



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, December 17, 2019

7:00 PM

Council Chambers

Last Meeting of the Year

- 1. ROLL CALL**
- 1.A ANNOUNCEMENTS**
- 1.B APPROVAL OF AGENDA**
- 2. SPECIAL RECOGNITION - None**
- 3. PUBLIC COMMENT**

(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 COMMENT (Optional)

4. CONSENT CALENDAR

(Items of a Routine Nature)

- 4.A [19-1173](#)** Approval of December 10, 2019 Study Session Meeting Minutes
Attachments: [Minutes](#)
- 4.B [19-1174](#)** Approval of December 10, 2019 City Council Meeting Minutes
Attachments: [Minutes](#)

- 4.C [19-1002](#) Approval of a Resolution Authorizing the Pursuit of an Ecology Grant for a Second Street Sweeper
Attachments: [Resolution](#)
[WQ Enhanced Sweeper Program Budget](#)
- 4.D [19-1003](#) Approval of a Resolution Authorizing a Sublease at Percival Landing with Mg Burgher & Associates
Attachments: [Resolution](#)
[Sublease](#)
- 4.E [19-1068](#) Approval of a Resolution Authorizing an Amendment to the Interagency Agreement Between the Department of Ecology and the City of Olympia to Sponsor Bioretention Hydrologic Performance Studies
Attachments: [Resolution](#)
[Agreement](#)
- 4.F [19-1169](#) Approval of a Resolution Authorizing the Mayor to Sign a Letter to the United States Secretary of State Conveying the City of Olympia's Consent to Welcoming and Resettling Refugees
Attachments: [Resolution](#)

4. SECOND READINGS (Ordinances)

- 4.G [19-1151](#) Approval of an Ordinance Amending Ordinance 7212 (Special Funds)
Attachments: [Revised Ordinance](#)
[Ordinance](#)
- 4.H [19-1152](#) Approval of an Ordinance Amending Ordinance 7213 (Capital Budget)
Attachments: [Revised Ordinance](#)
[Ordinance](#)
- 4.I [19-1150](#) Approval of an Ordinance Amending Ordinance 7214 (Operating Budget)
Attachments: [Revised Ordinance](#)
[Ordinance](#)
- 4.J [19-1069](#) Approval of an Ordinance Adopting 2020 Utility Rates and General Facilities Charges
Attachments: [Ordinance](#)
- 4.K [19-1104](#) Approval of an Ordinance Setting 2020 Development Fee Adjustments
Attachments: [Ordinance](#)
- 4.L [19-1093](#) Approval of an Ordinance Amending Transportation Impact Fees
Attachments: [Ordinance](#)

[Cost Distribution](#)

- 4.M** [19-1123](#) Approval of an Ordinance Amending Olympia Municipal Code Related to Storm and Surface Water Management
Attachments: [Ordinance](#)
- 4.N** [19-1122](#) Approval of an Ordinance Amending Olympia School District Impact Fees
Attachments: [Ordinance](#)
- 4.O** [19-1124](#) Approval of an Ordinance Authorizing State-Mandated Amendments to the Model Business and Occupation Tax Ordinance
Attachments: [Ordinance](#)
 [Model Apportionment Rule for Taxpayer Use](#)
- 4.P** [19-1149](#) Approval of an Ordinance Adopting the 2020 Operating, Special Funds, Capital Budget, Capital Facilities Plan, and 2020-2025 Financial Plan
Attachments: [Ordinance](#)
- 4.Q** [19-1143](#) Approval of an Ordinance to Vacate a Portion of Bethel Street NE between State Avenue and Olympic Drive
Attachments: [Ordinance](#)
 [Petition to Vacate](#)
 [Proposed Development Site Plan](#)
 [Vicinity Map](#)
- 4.R** [19-1144](#) Approval of an Ordinance to Grant a Master Permit to Noel Communications
Attachments: [Ordinance](#)
 [Map](#)
- 4.S** [19-1142](#) Approval of an Ordinance to Grant a Master Permit to Astound Broadband
Attachments: [Ordinance](#)
 [Map](#)
- 4.T** [19-1049](#) Approval of an Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC
Attachments: [Ordinance](#)

4. FIRST READINGS (Ordinances) - None**5. PUBLIC HEARING - None****6. OTHER BUSINESS**

- 6.A** [19-1162](#) 2019 Year-End Highlights

6.B [19-1164](#) Remarks from Outgoing Councilmember Jones

7. CONTINUED PUBLIC COMMENT

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

City Council

Approval of December 10, 2019 Study Session Meeting Minutes

Agenda Date: 12/17/2019
Agenda Item Number: 4.A
File Number: 19-1173

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

Title

Approval of December 10, 2019 Study Session Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, December 10, 2019

5:30 PM

Council Chambers

Study Session

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Mayor Pro Tem Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Nathaniel Jones and Councilmember Lisa Parshley

Excused: 1 - Councilmember Renata Rollins

2. BUSINESS ITEM

2.A [19-0053](#) Regional Climate Mitigation Plan Update

Public Works Director Rich Hoey gave an overview on the Thurston Climate Mitigation Plan. He thanked the Thurston Regional Planning Council (TRPC) for their work, along with Councilmembers Parshley and Jones who have been participating.

TRPC Senior Planner Allison Osterberg gave an overview of the project, public engagement efforts, the communitywide actions list, criteria & analysis and next steps.

Waster Resources Planning and Engineering Supervisor Susan Clark gave an update on early action strategies developed by the Climate Action Work Group.

Councilmembers asked clarifying questions.

The study session was completed.

3. ADJOURNMENT

The meeting adjourned at 6:43 p.m.



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601 4th Avenue E.
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360-753-8244

City Council

Approval of December 10, 2019 City Council Meeting Minutes

Agenda Date: 12/17/2019
Agenda Item Number: 4.B
File Number: 19-1174

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

Title

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City Council

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Information: 360.753.8244

Tuesday, December 10, 2019

7:00 PM

Council Chambers

1. ROLL CALL

Present: 6 - Mayor Cheryl Selby, Mayor Pro Tem Jessica Bateman,
Councilmember Jim Cooper, Councilmember Clark Gilman,
Councilmember Nathaniel Jones and Councilmember Lisa Parshley

Excused: 1 - Councilmember Renata Rollins

1.A ANNOUNCEMENTS

Mayor Selby announced the Council met earlier in a Study Session. No decisions were made.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION

2.A [19-1145](#) Special Recognition - Westminster Presbyterian Church's Hope Village

Interim Assistant City Manager Keith Stahley recognized Westminster Presbyterian Church and their faith-based tiny house village. Mr. Stahley thanked Pastor Theron Fenner and the congregation for their work.

Pastor Theron and Church representative Littleton Dudley discussed the tiny home village and the partnership.

Councilmembers asked clarifying questions.

The recognition was received.

3. PUBLIC COMMENT

The following people spoke: Linda Ann Moniz, Heather Spradlin, Allison Spector, Renee Dars, Sara Joseph, Maria Cortez, Holly Davies, and Raven Yamata.

4. CONSENT CALENDAR

4.A [19-1155](#) Approval of November 26, 2019 Study Session Meeting Minutes

The minutes were adopted.

- 4.B [19-1154](#) Approval of November 26, 2019 City Council Meeting Minutes

The minutes were adopted.

- 4.C [19-1153](#) Bills and Payroll Certification

Payroll check numbers 92447 through 92471 and Direct Deposit transmissions: Total: \$3,156,160.37; Claim check numbers 3720438 through 3721016 and 3721202 through 3721354: Total: \$3,256,630.43.

The decision was adopted.

- 4.D [19-0265](#) Approval of a Resolution Adopting the 2021-2026 Transportation Improvement Program

The resolution was adopted.

- 4.E [19-0686](#) Approval of a Resolution Authorizing an Intergovernmental Agreement with Thurston County Medic One for Basic Life Support Services

The resolution was adopted.

- 4.F [19-1140](#) Approval of a Resolution Authorizing a Professional Services Agreement with Pioneer Technologies for Grant Management and Brownfield Consulting Services

The discussion was completed.

- 4.G [19-1132](#) Approval of a Resolution Granting Special Tax Valuation for the Olympia Heritage Site at 208 18th Avenue SW

The resolution was adopted.

- 4.H [19-1092](#) Approval of a Resolution Granting Special Tax Valuation for the Olympia Heritage Site at 215 19th Avenue SW

The resolution was adopted.

4. SECOND READINGS (Ordinances) - None

4. FIRST READINGS (Ordinances)

- 4.J [19-1151](#) Approval of an Ordinance Amending Ordinance 7212 (Special Funds)

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

- 4.K [19-1152](#) Approval of an Ordinance Amending Ordinance 7213 (Capital Budget)

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

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

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

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

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

- 4.U [19-1144](#) Approval of an Ordinance to Grant a Master Permit to Noel Communications

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

- 4.V [19-1142](#) Approval of an Ordinance to Grant a Master Permit to Astound Broadband

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

- 4.W [19-1049](#) Approval of an Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC

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

Approval of the Consent Agenda

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

Aye: 6 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Jones and Councilmember Parshley

Excused: 1 - Councilmember Rollins

PULLED FROM CONSENT CALENDAR

- 4.I [19-1133](#) Approval of a Resolution Granting Special Tax Valuation for the Olympia Heritage Site at 1616 Capitol Way South

Mayor Pro Tem Bateman moved, seconded by Councilmember Parshley, to adopt a resolution granting special tax valuation for the Olympia heritage site at 1616 Capitol Way South. The motion carried by the following vote:

Aye: 5 - Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Jones and Councilmember Parshley

Excused: 1 - Councilmember Rollins

Recused: 1 - Mayor Selby

5. PUBLIC HEARING

- 5.A [19-1017](#) Public Hearing on Community Development Block Grant (CDBG) Program Year 2019 Amendments

CDBG Program Manager Anna Schlecht gave an overview of the CDBG consolidated plan and proposed amendments.

Mayor Selby opened the public hearing at 7:58 p.m. Derrick Harris and Lisa Gillotti spoke. The public hearing closed at 8:01 p.m. Mayor Selby noted written comments will be accepted until January 3, 2020.

The public hearing was held and closed.

6. OTHER BUSINESS

6.A [19-1148](#) Intercity Transit Update

Intercity Transit General Manager Ann Freeman-Manzanares gave an update on the Intercity Transit Proposition 1 service enhancements.

Councilmembers asked clarifying questions.

The discussion was completed.

6.B [19-1146](#) Approval of the City of Olympia 2020 Legislative Agenda

Legislative Liaison Susan Grisham shared the proposed 2020 Legislative Agenda for Olympia.

Councilmembers asked clarifying questions.

Following discussion, Councilmembers agreed to the following edits:

page 1 - modify the first priority to: State resources and policy support...

page 1 - add - Support legislation increasing statewide housing supply.

page 2 - under Solid Waste Reduction change to "The City is interested in tracking legislation ~~on solid waste, including bills~~ on reducing packaging and plastic, as well as improving recycling markets in Washington State.

page 2 - move the Capitol Lake - Deschutes Estuary Phase II EIS Process up higher on the list.

Mayor Selby moved, seconded by Councilmember Cooper, to approve the 2020 Legislative Agenda with edits as noted. The motion carried by the following vote:

Aye: 6 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Jones and Councilmember Parshley

Excused: 1 - Councilmember Rollins

6.C [19-1141](#) Update on the Boulevard Road Property Draft Request for Qualifications

Mr. Stahley shared a video of Economic Development Director Mike Reid providing a briefing on the Boulevard Road Property Draft Request for Qualifications. The video will be available on the City's website in association with this project.

Councilmembers asked clarifying questions.

The discussion was completed.

7. CONTINUED PUBLIC COMMENT - None**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

Interim City Manager Jay Burney discussed a TCOMM members meeting he and Councilmember Rollins attended today.

9. ADJOURNMENT

The meeting adjourned at 9:09 p.m.



City Council

Approval of a Resolution Authorizing the Pursuit of an Ecology Grant for a Second Street Sweeper

Agenda Date: 12/17/2019
Agenda Item Number: 4.C
File Number: 19-1002

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

Title

Approval of a Resolution Authorizing the Pursuit of an Ecology Grant for a Second Street Sweeper

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the City to apply for a Washington State Department of Ecology grant and loan to fund a second street sweeper and authorizing the Interim City Manager to sign the grant and loan, if awarded.

Report

Issue:

Whether to approve a resolution authorizing the City to apply for a water quality grant and loan to fund a second street sweeper.

Staff Contact:

Sue Barclift, Senior Stormwater Program Specialist, Public Works Water Resources, 360.570.3805

Presenter:

Sue Barclift, Senior Stormwater Program Specialist

Background and Analysis:

The Department of Ecology offers grant and loan funding for stormwater activities that provide water quality benefits. Street sweeping is a stormwater activity and is recognized as a cost-effective practice that significantly reduces pollutants in surface water by removing sediment before it enters a stormwater collection system.

Current street sweeping program funding is split between the City's Transportation Program and the Stormwater Utility. For the past four years, the Stormwater Utility has worked to enhance the street sweeping program by shifting focus to sediment removal and increasing sweeper operating hours. Progress has been slow since the City has only one street sweeper. Having to compete with using

the sweeper for other activities (e.g., spills, litter, leaves, winter sand cleanup, resident requests) limits time to concentrate on a water quality route. The additional sweeping hours have also put a strain on the sweeper's performance causing frequent mechanical downtime.

The grant requires 25 percent matching funds and requires the program to continue for three years after the grant term is completed. The maximum grant term is three years unless the grant is combined with a loan. Packaging the grant with a loan for the required 25 percent matching funds extends the grant term to five years. Continuing the program for three more years will fulfill the grant timeline requirement and aligns with the eight-year lifecycle of a street sweeper.

A second street sweeper is now included in the City's 2020-2025 Capital Facilities Plan (CFP) and a new 0.5 FTE is in the 2020 budget for a street sweeper operator. Staff will present more details about the terms of the grant and loan, including matching funds and resources included in the 2020 budget.

Neighborhood/Community Interests (if known):

Projects to improve water quality have consistently received the support of the Utility Advisory Committee and the community.

Options:

Option 1: Approve a Resolution authorizing the City to apply for a Washington State Department of Ecology grant and loan to fund a second street sweeper and authorize the interim City Manager to sign the grant and loan, if awarded. The City receives financial assistance in the form of a grant to offset planned expenditures for the purchase and operation of a second street sweeper.

Option 2: Do not approve a Resolution authorizing the City to pursue a grant to fund a second street sweeper. The City will not receive financial assistance and would need to evaluate an increase to stormwater utility rates to fund the sweeper.

Financial Impact:

The total cost for the eight-year water quality enhanced street sweeping program is \$2,044,055. Receiving the Ecology grant opportunity brings the program costs for the City to \$947,998.

Attachments:

Resolution
Water Quality Enhanced Street Sweeping Program Budget

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING THE STORMWATER UTILITY TO PURSUE A GRANT OFFERED BY THE DEPARTMENT OF ECOLOGY THAT WOULD PARTIALLY FUND PURCHASE AND OPERATION OF A SECOND STREET SWEEPER, AGREEING TO THE TERMS OF THE DEPARTMENT OF ECOLOGY GRANT, AND AUTHORIZING AND DIRECTING THE INTERIM CITY MANAGER, THE CITY MANAGER OR DESIGNEE TO SIGN THE GRANT AGREEMENT ON BEHALF OF THE CITY, SHOULD THE CITY BE AWARDED THE GRANT.

WHEREAS, the City of Olympia's Stormwater Utility has need for a second street sweeper to augment its street sweeping program. For the past four years, the Stormwater Utility has worked to enhance the street sweeping program by shifting focus to sediment removal and increasing sweeper operating hours. Progress has been slow since the City has only one street sweeper. Having to compete with using the sweeper for other activities (e.g., spills, litter, leaves, winter sand cleanup, resident requests) limits time to concentrate on a water quality route. The additional sweeping hours has also put a strain on the sweeper's performance causing frequent mechanical downtime.

WHEREAS, the City's street sweeping program has important benefits for the City, including keeping the streets safe by removing leaves and other debris that could be an obstruction to people walking, biking, or motoring, reducing flooding by keeping gutters and drains free of obstructions to the flow of storm water, and improving water quality by removing sediment and toxins from the streets, which would otherwise flow into the storm water system.

WHEREAS, a second street sweeper is included in the City's 2020-2025 capital facilities plan (CFP) and a new .5 FTE is in the 2020 budget for a street sweeper operator.

WHEREAS, the Department of Ecology, through its Water Quality Combined Funding Program (WCQ) offers grant funding for activities that provide water quality benefit. Street sweeping is a stormwater activity and is recognized as a cost-effective practice that significantly reduces pollutants in surface water by removing sediment before it enters a stormwater collection system.

WHEREAS, this Department of Ecology Water Quality Combined Financial Assistance Grant, if awarded to the City, could be used towards the purchase and operation of a second street sweeper for the City's Stormwater Utility. The total cost for the eight year water quality enhanced street sweeping program is \$2,044,055. If the City were to receive the Grant, it would reduce the program costs for the City to \$947,998.

WHEREAS, the terms of the Department of Ecology Water Quality Combined Financial Assistance Grant requires 25% matching funds and requires the program to continue for three years after the grant term is completed. The maximum grant term is three years unless the grant is combined with a loan. Packaging the grant with a loan for the required 25% matching funds extends the grant term to five years. Continuing the program for three more years will fulfill the grant timeline requirement and aligns with the eight year lifecycle of a street sweeper.

WHEREAS, if the City is awarded the Department of Ecology Water Quality Combined Financial Assistance Grant, it will have to sign a grant agreement, substantially similar in form to the Water Quality Combined Financial Assistance Agreement between the Department of Ecology and the City of Lacey Public Works Department, Agreement WQC-2018-LacePW-00137. The terms of that Grant Agreement are consistent with other Department of Ecology grant agreements that the City has signed;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The City Stormwater Utility is authorized to pursue the Water Quality Combined Financial Assistance Grant offered by the Department of Ecology to fund part of the costs of purchasing and operating a second street sweeper to enhance the City's street sweeping program.
2. The City agrees to comply with the terms of the Department of Ecology Water Quality Combined Financial Assistance Grant, including providing the 25% matching funds.
3. If the City is awarded the Department of Ecology Water Quality Combined Financial Assistance Grant, the Interim City Manager or the City Manager is authorized and directed to execute the Department of Ecology Water Quality Combined Financial Assistance Agreement on behalf of the City of Olympia, provided that such Agreement is substantially similar in form to the Water Quality Combined Financial Assistance Agreement between the Department of Ecology and the City of Lacey Public Works Department, Agreement WQC-2018-LacePW-00137, and the Interim City Manager or the City Manager is further authorized and directed to execute any other documents necessary to execute said Agreement, and to make any minor modifications as may be required and are consistent with the intent of the Agreement, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY



Agreement WQC-2018-LacePW-00137

WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF LACEY – PUBLIC WORKS DEPARTMENT

This is a binding Agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and the City of Lacey – Public Works Department, hereinafter referred to as the "RECIPIENT" to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Lacey Regenerative Air Street Sweeper
Total Cost:	\$664,094.00
Total Eligible Cost:	\$659,302.67
Ecology Share:	\$494,477.00
Recipient Share:	\$164,825.67
The Effective Date of this Agreement is:	07/01/2018
The Expiration Date of this Agreement is no later than:	06/30/2021
Project Type:	Stormwater Activity

Project Short Description:

This project will provide source control and help prevent street waste containing sediment, suspended solids, dissolved metals, oil, and phosphorus from entering City of Lacey streams and lakes through an enhanced road-sweeping program. Additional benefits of this project include improved air quality resulting from the removal of dust particulates.

Project Long Description:

The RECIPIENT will purchase and operate a high efficiency street sweeper to enhance their current street sweeping program. The RECIPIENT currently operates a single street sweeper which effectively sweeps the City's main streets. Through operation of a second street sweeper, the RECIPIENT will add residential streets to the program and anticipates

Agreement No: WQC-2018-LacePW-00137
Project Title: Lacey Regenerative Air Street Sweeper
Recipient Name: City of Lacey – Public Works Department

doubling the quantity of debris and pollutants removed each year, to approximately 3,000 cubic yards. The RECIPIENT will operate the sweeper and track both the miles swept and volume of debris removed.

Hicks Lake, Pattison Lake, Long Lake, Lake Lois, Chambers Lake, the Woodland Creek drainage system, and Henderson Inlet on Puget Sound will all benefit from the enhanced sweeping program. Several of these water bodies are fish bearing and listed as impaired for low dissolved oxygen and bacteria. The additional street sweeping will remove sediment, suspended solids, oil, organic matter, and associated pollutants such as phosphorous and pathogens that help contribute to the impaired condition.

Overall Goal:

This project will help protect and restore water quality in Washington by reducing stormwater impacts from existing infrastructure and development.

RECIPIENT INFORMATION

Organization Name: City of Lacey - Public Works Department

Federal Tax ID: 91-0819427
DUNS Number: 085248011

Mailing Address: 420 College Street SE
Lacey, WA 98503

Physical Address: 420 College Street SE
Lacey, Washington 98503

Contacts

Project Manager	Doug Christenson Water Resources Engineer 420 College Street SE Lacey, Washington 98503 Email: dchriste@ci.lacey.wa.us Phone: (360) 438-2686
Billing Contact	Doug Christenson Water Resources Engineer 420 College Street SE Lacey, Washington 98503 Email: dchriste@ci.lacey.wa.us Phone: (360) 438-2686
Authorized Signatory	Scott Egger Public Works Director 420 College Street SE Lacey, Washington 98503-1238 Email: segger@ci.lacey.wa.us Phone: (360) 438-2649 Fax: (360) 456-7799

ECOLOGY INFORMATION

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

Physical Address: Water Quality
300 Desmond Drive
Lacey, WA 98503

Contacts

Project Manager	Lorie Hammerli Department of Ecology Water Quality PO BOX 47775 Olympia, WA 98504-7775 Email: Lorie.Hammerli@ecy.wa.gov Phone: 360-407-6294
Financial Manager	Sarah Zehner Department of Ecology Water Quality PO BOX 47600 Olympia, WA 98504-7600 Email: sarah.zehner@ecy.wa.gov Phone: 360-407-7196
Technical Adviser	Doug Howie Department of Ecology Water Quality PO BOX 47600 Olympia, WA 98504-7600 Email: doug.howie@ecy.wa.gov Phone: 360-407-6444

SCOPE OF WORK

Task Number: 1 Task Cost: \$7,537.00

Task Title: Grant and Loan Administration

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; an EAGL (Ecology Administration of Grants and Loans) recipient closeout report; and a two-page Final Report (including photos, if applicable). In the event that the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be made available to ECOLOGY upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY’s grant and loan administrative requirements.

Task Expected Outcome:

* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.

* Properly maintained project documentation.

Recipient Task Coordinator: Doug Christenson

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page Outcome Summary Report.	

SCOPE OF WORK

Task Number: 2 **Task Cost:** \$284,693.00

Task Title: Equipment Purchase

Task Description:

- A. The RECIPIENT will submit product details and costs associated with the purchase of a high efficiency street sweeper. No reimbursement will be made for equipment purchases without prior written acceptance by ECOLOGY.
- B. Following ECOLOGY acceptance, the RECIPIENT will purchase the accepted sweeper.

Task Goal Statement:

The RECIPIENT will select and purchase Ecology-accepted high efficiency street sweeper.

Task Expected Outcome:

The purchased sweeper will be the appropriate type, make, and model to remove targeted pollutants.

Recipient Task Coordinator: Doug Christenson

**Equipment Purchase
Deliverables**

Number	Description	Due Date
2.1	Submit documentation indicating make, model, and specifications of sweeper to ECOLOGY for ECOLOGY Engineer review. Upload to EAGL and notify ECOLOGY Project Manager when upload is complete.	
2.2	Submit documentation outlining cost effectiveness of purchase of sweeper to ECOLOGY for ECOLOGY review. Upload to EAGL and notify ECOLOGY Project Manager when upload is complete.	
2.3	Submit Equipment Purchase Contract. Upload to EAGL and notify ECOLOGY Project Manager when upload is complete.	

SCOPE OF WORK

Task Number: 3 Task Cost: \$367,072.67

Task Title: Sweeper Operation and Reporting Requirements

Task Description:

- A. The RECIPIENT will use the high efficiency sweeper to remove sediment and debris from public roadways.
- B. The RECIPIENT will develop and/or maintain a database that tracks sweeper operations. Data tracked will include the area swept (GIS data), when (time data), as well as the volume of sediment and debris removed and properly disposed of at the City’s disposal facility.
- C. The RECIPIENT will track and report sweeper use for a minimum of two years.
- D. The RECIPIENT will report miles swept and volume of sediment and debris removed on an annual basis, to be submitted with each progress report/payment request.
- E. The RECIPIENT will report the number of loads/dumps on a quarterly basis, to be submitted with each progress report/payment request.
- F. The RECIPIENT will track and report cumulative total miles swept on a quarterly basis, to be submitted with each progress report/payment request.
- G. The RECIPIENT will provide a final sweeping tracking report as part of the Project Outcome Summary Report.

Task Goal Statement:

The sweeper will be used to enhance the RECIPIENT’s street sweeping program.

Task Expected Outcome:

The RECIPIENT will increase the volume of sweeper debris removed prior to it entering City of Lacey lakes and streams.

Recipient Task Coordinator: Doug Christenson

Sweeper Operation Tracking

Deliverables

Number	Description	Due Date
3.1	Provide documentation to show that the RECIPIENT is maintaining a database that tracks sweeper operations. Data collected includes, but is not limited to, the area swept (GIS/GPS track lines), when (sweeping time data), as well as the volume of sediment and debris removed and properly disposed of at the City’s disposal facility.	
3.2	As part of quarterly reporting, report the miles swept by each sweeper unit operated by the RECIPIENT. Upload to EAGL and notify ECOLOGY when upload is complete.	

3.3	As part of quarterly reporting, report volume of sediment and debris removed by each sweeper unit operated by the RECIPIENT. Upload to EAGL and notify ECOLOGY when upload is complete.	
3.4	Final sweeping tracking report. Upload to EAGL and notify ECOLOGY when upload is complete.	

DRAFT

BUDGET

Funding Distribution 1

Funding Title: Stormwater Financial Assistance Program (SFAP)

Funding Type: Grant

Funding Effective Date: 7/1/2018

Funding Expiration Date: 06/30/2021

Funding Source: SFAP-SFY17 (WQC-2016) 94.46%
 SFAP-SFY18 5.54%

Recipient Match %: 25

InKind Interlocal Allowed: N

InKind Other Allowed: N

Is this Funding Distribution used to match a federal grant? N

Indirect Rate: 0%

Stormwater Financial Assistance Program	Task Total
1. Project Administration/Management	\$7,537.00
2. Equipment Purchase	\$284,693.00
3. Sweeper Operation Reporting Requirements	\$367,072.67
Total	\$659,302.67

Funding Distribution Name	Recipient Match	Recipient Share	Ecology Share	Total
SFAP	25%	\$164,825.67	\$494,477.00	\$659,302.67
Total		\$164,825.67	\$494,477.00	\$659,302.67

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

SECTION 1: DEFINITIONS

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY'S ADMINISTRATIVE REQUIREMENTS FOR RECIPIENTS OF ECOLOGY GRANTS AND LOANS at the signing of this loan.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water quality problem as described in Chapter 173-98-730 WAC.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defeasance or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY’s Funding Guidelines that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the Water Pollution Control Facility financed with proceeds of the loan begins to operate for its intended purpose.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund of that name created by ordinance or resolution of the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this loan agreement.

“Project Completion Date” means the date specified in the loan agreement on which the Scope of Work will be fully completed.

“Project Schedule” means that schedule for the project specified in the loan agreement.

“Reserve Account” means, for a loan that constitutes Revenue-Secured Debt, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of the ECOLOGY’s termination of the loan agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to the ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

SECTION 2: THE FOLLOWING CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring

qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final negotiated agreement and submit a copy of the agreement to ECOLOGY.

B. Cultural and Historic Resources Protection: The RECIPIENT must comply with all requirements listed in Section 106 of the National Historic Preservation Act (for federally funded projects) or Executive Order 05-05 (for state funded projects) prior to implementing any project that involves soil disturbing activities. A soil disturbing activity includes but is not limited to planting vegetation, installing fence posts, sloping stream banks, channel modifications, geotechnical test borings, and other construction projects. For more details regarding these requirements, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

C. Equipment Purchase: Equipment not included in the scope of work or a construction plan and specification approval must be pre-approved by ECOLOGY's project manager before purchase.

D. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or EPA funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site- specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's financial manager upon request.

E. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, "Growth Management Planning by Selected Counties and Cities." If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

F. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, "Interlocal Cooperation Act." The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY.

G. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY's Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

SECTION 3: THE FOLLOWING CONDITIONS APPLY TO NONPOINT ACTIVITY PROJECTS ONLY

A. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement will be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State. However, ECOLOGY may accept as eligible technical assistance, proposed practices, or project designs that do not meet these standards if approved in writing by the NRCS and ECOLOGY.

B. Project Status Evaluation: ECOLOGY will evaluate the status of this project 18 months from the effective date of this agreement. ECOLOGY's Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be

delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

SECTION 4: THE FOLLOWING CONDITIONS APPLY TO CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS ONLY.

A. Centennial-Funded Projects Used to Match Section 319-Funded Projects: Projects used by ECOLOGY to meet a matching requirement for the Section 319 program require the RECIPIENT to comply with Federal Section 319 reporting requirements. Required reporting includes providing project data on BMP implementation and annual pollutant load reduction.

B. Section 319 Reporting Requirements: The RECIPIENT must complete ECOLOGY's "Clean Water Act Section 319 Initial Data Reporting Sheet." The RECIPIENT must submit this form to ECOLOGY's Financial Manager with the signed agreement. The form is available on ECOLOGY's Water Quality Program funding website.

C. The RECIPIENT must complete ECOLOGY's "Federal Clean Water Act Section 319 Grant Load Reductions Reporting Form" annually. This form is used to gather information on pollutant load reduction for each best management practice (BMP) installed for the project. The RECIPIENT must submit this form to ECOLOGY's Financial Manager by January 15 of each year, and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed and submitted the form to the financial manager. This form is available on our website.

SECTION 5: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form
2. Clean Water Act Section 319 Initial Data Reporting Sheet

Contact your ECOLOGY financial manager for the forms.

A. Disadvantaged Business Enterprise (DBE):

GENERAL COMPLIANCE, 40 CFR, Part 33 - The RECIPIENT agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D - A RECIPIENT must negotiate with the appropriate EPA award official or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal - The dollar amount of this assistance agreement is over \$250,000; or the total dollar amount of all of the RECIPIENT's non-TAG assistance agreements from EPA in the current fiscal year is over \$250,000. The Washington State Department of Ecology has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: SUPPLIES 8.00%; SERVICES 10.00%; EQUIPMENT 8.00%; CONSTRUCTION 10.00%

WBE: SUPPLIES 4.00%; SERVICES 4.00%; EQUIPMENT 4.00%; CONSTRUCTION 6.00%

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404 - If the RECIPIENT has not yet negotiated its

MBE/WBE fair share objectives/goals, the RECIPIENT agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The RECIPIENT agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA shall respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C - Pursuant to 40 CFR, Section 33.301, the RECIPIENT 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:

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

B. Funding Recognition: The RECIPIENT must use the following paragraph in all reports, documents, and signage developed under this agreement:

This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.

C. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA's assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date.

SECTION 6: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Opinion of RECIPIENT's Legal Council
2. Authorizing Ordinance or Resolution
3. Pre-Award Compliance Review Report for All Applicants Requesting Federal Assistance
4. Federal Funding Accountability and Transparency Act (FFATA) Form
5. Clean Water State Revolving Fund Initial Data Reporting Sheet

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means 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. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT'S authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Clean Water State Revolving Fund Data Reporting Sheet (Data Reporting Sheet): The RECIPIENT shall submit the completed Data Reporting Sheet before this agreement is signed by ECOLOGY. ECOLOGY shall provide the Data Reporting Sheet form to the RECIPIENT.

E. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement. Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including, but not limited to Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA). In the event of the RECIPIENT'S noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The

RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance. Fair Share Objective/Goals, 40 CFR, Part 33, Subpart D. If the dollar amount of this agreement or the total dollar amount of all of the RECIPIENT's financial assistance agreements in the current federal fiscal year from the Revolving Fund is over \$250,000, the RECIPIENT accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the Office of Minority Women Business Enterprises as follows:

Construction 10.00% MBE 6.00% WBE
Supplies 8.00% MBE 4.00% WBE
Services 10.00% MBE 4.00% WBE
Equipment 8.00% MBE 8.00% WBE

By signing this agreement the RECIPIENT 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 Office of Minority Women Business Enterprises.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensuring 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 and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. Qualified Women and Minority business enterprises may be found on the Internet at www.omwbe.wa.gov or by contacting the Washington State Office of Minority and Women's Enterprises at 866-208-1064.
- 2) Making 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.
- 3) Considering 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 shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, requiring the subcontractors to take the five good faith efforts in paragraphs 1 through 5 above.

MBE/WBE Reporting, 40 CFR, Part 33, Sections 33.302, 33.502 and 33.503. The RECIPIENT agrees to provide forms: EPA Form 6100-2 DBE Subcontractor Participation Form and EPA Form 6100-3 DBE Subcontractor Performance Form to all its DBE subcontractors, and EPA Form 6100-4 DBE Subcontractor Utilization Form to all its prime contractors. These forms are available on ECOLOGY's Water Quality Program funding website.

EPA Form 6100-2 – The RECIPIENT must document that this form was received by DBE subcontractor. DBE subcontractors may submit the completed form to the EPA Region 10 DBE coordinator in order to document issues or concerns with their usage or payment for a subcontract.

EPA Form 6100-3 – This form must be completed by DBE subcontractor(s), submitted with bid, and kept with the contract.

EPA Form 6100-4 – This form must be completed by the prime contractor, submitted with bid, and kept with the contract.

The RECIPIENT also agrees to submit ECOLOGY's MBE/WBE participation report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The RECIPIENT also agrees to ensure that RECIPIENTs of identified loans also comply with provisions of 40CFR, Section 33.302.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

“The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will 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 or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

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
4. Entity's status as an MBE/WBE or non-MBE/WBE

F. Electronic and Information Technology (EIT) Accessibility: RECIPIENTs shall ensure that loan funds provided under this agreement for costs incurred in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7. Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

G. Free Service: The RECIPIENT shall not furnish utility service to any customer free of charge if providing that free service affects the RECIPIENT's ability to meet the obligations of this agreement.

H. Insurance: The RECIPIENT shall at all times carry fire and extended coverage, public liability and property damage, and such other forms of insurance with responsible insurers and with policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or

participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date. The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments semiannually over the term of this loan "Loan Term" as outlined in this agreement.

J. Loan Repayment:

Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all of the other agreements and obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all of the covenants, agreements, and attachments contained herein.

2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.

3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all of the taxable property within the boundaries of the RECIPIENT.

4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT's Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.

6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest. Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY's notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

Agreement No: WQC-2018-LacePW-00137
Project Title: Lacey Regenerative Air Street Sweeper
Recipient Name: City of Lacey – Public Works Department

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:
Department of Ecology
Cashiering Unit
P.O. Box 47611
Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY's Financial Manager.

No change to the amount of the semiannual principal and interest payments shall be made without a formal amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.

4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax

limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations. Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Reserve Requirement: For loans that are Revenue-Secured Debt with terms greater than five years, the RECIPIENT must accumulate a reserve for the loan equivalent to at least the Average Annual Debt Service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a Reserve Account in the Loan Fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first.

“Reserve Account” means, for a loan that constitutes Revenue-Secured Debt, an account of that name created in the Loan Fund to secure the payment of the principal and interest on the loan. The amount on deposit in the Reserve Account may be applied by the RECIPIENT (1) to make, in part or in full, the final repayment to ECOLOGY of the loan amount or, (2) if not so applied, for any other lawful purpose of the RECIPIENT once the Loan Amount, plus interest and any other amounts owing to ECOLOGY, have been paid in full.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the loan Fund and used to pay the principal of and interest on the loan. The ULID Assessments in the ULID may be deposited into the Reserve Account to satisfy a Reserve Requirement if a Reserve Requirement is applicable.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall at all times maintain and keep a funded Utility in good repair, working order and condition and also shall at all times operate the Utility and the business in an efficient manner and at a reasonable cost.

M. Opinion of RECIPIENT’s Legal Counsel: The RECIPIENT must submit an “Opinion of Legal Counsel to the RECIPIENT” to ECOLOGY before this agreement shall be signed. ECOLOGY will provide the form.

N. Payment to Consultants: The RECIPIENT shall ensure that loan funds provided under this agreement to reimburse for costs incurred by individual consultants (excluding overhead) is limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed. Contracts for services awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the RECIPIENT with responsibility for the selection, direction, and control of the individuals who shall be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j) for additional information.

O. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and

subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and sub contracts in excess of \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act, and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and make such records available for review upon request.

P. Litigation; Authority: No litigation is now pending, or to the RECIPIENT’s knowledge, threatened, seeking to restrain, or enjoin:

(i) the execution of this agreement; or

(ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or

(iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or

(iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

Q. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein. Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

R. Sale or Disposition of Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the Utility, or any real or personal property comprising a part of the Utility unless one of the following applies:

1. The facilities or property transferred are not material to the operation of the Utility; or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the Utility; or are no longer necessary, material, or useful to the operation of the Utility.

2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the Utility.

3. The RECIPIENT receives from the transferee an amount which shall be in the same proportion to the net amount of Senior Lien Obligations and this loan then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the Utility from the portion of the Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.

The proceeds of any transfer under this paragraph shall be used (1) to redeem promptly or irrevocably set aside for the redemption of, Senior Lien Obligations and to redeem promptly the loan; or (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

S. Sewer-Use Ordinance or Resolution: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. The sewer use ordinance must include provisions to:

1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.

2) Prohibit inflow of stormwater.

3) Require that new sewers and connections be properly designed and constructed.

4) Require all existing and future residents to connect to the sewer system. Such ordinance or resolution shall be submitted to ECOLOGY upon request by ECOLOGY.

T. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.

2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.

3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.

4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all of its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may at its sole discretion declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligations upon the Net Revenue. Repayments not made immediately upon such acceleration shall incur late charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Intercept State Funds. In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance, ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

Documents and Materials. If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

Fees and Expenses. In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments

for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

U. User-Charge System: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the utility, to establish a reserve to pay for replacement, to establish the required Loan Reserve Account, and to repay the loan.

GENERAL FEDERAL CONDITIONS

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

CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, or debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department for assistance in obtaining a copy of those regulations.

The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING BUSINESS SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transaction and in all solicitations for lower tier covered transactions.

Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <<http://www.sam.gov>> and print a copy of completed searches to document proof of compliance.

Federal Funding Accountability And Transparency Act (FFATA) Reporting Requirements:

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

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

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

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

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

GENERAL TERMS AND CONDITIONS

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the “Administrative Requirements for Recipients of Ecology Grants and Loans - EAGL Edition”. <https://fortress.wa.gov/ecy/publications/SummaryPages/1401002.html>
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT’s activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological or cultural resources. Activities associated with archaeological and cultural resources are an eligible reimbursable cost subject to approval by ECOLOGY.

RECIPIENT shall:

- a) Immediately cease work and notify ECOLOGY if any archaeological or cultural resources are found while conducting work under this Agreement.
- b) Immediately notify the Department of Archaeological and Historic Preservation at (360) 586-3064, in the event historical or cultural artifacts are discovered at a work site.
- c) Comply with Governor Executive Order 05-05, Archaeology and Cultural Resources, for any capital construction projects prior to the start of any work.
- d) Comply with RCW 27.53, Archaeological Sites and Resources, for any work performed under this Agreement, as applicable. National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact cultural or historic properties.

4. ASSIGNMENT

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

5. COMMUNICATION

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

6. COMPENSATION

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

7. COMPLIANCE WITH ALL LAWS

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

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

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

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

8. CONFLICT OF INTEREST

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

9. CONTRACTING FOR GOODS AND SERVICES

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

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

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

10. DISPUTES

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

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

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

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

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

11. ENVIRONMENTAL STANDARDS

- a) RECIPIENTS who collect environmental-monitoring data must provide these data to ECOLOGY using the Environmental Information Management System (EIM). To satisfy this requirement these data must be successfully loaded into EIM, see instructions on the EIM website at: <http://www.ecy.wa.gov/eim>.
- b) RECIPIENTS are required to follow ECOLOGY's data standards when Geographic Information System (GIS) data are collected and processed. More information and requirements are available at: <http://www.ecy.wa.gov/services/gis/data/standards/standards.htm>. RECIPIENTS shall provide copies to ECOLOGY of all

final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

c) RECIPIENTS must prepare a Quality Assurance Project Plan (QAPP) when a project involves the collection of environmental measurement data. QAPP is to ensure the consistent application of quality assurance principles to the planning and execution of all activities involved in generating data. RECIPIENTS must follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030). ECOLOGY shall review and approve the QAPP prior to start of work. The size, cost, and complexity of the QAPP should be in proportion to the magnitude of the sampling effort.

12. GOVERNING LAW

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

13. INDEMNIFICATION

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

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

14. INDEPENDENT STATUS

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

15. KICKBACKS

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

16. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MBWE)

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

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

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

17. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c)

Special Terms and Conditions; (d) Any provisions or terms incorporated herein by reference including the “Administrative Requirements for Recipients of Ecology Grants and Loans”; and (e) the General Terms and Conditions.

18. PRESENTATION AND PROMOTIONAL MATERIALS

RECIPIENT shall obtain ECOLOGY’s approval for all communication materials or documents related to the fulfillment of this Agreement. Steps for approval:

- a) Provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution of any documents or materials compiled or produced.
- b) ECOLOGY reviews draft copy and reserves the right to require changes until satisfied.
- c) Provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets, such as a refrigerator magnet with a message as well as media announcements, and any other online communication products such as Web pages, blogs, and Twitter campaigns. If it is not practical to develop a copy, then the RECIPIENT must provide a complete description including photographs, drawings, or printouts of the product that best represents the item.

RECIPIENT shall include in their project timeline for ECOLOGY’s review and approval process.

RECIPIENT shall acknowledge in the materials or documents that funding was provided by ECOLOGY.

19. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY’s provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT shall submit the Closeout Report within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY. RECIPIENT shall use the ECOLOGY provided closeout report format.

20. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY’s current edition of “Administrative Requirements for Recipients of Ecology Grants and Loans”, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state or federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.

- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
- a. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 - b. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
 - g) Conversions. Regardless of the agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

21. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

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

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

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

22. RECOVERY OF FUNDS

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

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

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

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

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

23. SEVERABILITY

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

24. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

25. SUSPENSION

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

26. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web pages: Green Purchasing, <http://www.ecy.wa.gov/programs/swfa/epp> and Sustainability, www.ecy.wa.gov/sustainability.

27. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

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

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

28. THIRD PARTY BENEFICIARY

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

29. WAIVER

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

Water Quality Enhanced Street Sweeping Program Budget

TASK	Staff*	Sweeper Cost	Sales Tax	Maintenance & Repair	Fuel	Disposal Fees	Sub-Task Total	Task Total - Eligible Grant Costs	Grant Required 25% Match	Additional 3 Years of 8 Year Program	Total Program Cost for City
Task 1: Project Admin								\$8,355			
1.1 Progress Reports & Payment Requests - 120hrs	\$6,300						\$6,300				
1.2 Closeout Report - 12 hrs	\$685						\$685				
1.3 Outcome Summary Report - 24 hours	\$1,370						\$1,370				
Task 2: Enhanced Sweeper Maintenance Plan								\$11,270			
2.1 Draft Enhanced Sweeper Maintenance Plan	\$10,600						\$10,600				
2.2 Send Enhanced Maintenance Plan to Ecology	\$50						\$50				
2.3 Review Ecology Comments & Make Edits	\$570						\$570				
2.4 Send Revised Enhanced Maintenance Plan to Ecology	\$50						\$50				
Task 3: Sweeper Cost Analysis								\$2,620			
3.1 Cost Benefit Analysis: Research Options	\$2,000						\$2,000				
3.2 Send Cost Benefit Analysis to Ecology	\$50						\$50				
3.3 Review Ecology Comments	\$570						\$570				
Task 4: Develop an Operations and Maintenance Plan								\$7,620			
4.1 Draft Operations & Maintenance Plan	\$6,950						\$6,950				
4.2 Send Operations & Maintenance Plan to Ecology	\$50						\$50				
4.3 Review Ecology Comments & Make Edits	\$570						\$570				
4.4 Send Revised Operations & Maintenance Plan to Ecology	\$50						\$50				
Task 5: Sweeper Purchase								\$277,770			
5.1 Sweeper Selection	\$570						\$570				
5.2 Sweeper Purchase		\$252,000	\$25,200				\$277,200				
Task 6: Sweeper Operation								\$971,075			
6.1 Sweeper Operator	\$485,020						\$485,020			\$291,012	
6.2 Maintenance & Repair				\$245,405			\$245,405			\$147,243	
6.3 Fuel					\$115,650		\$115,650			\$69,390	
6.4 Disposal Fees						\$125,000	\$125,000			\$75,000	
Task 7: Tracking and Reporting								\$182,700			
6.1 Follow Sweeper Enhanced Maintenance Plan Elements	\$182,700						\$182,700				
Project/Program Total								\$1,461,410	\$365,353	\$2,044,055	\$947,998*

*Total program cost does not include 1% interest on the loan

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT ("Sublease") is made and entered into this 1st day of February, 2019, by and between the City of Olympia ("Olympia"), and M.G. Burgher & Associates, Inc. ("Sublessor", and collectively, the "Parties").

RECITALS

A. Sublessor leases certain property, a portion of which is the subject of this Sublease, from the Washington State Department of Natural Resources (the "State") under Lease 22-A02433, effective February 1, 2019 (the "DNR Lease") found in **Exhibit D**. Capitalized terms not otherwise defined in this Sublease shall have those meanings provided in the Lease.

B. Sublessor desires to sublease to Olympia, and Olympia desires to sublease from Sublessor, a portion of the property legally described on **Exhibit A** (the "DNR Leased Property" or "Property") for this Sublease. The Sub-Leased Area shall be further described as provided herein.

AGREEMENT

In consideration for the mutual benefits created herein, and other good and valuable consideration, Sublessor hereby subleases to Olympia the Sub-Leased Area legally described on **Exhibit B** pursuant to the following terms:

1. **Term.** The term of this Sublease shall be deemed to have commenced on February 1, 2019, and shall run concurrently with the term of the DNR Lease.

2. **Rent.** Olympia shall pay annual rent to Sublessor in an amount calculated at one-half the lease rate for the paved parking area portion of the nonwater dependent rate found in the DNR Lease ("Rent"), or as otherwise negotiated by Sublessor and DNR. This amount is deemed to include costs and any other fees that Sublessor pays under the DNR Lease for this portion of the Property. Olympia shall pay Rent in quarterly installments, each of which is equal to one-fourth (1/4) the then-current Rent. These payments shall be due on or before the first day of February, May, August, and November each year. Upon execution of this Sublease, Olympia shall pay the installments of Rent due as of February and May 2019. Increases in Rent shall be as provided for in the DNR Lease. When Sublessor's Rent for the Sub-Leased Area is adjusted, Rent shall be adjusted for Olympia accordingly, but shall never exceed half the amount that Sublessor pays for the paved parking area category in the nonwater dependent rate section of the DNR Lease. Exhibit C has been provided to illustrate the manner in which the nonwater dependent rate is broken into the four categories.

3. **Use; Public Benefit.** Olympia may use the Sub-Leased Area to maintain and operate a boardwalk and parking facilities. The Parties agree that the Sub-Leased Area shall be used for the benefit of the public and that Sublessor shall not interfere with the right of any member of the public to lawfully use the Sub-Leased Area.

Olympia shall maintain the Sub-Leased Area in a reasonable manner and shall make necessary repairs in a timely fashion. Olympia's occupancy and use shall not unreasonably interfere with the business of the Sublessor.

4. **Public Parking; Maintenance.** Sublessor hereby authorizes Olympia to enforce reasonable parking restrictions in the Sub-Leased Area. Olympia may establish daily or weekend time limits for parking. Olympia may patrol the Sub-Leased Area in the same manner it patrols other facilities. Olympia shall maintain the Sub-Leased Area as is reasonably necessary or appropriate to present a clean, neat, and orderly appearance.

5. **Termination.** Sublessor may terminate this Sublease prior to the end of the Term only if Olympia abandons the Sub-Leased Area or no longer uses it for the authorized use herein.

6. **Indemnification**

6.1 Olympia shall indemnify and hold the State, Sublessor, and their respective employees, officers, and agents harmless from any claims arising out of Olympia's use, occupation, or control of the Sub-Leased Area.

6.2 Sublessor shall indemnify and hold Olympia, its employees, officers, and agents harmless from any claims arising out of Sublessor's use, occupation, or control of the Property.

6.3 In construction and maintenance, Olympia shall not unreasonably disrupt Sublessor's business on the Property or the adjacent property. Sublessor retains the right to maintain and upgrade its existing utility lines and facilities that are currently located on the Property, and shall not unreasonably interfere with Olympia's use of the Sub-Leased Area in doing so.

7. **Subtenancy.** In the event any provision of this Sublease purports to grant Olympia the ability to hinder or disrupt Sublessor's ability to perform its obligations under the DNR Lease, said provision shall be deemed ineffective for the purpose of doing so. Under no circumstance shall Sublessor be limited in performing its obligations under the DNR Lease due to this Sublease. In the event Sublessor requires Olympia's consent or cooperation in order for Sublessor to perform an obligation under the DNR Lease, Olympia shall not withhold such consent or cooperation.

7.1 Should Sublessor desire to convey or transfer its leasehold interest under the DNR Lease, it shall notify Olympia of its intention to do so at least twenty (20) days prior to executing said conveyance or transfer.

7.2 Any such conveyance or transfer shall include as a condition thereof a provision that the conveyance or transferee shall be bound by the terms of this Sublease. Sublessor shall not further sublease the Property in a manner or to an extent that interferes with the use of said Sub-Leased Area by Olympia or the general public.

8. Description of Sub-Leased Area. The Sub-Leased Area is described on **Exhibit B** and a drawing of the Sub-Leased Area is attached as **Exhibits B-1 and B-2.**

8.1 Olympia agrees, at its sole expense, to install a barrier to segregate the Sub-Leased Area from the remainder of the parking lot, effectively splitting the existing parking lot into two separate parking lots, each with single dedicated entrances. The Sub-Leased Area will be accessible from the Southeastern entrance to the existing parking lot. The portion of the parking lot retained by Sublessor shall be accessible by the Northeast entrance to the existing parking lot. The Parties have mutually negotiated the installation of a barrier on the Property to effectively divide the Sub-Leased Area from the rest of the parking lot, and shall do so upon the commencement of this Sublease.

9. Additional Sublease Terms. Pursuant to Section 9.3 of the DNR Lease, the following terms, representations, and acknowledgements are hereby made:

9.1 This Sublease is subject and subordinate to the DNR Lease, and Olympia shall have no greater rights in and to the Sub-Leased Area than Sublessor has as a tenant under the DNR Lease. In the event of any conflict between a term of the DNR Lease and this Sublease, the provisions of the DNR Lease shall control.

9.2 In the event the DNR Lease is cancelled or terminated, the Term of this Sublease shall automatically terminate as of the date of such cancellation or termination of the DNR Lease, and Sublessor shall not be liable in any way or to any extent to Olympia for such termination or cancellation or for any damages or losses incurred or claimed to be incurred by Olympia as a result thereof.

9.3 Olympia hereby represents and acknowledges it has received a copy of the DNR Lease.

9.4 Olympia may not prepay to Sublessor more than quarterly Rent.

9.5 The Parties acknowledge and agree there is no privity of contract between Olympia and the State of Washington, or any of its agencies or political subdivisions, by virtue of arising out of this Sublease.

9.6 Upon termination of this Sublease, Olympia shall remove any improvements or personal property it constructed or owns from the Sub-Leased Area.

10. Improvements. Olympia may not construct any improvements in the Sub-Leased Area: (i) without the prior written consent of Sublessor, which shall not be unreasonably withheld; and (ii) unless such construction or improvement is allowed by the DNR Lease.

11. Entry by State. Olympia acknowledges that the State may enter the Property (to include the Sub-Leased Area) at any reasonable hour to inspect for compliance with the terms of the DNR Lease, monitor impacts to habitat, or to survey habitat and species.

12. **State Approval.** A condition precedent to the effectiveness of this Sublease, regardless of execution, is the approval of this Sublease by the State.

This Sublease is made and entered into the date first above-written.

**CITY OF OLYMPIA:
OLYMPIA**

By: _____
Steven J. Burney
Interim City Manager

Date: _____

Approved as to form:



Deputy City Attorney

STATE OF WASHINGTON)

) ss.

COUNTY OF THURSTON)

On the ____ day of _____ 2019, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Steven J. Burney, to me known to be the Interim City Manager of the City of Olympia, a municipal corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath states that Steven J. Burney is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____

NOTARY PUBLIC in and for the State of Washington,
residing at _____

My commission expires _____

**SUBLESSOR:
M.G. BURGHER & ASSOCIATES, INC.**

By: *Roger Burgher*
Roger Burgher
Its: ~~President~~ Treasurer RB
Date: 12/6/19

STATE OF WASHINGTON)

KING (4)) ss.
COUNTY OF ~~THURSTON~~)

On the 6th day of December 2019, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared before me Roger Burgher, to me known to be the Treasurer of M.G. Burgher & Associates, Inc., a Washington corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath states that he is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.



Lisa Johnson
Signature
Print Name: Lisa Johnson

NOTARY PUBLIC in and for the State of Washington,
residing at Seattle
My commission expires Dec 9th 2020

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

MARTIN MARINA – PERCIVAL LANDING NORTH

THOSE PORTIONS of Olympia Harbor Lease Numbers 2213, 2410, and 2433 lying between the inner harbor line and the outer harbor line as shown on the Fourth Supplemental Maps of Replat of a portion of Olympia Tidelands and Harbor Area Plate 1, recorded under Auditor's File Number 1041210, Records of Thurston County, Washington, described as follows:

Beginning at the intersection of the inner harbor line with the North line of Lot 3, Block 2, Olympia Tidelands, extended westerly thence S 4-05-26 E along said harbor line, 447.88 feet to the Government Meander Line; thence S 43-14-35 W along said meander line, 18.17 feet to the North right-of-way line of Thurston Avenue; thence S 85-53-44 W along said line and said line extended, 158.91 feet to the waterward face of a boardwalk known as Percival Landing North the plan of which is on file at the Olympia City Engineer's office; thence N 1-29-23 W along said face, 91.04 feet; thence N 49-12-01 W along said face, 37.90 feet; thence N 4-05-06 W along said face, 84.00 feet, thence N 40-54-20 E along said face, 9.90 feet; thence N 85-52-44 E along said face, 85.98 feet; thence N 40-54-35 E along said face, 31.11 feet; thence N 4-05-26 W along said face, and said face extended to the intersection of said north line of said Lot 3 extended; thence N 85-54-34 E along said north line, 80.00 feet to the point of beginning.

EXCEPTING THEREFROM the following described parcel:

Commencing at the intersection of the inner harbor line and the North line of said Lot 3 extended westerly; thence S 4-05-26 E along said harbor line, 258.64 feet; thence S 85-54-35 W, 5.20 feet to the point of beginning; thence S 4-05-26E, 122.56 feet; thence S 40-54-35 W, 12.73 feet; thence S 85-54-36W, 41.10 feet; thence N 49-05-24 W, 66.60 feet; thence N 40-54-35 E, 128.45 feet; thence S 49-05-26 E, 9.00 feet to the point of beginning.

ALSO EXCEPTING THEREFROM the following parcel:

Commencing at the intersection of the inner harbor line and the North line of said Lot 3 extended westerly; thence S 4-05-26 E along said harbor line, 43.10 feet; thence S 85-54-35 W, 7.00 feet to the point of beginning; thence S 4-05-26 E, 123.10 feet; thence S 40-54-35 W, 39.60 feet; thence S 85-54-34 W, 20.00 feet; thence N 4-05-26 W, 112.99 feet; thence N 40-54-03 E, 60.89 feet; thence S 49-05-25 E, 7.00 feet to the point of beginning.

In City of Olympia, Thurston County, Washington.

EXHIBIT "B"

DESCRIPTION OF SUBLEASE AREA

That portion of the Olympia Harbor area lying between the Inner Harbor Line and the Outer Harbor Line as shown on the Fourth Supplemental Maps of Olympia Tidelands as recorded under Auditor's File No. 1041210, situated within the Northwest Quarter of Section 14, Township 18 North, Range 2 West, Willamette Meridian, more particularly described as follows:







Commencing at a cased monument at the intersection of Columbia Street and Thurston Avenue West, as shown on Record of Survey filed under Auditor's File No. 9312030180, records of Thurston County, Washington; thence S85°53'44"W along the monumented line of Thurston Avenue West a distance of 262.27 feet; then departing said monumented line on a bearing of N01°03'49"W a distance of 24.02 feet to the northerly margin of Thurston Avenue West as shown on said Record of Survey, and the TRUE POINT OF BEGINNING; thence continuing N01°03'49"W a distance of 90.02 feet; thence N48°12'40"W a distance of 38.12 feet; thence N03°42'54"W a distance of 85.09 feet; thence N41°10'10"E a distance of 9.22 feet; thence N86°05'50"E a distance of 85.37 feet; thence N40°57'02"E a distance of 31.41 feet; thence N04°06'55"W a distance of 144.54 feet; thence N40°40'51"E a distance of 54.76 feet; thence N04°18'55"W a distance of 26.19 feet; thence N46°59'32"W a distance of 27.01 feet to the northerly line of that parcel surveyed on said Record of Survey; thence N85°53'56"E a distance of 60.46 feet to the Inner Harbor Line as shown on said Record of Survey; thence S04°04'20"E along said Inner Harbor Line a distance of 23.70 feet; thence S41°21'13"W a distance of 80.47 feet; thence S04°11'00"E a distance of 113.97 feet; thence N86°11'19"E a distance of 33.34 feet; thence S40°54'49"W a distance of 118.30 feet; thence S74°31'44"W a distance of 14.63 feet; thence S40°50'40"W a distance of 51.90 feet; thence S04°08'05"E a distance of 62.91 feet; thence S49°06'01"E a distance of 34.16 feet; thence N41°02'55"E a distance of 58.69 feet; thence S49°06'19"E a distance of 54.49 feet; thence N85°55'31"E a distance of 39.26 feet; thence N42°22'38"E a distance of 20.35 feet to the Inner Harbor Line as shown on said Record of Survey; thence S04°04'20"E along said Inner Harbor Line a distance of 59.92 feet; thence S43°14'40"W a distance of 18.42 feet to said northerly margin of Thurston Avenue West; thence S85°53'44"W along said northerly margin a distance of 158.87 feet to the TRUE POINT OF BEGINNING.

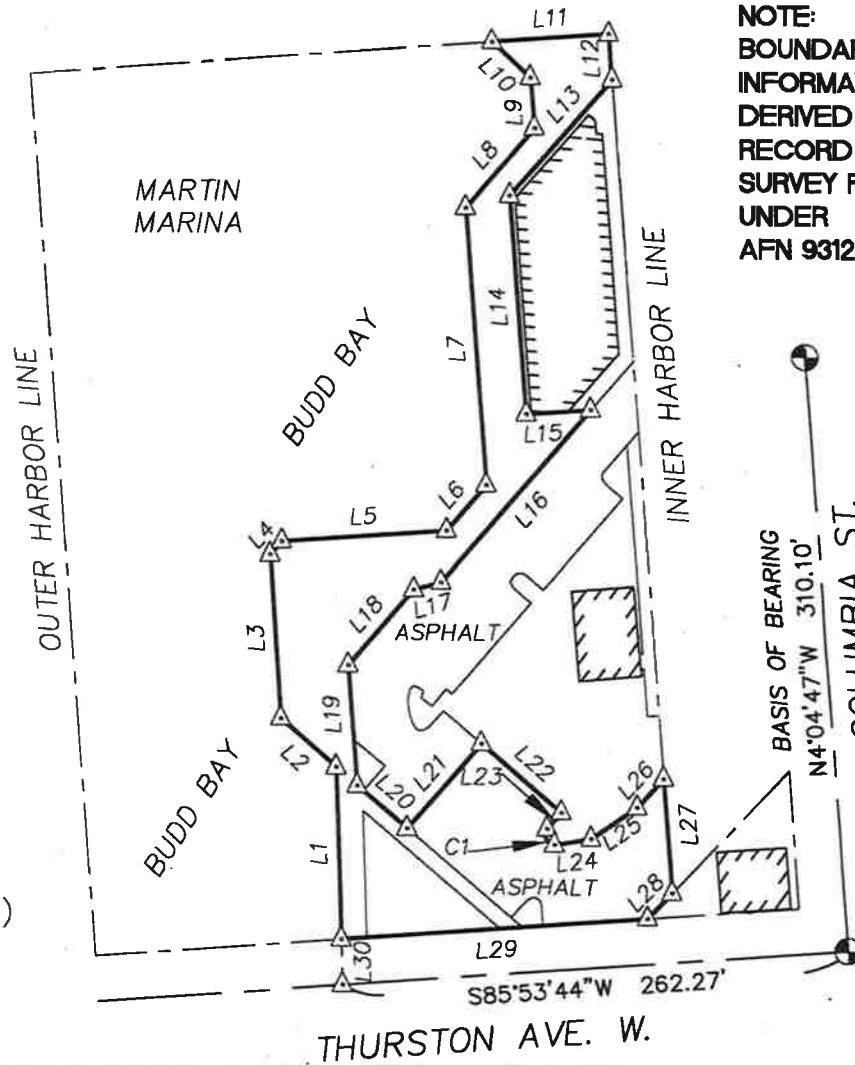




NOTE: SEE EXHIBIT B-2 FOR DIMENSIONS
(LINE CALL TABLE)

LEGEND

-  PROPERTY LINE
-  MONUMENT LINE
-  LEASE AREA BOUNDARY
-  BUILDING LINE
-  CALCULATED POINT
(NOTHING SET OR FOUND)
-  CASED MONUMENT—
PER RECORD OF SURVEY
UNDER AFN 9312030180



NOTE:
BOUNDARY
INFORMATION
DERIVED FROM
RECORD OF
SURVEY FILED
UNDER
AFN 9312030180

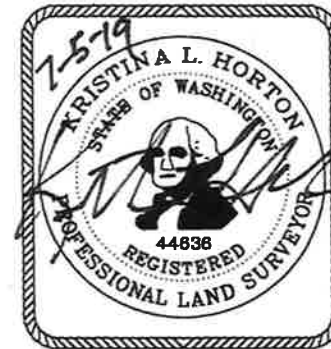
		PROJECT NO.	CITY OF OLYMPIA EXHIBIT "B-1" SUBLEASE AREA SECTION 14, T.18N., R.2W., W.M.	DRAWING NAME
DRAWN	TCM	DATE		PERCIVAL LANDING
QC REVIEW	KLH	JULY 2019		SHEET 1 OF 2
SCALE	N.T.S.			

Line Table		
Line #	Length	Direction
L1	90.02'	N1°35'49"W
L2	38.12'	N48°12'40"W
L3	85.09'	N3°42'54"W
L4	9.22'	N41°10'10"E
L5	85.37'	N86°05'50"E
L7	144.54'	N4°06'55"W
L8	54.76'	N40°40'51"E
L9	26.19'	N4°18'55"W
L10	27.01'	N46°59'32"W
L11	60.46'	N85°53'56"E

Line Table		
Line #	Length	Direction
L12	23.70'	S4°04'20"E
L13	80.47'	S41°21'13"W
L14	113.97'	S4°11'00"E
L15	33.34'	N86°11'19"E
L16	118.30'	S40°54'49"W
L17	14.63'	S74°31'44"W
L18	51.90'	S40°50'40"W
L19	62.91'	S4°08'05"E
L20	34.16'	S49°06'01"E
L21	58.69'	N41°02'55"E

Line Table		
Line #	Length	Direction
L22	54.49'	S49°06'19"E
L23	11.29'	S40°52'33"W
L24	19.17'	N80°25'20"E
L25	29.02'	N55°20'07"E
L26	20.35'	N42°22'38"E
L27	59.92'	S4°04'20"E
L28	18.42'	S43°14'40"W
L29	158.87'	S85°53'44"W
L30	24.02'	N1°35'49"W

Curve Table				
Curve #	Length	Radius	Delta	Radial Bearing
C1	11.64'	5.00'	133°20'52"	S47°36'37"E



		PROJECT NO.	CITY OF OLYMPIA EXHIBIT "B-2" SUBLEASE AREA SECTION 14, T.18N., R.2W., W.M.	DRAWING NAME
DRAWN	TCM	-		PERCIVAL LANDING
QC REVIEW	KLH	DATE		SHEET 2 OF 2
SCALE	N.T.S.	JULY 2019		

EXHIBIT C



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

February 6, 2019

Roger Burgher, Treasurer
MG Burgher & Associates
4015 Northeast 70th Street
Seattle, WA 98115

Subject: Aquatic Lands Lease 22-A02433 Rent Negotiation

Dear Mr. Burgher:

This letter summarizes the rent negotiations for nonwater dependent rent remanded back to DNR staff based upon the decision from the Rental Dispute Officer (RDO) in the November 5, 2018, letter.

Background

DNR offered a lease on June 12, 2018. The DNR proposed a rent of \$82,062.36, consisting of \$19,047.42 related to water dependent use and \$63,014.94 related to nonwater dependent use. The one portion of rent that was not disputed was the water dependent rent, which is statutorily calculated as 30 percent of the value generated using parcel number 91005800000. The breakdown of the rent for the four areas of nonwater dependent rent was as follows:

- the paved parking was proposed for \$1.06 per square foot resulting in a rent amount of \$19,276.10;
- the floating homes were \$4.56 per square foot resulting in a value of \$7,405.44;
- building 1 was proposed for \$1.80 per square foot resulting in a value of \$14,131.80;
- building 2 with gravel parking was proposed for \$1.60 per square foot resulting in a value of \$22,201.60.

On July 9th, 2018 you appealed the rent and on November 5th, 2018 the RDO remanded the nonwater dependent rent back to DNR staff.

Negotiations

Based upon the remanded negotiations completed January 24, 2019, the rent for the four areas of nonwater dependent rent are as follows:

- the paved parking will be stair-stepped: the 2019 rent will be \$15,000.00, in 2020 rent will be \$17,500.00, in 2021 rent will be \$20,000.00, and in 2022 rent will be \$22,500.00;
- the floating homes' rent remains at \$4.56 per square foot, resulting in a total value of \$7,405.44;
- building 1 is reduced to \$1.60 per square foot, resulting in a total value of \$12,561.60;
- building 2 with gravel parking remains at \$1.60 per square foot, resulting in a total value of \$22,201.60.

DEPARTMENT OF
NATURAL RESOURCES
AQUATIC RESOURCES DIVISION
1111 WASHINGTON ST SE
MAIL STOP 47027
OLYMPIA, WA 98504-7027

360-902-1100
FAX 360-902-1786
TRS 711
ARD@DNR.WA.GOV
WWW.DNR.WA.GOV

EXHIBIT C

22A02433 RDO Conclusion
February 6, 2019
Page 2 of 2

The final DNR rent for 2019 is \$73,671.89, consisting of \$16,503.25 related to water dependent use and \$57,168.60 related to nonwater dependent rent.

Decision:

This concludes my rental dispute decision.

If you have any questions, please feel free to direct them to Shoreline District Manager Neal Cox. You can reach him at 360-490-5355, or via email at neal.cox@dnr.wa.gov.

Sincerely,



Kristin Swenddal, Manager
Aquatic Resources Division

c: File 22-A02433
Neal Cox, Shoreline District Manager
Katrina Lassiter, Policy Office

EXHIBIT D



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

**DEPARTMENT OF
NATURAL RESOURCES**

SOUTH PUGET SOUND REGION
950 FARMAN AVENUE N
ENUMCLAW, WA 98022-9282

360-825-1631
TRS 711
SOUTHPUGET.REGION@DNR.WA.GOV
WWW.DNR.WA.GOV

April 18, 2019

Mr. Roger Burgher, Treasurer
MG Burgher & Associates
4015 Northeast 70th Street
Seattle, WA 98115

CERTIFIED MAIL
7016 3560 0000 6862 7773

Subject: Aquatics Land Lease 22-A02433

Dear Mr. Burgher:

Enclosed is a final original of Aquatics Land Lease No. 22-A02433 for your records.

Please record this document at the Thurston county auditor's office and return the information to our office within thirty (30) days of your receipt of this letter. Section 18 of this agreement details the requirements, which include providing us the recording number and date.

If you should have any questions, feel free to contact Cailan Nealer at (360) 584-8103 or Cailan.nealer@dnr.wa.gov.

Sincerely,

Cailan Nealer, Land Manager
Shoreline District Aquatics

Enclosure

cc: District file
TRO file

EXHIBIT D

When recorded, return to:
M.G. Burgher and Associates, Inc.
dba Martin Marina
4015 NE 70th Street
Seattle, WA 98115



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

AQUATIC LANDS LEASE

Lease No. 22-A02433

Grantor: Washington State Department of Natural Resources
Grantee(s): M.G. Burgher and Associates, Inc. dba Martin Marina
Legal Description: Section 14, Township 18 North, Range 2 West, W.M.
Assessor's Property Tax Parcel or Account Number: Not Applicable
Assessor's Property Tax Parcel or Account Number for Upland parcel used in conjunction with this lease: Not Applicable

THIS LEASE is between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and M.G. BURGHER AND ASSOCIATES, INC. dba MARTIN MARINA, a Washington Corporation ("Tenant").

BACKGROUND

Tenant desires to lease the aquatic lands commonly known as Budd Inlet, more specifically West Bay, which is a harbor area located in Thurston County, Washington, from State, and State desires to lease the property to Tenant pursuant to the terms and conditions of this Lease. State has authority to enter into this Lease under Chapter 43.12, Chapter 43.30 and Title 79 of the Revised Code of Washington (RCW).

EXHIBIT D

THEREFORE, the Parties agree as follows:

SECTION 1 PROPERTY

1.1 Property Defined.

- (a) State leases to Tenant and Tenant leases from State the real property described in Exhibit A together with all the rights of State, if any, to improvements on and easements benefiting the Property, but subject to the exceptions and restrictions set forth in this Lease (collectively the "Property").
- (b) This Lease is subject to all valid interests of third parties noted in the records of Thurston County, or on file in the Office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.
- (c) This Lease does not include a right to harvest, collect or damage natural resources, including aquatic life or living plants; water rights; mineral rights; or a right to excavate or withdraw sand, gravel, or other valuable materials.
- (d) State reserves the right to grant easements and other land uses on the Property to others when the easement or other land uses will not interfere unreasonably with the Permitted Use.

1.2 Survey and Property Descriptions.

- (a) Tenant prepared Exhibit A, which describes the Property. Tenant warrants that Exhibit A is a true and accurate description of the Lease boundaries and the improvements to be constructed or already existing in the Lease area. Tenant's obligation to provide a true and accurate description of the Property boundaries is a material term of this Lease.
- (b) State's acceptance of Exhibit A does not constitute agreement that Tenant's property description accurately reflects the actual amount of land used by Tenant. State reserves the right to retroactively adjust rent if at any time during the term of the Lease State discovers a discrepancy between Tenant's property description and the area actually used by Tenant.
- (c) State accepts a preliminary Exhibit A upon the Commencement Date of this Lease. Tenant shall submit a final Exhibit A for State's approval within Three Hundred Sixty-Five (365) days of the Commencement Date. Upon State's written approval, the final Exhibit A supersedes the preliminary Exhibit A. Until superseded, the preliminary Exhibit A has full legal effect.

1.3 Inspection. State makes no representation regarding the condition of the Property, improvements located on the Property, the suitability of the Property for Tenant's Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Property, or the existence of hazardous substances on the Property. Tenant inspected the Property and accepts it "AS IS."

EXHIBIT D

SECTION 2 USE

2.1 Permitted Use. Tenant shall use the Property for a private marina, two commercial buildings, boardwalk and parking lot, (the "Permitted Use"), and for no other purpose. This is a mixed use with 80,219 square feet of water-dependent use, 41,536 square feet of nonwater-dependent use and 16,198 square feet of public use and access. Exhibit B describes the Permitted Use in detail. The Permitted Use is subject to additional obligations in Exhibit B.

2.2 Restrictions on Permitted Use and Operations. The following limitations apply to the Property and adjacent state-owned aquatic land. Tenant's compliance with the following does not limit Tenant's liability under any other provision of this Lease.

- (a) Tenant shall not cause or permit:
 - (1) Damage to natural resources,
 - (2) Waste, or
 - (3) Deposit of material, unless approved by State in writing. This prohibition includes deposit of fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter.
- (b) Tenant shall not cause or permit scour or damage to aquatic land and vegetation. This prohibition includes the following limitations:
 - (1) Tenant shall not use or allow use of a pressure washer to clean underwater surfaces unless the water is deeper than seven (7) feet at the time.
- (c) Tenant shall not construct new bulkheads or place hard bank armoring.
- (d) Tenant shall not install fixed breakwaters.
- (e) Tenant shall not construct or install new covered moorage or boat houses.
- (f) Unless approved by State in writing, Tenant shall not cause or permit dredging on the Property. State will not approve dredging unless (1) required for flood control, maintenance of existing vessel traffic lanes, or maintenance of water intakes and (2) consistent with State's management plans, if any. Tenant shall maintain authorized dredge basins in a manner that prevents internal deeper pockets.
- (g) Tenant shall limit the number of residential slips, and shall manage residential uses on the Property, in accordance with the provisions of WAC 332-30-171 and as specified in Exhibit B.
- (h) Floating houses, as defined by WAC 332-30-106 (23), are not allowed in Harbor Areas pursuant to WAC 332-30-109(11). As of the Commencement Date, three (3) floating houses are in the harbor area on the Property, ("the Existing Floating Houses"). The Existing Floating Houses are the subject of the settlement agreement in *Oly Liveaboards Assoc. v. Department of Natural Resources, et. al.*, Thurston County Superior Court case no. 13-2-02209-2, incorporated herein by reference, which describes the Existing Floating Houses, ("the Settlement Agreement"). The Existing Floating Houses are further identified in Exhibit B. In accordance with the Settlement Agreement, Tenant shall come into compliance with WAC 332-30-109(11) through attrition during the Term of the Lease as provided in this Section 2.2(h). Subject to the conditions set forth below, Tenant may allow the Existing Floating Houses on the Property to remain during

EXHIBIT D

the Term of the Lease so long as the Existing Floating Houses otherwise comply with the terms of this Lease:

- (1) Tenant shall not allow replacement of any of the Existing Floating Houses. If an Existing Floating House is permanently removed from the Property, the Existing Floating House shall not be returned to the Property. For purposes of this Section 2.2 an Existing Floating House shall be deemed to be permanently removed from the Property if it has been removed from the property for a period of thirty (30) consecutive days without prior written approval from State for a longer period of absence, which approval shall not be unreasonably withheld.
- (2) Tenant shall not expand or permit expansion of the exterior dimensions ("footprint") of an Existing Floating House. Tenant may maintain, repair, and improve an Existing Floating House, provided the work does not expand its footprint. The requirements of Section 11 ROUTINE MAINTENANCE AND REPAIR apply to maintenance and repair on the exterior surfaces, features, or fixtures of an Existing Floating House.
- (3) Except for the Existing Floating Houses, Tenant shall not allow or authorize any floating houses on the Property.
- (4) In the event that an Existing Floating Home is moved from the slip it occupies on the Commencement Date to a new slip at the marina, Tenant shall immediately notify State in writing.
- (5) In the event that an Existing Floating House must relocate because of significant renovations requiring removal of the Existing Floating House from the Property for longer than 30 days, such Existing Floating House shall not be deemed permanently removed from the Property for up to 120 days during the period of renovation, and such Existing Floating House shall be an authorized use of the Property or Martin Marina during such period of renovation.

2.3 Conformance with Laws. Tenant shall, at all times, keep current and comply with all conditions and terms of permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding Tenant's use or occupancy of the Property.

2.4 Liens and Encumbrances. Unless expressly authorized by State in writing, Tenant shall keep the Property free and clear of liens or encumbrances arising from the Permitted Use or Tenant's occupancy of the Property.

SECTION 3 TERM

3.1 Term Defined. The term of this Lease is Thirty (30) years (the "Term"), beginning on the 1st day of February, 2019 (the "Commencement Date"), and ending on the 31st day of January, 2049 (the "Termination Date"), unless terminated sooner under the terms of this Lease.

3.2 Renewal of the Lease. This Lease does not provide a right of renewal. Tenant may apply for a new lease, which State has discretion to grant. Tenant must apply for a new lease at

EXHIBIT D

least one (1) year prior to Termination Date. State will notify Tenant within ninety (90) days of its intent to approve or deny a new Lease.

3.3 End of Term.

- (a) Upon the expiration or termination of this Lease, Tenant shall remove Improvements in accordance with Section 7, Improvements, and surrender the Property to State in the same or better condition as on the Commencement Date, reasonable wear and tear excepted.
- (b) Definition of Reasonable Wear and Tear.
 - (1) Reasonable wear and tear is deterioration resulting from the Permitted Use that has occurred without neglect, negligence, carelessness, accident, or abuse of the Property by Tenant or any other person on the premises with the permission of Tenant.
 - (2) Reasonable wear and tear does not include unauthorized deposit of material prohibited under Paragraph 2.2 regardless of whether the deposit is incidental to or the byproduct of the Permitted Use.
- (c) If Property is in worse condition, excepting for reasonable wear and tear, on the surrender date than on the Commencement Date, the following provisions apply.
 - (1) State shall provide Tenant a reasonable time to take all steps necessary to remedy the condition of the Property. State may require Tenant to enter into a right-of-entry or other use authorization prior to the Tenant entering the Property if the Lease has terminated.
 - (2) If Tenant fails to remedy the condition of the Property in a timely manner, State may take steps reasonably necessary to remedy Tenant's failure. Upon demand by State, Tenant shall pay all costs of State's remedy, including but not limited to the costs of removing and disposing of material deposited improperly on the Property, lost revenue resulting from the condition of the Property, and administrative costs associated with the State's remedy.

3.4 Holdover.

- (a) If Tenant remains in possession of the Property after the Termination Date, the occupancy will not be an extension or renewal of the Term. The occupancy will be a month-to-month tenancy, on terms identical to the terms of this Lease, which either Party may terminate on thirty (30) days' written notice.
 - (1) The monthly rent during the holdover will be the same rent that would be due if the Lease were still in effect and all adjustments in rent were made in accordance with its terms.
 - (2) Payment of more than the monthly rent will not be construed to create a periodic tenancy longer than month-to-month. If Tenant pays more than the monthly rent and State provides notice to vacate the property, State shall refund the amount of excess payment remaining after the Tenant ceases occupation of the Property.
- (b) If State notifies Tenant to vacate the Property and Tenant fails to do so within the time set forth in the notice, Tenant will be a trespasser and shall owe the State all amounts due under RCW 79.02.300 or other applicable law.

SECTION 4 RENT

4.1 Annual Rent.

- (a) Until adjusted as set forth below, Tenant shall pay to State an annual rent of Seventy-Three Thousand Six Hundred Seventy-One Dollars and Eighty-Nine Cents (\$73,671.89), consisting of Sixteen Thousand Five Hundred Three Dollars and Twenty-Five Cents (\$16,503.25) related to the water-dependent use and Fifty-Seven Thousand One Hundred Sixty-Eight Dollars and Sixty-Four Cents (\$57,168.64) related to the nonwater-dependent use.
- (b) The annual rent, as it currently exists or as adjusted or modified (the "Annual Rent"), is paid in quarterly installments, each of which is equal to one-fourth (1/4) of the then-current Annual Rent. The first installment, in the amount of Eighteen Thousand Four Hundred Seventeen Dollars and Ninety-Seven Cents (\$18,417.97), is due and payable in full on or before the Commencement Date and subsequent installments shall be due and payable in full on or before the same day of each third month thereafter. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Tenant shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

4.3 Adjustment Based on Use. Annual Rent is based on Tenant's Permitted Use of the Property, as described in Section 2 above. If Tenant's Permitted Use changes, the Annual Rent shall be adjusted as appropriate for the changed use.

4.4 Rent Adjustment Procedures.

- (a) Notice of Rent Adjustment. State shall provide notice of adjustments to the Annual Rent allowed under Paragraphs 4.5(b) and 4.6(b) to Tenant in writing no later than ninety (90) days after the anniversary date of the Lease.
- (b) Procedures on Failure to make Timely Adjustment. If the State fails to provide the notice required in Paragraph 4.4(a), State shall not collect the adjustment amount for the year in which State failed to provide notice. Upon providing notice of adjustment, State may adjust and prospectively bill Annual Rent as if missed or waived adjustments had been implemented at the proper interval. This includes the implementation of any inflation adjustment.

4.5 Rent Adjustments for Water-Dependent Uses.

- (a) Inflation Adjustment. State shall adjust water-dependent rent annually pursuant to RCW 79.105.200-.360, except in those years in which State revalues the rent under Paragraph 4.5(b) below. This adjustment will be effective on the anniversary of the Commencement Date.
- (b) Revaluation of Rent. At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the water-dependent Annual Rent in accordance with RCW 79.105.200-.360.

EXHIBIT D

- (c) **Rent Cap.** State shall increase rent incrementally in compliance with RCW 79.105.260 as follows: If application of the statutory rent formula for water-dependent uses would result in an increase in the rent attributable to such uses of more than fifty percent (50%) in any one year, State shall limit the actual increase implemented in such year to fifty percent (50%) of the then-existing rent. In subsequent, successive years, State shall increase the rental amount incrementally until the State implements the full amount of increase as determined by the statutory rent formula.

4.6 Rent Adjustments for Nonwater-Dependent Uses.

- (a) **Inflation Adjustment.** Except in those years in which State revalues the rent under Paragraph 4.5(b) below, State shall adjust nonwater-dependent rent annually on the Commencement Date. Adjustment is based on the percentage rate of change in the previous calendar year's Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Commerce, for the Seattle-Tacoma-Bremerton CMSA, All Urban Consumers, all items 1982-84 = 100. If publication of the Consumer Price Index is discontinued, State shall use a reliable governmental or other nonpartisan publication evaluating the information used in determining the Consumer Price Index.
- (b) **Revaluation of Rent.**
 - (1) At the end of the first four-year period of the Term, and at the end of each subsequent four-year period, State shall revalue the nonwater-dependent Annual Rent to reflect the then-current fair market rent.
 - (2) If State and Tenant cannot reach agreement on the fair market rental value, the Parties shall submit the valuation to a review board of appraisers. The board must consist of three members, one selected by and at the cost of Tenant; a second member selected by and at the cost of State; and a third member selected by the other two members with the cost shared equally by State and Tenant. The decision of the majority of the board binds the Parties. Until the Parties agree to, or the review board establishes, the new rent, Tenant shall pay rent in the same amount established for the preceding year. If the board determines additional rent is required, Tenant shall pay the additional rent within ten (10) days of the board's decision. If the board determines a refund is required, State shall pay the refund within ten (10) days of the board's decision.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Tenant shall pay all fees charged for utilities required or needed by the Permitted Use.

5.2 Taxes and Assessments. Tenant shall pay all taxes (including leasehold excise taxes), assessments, and other governmental charges applicable or attributable to the Property, Tenant's leasehold interest, the improvements, or Tenant's use and enjoyment of the Property.

EXHIBIT D

5.3 Right to Contest. If in good faith, Tenant may contest any tax or assessment at its sole cost and expense. At the request of State, Tenant shall furnish reasonable protection in the form of a bond or other security, satisfactory to State, against loss or liability resulting from such contest.

5.4 Proof of Payment. If required by State, Tenant shall furnish to State receipts or other appropriate evidence establishing the payment of amounts this Lease requires Tenant to pay.

5.5 Failure to Pay. If Tenant fails to pay amounts due under this Lease, State may pay the amount due, and recover its cost in accordance with Section 6.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Failure to Pay Rent. Failure to pay rent is a default by the Tenant. State may seek remedies under Section 14 as well as late charges and interest as provided in this Section 6.

6.2 Late Charge. If State does not receive full rent payment within ten (10) days of the date due, Tenant shall pay to State a late charge equal to four percent (4%) of the unpaid amount or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.3 Interest Penalty for Past Due Rent and Other Sums Owed.

- (a) Tenant shall pay interest on the past due rent at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Paragraph 6.2. Rent not paid by the close of business on the due date will begin accruing interest the day after the due date.
- (b) If State pays or advances any amounts for or on behalf of Tenant, Tenant shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Tenant of the payment or advance. This includes, but is not limited to, State's payment of taxes of any kind, assessments, insurance premiums, costs of removal and disposal of materials or Improvements under any provision of this Lease, or other amounts not paid when due.

6.4 Referral to Collection Agency and Collection Agency Fees. If State does not receive full payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Tenant shall pay collection agency fees in addition to the unpaid amount.

6.5 No Accord and Satisfaction. If Tenant pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. State may accept payment in any amount without prejudice to State's right to recover the balance of the rent or pursue any other right or remedy. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

6.6 No Counterclaim, Setoff, or Abatement of Rent. Except as expressly set forth elsewhere in this Lease, Tenant shall pay rent and all other sums payable by Tenant without the requirement that State provide prior notice or demand. Tenant's payment is not subject to counterclaim, setoff, deduction, defense or abatement.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, fill, structures, bulkheads, docks, pilings, and other fixtures.
- (b) "Personal Property" means items that can be removed from the Property without (1) injury to the Property or Improvements or (2) diminishing the value or utility of the Property or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Tenant.
- (d) "Tenant-Owned Improvements" are Improvements authorized by State and (1) made by Tenant or (2) acquired by Tenant from the prior tenant.
- (e) "Unauthorized Improvements" are Improvements made on the Property without State's prior consent or Improvements made by Tenant that do not conform to plans submitted to and approved by the State.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Property: a private marina consisting of floating docks, finger piers, pilings and utilities, two commercial buildings, a boardwalk and parking lot. The Improvements are Tenant-Owned.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Paragraph 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair.
- (b) All Work must conform to requirements under Paragraph 7.4. Paragraph 11.3, which applies to routine maintenance and minor repair, also applies to all Work under this Paragraph 7.3
- (c) Except in an emergency, Tenant shall not conduct Work, without State's prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State or if proposed Work does not comply with Paragraphs 7.4 and 11.3. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of some or all Improvements.
 - (2) Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before

EXHIBIT D

- submitting permit applications to regulatory authorities unless Tenant and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work.
- (3) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.
 - (d) Tenant shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Tenant shall provide State with plans and specifications or as-builts of emergency Work.
 - (e) Tenant shall not commence or authorize Work until Tenant has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Tenant shall maintain the performance and payment bond until Tenant pays in full the costs of the Work, including all laborers and material persons.
 - (2) Obtained all required permits.
 - (f) Before completing Work, Tenant shall remove all debris and restore the Property to an orderly and safe condition. If Work is intended for removal of Improvements at End of Term, Tenant shall restore the Property in accordance with Paragraph 3.3, End of Term.
 - (g) Upon completing work, Tenant shall promptly provide State with as-built plans and specifications.
 - (h) State shall not charge rent for authorized Improvements installed by Tenant during this Term of this Lease, but State may charge rent for such Improvements when and if Tenant or successor obtains a subsequent use authorization for the Property and State has waived the requirement for Improvements to be removed as provided in Paragraph 7.5.

7.4 Standards for Work.

- (a) Applicability of Standards for Work.
 - (1) The standards for Work in Paragraph 7.4(b) apply to Work commenced in the five year period following the Commencement Date. Work has commenced if State has approved plans and specifications.
 - (2) If Tenant undertakes Work five years or more after the Commencement Date, Tenant shall comply with State's then current standards for Work.
 - (3) At Tenant's option, Tenant may ascertain State's current standards for Work as follows:
 - (i) Before submitting plans and specifications for State's approval as required by Paragraph 7.3 of the Lease, Tenant shall request State to provide Tenant with then current standards for Work on State-owned Aquatic Lands.
 - (ii) Within thirty (30) days of receiving Tenant's request, State shall provide Tenant with current standards for Work, which will be effective for the purpose of State's approval of Tenant's proposed Work provided Tenant submits plans and specifications for State's approval within two (2) years of Tenant's request for standards. .

EXHIBIT D

- (iii) If State does not timely provide current standards upon Tenant's request, the standards under Paragraph 7.4(b) apply to Tenant's Work provided Tenant submits plans and specifications as required by Paragraph 7.3 within two (2) years of Tenant's request for standards.
 - (iv) If Tenant fails to (1) make a request for current standards or (2) timely submit plans and specifications to State after receiving current standards, Tenant shall make changes in plans or Work necessary to conform to current standards for Work upon State's demand.
- (b) Standards for Work.
- (1) State will not approve plans to construct new Improvements or expand existing Improvements in or over habitats designated by State as important habitat. Tenant shall confirm location of important habitat on Property, if any, with State before submitting plans and specifications in accordance with Paragraph 7.3.
 - (2) Tenant shall not install skirting on any overwater structure.
 - (3) Tenant shall not conduct in-water Work during time periods prohibited for such work under WAC 220-110-271, Prohibited Work Times in Saltwater, as amended, or as otherwise directed by the Washington Department of Fish and Wildlife (WDFW).
 - (4) Tenant shall install unobstructed grating over at least 50 percent of the surface area of all new floats, piers, fingers, docks, and gangways; grating material must have at least 60 percent unobstructed open space.

7.5 Tenant-Owned Improvements at End of Lease.

- (a) Disposition.
- (1) Tenant shall remove Tenant-Owned Improvements in accordance with Paragraph 7.3 upon the expiration, termination, or cancellation of the Lease unless State waives the requirement for removal.
 - (2) Tenant-Owned Improvements remaining on the Property on the expiration, termination or cancellation date shall become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership. If RCW 79.125.300 or 79.130.040 apply at the time this Lease expires, Tenant could be entitled to payment by the new tenant for Tenant-Owned Improvements.
 - (3) If Tenant-Owned Improvements remain on the Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Tenant shall pay State's costs.
- (b) Conditions Under Which State May Waive Removal of Tenant-Owned Improvements.
- (1) State may waive removal of some or all Tenant-Owned Improvements whenever State determines that it is in the best interests of the State and regardless of whether Tenant re-leases the Property.

EXHIBIT D

- (2) If Tenant re-leases the Property, State may waive requirement to remove Tenant-Owned Improvements. State also may consent to Tenant's continued ownership of Tenant-Owned Improvements.
 - (3) If Tenant does not re-lease the Property, State may waive requirement to remove Tenant-Owned Improvements upon consideration of a timely request from Tenant, as follows:
 - (i) Tenant must notify State at least one (1) year before the Termination Date of its request to leave Tenant-Owned Improvements.
 - (ii) State, within ninety (90) days of receiving Tenant's notification, will notify Tenant whether State consents to some or all Tenant-Owned Improvements remaining. State has no obligation to grant consent.
 - (iii) State's failure to respond to Tenant's request to leave Improvements within ninety (90) days is a denial of the request.
- (c) **Tenant's Obligations if State Waives Removal.**
- (1) Tenant shall not remove Improvements if State waives the requirement for removal of some or all Tenant-Owned Improvements.
 - (2) Tenant shall maintain such Improvements in accordance with this Lease until the expiration, termination, or cancellation date. Tenant is liable to State for cost of repair if Tenant causes or allows damage to Improvements State has designated to remain.

7.6 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Tenant ownership of the Improvements, or
 - (2) Charge rent for use of the Improvements from the time of installation or construction and
 - (i) Require Tenant to remove the Improvements in accordance with Paragraph 7.3, in which case Tenant shall pay rent for the Improvements until removal, or
 - (ii) Consent to Improvements remaining and Tenant shall pay rent for the use of the Improvements, or
 - (iii) Remove Improvements and Tenant shall pay for the cost of removal and disposal, in which case Tenant shall pay rent for use of the Improvements until removal and disposal.

7.7 Disposition of Personal Property.

- (a) Tenant retains ownership of Personal Property unless Tenant and State agree otherwise in writing.
- (b) Tenant shall remove Personal Property from the Property by the Termination Date. Tenant is liable for damage to the Property and Improvements resulting from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Property after the Termination Date.

EXHIBIT D

- (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Tenant to the State. State shall pay the remainder, if any, to the Tenant.
- (2) If State disposes of Personal Property, Tenant shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a).
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
- (d) "Tenant and affiliates" when used in this Section 8 means Tenant or Tenant's subtenants, contractors, agents, employees, guests, invitees, licensees, affiliates, or any person on the Property with the Tenant's permission.
- (e) "Liabilities" as used in this Section 8 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.

8.2 General Conditions.

- (a) Tenant's obligations under this Section 8 extend to the area in, on, under, or above
 - (1) The Property and
 - (2) Adjacent state-owned aquatic lands if affected by a release of Hazardous Substances that occurs as a result of the Permitted Use.
- (b) Standard of Care.
 - (1) Tenant shall exercise the utmost care with respect to Hazardous Substances.
 - (2) Tenant shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Property. Hazardous Substances may exist in, on, under, or above the Property.

EXHIBIT D

- (b) This Lease does not impose a duty on State to conduct investigations or supply information to Tenant about Hazardous Substances.
- (c) Tenant is responsible for conducting all appropriate inquiry and gathering sufficient information about the existence, scope, and location of Hazardous Substances on or near the Property necessary for Tenant to meet Tenant's obligations under this Lease and utilize the Property for the Permitted Use.

8.4 Use of Hazardous Substances.

- (a) Tenant and affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Tenant shall not undertake, or allow others to undertake by Tenant's permission, acquiescence, or failure to act, activities that result in a release or threatened release of Hazardous Substances.
- (c) If use of Hazardous Substances related to Tenant's use or occupancy of the Property results in violation of law:
 - (1) Tenant shall submit to State any plans for remedying the violations, and
 - (2) Tenant shall implement any remedial measures to restore the Property or natural resources that State may require in addition to remedial measures required by regulatory authorities.
- (d) Tenant shall comply with the provisions of Chapter 90.56 RCW Oil and Hazardous Substance Spill Prevention and Response Act. Tenant shall develop, update as necessary and operate in accordance with a plan of operations consistent with the requirements of Chapter 90.56 RCW. Failure to comply with the requirements of Chapter 90.56 is a default under Section 14.
- (e) At a minimum, Tenant and affiliates shall observe the following Hazardous Substances operational standards. If the Washington Department of Ecology, U.S. Environmental Protection Agency or other regulatory agency establishes different standards applicable to Tenant's activities under the Permitted Use, Tenant shall meet the standard that provides greater protection to the environment.
 - (1) Tenant shall not allow work on overwater structures or vessels without protective measures to prevent discharge of toxins to the water, including:
 - (i) Tenant shall not cause or allow underwater hull scraping and other underwater removal of paints.
 - (ii) Tenant shall not cause or allow underwater refinishing work from boats or temporary floats unless permitted by an industrial National Pollution Discharge Elimination System (NPDES) permit.
 - (iii) Tenant shall not cause or allow above the waterline boat repairs or refinishing in-water except if limited to decks and superstructures and less than 25 percent of a boat is repaired or refinished in-water per year.
 - (iv) Tenant shall use and require others to use tarps and other dust, drip and spill containment measures when repairing or refinishing boats in water.

EXHIBIT D

- (2) Tenant shall not store or allow others to store fuel tanks, petroleum products, hydraulic fluid, machinery coolants, lubricants and chemicals not in use in locations above the water surface.
- (3) Tenant shall inspect all equipment using petroleum products, hydraulic fluids, machinery coolants, chemicals, or other toxic or deleterious materials on a monthly basis and immediately make all repairs necessary to stop leakage. Tenant shall submit to State an annual report documenting inspections and repair.
- (4) Tenant shall maintain a supply of oil spill containment materials adequate to contain a spill from the largest vessel in use on the Property.
- (5) Tenant shall not use or allow use of a pressure washer at any location above the water surface to clean any item that uses petroleum products.
- (f) Tenant shall incorporate best management practices to prevent the release of chemical contaminants, wastewater, garbage and other pollutants, as specified in Resource Manual for Pollution Prevention in Marinas published by the Washington Department of Ecology, publication number 98-11, available at <http://www.ecy.wa.gov/biblio/9811.html>. If the Department of Ecology or other regulatory agency establishes different standards, Tenant shall meet the most protective standard.

8.5 Management of Contamination, if any.

- (a) Tenant and affiliates shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities, if any;
 - (2) Result in human or environmental exposure to contaminated sediments, if any;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation, if any.
- (b) If requested, Tenant shall allow reasonable access to:
 - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Property. Tenant may negotiate an access agreement with such parties, but Tenant may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Tenant shall immediately notify State if Tenant becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of Hazardous Substances;
 - (3) Any lien or action arising from Hazardous Substances;

EXHIBIT D

- (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Property.
- (b) Tenant's duty to report under Paragraph 8.6(a) extends to lands described in Paragraph 8.2(a) and to any other property used by Tenant in conjunction with the Property if a release of Hazardous Substances on the other property could affect the Property.
 - (c) Tenant shall provide State with copies of all documents Tenant submits to any federal, state or local authorities concerning environmental impacts or proposals relative to the Property. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits; Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Property.

8.7 Indemnification.

- (a) Tenant shall fully indemnify, defend, and hold State harmless from and against Liabilities that arise out of, or relate to:
 - (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property;
 - (2) The release or threatened release of any Hazardous Substance resulting from any act or omission of Tenant and affiliates occurring whenever Tenant occupies or has occupied the Property.
- (b) Tenant shall fully indemnify, defend, and hold State harmless for Liabilities that arise out of or relate to Tenant's breach of obligations under Paragraph 8.5.
- (c) Tenant has no duty to indemnify State for acts or omissions of third parties unless and only if an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Tenant failed to exercise care as described in Paragraph 8.2(b)(2). In such case, Tenant shall fully indemnify, defend, and hold State harmless from and against Liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes Liabilities arising before the finding or holding in the proceeding.

8.8 Reservation of Rights.

- (a) For Liabilities not covered by the indemnification provisions of Paragraph 8.7, the Parties expressly reserve and do not waive any rights, claims, immunities, causes of action, or defenses relating to Hazardous Substances that either Party may have against the other under law.

- (b) The Parties expressly reserve all rights, claims, immunities, and defenses either Party may have against third parties. Nothing in this Section 8 benefits or creates rights for third parties.
- (c) The allocations of risks, Liabilities, and responsibilities set forth in this Section 8 do not release either Party from or affect the liability of either Party for Hazardous Substances claims or actions by regulatory agencies.

8.9 Cleanup.

- (a) If Tenant's act, omission, or breach of obligation under Paragraph 8.4 results in a release of Hazardous Substances that exceeds the threshold limits of any applicable regulatory standard, Tenant shall, at Tenant's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law.
- (b) Tenant may undertake a cleanup of the Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Tenant cooperates with the Department of Natural Resources in development of cleanup plans. Tenant shall not proceed with Voluntary Cleanup without the Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by the Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Lease. Tenant's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Lease.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) State may enter the Property and conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (b) If such Tests, along with any other information, demonstrate a breach of Tenant's obligations regarding Hazardous Substances under this Lease, Tenant shall promptly reimburse State for all costs associated with the Tests, provided State gave Tenant thirty (30) calendar days advance notice in nonemergencies and reasonably practical notice in emergencies.
- (c) In nonemergencies, Tenant is entitled to obtain split samples of Test samples, provided Tenant gives State written notice requesting split samples at least ten (10) calendar days before State conducts Tests. Upon demand, Tenant shall promptly reimburse State for additional cost, if any, of split samples.
- (d) If either Party conducts Tests on the Property, the conducting Party shall provide the other with validated final data and quality assurance/quality control/chain of custody information about the Tests within sixty (60) calendar days of a written request by the other party, unless Tests are part of a submittal under Paragraph 8.6(c) in which case Tenant shall submit data and information to State without written request by State. Neither party is obligated to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT AND SUBLETTING

9.1 State Consent Required. Tenant shall not convey, transfer, or encumber any part of Tenant's interest in this Lease or the Property without State's prior written consent, which State shall not unreasonably condition or withhold.

- (a) In determining whether to consent, State may consider, among other items, the proposed transferee's financial condition, business reputation and experience, the nature of the proposed transferee's business, the then-current value of the Property, and such other factors as may reasonably bear upon the suitability of the transferee as a tenant of the Property. Tenant shall submit information regarding any proposed transferee to State at least thirty (30) days prior to the date of the proposed transfer.
- (b) State reserves the right to condition its consent upon:
 - (1) Changes in the terms and conditions of this Lease, including, but not limited to, the Annual Rent; and/or
 - (2) The agreement of Tenant or transferee to conduct Tests for Hazardous Substances on the Property or on other property owned or occupied by Tenant or the transferee.
- (c) Each permitted transferee shall assume all obligations under this Lease, including the payment of rent. No assignment, sublet, or transfer shall release, discharge, or otherwise affect the liability of Tenant.
- (d) State's consent under this Paragraph 9.1 does not constitute a waiver of any claims against Tenant for the violation of any term of this Lease.

9.2 Rent Payments Following Assignment. The acceptance by State of the payment of rent following an assignment or other transfer does not constitute consent to any assignment or transfer.

9.3 Terms of Subleases.

- (a) Tenant shall submit the terms of all subleases to State for approval.
- (b) Tenant shall incorporate the following requirements in all subleases:
 - (1) The sublease must be consistent with and subject to all the terms and conditions of this Lease;
 - (2) The sublease must provide that this Lease controls if the terms of the sublease conflict with the terms of this Lease;
 - (3) The term of the sublease (including any period of time covered by a renewal option) must end before the Termination Date of the initial Term or any renewal term;
 - (4) The sublease must terminate if this Lease terminates for any reason;
 - (5) The subtenant must receive and acknowledge receipt of a copy of this Lease;
 - (6) The sublease must prohibit the prepayment to Tenant by the subtenant of more than the quarterly rent;
 - (7) The sublease must identify the rental amount subtenant is to pay to Tenant;

- (8) The sublease must provide that there is no privity of contract between the subtenant and State;
- (9) The sublease must require removal of the subtenant's Improvements and Personal Property upon termination of the sublease;
- (10) The subtenant's permitted use must be within the scope of the Permitted Use; and
- (11) The sublease must require the subtenant to meet all obligations of Tenant under Section 10, Indemnification, Financial Security, and Insurance.

9.4 Short-Term Subleases of Moorage Slips. Short-term subleasing of moorage slips for a term of less than one year does not require State's written consent or approval pursuant to Paragraphs 9.1 or 9.3. Tenant shall conform moorage sublease agreements to the sublease requirements in Paragraph 9.3.

9.5 Event of Assignment. If Tenant is a corporation, dissolution of the corporation or a transfer (by one or more transactions) of a majority of the voting stock of Tenant is an assignment of this Lease. If Tenant is a partnership, dissolution of the partnership or a transfer (by one or more transactions) of the controlling interest in Tenant is an assignment of this Lease. Assignments defined in this Paragraph 9.5 require State's consent under Paragraph 9.1.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Tenant shall indemnify, defend, and hold State, its employees, officers, and agents harmless from Claims arising out of the use, occupation, or control of the Property by Tenant, its subtenants, contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Paragraph 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury, sickness, disease, death, and damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources. "Damages to tangible property" includes, but is not limited to, physical injury to the Property and damages resulting from loss of use of the Property.
- (c) State shall not require Tenant to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (d) Tenant waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (e) Section 8, Environmental Liability/Risk Allocation, exclusively shall govern Tenant's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) **Insurance Required.**
- (1) At its own expense, Tenant shall procure and maintain during the Term of this Lease, the insurance coverages and limits described in this Paragraph 10.2 and in Paragraph 10.3, Insurance Types and Limits. State may terminate this Lease if Tenant fails to maintain required insurance.
 - (2) Unless State agrees to an exception, Tenant shall provide insurance issued by an insurance company or companies admitted to do business in the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Tenant may submit a request to the risk manager for the Department of Natural Resources to approve an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies shall comply with Chapter 48.15 RCW and 284-15 WAC.
 - (3) All general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies must name the State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees as an additional insured.
 - (4) All insurance provided in compliance with this Lease must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) **Waiver.**
- (1) Tenant waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Lease covers these damages.
 - (2) Except as prohibited by law, Tenant waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this lease.
- (c) **Proof of Insurance.**
- (1) Tenant shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Lease and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Lease number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Lease, as follows:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of

EXHIBIT D

- cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) **Adjustments in Insurance Coverage.**
 - (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Tenant shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.
 - (f) If Tenant fails to procure and maintain the insurance described above within fifteen (15) days after Tenant receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Tenant shall pay to State the full amount paid by State, together with interest at the rate provided in Paragraph 6.2 from the date of State's notice of the expenditure until Tenant's repayment.
 - (g) **General Terms.**
 - (1) State does not represent that coverage and limits required under this Lease are adequate to protect Tenant.
 - (2) Coverage and limits do not limit Tenant's liability for indemnification and reimbursements granted to State under this Lease.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to property first to restore the real property covered by this Lease, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Tenant.

10.3 Insurance Types and Limits.

- (a) **General Liability Insurance.**
 - (1) Tenant shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Property and/or arising out of Tenant's use, occupation, or control of the Property and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.

EXHIBIT D

- (b) **Workers' Compensation.**
- (1) **State of Washington Workers' Compensation.**
- (i) Tenant shall comply with all State of Washington workers' compensation statutes and regulations. Tenant shall provide workers' compensation coverage for all employees of Tenant. Coverage must include bodily injury (including death) by accident or disease, which arises out of or in connection with Tenant's use, occupation, and control of the Property.
- (ii) If Tenant fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Tenant shall indemnify State. Indemnity shall include all fines; payment of benefits to Tenant, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) **Longshore and Harbor Workers' and Jones Acts.** Longshore and Harbor Workers' Act (33 U.S.C. Section 901 *et seq.*) and/or the Jones Act (46 U.S.C. Section 688) may require Tenant to provide insurance coverage in some circumstances. Tenant shall ascertain if such insurance is required and, if required, shall maintain insurance in compliance with law. Tenant is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) **Employers' Liability Insurance.** Tenant shall procure employers' liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
- (d) **Builder's Risk Insurance.**
- (1) Tenant shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project and acceptance by State. Such insurance must be written on a completed form and in an amount equal to the value of the completed building and/or Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).
- (2) Insurance described above must cover or include the following:
- (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
- (ii) The entire work on the Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
- (iii) Portions of the work located away from the Property but intended for use at the Property, and portions of the work in transit;

EXHIBIT D

- (iv) Scaffolding, falsework, and temporary buildings located on the Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Tenant or Tenant'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
 - (4) Tenant or Tenant'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Tenant, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Paragraph 10.2(a)(3).

10.4 Financial Security.

- (a) At its own expense, Tenant shall procure and maintain during the Term of this Lease a corporate security bond or provide other financial security that State, at its option, may approve ("Security"). Tenant shall provide Security in an amount equal to Seventy-Five Thousand Dollars (\$75,000), which is consistent with RCW 79.105.330, and secures Tenant's performance of its obligations under this Lease, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Tenant's failure to maintain the Security in the required amount during the Term constitutes a breach of this Lease.
- (b) All Security must be in a form acceptable to the State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best's Reports, unless State approves an exception. Tenant may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation of the Annual Rent,
 - (ii) As a condition of approval of assignment or sublease of this Lease,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Tenant shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.

EXHIBIT D

- (d) Upon any default by Tenant in its obligations under this Lease, State may collect on the Security to offset the liability of Tenant to State. Collection on the Security does not (1) relieve Tenant of liability, (2) limit any of State's other remedies, (3) reinstate or cure the default or (4) prevent termination of the Lease because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State's Repairs. This Lease does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Property, or any part thereof, during the Term.

11.2 Tenant's Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.
- (b) At Tenant's own expense, Tenant shall keep and maintain the Property and all Improvements in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Tenant's own expense, Tenant shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Property or to any Improvements on the Property that any public authority may require. If a public authority requires work beyond the scope of routine maintenance and repair, Tenant shall comply with Section 7 of this Lease.

11.3 Limitations. The following limitations apply whenever Tenant conducts maintenance, repair, or replacement. The following limitations also apply whenever Tenant conducts maintenance, repair, or replacement on the exterior surfaces, features, or fixtures of a floating house.

- (a) Tenant shall not use or install treated wood at any location above or below water, except that Tenant may use treated wood for above water structural framing.
- (b) Tenant shall not use or install tires (for example, floatation or fenders) at any location above or below water.
- (c) Tenant shall install only floatation material encapsulated in a shell resistant to ultraviolet radiation and abrasion. The shell must be capable of preventing breakup and loss of flotation material into the water.
- (d) Tenant shall orient night lighting to minimize the amount of light shining directly on the water.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of damage to or destruction of the Property or Improvements, Tenant shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction without Tenant's written notice.

EXHIBIT D

- (b) Unless otherwise agreed in writing, Tenant shall promptly reconstruct, repair, or replace the Property and Improvements as nearly as possible to its condition immediately prior to the damage or destruction in accordance with Paragraph 7.3, Construction, Major Repair, Modification, and Demolition and Tenant's additional obligations in Exhibit B, if any.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Property unless State provides written notice to Tenant of each specific claim waived.

12.3 Insurance Proceeds. Tenant's duty to reconstruct, repair, or replace any damage or destruction of the Property or any Improvements on the Property is not conditioned upon the availability of any insurance proceeds to Tenant from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Paragraph 10.2(g)(3).

12.4 Rent in the Event of Damage or Destruction. Unless the Parties agree to terminate this Lease, there is no abatement or reduction in rent during such reconstruction, repair, and replacement.

12.5 Default at the Time of Damage or Destruction. If Tenant is in default under the terms of this Lease at the time damage or destruction occurs, State may elect to terminate the Lease and State then shall have the right to retain any insurance proceeds payable as a result of the damage or destruction.

SECTION 13 CONDEMNATION

13.1 Definitions.

- (a) "Taking" means that an entity authorized by law exercises the power of eminent domain, either by judgment, settlement in lieu of judgment, or voluntary conveyance in lieu of formal court proceedings, over all or any portion of the Property and Improvements. This includes any exercise of eminent domain on any portion of the Property and Improvements that, in the judgment of the State, prevents or renders impractical the Permitted Use.
- (b) "Date of Taking" means the date upon which title to the Property or a portion of the Property passes to and vests in the condemner or the effective date of any order for possession if issued prior to the date title vests in the condemner.

13.2 Effect of Taking. If there is a taking, the Lease terminates proportionate to the extent of the taking. If this Lease terminates in whole or in part, Tenant shall make all payments due and attributable to the taken Property up to the date of taking. If Tenant has pre-paid rent and Tenant is not in default of the Lease, State shall refund Tenant the pro rata share of the pre-paid rent attributable to the period after the date of taking.

13.3 Allocation of Award.

- (a) The Parties shall allocate the condemnation award based upon the ratio of the fair market value of (1) Tenant's leasehold estate and Tenant-Owned Improvements

- and (2) State's interest in the Property; the reversionary interest in Tenant-Owned Improvements, if any; and State-Owned Improvements, if any.
- (b) If Tenant and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 DEFAULT AND REMEDIES

14.1 Default Defined. Tenant is in default of this Lease on the occurrence of any of the following:

- (a) Failure to pay rent or other expenses when due;
- (b) Failure to comply with any law, regulation, policy, or order of any lawful governmental authority;
- (c) Failure to comply with any other provision of this Lease;
- (d) Commencement of bankruptcy proceedings by or against Tenant or the appointment of a trustee or receiver of Tenant's property.

14.2 Tenant's Right to Cure.

- (a) A default becomes an "Event of Default" if Tenant fails to cure the default within the applicable cure period following State's written notice of default. Upon an Event of Default, State may seek remedies under Paragraph 14.3.
- (b) Unless expressly provided elsewhere in this Lease, the cure period is sixty (60) days.
- (c) For nonmonetary defaults not capable of cure within sixty (60) days, State will not unreasonably withhold approval of a reasonable alternative cure schedule. Tenant must submit a cure schedule within thirty (30) days of a notice of default. The default is not an Event of Default if State approves the schedule and Tenant works diligently and in good faith to execute the cure. The default is an Event of Default if Tenant fails to timely submit a schedule or fails to cure in accordance with an approved schedule.
- (d) State may elect to deem a default by Tenant as an Event of Default if the default occurs within six (6) months after a default by Tenant for which State has provided notice and opportunity to cure and regardless of whether the first and subsequent defaults are of the same nature.

14.3 Remedies.

- (a) Upon an Event of Default, State may terminate this Lease and remove Tenant by summary proceedings or otherwise.
- (b) If the Event of Default (1) arises from Tenant's failure to comply with restrictions on Permitted Use and operations under Paragraph 2.2 or (2) results in damage to natural resources or the Property, State may enter the Property without terminating this Lease to (1) restore the natural resources or Property and charge Tenant restoration costs and/or (2) charge Tenant for damages. On demand by State, Tenant shall pay all costs and/or damages.

EXHIBIT D

- (c) Without terminating this Lease, State may relet the Property on any terms and conditions as State may decide are appropriate.
 - (1) State shall apply rent received by reletting: (1) to the payment of any indebtedness other than rent due from Tenant to State; (2) to the payment of any cost of such reletting; (3) to the payment of the cost of any alterations and repairs to the Property; and (4) to the payment of rent and leasehold excise tax due and unpaid under this Lease. State shall hold and apply any balance to Tenant's future rent as it becomes due.
 - (2) Tenant is responsible for any deficiency created by the reletting during any month and shall pay the deficiency monthly.
 - (3) At any time after reletting, State may elect to terminate this Lease for the previous Event of Default.
- (d) State's reentry or repossession of the Property under Paragraph 14.3 is not an election to terminate this Lease or cause a forfeiture of rents or other charges Tenant is obligated to pay during the balance of the Term, unless (1) State gives Tenant written notice of termination or (2) a legal proceeding decrees termination.
- (e) The remedies specified under this Paragraph 14.3 are not exclusive of any other remedies or means of redress to which the State is lawfully entitled for Tenant's breach or threatened breach of any provision of this Lease.

SECTION 15 ENTRY BY STATE

State may enter the Property at any reasonable hour to inspect for compliance with the terms of this Lease, to monitor impacts to habitat, or survey habitat and species. Tenant grants State permission to cross Tenant's upland and aquatic land property to access the Property. State shall provide at least 48 hours notice before entering Tenant's property. State's failure to inspect the Property does not constitute a waiver of any rights or remedies under this Lease.

SECTION 16 DISCLAIMER OF QUIET ENJOYMENT

16.1 No Guaranty or Warranty.

- (a) State believes that this Lease is consistent with the Public Trust Doctrine and that none of the third-party interests identified in Paragraph 1.1(b) will materially or adversely affect Tenant's right of possession and use of the Property, but State makes no guaranty or warranty to that effect.
- (b) State disclaims and Tenant releases State from any claim for breach of any implied covenant of quiet enjoyment. This disclaimer and release includes, but is not limited to, interference arising from exercise of rights under the Public Trust Doctrine; Treaty rights held by Indian Tribes; and the general power and authority of State and the United States with respect to aquatic lands and navigable waters.
- (c) Tenant is responsible for determining the extent of Tenant's right to possession and for defending Tenant's leasehold interest.

EXHIBIT D

16.2 Eviction by Third-Party. If a third-party evicts Tenant, this Lease terminates as of the date of the eviction. In the event of a partial eviction, Tenant's rent obligations abate as of the date of the partial eviction, in direct proportion to the extent of the eviction; this Lease shall remain in full force and effect in all other respects.

SECTION 17 NOTICE AND SUBMITTALS

Following are the locations for delivery of notice and submittals required or permitted under this Lease. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District
950 Farman Avenue North
Enumclaw, WA 98022-9282

Tenant: M.G. BURGHER AND ASSOCIATES, INC.
dba Martin Marina
4015 Northeast 70th Street
Seattle, WA 98115

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Lease number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

SECTION 18 MISCELLANEOUS

18.1 Authority. Tenant and the person or persons executing this Lease on behalf of Tenant represent that Tenant is qualified to do business in the State of Washington, that Tenant has full right and authority to enter into this Lease, and that each and every person signing on behalf of Tenant is authorized to do so. Upon State's request, Tenant shall provide evidence satisfactory to State confirming these representations.

18.2 Successors and Assigns. This Lease binds and inures to the benefit of the Parties, their successors, and assigns.

18.3 Headings. The headings used in this Lease are for convenience only and in no way define, limit, or extend the scope of this Lease or the intent of any provision.

EXHIBIT D

18.4 Entire Agreement. This Lease, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Lease merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Property.

18.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Lease is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Lease. State's acceptance of a rental payment is not a waiver of any preceding or existing breach other than the failure to pay the particular rental payment that was accepted.
- (b) The renewal of the Lease, extension of the Lease, or the issuance of a new lease to Tenant, does not waive State's ability to pursue any rights or remedies under the Lease.

18.6 Cumulative Remedies. The rights and remedies under this Lease are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

18.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Lease.

18.8 Language. The word "Tenant" as used in this Lease applies to one or more persons and regardless of gender, as the case may be. If there is more than one Tenant, their obligations are joint and several. The word "persons," whenever used, shall include individuals, firms, associations, and corporations. The word "Parties" means State and Tenant in the collective. The word "Party" means either or both State and Tenant, depending on the context.

18.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Lease does not affect, impair, or invalidate any other provision of this Lease.

18.10 Applicable Law and Venue. This Lease is to be interpreted and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or in connection with this Lease is in the Superior Court for Thurston County, Washington.

18.11 Statutory Reference. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded.

18.12 Recordation. At Tenant's expense and no later than thirty (30) days after receiving the fully-executed Lease, Tenant shall record this Lease in the county in which the Property is located. Tenant shall include the parcel number of the upland property used in conjunction with the Property, if any. Tenant shall provide State with recording information, including the date of recordation and file number. If Tenant fails to record this Lease, State may record it and Tenant shall pay the costs of recording upon State's demand.

18.13 Modification. No modification of this Lease is effective unless in writing and signed by both Parties. Oral representations or statements do not bind either Party.

EXHIBIT D

18.14 Survival. Any obligations of Tenant not fully performed upon termination of this Lease do not cease, but continue as obligations of the Tenant until fully performed.

18.15 Exhibits. All referenced exhibits are incorporated in the Lease unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

M.G. BURGHER AND ASSOCIATES, INC. dba
MARTIN MARINA

Dated: 3/7, 2019

Helen L. Hitchcock
By: HELEN L. HITCHCOCK
Title: President

Dated: 2/26, 2019

Larry Burgher
By: LARRY BURGHER
Title: Vice President

Dated: February 26th, 2019

Roger Burgher
By: ROGER BURGHER
Title: Treasurer

Address: 4015 Northeast 70th Street
Seattle, WA 98115
Phone: 360-357-5433

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: April 17, 2019

Amalia Walton
By: AMALIA WALTON
Title: Deputy Supervisor for Aquatics and Geology



Address: 950 Farman Avenue North
Enumclaw, WA 98022

Approved as to form
17th day of July 2014
Terry Pruitt, Assistant Attorney General

EXHIBIT D

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EXHIBIT D

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF ~~WASHINGTON~~) ^{CALIFORNIA} NPW
County of ~~WASHINGTON~~) ss. ^{RIVERSIDE}

I certify that I know or have satisfactory evidence that HELEN L. HITCHCOCK is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President of M. G. Burgher and Associates, Inc. dba Martin Marina to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: MARCH 07th, 2019

(Seal or stamp)



(Signature)

NAYAN P. GHELANI

(Print Name)

^{NPW}
CALIFORNIA

Notary Public in and for the State of Washington, residing at

LA QUINTA, CA

My appointment expires 12/31/2020

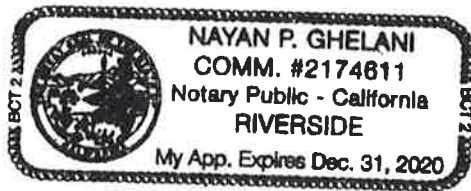


EXHIBIT D

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of)

I certify that I know or have satisfactory evidence that LARRY BURGHER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President of M. G. Burgher and Associates, Inc. dba Martin Marina to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 02-26-2019

(Seal or stamp)



[Handwritten Signature]
(Signature)

David Fletcher
(Print Name)

Notary Public in and for the State of
Washington, residing at
Seattle

My appointment expires 08-29-2020

EXHIBIT D

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of)

I certify that I know or have satisfactory evidence that ROGER BURGHER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Treasurer of M. G. Burgher and Associates, Inc. dba Martin Marina to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 02-26-2019

(Seal or stamp)



[Handwritten Signature]

(Signature)

David Fletcher

(Print Name)

Notary Public in and for the State of Washington, residing at

Seattle

My appointment expires 08-29-2020

EXHIBIT D

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss.
County of Thurston)

I certify that I know or have satisfactory evidence that AMALIA WALTON is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the DEPUTY SUPERVISOR FOR AQUATICS AND GEOLOGY of the DEPARTMENT OF NATURAL RESOURCES to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 4-11-2019

(Seal or stamp)



Andrea Wagner
(Signature)

Andrea Wagner
(Print Name)

Notary Public in and for the State of Washington, residing at

Clippia

My appointment expires 9-16-22

EXHIBIT D

PRELIMINARY EXHIBIT A

Agreement Number 22-A02433

Legal description of the Property:

THAT PART OF THE OLYMPIA HARBOR AREA LYING BETWEEN THE INNER HARBOR LINE AND THE OUTER HARBOR LINE AS SHOWN ON THE FOURTH SUPPLEMENTAL MAPS OF OLYMPIA TIDELANDS AS RECORDED UNDER AUDITOR'S FILE NO. 1041210, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE INNER HARBOR LINE WITH THE EXTENDED NORTH LINE OF LOT 3, BLOCK 2, OF OLYMPIA TIDELANDS, ACCORDING TO THE OFFICIAL MAP ON FILE WITH THE COMMISSIONER OF PUBLIC LANDS; THENCE SOUTH 05°52'27" EAST ALONG THE INNER HARBOR LINE 447.88 FEET, MORE OR LESS, TO THE GOVERNMENT MEANDER LINE; THENCE SOUTHWESTERLY ALONG SAID MEANDER LINE 18.17 FEET, MORE OR LESS, TO THE EXTENDED NORTH RIGHT-OF-WAY LINE OF THURSTON AVENUE; THENCE SOUTH 84°07'33" WEST ALONG SAID EXTENDED NORTH RIGHT-OF-WAY LINE 287 FEET, MORE OR LESS, TO THE OUTER HARBOR LINE; THENCE NORTH 05°52'27" WEST ALONG SAID OUTER HARBOR LINE 460 FEET, MORE OR LESS, TO ITS INTERSECTION WITH THE EXTENDED NORTH LINE OF SAID LOT 3, BLOCK 2, OF OLYMPIA TIDELANDS; THENCE NORTH 84°07'33" EAST ALONG SAID EXTENDED NORTH LINE 300 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

IN THURSTON COUNTY, WASHINGTON.

Square footage reflecting the addition of three floating homes:

Water-dependent	80,219
Nonwater-dependent	41,536
Public Use & Access	<u>16,198</u>
Total square feet	137,953

EXHIBIT D

**EXHIBIT B
PLAN OF OPERATIONS**

1. DESCRIPTION OF PERMITTED USE

A. Existing Facilities. 31 creosote wood piles, two main concrete floats (with utilities), 40 concrete finger piers, two gangways, a public boardwalk, a public parking lot, and two commercial buildings.

Residential Uses:

The marina allows residential liveaboard uses. The marina maintains support services including restrooms, and laundry machines on the adjacent terrestrial property, 501 NW Columbia Street, Olympia, WA. The pump-out facilities are provided by a mobile service provider. Additional pump-out facilities are located at Percival Landing Park.

B. Residential Uses. Tenant is required to comply with all provisions outlined in the Residential Use Rule per WAC 332-30-171, including:

- i. Tenant is required to collect documentation on a monthly basis documenting the resident's compliance with upland disposal of sewage; the marina must quarterly provide documentation to DNR confirming that all residential uses moored in leased area are disposing of sewage (e.g., blackwater) in an upland facility per WAC 332-30-171(4)(a) and (5)(a).
- ii. Per WAC 332-30-171(4)(d), Tenant shall implement Best Management Practices (BMP) to avoid, to the maximum extent possible, discharges of gray water (e.g., sink and shower discharges). Tenant agrees to implement the BMPs described in Exhibit C, including but not limited to the following:
 - a. Tenant shall provide all marina tenants with a copy of the "Best Management Practices (BMPs) for Boaters" section from the Ecology Manual for Pollution Prevention in within thirty (30) days following the Commencement Date.
 - b. Tenant shall actively discourage tenants from discharging gray water within the marina.
 - c. Tenant shall provide garbage receptacles and signage to discourage disposal of food and other waste overboard
- iii. Within 60 days after the Commencement Date, and by the same date each year thereafter, Tenant shall provide State a report containing the following information:
 - a. The number of residential uses on the Property by type of residential structure (e.g., Existing Floating House or vessel (as defined by WAC 332-30-106 (23) and (74)));

EXHIBIT D

- b. Name of occupant of the residential structure;
 - c. Date when current moorage agreement commenced and term of agreement; and
 - d. Boat registration number issued by Department of Licensing, if applicable.
- iv. If the total number of slips or moorage spaces changes on the property, Tenant is required to notify State within sixty (60) days.
 - v. If an Existing Floating House leaves the marina for a period of greater than thirty consecutive days, Tenant must notify State at the expiration of such thirty (30) day period.

Floating Homes:

Floating houses are not allowed within harbor areas. There are three (3) Existing Floating Houses within the marina. These Existing Floating Houses are permitted to remain on the Property during the Term only as provided in Section 2.2(h) of the Lease. The Existing Floating Houses were installed after October 1, 1984 are privately owned by subtenants at the marina. Rent for the Existing Floating Homes will be assessed at the nonwater-dependent rate. The floating homes are described below

- Existing Floating Home No. 1 – This home is approximately 40 feet x 14 feet. It has Washington registration number WN0424RB. Existing Floating House No. 1 is known as the LARGO, aka “SWEET PEA” and is located in Slip A47.
- Existing Floating House No. 2 – This home is approximately 38 feet x 14 feet. It has Washington registration number WN1243NS. Existing Floating House No.2 is known as [not named] and is located in Slip No. A4.
- Existing Floating House No. 3 – This home is approximately 38 feet x 14 feet. It has Washington registration number WN431ME. Existing Floating No. 4 is known as [not named] and is located in Slip No. A18.

C. Proposed Facilities. Tenant proposes no new facilities.

2. ADDITIONAL OBLIGATIONS

- (a) Tenant shall post the Property with no-wake advisories.
- (b) Tenant shall replace existing treated wood decking, timbers, pilings, etc. with non-toxic materials such as untreated wood, steel, concrete, or recycled plastic, or encased in a manner that prevents leaching of contaminants into surface water. Tenant may use non-cresote treated wood to replace above water structural

EXHIBIT D

framing. Replacement may occur under an ordinary maintenance or repair schedule, but all treated wood must be replaced by January 31, 2031.

- (c) Tenant shall replace existing unencapsulated floatation materials with encapsulated floatation materials. Replacement may occur under an ordinary maintenance or repair schedule, but all unencapsulated floatation material must be replaced by January 31, 2021.
- (d) Tenant shall renovate or replace existing docks, rafts, floats, wharves and piers to provide 50 percent grated surface; grating material must have at least 60 percent functional open space. Replacement may occur under an ordinary maintenance or repair schedule, but replacement must be complete by January 31, 2031.
- (e) Within thirty (30) days following the Commencement Date, Tenant shall give a copy of the BMPs described in Exhibit C to all of their subtenants, and to any new subtenants when they move into the marina.
- (f) Tenants with moorage for more than ten vessels shall submit to State for approval a written sewage management plan by May 1, 2019 that identifies and explains the methods Tenant will require vessels moored on the Property to use for disposing wastewater from vessel holding tanks and portable toilets and identifies available upland restroom facilities in accordance with the National Management Measures Guideline to Control Nonpoint Source Pollution from Marina and Recreational Boating, EPA 841-B-01-005 - http://water.epa.gov/polwaste/nps/marinas/mmmsp_index.cfm. State waives the requirement for approval if State does not notify Tenant of its approval or denial of Tenant's plan no later than sixty (60) days after submittal of the survey. Tenant shall implement the plan 90 days after State approves or waives approval of the plan.
- (g) Tenant shall post clearly the location of the nearest upland restroom facility and sewage pumpout facility.

EXHIBIT D

EXHIBIT C

**BEST MANAGEMENT PRACTICES
TO AVOID DISCHARGES OF GREY WATER**

Deck
<ul style="list-style-type: none">• Wash often with water only.
<ul style="list-style-type: none">• Use “green” products.
<ul style="list-style-type: none">• Spot clean only with harsher products.
<ul style="list-style-type: none">• Require “scupper stoppers” when cleaning.
<ul style="list-style-type: none">• Prohibit overboard discharge from decks.
Galley
<ul style="list-style-type: none">• Use sink strainers.
<ul style="list-style-type: none">• Scrape plates into trash receptacles prior to washing.
<ul style="list-style-type: none">• Discourage garbage disposal use.
<ul style="list-style-type: none">• Use “green” products.
<ul style="list-style-type: none">• Encourage upland facility use.
<ul style="list-style-type: none">• Discourage or minimize in-port use of sink.
<ul style="list-style-type: none">• Prohibit discharges from galley.
Shower
<ul style="list-style-type: none">• Educate on “sea-showers.”
<ul style="list-style-type: none">• Use drain-strainers.
<ul style="list-style-type: none">• Encourage “green” products.
<ul style="list-style-type: none">• Require automatic shut-off valves.
<ul style="list-style-type: none">• Prohibit discharges from showers and sinks.
Laundry
<ul style="list-style-type: none">• Encourage upland facility use.
<ul style="list-style-type: none">• Post names and locations of laundries.
<ul style="list-style-type: none">• Encourage “green” products.
<ul style="list-style-type: none">• Recommend load sizes to minimize use.
<ul style="list-style-type: none">• Require strainers on discharge.
<ul style="list-style-type: none">• Free coupons for upland facilities.
<ul style="list-style-type: none">• Prohibit on-board laundry.
Fresh Water
<ul style="list-style-type: none">• Do not allow continuous hook-up.



City Council

Approval of a Resolution Authorizing a Sublease at Percival Landing with Mg Burgher & Associates

Agenda Date: 12/17/2019
Agenda Item Number: 4.D
File Number: 19-1003

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

Title

Approval of a Resolution Authorizing a Sublease at Percival Landing with Mg Burgher & Associates

Recommended Action

Committee Recommendation:

Not referred to a committee

City Manager Recommendation:

Move to approve the resolution authorizing a sublease at Percival Landing with Mg Burgher & Associates and authorize the Interim City Manager to execute all documents necessary

Report

Issue:

Whether to approve a resolution authorizing a sublease at Percival Landing with Mg Burgher & Associates

Staff Contact:

Jonathon Turlove, Director of Park Planning and Maintenance, 360.753-8068

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Much of the aquatic land underlying Percival Landing is managed by the Department of Natural Resources (DNR) and is either leased or subleased to the City. One such area is the portion of the Landing and associated parking near Martin Marina. This portion of the Landing is leased by DNR to Mg Burgher & Associates (the owner of the marina and several buildings) who then subleases it to the City. The City's current sublease with Mg Burgher & Associates has expired. Mr. Burgher has recently renewed his lease with DNR and for the past several years has been negotiating with the City over the terms of the sublease.

The sublease area includes a portion of Percival Landing from just north of the Harbor House to a

point just south of Budd Bay Café (see attached sublease exhibits for an exact drawing and legal description). This portion is being leased to the City free of charge.

The sublease area also includes a portion of a paved parking lot north of the Harbor House. This parking area is currently signed as free two-hour parking and is used by both the general public as well as tenants at Martin Marina (who are given a parking pass to use the lot). The lot also provides the only access to the dumpster and maintenance entrance to Percival Landing's Harbor House. DNR is charging Mg Burgher & Associates what they have determined to be market rate rent for this parking area. The City has negotiated with Mg Burger & Associates to lease half of this parking area, and pay Mg Burgher & Associates half of what DNR will be charging them.

This lease agreement will allow the City to place a physical barrier delineating the City's portion of the lot. This will provide dedicated parking on that half of the lot for Percival Landing and the Harbor House. (Currently, any vehicle with a placard issued by Martin Marina can park anywhere in the lot). Delineating the lot in this manner will also provide better clarity regarding maintenance responsibilities, with each party responsible for maintaining its own side. Staff is proposing to continue to use the City's half of the lot for free two-hour parking for Percival Landing at this time. Increased commercial and residential development in the area may necessitate a paid or permit-based system in the future; the lease agreement would allow for this.

Neighborhood/Community Interests (if known):

The parking lot is well used, as it provides free two-hour parking for Percival Landing and nearby businesses.

Options:

1. Move to approve the resolution authorizing a sublease at Percival Landing with Mg Burgher & Associates and authorize the Interim City Manager to execute all documents necessary.
2. Do not move to approve the resolution authorizing the sublease. Unless a different sublease was renegotiated, the City would lose parking for Percival Landing and maintenance/dumpster access for the Harbor House.

Financial Impact:

Under the former lease agreement, the City was not charged rent for the shared parking lot because DNR did not charge Burgher & Associates rent for this area. Under DNR's new lease agreement with Burgher & Associates, DNR is charging market-rate rent for the parking lot. Burgher & Associates is in turn charging the City half of this rate for the use of half of the parking lot. The sublease will cost \$7,500 in 2019, \$8,750 in 2020, \$10,000 in 2021, and \$11,250 in 2022.

Attachments:

Resolution
Sublease

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING A SUBLEASE BY THE CITY OF OLYMPIA FROM M.G. BURGHER AND ASSOCIATES, INC. FOR PROPERTY OWNED BY THE DEPARTMENT OF NATURAL RESOURCES AND UTILIZED FOR PERCIVAL LANDING.

WHEREAS, much of the aquatic land underlying Percival Landing is managed by the Department of Natural Resources (DNR) and is either leased or subleased by the City; and

WHEREAS, one such area includes the portion of the Landing and associated parking near Martin Marina, which is leased by DNR to M.G. Burgher and Associates, Inc. (Burgher and Associates), who then subleases it to the City; and

WHEREAS, the City's current sublease with Burgher and Associates has expired; and

WHEREAS, Burgher and Associates recently renewed their lease with DNR and for the past several years has been negotiating with the City over the terms of the sublease; and

WHEREAS, the City and Burgher and Associates have agreed to a sublease which includes a portion of Percival Landing from just north of the Harbor House to a point just south of Budd Bay Café, free of charge to the City; and

WHEREAS, the sublease area also includes a portion of paved parking lot north of the Harbor House, currently signed as free 2-hour parking for which the City has agreed to pay half of what DNR charges Burgher and Associates to lease; and

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the form of Sublease Agreement between the City of Olympia and Burgher and Associates for property utilized for Percival Landing and the terms and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Sublease Agreement, and any other documents necessary to execute said Agreement, and to make any minor modifications as may be required and are consistent with the intent of the Agreement, or to correct any scrivener's errors.

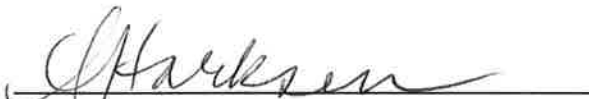
PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY



City Council

Approval of a Resolution Authorizing an Amendment to the Interagency Agreement Between the Department of Ecology and the City of Olympia to Sponsor Bioretention Hydrologic Performance Studies

Agenda Date: 12/17/2019
Agenda Item Number: 4.E
File Number: 19-1068

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

Title

Approval of a Resolution Authorizing an Amendment to the Interagency Agreement Between the Department of Ecology and the City of Olympia to Sponsor Bioretention Hydrologic Performance Studies

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing an amendment to the Interagency Agreement with the Department of Ecology to sponsor Bioretention Hydrologic Performance Studies and authorize the Interim City Manager to sign the agreement.

Report

Issue:

Whether to approve a resolution authorizing the City to amend an Interagency Agreement that allows additional time for the City's consultants to complete a Department of Ecology Stormwater Action Monitoring effectiveness study.

Staff Contact:

Eric Christensen, Water Resources Director, Public Works, 360.704.9570

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

Olympia pays into a collective fund to implement the Washington State Department of Ecology's (Ecology) Stormwater Action Monitoring (SAM) Program. Administered by Ecology, the program is a collaboration between Western Washington jurisdictions with National Pollutant Discharge

Elimination System (NPDES) Municipal Stormwater Permits. SAM identifies effective actions and tracks regional progress to reduce pollution and flooding associated with stormwater. One of SAM's focus areas is studies to measure the effectiveness of stormwater management actions and communicating this information to jurisdictions.

Ecology requested City sponsorship of a study to evaluate bioretention facilities and engineered rain gardens designed to remove contaminants and sediment from stormwater. In October 2017, the City entered an Interagency Agreement to allow \$526,026 in funding to pass from Ecology to City-contracted consultants performing the studies. The study is proceeding well, but initial challenges locating qualified study sites and inconsistent precipitation last winter resulted in the need to amend the contract to extend the term for completing the work.

Timing of the Interagency Agreement is critical. The current agreement expires at the end of 2019; therefore the City and Ecology need to sign the amendment by December 31, 2019.

Neighborhood/Community Interests (if known):

There are no specific neighborhood and/or community concerns. Studies are being performed throughout Western Washington. Findings from the studies will benefit jurisdictions throughout the region.

Options:

- Option 1: Approve the resolution authorizing an amendment to the Interagency Agreement with the Department of Ecology to sponsor Bioretention Hydrologic Performance Studies and authorize the Interim City Manager to sign the agreement. This will allow important studies of the effectiveness of low impact development practices to be completed.
- Option 2: Do not approve the resolution and do not authorize the Interim City Manager to sign the Interagency Agreement with Ecology. This would likely result in the ongoing study not being completed.

Financial Impact:

This amendment makes no changes to funding. Under the existing agreement, the Department of Ecology is providing funding of \$526,026 for the ongoing study.

Attachments:

Resolution
Amended Interagency Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING AMENDMENT NO. 1 TO THE INTERAGENCY AGREEMENT BETWEEN THE CITY OF OLYMPIA AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR BIORETENTION HYDROLOGIC PERFORMANCE STUDIES.

WHEREAS, the City of Olympia (City) holds a National Pollutant Discharge Elimination (NPDES) Phase II Western Washington Municipal Stormwater Permit (Permit); and

WHEREAS, the Department of Ecology Stormwater Action Monitoring (SAM) program is a collaborative, regional stormwater monitoring program funded by more than 90 Western Washington Permit holders including cities and counties, the ports of Seattle and Tacoma, and the Washington State Department of Transportation; and

WHEREAS, the Department of Ecology SAM program effectiveness studies are of regional significance, benefit all Permit holders, and provide long term benefits through updates to the Stormwater Management Manual for Western Washington; and

WHEREAS, the Department of Ecology SAM program requires a Permit holder to sponsor effectiveness studies; and

WHEREAS, the City sees benefit in sponsoring the second phase of the Bioretention Hydrologic Performance Studies; and

WHEREAS, the Interagency Agreement Between the City Of Olympia and the Washington State Department of Ecology for Bioretention Hydrologic Performance Studies was executed in October 2017 and expires December 31, 2019; and

WHEREAS, the consultant performing the Bioretention Hydrologic Performance Studies encountered difficulty identifying appropriate study sites and had to extend the monitoring periods due to adverse weather conditions; and

WHEREAS, the Department of Ecology has agreed to extend the study schedule;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. The Olympia City Council hereby approves the form of Amendment No. 1 to the Interagency Agreement between the City of Olympia and the Washington State Department of Ecology for Bioretention Hydrologic Performance Studies and the terms and conditions contained therein.
2. The Interim City Manager is authorized and directed to execute on behalf of the City of Olympia the attached Amendment No. 1 to the Interagency Agreement, and any other documents necessary to execute said Agreement, and to make any minor modifications as

may be required and are consistent with the intent of the attached Interagency Agreement amendment, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of _____ 2019.

MAYOR

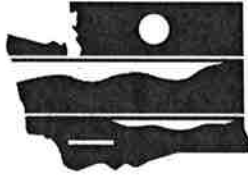
ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY



DEPARTMENT OF
ECOLOGY
State of Washington

AMENDMENT NO. 1

To

IAA No. C1800060

**INTERAGENCY AGREEMENT (IAA) BETWEEN
THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY AND
CITY OF OLYMPIA**

PURPOSE: To amend the Agreement between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY" and CITY OF OLYMPIA, hereinafter referred to as "CITY," or "CONTRACTOR".

WHEREAS: This Agreement is undergoing an extension of the timeline to allow for completion of the work described in contract.

IT IS MUTUALLY AGREED the agreement is amended as follows:

- 1) The project end date is changed from December 31, 2019 to December 31, 2020.
- 2) Task 5 and Task 6 deliverable due dates are changed as shown:

Deliverable 5.1 target date is changed from ~~6/30/2018~~ to 12/30/2019

Deliverable 5.2 target date is changed from ~~9/30/2018~~ to 6/30/2020

Deliverable 5.3 target date is changed from ~~9/30/2018~~ to 6/30/2020

Deliverable 5.4 target date is changed from ~~9/30/2018~~ to 6/30/2020

Deliverable 5.5 target date is changed from ~~11/30/2018~~ to 9/1/2020

Deliverable 6.1 target date is changed from ~~12/31/2018~~ to 10/01/2020

Deliverable 6.2 target date is changed from ~~1/31/2019~~ to 12/01/2020

Deliverable 6.3 target date is changed from ~~3/31/2019~~ to 12/01/2020

Deliverable 6.4 target date is changed from ~~3/31/2019~~ to 12/01/2020

Deliverable 6.5 target date is changed from ~~6/30/2019~~ to 12/01/2020

State of Washington, Department of Ecology IAA No. C1800060, Amendment 1
City of Olympia

All other terms and conditions of the original Agreement including any Amendments remain in full force and effect, except as expressly provided by this Amendment.

This Amendment is signed by persons who represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This Amendment is effective when executed by ECOLOGY.

IN WITNESS WHEREOF: the parties have executed this Amendment

**State of Washington
Department of Ecology**

City of Olympia

By:

By:

Signature

Date

Signature

Date

Print Name: Polly Zehm

Print Name: Steven J. Burney

Title: Deputy Director

Title: Interim City Manager

APPROVED AS TO FORM ONLY:

APPROVED AS TO FORM:

Office of the Attorney General


Deputy City Attorney



City Council

Approval of a Resolution Authorizing the Mayor to Sign a Letter to the United States Secretary of State Conveying the City of Olympia's Consent to Welcoming and Resettling Refugees

Agenda Date: 12/17/2019
Agenda Item Number: 4.F
File Number: 19-1169

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

Title

Approval of a Resolution Authorizing the Mayor to Sign a Letter to the United States Secretary of State Conveying the City of Olympia's Consent to Welcoming and Resettling Refugees

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the Mayor to sign a letter conveying to the U.S. Secretary of State that the City of Olympia consents to welcoming and resettling refugees.

Report

Issue:

Whether to approve a resolution authorizing the Mayor to sign a letter conveying to the U.S. Secretary of State that the City of Olympia consents to welcoming and resettling refugees.

Staff Contact:

Mark Barber, City Attorney. (360) 753-8338

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

On September 26, 2019, President Donald J. Trump issued Executive Order 13888, stating that the policy of the United States of America in resettling refugees into American communities is to cooperate and consult with State and local governments, to take into account the preferences of State governments, and to provide a pathway for refugees to become self-sufficient. The President alleged that these policies ensure that refugees are resettled in communities that are eager and equipped to support refugees' successful integration into American society and the labor force.

After issuance of Executive Order 13888, Governor Jay Inslee sent a letter to U.S. Secretary of State, Michael Pompeo, affirming that the State of Washington consents to welcoming and resettling refugees into the State's communities. Governor Inslee also reserved the right to challenge the validity of Executive Order 13888's requirements in the future.

As a local jurisdiction within the State of Washington and the capitol of Washington State, the City of Olympia must also indicate its consent to the welcoming and resettlement of refugees under the U.S. Department of State's Reception and Placement Program pursuant to Executive Order 13888. Previously, the Olympia City Council passed a Resolution declaring the City of Olympia to be a sanctuary city for immigrants and refugees. The letter consenting to welcoming and resettling refugees required by Executive Order 13888 is consistent with the Council's prior resolution in support of immigrants and refugees.

Neighborhood/Community Interests (if known):

Unknown

Options:

1. Approve the Resolution authorizing the Mayor to sign a letter consenting to the welcoming and resettling of refugees within the City of Olympia as required by Executive Order 13888.
2. Modify the letter authorizing the Mayor to consent to the welcoming and resettling of refugees within the City of Olympia.
3. Do not approve the Resolution, which will result in the City of Olympia being unable to qualify to accept refugees under the U.S. Department of State's Reception and Placement Program pursuant to Executive Order 13888.

Financial Impact:

Unknown

Attachments:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, AUTHORIZING THE MAYOR TO SIGN A LETTER TO UNITED STATES SECRETARY OF STATE, THE HONORABLE MICHAEL POMPEO, CONVEYING THE CITY OF OLYMPIA'S CONSENT TO WELCOMING AND RESETTLING REFUGEES THROUGH THE U.S. DEPARTMENT OF STATE'S RECEPTION AND PLACEMENT PROGRAM AND AS OTHERWISE PERMITTED BY FEDERAL LAW.

WHEREAS, the City of Olympia is a welcoming city that serves and protects its residents regardless of their immigration status; and

WHEREAS, the City of Olympia is a city of peace where those who are politically persecuted can find safe haven and sanctuary, with a history of supporting immigrant and refugee rights; and

WHEREAS, in the City of Olympia, all people, including immigrants and refugees, are respected and valued and are vital to our shared prosperity; and

WHEREAS, immigration and supporting refugees has been a cornerstone of our city, state and nation's development throughout our shared history; and

WHEREAS, the State of Washington is the nation's eighth largest refugee-receiving state in the United States of America; and

WHEREAS, on November 5, 2019, Governor Jay Inslee on behalf of the State of Washington wrote to Secretary of State Michael Pompeo to affirm the State of Washington's consent to welcoming and resettling refugees into our State's communities; and

WHEREAS, Governor Inslee recognized that refugees have sacrificed everything to seek refuge in America from violence, starvation, and other horrors most Americans have not experienced, and that refugees and their children bring with them their unique perspectives on tragedy, perseverance, and triumph, which experiences have made Washington State and our communities richer because of their important contributions; and

WHEREAS, on September 26, 2019, President Donald J. Trump signed Executive Order 13888 which provided that the federal government should resettle refugees only in those jurisdictions in which both the State and local governments have consented to receive refugees under the Department of State's Reception and Placement Program; and

WHEREAS, the President's Executive Order 13888 provided a time period within which the Secretary of State and the Secretary of Health and Human Services implement a process by which a State's and local governments' consent to the resettlement of refugees under the Department of State's Reception and Placement Program is to be taken into account to the maximum extent consistent with law, and that if a State or local government has not provided consent to receive refugees under the Reception and Placement Program, then refugees should not be resettled within that State or locality unless the Secretary of State, in consultation with the Secretary of Health and Human Services and the Secretary of

Homeland Security, determines that failing to resettle refugees within that State or locality would be inconsistent with the policies and strategies established under federal law in Title 8 U.S.C. 1522(a)(2)(B) and (C) or other applicable law;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE that Mayor Cheryl Selby is authorized to sign and transmit the attached letter on behalf of the City of Olympia, Washington, affirming the City of Olympia's consent to welcome and resettle refugees in our city pursuant to President Trump's Executive Order 13888, and reserving the right to challenge the validity of Executive Order 13888's requirements in the future.

PASSED BY THE OLYMPIA CITY COUNCIL this _____ day of December, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY



December 17, 2019

The Honorable Michael R. Pompeo, Secretary
United States Department of State
2201 C Street NW
Washington DC, 20230

Re: Consent for refugee resettlement pursuant to Executive Order 13888

Dear Secretary Pompeo:

This letter is in reference to Executive Order 13888, *"On Enhancing State and Local Involvement in Resettlement."*

As Mayor of the City of Olympia, capitol of the State of Washington, I consent to initial refugee resettlement in Olympia, Washington, as per the terms of the Executive Order.

Sincerely,

Cheryl Selby
Mayor

cc: Carol T. O'Connell, Principal Deputy Assistant Secretary
U.S. Department of State
Bureau of Population, Refugees, and Migration

Governor Jay Inslee, State of Washington

Sarah Peterson, Chief of Department of Social and Health Services
Office of Refugee and Immigrant Assistance



City Council

Approval of an Ordinance Amending Ordinance 7212 (Special Funds)

Agenda Date: 12/17/2019
Agenda Item Number: 4.G
File Number: 19-1151

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Ordinance 7212 (Special Funds)

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance amending Ordinance 7212 on second reading.

Report

Issue:

Whether to amend Ordinance 7212 on second reading.

Staff Contact:

Nanci Lien, Fiscal Services Director, Administrative Services Department, 360.753.8465

Presenter(s):

None - Consent Calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

City Council may revise the City's Special Funds Budget by approving an ordinance. Generally, budget amendments are presented quarterly to Council for their review and approval, but may be made at any time during the year. The amended ordinances appropriate funds and provide authorization to expend the funds.

No separate ordinances were passed since the adoption of ordinance 7212 on November 26, 2019, relating to the Special Funds Budget.

The attached ordinance includes recommended amendments to the 2019 Special Funds Budget for the following:

1. Administrative Service Department

- \$87,454 in appropriations for software related expenditures for ESO Fire Inspection (OFD), Dude Solutions (Parks), and Criminal Justice Case Management (Court). Funding for Fire and Parks software coming from transfers from department operating funds. The Criminal Justice Case Management Software appropriation is an administrative correction. It was approved as part of the 2018 EOY funding, but was appropriated in the wrong fund.

2. Hands on Children Museum

- \$11,234 in appropriation for increase in insurance costs. Funding from the Public Facility District revenues.

Neighborhood/Community Interests (if known):

N/A

Options:

1. Approve ordinance that amends Ordinance 7212. Authorizes staff to expend the funds.
2. Do not approve the proposed ordinance. The budget items not previously presented to the Council would not be authorized.

Financial Impact:

Total increase in appropriations is \$98,688. The sources of funding are noted above.

Attachments:

Ordinance

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, APPROPRIATING FUNDS
WITHIN VARIOUS SPECIAL FUNDS AND AMENDING ORDINANCE NO. 7212**

WHEREAS, the Olympia City Council passed Ordinance No. 7212 on November 26, 2019, appropriating funds within various special funds; and

WHEREAS, the following amendments need to be made to Ordinance No. 7212;

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

Section 1. The following appropriations are hereby made:

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
HUD Fund	\$8,166	\$1,937,023	\$1,945,189	-
Lodging Tax Fund	1,366,150	1,000,000	893,452	1,472,698
Parking Business Improvement Area Fund	59,673	100,000	115,840	43,833
Farmers Market Repair and Replacement Fund	76,701	-	-	76,701
Hands On Children's Museum	528,637	514,000	458,188 <u>469,422</u>	584,449 <u>573,215</u>
Home Fund Operating Fund	347,916	1,100,506	1,100,506	347,916
Fire Equipment Replacement Fund	-	2,197,387 <u>2,217,887</u>	2,061,372 <u>2,081,872</u>	136,015
Equipment Rental Replacement Reserve Fund	11,776,033	1,885,830	3,295,730	10,366,133
Unemployment Compensation Fund	628,385	99,400	85,000	642,785
Insurance Trust Fund	105,444	2,137,035	2,142,246	100,233

Workers Compensation Fund	2,689,704	1,301,000	1,546,791	2,443,913
TOTALS	\$17,586,809	\$12,272,181	\$13,644,314	\$16,214,676
		\$12,292,681	\$13,676,048	\$16,203,442

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:

Ordinance No. _____

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, APPROPRIATING FUNDS
WITHIN VARIOUS SPECIAL FUNDS AND AMENDING ORDINANCE NO. 7212**

WHEREAS, the Olympia City Council passed Ordinance No. 7212 on November 26, 2019, appropriating funds within various special funds; and

WHEREAS, the following amendments need to be made to Ordinance No. 7212;

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

Section 1. The following appropriations are hereby made:

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
HUD Fund	\$8,166	\$1,937,023	\$1,945,189	-
Lodging Tax Fund	1,366,150	1,000,000	893,452	1,472,698
Parking Business Improvement Area Fund	59,673	100,000	115,840	43,833
Farmers Market Repair and Replacement Fund	76,701	-	-	76,701
Hands On Children's Museum	528,637	514,000	458,188 <u>469,422</u>	584,449 <u>573,215</u>
Home Fund Operating Fund	347,916	1,100,506	1,100,506	347,916
Fire Equipment Replacement Fund	-	2,197,387	2,061,372	136,015
Equipment Rental Replacement Reserve Fund	11,776,033	1,885,830	3,295,730	10,366,133
Unemployment Compensation Fund	628,385	99,400	85,000	642,785
Insurance Trust Fund	105,444	2,137,035	2,142,246	100,233

Workers Compensation Fund	2,689,704	1,301,000	1,546,791	2,443,913
TOTALS	\$17,586,809	\$12,272,181	\$13,644,314 \$13,655,548	\$16,214,676 \$16,203,442

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:



CITY ATTORNEY (BCA)

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Amending Ordinance 7213 (Capital Budget)

Agenda Date: 12/17/2019
Agenda Item Number: 4.H
File Number: 19-1152

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Ordinance 7213 (Capital Budget)

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance amending Ordinance 7213 on second reading.

Report

Issue:

Whether to amend Ordinance 7213 on second reading.

Staff Contact:

Nanci Lien, Fiscal Services Director, Administrative Services Department, 360.753.8465

Presenter(s):

None - Consent Calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

City Council may revise the City's Capital Budget by approving an ordinance. Generally, budget amendments are presented quarterly to Council for their review and approval but may be made at any time during the year. The amended ordinances appropriate funds and provide authorization to expend the funds.

No separate ordinances were passed since the adoption of ordinance 7213 on November 26, 2019, relating to the Capital Budget.

The attached ordinance includes recommended amendments to the 2020 Capital Budget as outlined below:

1. Parks Capital Projects

- \$3,800 in appropriations for expenditures related to Park acquisition. Funding to come from lease payments on the Yelm Highway Community Park property.
- \$145,987 in appropriations for expenditures related to the Percival Landing project. Funding to come from insurance proceeds.
- (\$79,833) reduction in appropriations for expenditures and revenue related to a Recreation and Conservation Office (RCO) grant that is complete.

2. Transportation Capital Projects

- \$71,050 in appropriations for expenditures related to school zone flashing beacons. Funding to come from associated grant proceeds.
- (\$568,291) reduction in appropriations and associated revenue related to the Boulevard Road/Morse-Merriman Roundabout. Grant revenue was reduced at the time of the award.
- \$500,000 in appropriations for expenditures related to Henderson & Eskridge Boulevard Intersection Improvements. Funding to come from the Transportation Improvement Board grant.

Neighborhood/Community Interests (if known):

None noted.

Options:

1. Approve the ordinance amending ordinance 7213. This allows staff to continue capital projects, complete seismic upgrades to reservoirs, and return unused funds to be used on future projects.
2. Do not approve the amending ordinance. This would stop certain projects.

Financial Impact:

Total increase in appropriations is \$232,492. The sources of funding are noted above.

Attachment:

Ordinance

Ordinance No. _____

AN ORDINANCE RELATING TO THE ADOPTION OF THE CITY OF OLYMPIA'S CAPITAL FACILITIES PLAN FOR THE YEARS 2019-2024 AND AMENDING ORDINANCE NO. 7213.

WHEREAS, the Olympia City Council adopted the Capital Facilities Plan for years 2019 through 2024 by passing Ordinance No. 7213 on November 26, 2019; and

WHEREAS, the CFP meets the requirements of the Washington State Growth Management Act, including RCW 36.70A.070(3); and

WHEREAS, the following amendments need to be made to Ordinance No. 7213;

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

Section 1. That certain document entitled the "Capital Facilities Plan," covering the years 2019 through 2024, 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 2019 all appropriations and allocations not otherwise closed, completed, or deleted from prior fiscal years' capital budgets.

Section 5. The following appropriations are hereby made:

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
Impact Fee Fund	\$10,453,696	-	\$8,455,867	\$1,997,829
SEPA Mitigation Fee Fund	1,609,899	-	980,106	629,793
Parks & Recreational Sidewalk, Utility Tax Fund	4,541,489	2,970,000	6,799,284	712,205
Real Estate Excise Tax Fund	6,171,866	1,500,000	6,626,043	1,045,823
Capital Improvement Fund	8,016,156	54,073,031 70,349,723	54,733,031 69,011,523	7,356,156 9,354,356
Olympia Home Fund Capital Fund	-	1,495,000	504,442	990,558
City Hall Fund	4,043	-	-	4,043

Water CIP Fund	19,154,424	25,262,612	25,299,674	19,117,362
Sewer CIP Fund	9,394,530	5,716,162	9,922,736	5,187,956
Waste ReSources CIP Fund	-	758,300	368,000	390,300
Storm Water CIP Fund	1,427,176	11,556,854 <u>11,706,854</u>	11,206,918 <u>11,356,918</u>	1,777,112
Storm Drain Mitigation Fund	1,069,576	-	485,812	583,764
TOTALS	\$61,842,855	\$103,331,959 <u>\$119,758,651</u>	\$125,381,913 <u>\$139,810,405</u>	\$39,792,901 <u>\$41,791,101</u>

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 effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED TO FORM:

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

Ordinance No. _____

AN ORDINANCE RELATING TO THE ADOPTION OF THE CITY OF OLYMPIA'S CAPITAL FACILITIES PLAN FOR THE YEARS 2019-2024 AND AMENDING ORDINANCE NO. 7213.

WHEREAS, the Olympia City Council adopted the Capital Facilities Plan for years 2019 through 2024 by passing Ordinance No. 7213 on November 26, 2019; and

WHEREAS, the CFP meets the requirements of the Washington State Growth Management Act, including RCW 36.70A.070(3); and

WHEREAS, the following amendments need to be made to Ordinance No. 7213;

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

Section 1. That certain document entitled the "Capital Facilities Plan," covering the years 2019 through 2024, 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 2019 all appropriations and allocations not otherwise closed, completed, or deleted from prior fiscal years' capital budgets.

Section 5. The following appropriations are hereby made:

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP.	ADDITIONS TO FUND BALANCE
Impact Fee Fund	\$10,453,696	-	\$8,455,867	\$1,997,829
SEPA Mitigation Fee Fund	1,609,899	-	980,106	629,793
Parks & Recreational Sidewalk, Utility Tax Fund	4,541,489	2,970,000	6,799,284	712,205
Real Estate Excise Tax Fund	6,171,866	1,500,000	6,626,043	1,045,823
Capital Improvement Fund	8,016,156	54,073,031 54,151,723	54,733,031 54,815,523	7,356,156 7,352,356
Olympia Home Fund Capital Fund	-	1,495,000	504,442	990,558
City Hall Fund	4,043	-	-	4,043

Water CIP Fund	19,154,424	25,262,612	25,299,674	19,117,362
Sewer CIP Fund	9,394,530	5,716,162	9,922,736	5,187,956
Waste ReSources CIP Fund	-	758,300	368,000	390,300
Storm Water CIP Fund	1,427,176	11,556,854 <u>11,706,854</u>	11,206,918 <u>11,356,918</u>	1,777,112
Storm Drain Mitigation Fund	1,069,576	-	485,812	583,764
TOTALS	\$61,842,855	\$103,331,959 <u>\$103,560,651</u>	\$125,381,913 <u>\$125,614,405</u>	\$39,792,901 <u>\$39,789,101</u>

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 effect five (5) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED TO FORM:



CITY ATTORNEY (DCA)

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Amending Ordinance 7214 (Operating Budget)

Agenda Date: 12/17/2019
Agenda Item Number: 4.I
File Number: 19-1150

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Ordinance 7214 (Operating Budget)

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the Ordinance amending Ordinance 7214 on second reading.

Report

Issue:

Whether to amend Ordinance 7214 on second reading.

Staff Contact:

Nanci Lien, Fiscal Services Director, Administrative Services Department, 360.753.8465

Presenter(s):

None - Consent Calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

City Council may revise the City's Operating Budget by approving an ordinance. Generally, budget amendments are presented quarterly to Council for their review and approval but may be made at any time during the year. The amended ordinances appropriate funds and provide authorization to expend the funds.

No separate ordinances were passed since the adoption of ordinance 7214 on November 26, 2019, relating to the Operating Budget.

The attached ordinance includes recommended amendments to the 2019 Operating Budget for the following:

1. Administrative Services

- \$12,000 in appropriations for expenditures related transfers to the Information Services fund for ESO Fire Inspection (OFD) and Court Criminal Justice Case Management (Court). Note: The Criminal Justice Case Management Software appropriation is an administrative correction. It was approved as part of the 2018 EOY funding, but was appropriated in the wrong fund.

2. Community Planning & Development

- \$30,000 in appropriations for expenditures related to the Homes First program. Funding from CDBG reserved funds.

3. Fire

- \$169,500 in appropriations for expenditures related to Fire fleet program. Funding to come from increase in revenue for work performed for other fire agencies.
- \$29,899 in appropriations for expenditures related to the Fire False Alarm program. Funding to come from increase in revenue for work performed.
- \$90,000 in appropriations for expenditures related to Medic I program. Funding to come from increase in revenue for work performed.
- \$45,000 in appropriations for expenditures related to Training program. Funding to come from increase in revenue for work performed.
- \$12,000 in appropriations for expenditures related to a transfer to Information Services fund for ESO Software. Funding to come from reduction in Fire operating expenditures.

4. Police

- \$100,000 in appropriations for expenditures related to the service contract with Washington Association of Sheriffs and Police Chiefs - Mental Health Response Team. Funding to come from the service contract revenue.

5. Parks & Recreation

- \$9,000 in appropriations for expenditures related to maintenance and operations. Funding to come from additional program and donation revenues.

Neighborhood/Community Interests (if known):

None noted.

Options:

1. Approve ordinance amending ordinance 7214. This provides staff with budget capacity to proceed with initiatives approved by Council.
2. Do not approve the amending ordinance; staff will not have authorization to expend the funds.

Financial Impact:

Total increase in appropriations of \$473,399. The sources of funding are noted above.

Attachments:

Ordinance

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO BUDGETS, FINANCE, AND SALARIES, AND AMENDING ORDINANCE NO. 7214.

WHEREAS, the Olympia City Council passed Ordinance No. 7173 on December 18, 2018; and

WHEREAS, throughout the year, updates are required to recognize changes relating to budget, finance, and salaries; and

WHEREAS, the Olympia City Council amended Ordinance No. 7173 by passage of Ordinance No. 7195 on June 11, 2019; and

WHEREAS, the Olympia City Council amended Ordinance 7195 by passage of Ordinance No. 7203 on October 8, 2019; and

WHEREAS, the Olympia City Council amended Ordinance No. 7203 by passage of Ordinance No. 7214 on November 26, 2019; and

WHEREAS, throughout the year, updates are required to recognize changes relating to budgets, finance, and salaries; and

WHEREAS, the following changes need to be made to Ordinance No. 7214;

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

Section 1. 2019 Budget. The budget for the calendar year 2019 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.

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP	ADDITIONS TO FUND BALANCE
General, Regular Operations	\$18,277,806	\$82,929,851 \$83,373,250	\$84,239,503 \$84,682,902	\$16,968,154
General, Special Sub-Funds				
Special Accounts	2,541,995	1,161,943 1,249,397	3,496,201 3,613,655	207,737 177,737
Development Fee Revenue	846,963	3,953,252	4,023,836	776,379
Parking	1,159,858	1,493,340	1,775,051	878,147
Post Employment Benefits	2,620,447	995,300	3,615,747	-
Washington Center Endowment	754,983	3,000	248,853	509,130
Washington Center Operating	85,179	503,000	508,000	80,179
Municipal Arts	472,663	59,000	524,070	7,593

Equipment & Facilities Reserve	3,480,663	1,276,465	4,475,024	282,104
Total General Fund	30,240,557	92,375,151	102,906,285	19,709,423
		92,906,004	103,467,138	19,679,423
LID Control	6	-	-	6
LID Guarantee	80,435	-	-	80,435
4 th /5 th Avenue Corridor Bridge Loan	86	546,084	546,084	86
UTGO Bond Fund - 2009 Fire	68,664	1,187,039 10,910,039	1,191,557 10,914,557	64,146
City Hall Debt Fund - 2009	7,326	2,418,038 27,627,038	2,421,918 27,630,918	3,446
2010 LTGO Bond — Street Projects	-	434,813	434,813	-
L.O.C.A.L. Debt Fund - 2010	-	178,282	178,282	-
2010B LTGO Bonds – HOCM	-	444,188	444,188	-
2013 LTGO Bond Fund	-	671,065	671,065	-
2016 LTGO Parks BAN	-	10,067,500	10,067,500	-
Water Utility O&M	37,469,007	14,186,171	17,661,872	33,993,306
Sewer Utility O&M	42,517,479	20,724,055	22,556,629	40,684,905
Solid Waste Utility	1,597,772	12,757,152	13,432,084	922,840
Stormwater Utility	23,884,025	5,933,432	6,754,511	23,062,946
Water/Sewer Bonds	13,652,732	2,044,782	2,033,548	13,663,966
Stormwater Debt Fund	1,379,797	123,650	123,650	1,379,797
Water/Sewer Bond Reserve	1,260,900	-	-	1,260,900
Equipment Rental	324,903	2,357,141	2,361,959	320,085
TOTALS	\$152,483,689	\$166,448,543	\$183,785,945	\$135,146,287
		\$201,911,396	\$219,278,798	\$135,116,287

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 2019 shall be as set forth in the "Supplementary Information" section of the 2019 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:

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO BUDGETS, FINANCE, AND SALARIES, AND AMENDING ORDINANCE NO. 7214.

WHEREAS, the Olympia City Council passed Ordinance No. 7173 on December 18, 2018; and

WHEREAS, throughout the year, updates are required to recognize changes relating to budget, finance, and salaries; and

WHEREAS, the Olympia City Council amended Ordinance No. 7173 by passage of Ordinance No. 7195 on June 11, 2019; and

WHEREAS, the Olympia City Council amended Ordinance 7195 by passage of Ordinance No. 7203 on October 8, 2019; and

WHEREAS, the Olympia City Council amended Ordinance No. 7203 by passage of Ordinance No. 7214 on November 26, 2019; and

WHEREAS, throughout the year, updates are required to recognize changes relating to budgets, finance, and salaries; and

WHEREAS, the following changes need to be made to Ordinance No. 7214;

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

Section 1. 2019 Budget. The budget for the calendar year 2019 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.

FUND	APPROP. FUND BALANCE	ESTIMATED REVENUE	APPROP	ADDITIONS TO FUND BALANCE
General, Regular Operations	\$18,277,806	\$82,929,851 <u>\$83,373,250</u>	\$84,239,503 <u>\$84,682,902</u>	\$16,968,154
General, Special Sub-Funds				
Special Accounts	2,541,995	1,161,943 <u>1,249,397</u>	3,496,201 <u>3,613,655</u>	207,737 <u>177,737</u>
Development Fee Revenue	846,963	3,953,252	4,023,836	776,379
Parking	1,159,858	1,493,340	1,775,051	878,147
Post Employment Benefits	2,620,447	995,300	3,615,747	-
Washington Center Endowment	754,983	3,000	248,853	509,130
Washington Center Operating	85,179	503,000	508,000	80,179
Municipal Arts	472,663	59,000	524,070	7,593

Equipment & Facilities Reserve	3,480,663	1,276,465	4,475,024	282,104
Total General Fund	30,240,557	92,375,151	102,906,285	19,709,423
		92,906,004	103,467,138	19,679,423
LID Control	6	-	-	6
LID Guarantee	80,435	-	-	80,435
4 th /5 th Avenue Corridor Bridge Loan	86	546,084	546,084	86
UTGO Bond Fund - 2009 Fire	68,664	1,187,039	1,191,557	64,146
City Hall Debt Fund - 2009	7,326	2,418,038	2,421,918	3,446
2010 LTGO Bond — Street Projects	-	434,813	434,813	-
L.O.C.A.L. Debt Fund - 2010	-	178,282	178,282	-
2010B LTGO Bonds – HOCM	-	444,188	444,188	-
2013 LTGO Bond Fund	-	671,065	671,065	-
2016 LTGO Parks BAN	-	10,067,500	10,067,500	-
Water Utility O&M	37,469,007	14,186,171	17,661,872	33,993,306
Sewer Utility O&M	42,517,479	20,724,055	22,556,629	40,684,905
Solid Waste Utility	1,597,772	12,757,152	13,432,084	922,840
Stormwater Utility	23,884,025	5,933,432	6,754,511	23,062,946
Water/Sewer Bonds	13,652,732	2,044,782	2,033,548	13,663,966
Stormwater Debt Fund	1,379,797	123,650	123,650	1,379,797
Water/Sewer Bond Reserve	1,260,900	-	-	1,260,900
Equipment Rental	324,903	2,357,141	2,361,959	320,085
TOTALS	\$152,483,689	\$166,448,543	\$183,785,945	\$135,146,287
		\$166,979,396	\$184,346,798	\$135,116,287

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 2019 shall be as set forth in the "Supplementary Information" section of the 2019 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:


CITY ATTORNEY (JEA)

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Adopting 2020 Utility Rates and General Facilities Charges

Agenda Date: 12/17/2019
Agenda Item Number: 4.J
File Number: 19-1069

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Adopting 2020 Utility Rates and General Facilities Charges

Recommended Action

Committee Recommendation:

The proposed rates and charges reflect recommendations from the City Council, Finance Committee and the Utility Advisory Committee. City Council held a public hearing on November 19, 2019. The review considered recommendations forwarded to Council by the Utility Advisory Committee.

City Manager Recommendation:

Move to approve the ordinance adopting the 2020 utility rates and general facilities charges on second reading.

Report

Issue:

Whether to approve an ordinance adopting the 2020 utility rates and general facility charges (GFC). Increases in LOTT Clean Water Alliance rates and capacity development charges are also included in the ordinance.

Staff Contacts:

Gary Franks, Waste ReSources Director, Public Works Department, 360.753.8780
Eric Christensen, Water Resources Director, Public Works Department, 360.570.3741

Presenters:

None - Consent Calendar Item

Background and Analysis:

Background and analysis has not changed from first to second reading.

City of Olympia provides vital utility services to our community. For 2020, staff is proposing rate increases (rounded) as follows:

- Drinking Water 6.3%

- Storm and Surface Water 3.5%
- Wastewater 0.2%
- Waste ReSources 3.3%
- LOTT 3.0%
- Combined 3.4% or \$8.78 bi-monthly/single family account

Key financial drivers for the proposed 2020 rate increase include:

- Increased funding for capital project construction (Drinking Water)
- One new employee, a sweeper operator (Storm and Surface Water)
- Shift funding of 1.25 FTE from Storm and Surface Water to Wastewater to correct an inequity in funding.
- Using cash reserves to buy down Waste ReSources residential rates.
- Distributing Waste ReSources rate increases amongst all rate categories.
- One percent increase in the municipal utility tax.

Additionally, utility-related development charges are proposed to increase \$318 (2.2 percent) per new single family residence as follows:

- Storm and Surface Water general facility charge (GFC) is proposed to increase 10 percent to \$1,440 plus \$6.60 per vehicle trip (\$137 total).

LOTT Clean Water Alliance Rate

Lacey, Olympia, Tumwater, Thurston County (LOTT) Clean Water Alliance Board of Directors has approved increases for both monthly wastewater treatment rates and their capital development charge (CDC). The CDC is similar to the City's GFC. The City collects monthly rates and CDCs for LOTT through the utility billing and development permitting processes.

- The LOTT Clean Water Alliance capacity development charge (CDC) is proposed to increase 3 percent (\$181) to \$6,231.

Neighborhood/Community Interests (if known):

City utilities provide important public health services for Olympia residents. Utility rates are set to ensure reliable, uninterrupted levels of service.

Options:

1. Approve the ordinance adopting the 2020 utility rates and general facility charges.
Implications:
 - Supports essential City public and environmental health services.
 - Increases rates for customers and charges for new development.
2. Modify or decline the proposed 2020 increases.
Implications:
 - Avoids, or lessens additional customer costs.
 - Risk failures in fulfilling City public and environmental health responsibilities.

Financial Impact:

The proposed rate and GFC increases will generate revenue to implement Council-adopted utility master plans and ensure financially responsible management of City utilities.

Attachment:

Ordinance

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO UTILITY FEES AND CHARGES AND AMENDING SECTION 4.24.010 OF THE OLYMPIA MUNICIPAL CODE

WHEREAS, the City’s utilities are managed with a goal of resource sustainability in order to maintain, rebuild, expand systems, and prepare for revenue variability; and

WHEREAS, the City Council intends to meet the goals and polices for utility fiscal management set forth in the Comprehensive Plan and utility master plans; and

WHEREAS, the City Council intends to promote rate equity through cost recovery by customer class, and to smooth out rate spikes over a period of up to six years, the time period for which the CFP is developed; and

WHEREAS, the City’s Storm and Surface Water Utility and the Wastewater Utility are managed to maintain minimum operating expense reserves of ten (10) percent, and the Drinking Water Utility is managed to maintain minimum operating expense reserves of twenty five (25) percent; and

WHEREAS, in order to incorporate the foregoing principles into City Drinking Water Utility, City Storm and Surface Water Utility, City Wastewater Utility and LOTT Cleanwater Alliance (LOTT) wastewater treatment rates, the City Council received recommendations from the Utility Advisory Committee, held hearings, and reviewed the utility rates set forth in this Ordinance; and

WHEREAS, pursuant to the Interlocal Cooperation Act Agreement for Sewer Treatment, the LOTT Board of Directors is empowered to “impose, alter, regulate, and control rates, charges, and assessments;” and the LOTT Board of Directors held a public hearing and approved certain rate increases, which the City Council must annually adopt;

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

Section 1. Amendment of OMC 4.240.010. Section 4.24.010 of the Olympia Municipal Code is hereby amended to read as follows:

4.24.010 Computation and assessment of charges

The rates set forth below do not reflect any possible surcharges or discounts provided to a parcel of property or customer under any provision of City ordinances or taxes assessed directly upon customers for which the City acts as collection agent.

A. WATER

1. Occupant turning on water after delinquent shutoff penalty	\$10.00 <u>\$40.00</u>	OMC 13.04.360
2. Delinquency notification penalty	\$10.00	OMC 13.04.430
3. Service disconnected/water reconnect for nonpayment penalty	\$25.00	OMC 13.04.430

4. Fire hydrant meter	\$ 1,500 deposit plus \$50.00 per month plus consumption charge	OMC 13.04.410
5. Water for residential building construction purposes	Ready to serve plus consumption charge in Subsection 8a	OMC 13.04.410
6. Non-emergency after-hours water service turn on/shut off	\$110.00	OMC 13.04.340
7. Water General Facility Charges, assessed and payable as provided in OMC 13.04.375:		OMC 13.04.375

Meter Size	AWWA Capacity Factor	GFC
3/4" -inch	1.00	\$4,433
1" -inch Residential Fire Sprinkler	1.00	\$4,433
1" -inch	1.67	\$7,483
1 1/2" -inch	3.33	\$14,920
2" -inch	5.33	\$23,881
3" -inch	10.67	\$46,670
4" -inch	16.33	\$73,168
6" -inch	33.33	\$149,338
8" -inch	53.33	\$238,951
10" -inch	76.67	\$347,419
12" -inch	100.00	\$448,064

This charge is assessed in addition to any other charges or assessments levied under this chapter.

8. Water Meter Rates—Inside City Limits:

a. **Schedule I: Monthly Charges.**

The following is the monthly charge based upon meter size for all customers. Customers with meter sizes not listed in the schedule will be charged at the rate applicable to the next larger meter size listed.

Meter Size	Ready to Serve Charge	OMC 13.04.380
3/4-inch	\$12.98 <u>\$13.80</u>	+ consumption charge
1-inch Residential Fire Sprinkler	\$12.98 <u>\$13.80</u>	+ consumption charge
1-inch	\$17.28 <u>\$18.37</u>	+ consumption charge
1 1/2-inch	\$28.02 <u>\$29.79</u>	+ consumption charge
2-inch	\$40.88 <u>\$43.46</u>	+ consumption charge
3-inch	\$75.26 <u>\$80.00</u>	+ consumption charge

Meter Size		Ready to Serve Charge	OMC 13.04.380
4-inch	\$113.91 <u>\$121.09</u>	+ consumption charge	
6-inch	\$221.28 <u>\$235.22</u>	+ consumption charge	
8-inch	\$350.13 <u>\$372.19</u>	+ consumption charge	
10-inch	\$500.43 <u>\$531.96</u>	+ consumption charge	
12-inch	\$650.76 <u>\$691.76</u>	+ consumption charge	

(1) Residential and nonresidential premises that are vacant are subject to payment of the full Water ready-to-serve charge. This fee will be charged even if the water is turned off.

Consumption charge per 100 cubic feet:

	Block 1	Block 2	Block 3	Block 4
Residential (Single Family and Duplex Residential)	\$1.88 <u>\$2.00</u>	\$3.15 <u>\$3.35</u>	\$5.03 <u>\$5.35</u>	\$6.62 <u>\$7.04</u>
Nonresidential (Multi-family and Commercial)	\$2.63 <u>\$2.80</u>	\$3.94 <u>\$4.19</u>	--	--
Irrigation	\$2.63 <u>\$2.80</u>	\$7.77 <u>\$8.26</u>	--	--
Blocks Definition:	Block 1	Block 2	Block 3	Block 4
Single Family and Duplex (1) Residential	0-400 cf/unit	401-900 cf/unit	901-1,400 cf/unit	1,401+ cf unit
Nonresidential (2)	Nov-June Usage	July-Oct Usage	--	
Irrigation	Nov-June Usage	July-Oct Usage		

(1) Single family accounts with or without accessory dwelling units are charged as one single family account.

(2) If nonresidential block usage cannot administratively be prorated between blocks, usage is billed at the block rate in which the meter reading period ends.

b. **Wholesale customers:**

See OMC 13.04.380B.

c. **State buildings with sprinkler systems or fire service connections:**

See OMC 13.04.380C.

d. **Fire protection:**

Automatic sprinkler systems or special fire service connections with the City water system will be charged the monthly ready-to-serve charge based on meter size in 4.24.010(A)(8a). Residential

fire service connections that require a 1" pipe size will be charged the same as a 3/4" pipe size as shown in Subsection 8a.

B. WASTEWATER (SEWER)

1) LOTT Charges

LOTT wastewater monthly service charge	\$39.80 <u>\$41.00</u> per ERU	OMC 13.08.190
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Nonresidential accounts are billed one (1) ERU minimum per month. ERU charges in excess of one (1) ERU are billed at the rate of ~~\$4.42~~ \$4.56 per 100 cf or any part thereof for LOTT wastewater service charges.

LOTT capacity development charge	\$6,049.21 <u>\$6,230.69</u> per ERU	OMC 13.08.210
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2) City of Olympia Monthly Sewer Charges

a.A) Residential accounts with separately metered City of Olympia water service servicing: one separate single-family residence, one single-family residence with accessory dwelling unit, one unit of a residential duplex, one mobile home, or one trailer is billed based on monthly water consumption as follows:

0 – 250 cf	\$13.29 <u>\$13.32</u> per month	
251 – 350 cf	\$ 13.29 <u>\$13.32</u> per month plus \$.0818 <u>\$0.082</u> per cf	OMC 13.08.190
351 cf and above	\$21.47 <u>\$21.52</u> per month	

b.B) Residential accounts with residential duplexes with a single water meter servicing both units are billed based on water consumption as follows:

0 – 500 cf	\$26.58 <u>\$26.64</u> per month	
501 – 700 cf	\$ 26.58 <u>\$26.64</u> per month plus \$.0818 <u>\$0.082</u> per cf	OMC 13.08.190
701 cf and above	\$42.94 <u>\$43.04</u> per month	

c.C) Residential accounts not included in A) or B) ~~\$21.47~~ \$21.52 per ERU OMC 13.08.190

d.D) Nonresidential accounts are billed one (1) ~~\$21.47~~ \$21.52 per ERU OMC 13.08.190
ERU minimum per month. ERU charges in excess of one (1) ERU are billed at the rate of \$.0307 per 1 cf. for local collection system.

3) City of Olympia General Facility Charge

Wastewater (Sewer) general facility charge	\$3,442.00 per ERU	OMC 13.08.205
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Wastewater (Sewer) general facility charge for properties on public combined sewers and in the Downtown Deferred General Facility Charge Payment Option Area	\$1,483.00 per ERU	OMC 13.08.010 OMC 13.08.205
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C. WASTE RESOURCES

1. Residential garbage rates, monthly, every-other-week collection:

	OMC 13.12.160
One twenty-gallon cart (minimum residential garbage service)	\$10.98 <u>\$11.35</u>
One thirty-five gallon cart	
Recycle rate	\$18.97 <u>\$19.60</u>
Nonrecycle rate	\$23.79 <u>\$24.58</u>
One sixty-five gallon cart	
Recycle rate	\$25.90 <u>\$26.76</u>
Nonrecycle rate	\$32.46 <u>\$33.54</u>
Two sixty-five gallon carts	
Recycle rate	\$49.56 <u>\$51.21</u>
Nonrecycle rate	\$62.06 <u>\$64.13</u>
Three sixty-five gallon carts	\$93.15 <u>\$96.25</u>
One ninety-five gallon cart	
Recycle rate	\$44.88 <u>\$46.37</u>
Nonrecycle rate	\$56.23 <u>\$58.10</u>
More than three sixty-five gallon carts	\$93.15 <u>\$96.25</u> + \$32.46 <u>\$33.54</u> for each sixty-five gallon cart over three carts

2. Residential garbage rates, monthly, weekly collection:

One thirty-five gallon cart	
Recycle rate	\$41.81 <u>\$43.20</u>
Nonrecycle rate	\$52.32 <u>\$54.06</u>
One sixty-five gallon cart	
Recycle rate	\$83.62 <u>\$86.40</u>
Nonrecycle rate	\$104.61 <u>\$108.09</u>
One ninety-five gallon cart	\$135.92 <u>\$140.45</u>

3. Extended pickup:

Rate	Distance
\$1/month	Over 5 feet to 25 feet
\$2/month	Over 25 feet to 100 feet
\$1/month	Every 50 feet over 100 feet

- a. Persons requesting extended distance service must be at least sixty-five years of age or handicapped where said person cannot wheel a full or partially full garbage cart to the collection point.
- b. No person living with the qualified applicant can wheel a full or partially full garbage cart to the collection point.
- c. Extended pickup service to be at no charge when the combined annual income of the household of the qualified applicant is equal to or less than fifty percent of the median household income in Thurston County.
- d. Persons requesting service must apply with the utilities office by filling out an affidavit for extended service. Upon approval of affidavit, service will be granted.
- e. Qualified applicant will reapply on a yearly basis on or before December 31st of each year.
- f. In the case of a multifamily residence or complex, only the qualified tenant's cart will be clearly marked with the tenant's name and unit number.

4. Residential and commercial organics rate, monthly, every other week collection:

Organics:

Per City-owned 95-gallon cart or each 1/2 yard of material collected ~~\$10.25~~ \$10.59

5. Commercial garbage rates, monthly, weekly collection:

One ten gallon can (minimum commercial garbage service)	\$7.10 <u>\$7.34</u>
One thirty-two gallon can or cart	\$20.96 <u>\$21.66</u>
Two thirty-two gallon cans or equivalent cart service	\$31.97 <u>\$33.03</u>
Three thirty-two gallon cans or equivalent cart service	\$60.12 <u>\$62.12</u>
Four thirty-two gallon cans or equivalent cart service	\$79.21 <u>\$81.85</u>
More than four thirty-two gallon cans or equivalent cart service	\$79.21 <u>\$81.85</u> + \$20.96 <u>\$21.66</u> for each additional thirty-two gallons of service

6. 95-gallon garbage and refuse cart service, monthly:

One pickup weekly	\$60.12 <u>\$62.12</u>
Two pickups weekly	\$115.22 <u>\$119.06</u>

Three pickups weekly	\$168.02 <u>\$173.62</u>
Four pickups weekly	\$221.80 <u>\$229.19</u>
Five pickups weekly	\$274.91 <u>\$284.06</u>

7. **One-yard garbage and refuse dumpster service, monthly:**

One pickup weekly	\$118.20 <u>\$122.14</u>
Two pickups weekly	\$232.42 <u>\$240.16</u>
Three pickups weekly	\$342.73 <u>\$354.14</u>
Four pickups weekly	\$452.82 <u>\$467.90</u>
Five pickups weekly	\$562.76 <u>\$581.50</u>
Six pickups weekly	\$672.82 <u>\$695.22</u>

8. **One and one-half yard garbage and refuse dumpster service, monthly:**

One pickup weekly	\$156.27 <u>\$161.47</u>
Two pickups weekly	\$297.84 <u>\$307.76</u>
Three pickups weekly	\$438.26 <u>\$452.85</u>
Four pickups weekly	\$578.36 <u>\$597.62</u>
Five pickups weekly	\$718.42 <u>\$742.34</u>
Six pickups weekly	\$858.95 <u>\$887.55</u>

9. **Two-yard garbage and refuse dumpster service, monthly:**

One pickup weekly	\$194.15 <u>\$200.62</u>
Two pickups weekly	\$370.45 <u>\$382.79</u>
Three pickups weekly	\$546.84 <u>\$565.05</u>
Four pickups weekly	\$723.20 <u>\$747.28</u>
Five pickups weekly	\$899.61 <u>\$929.57</u>
Six pickups weekly	\$1,073.13 <u>\$1,108.87</u>

10. **Three-yard garbage and refuse dumpster service, monthly:**

One pickup weekly	\$274.67 <u>\$283.82</u>
Two pickups weekly	\$537.58 <u>\$555.48</u>
Three pickups weekly	\$798.21 <u>\$824.79</u>
Four pickups weekly	\$1,066.59 <u>\$1,102.11</u>
Five pickups weekly	\$1,319.87 <u>\$1,363.82</u>
Six pickups weekly	\$1,568.94 <u>\$1,621.19</u>

11. Four-yard garbage and refuse dumpster service, monthly:

One pickup weekly	\$345.38 <u>\$356.88</u>
Two pickups weekly	\$683.41 <u>\$706.17</u>
Three pickups weekly	\$1,014.72 <u>\$1,048.51</u>
Four pickups weekly	\$1,339.05 <u>\$1,383.64</u>
Five pickups weekly	\$1,656.50 <u>\$1,711.66</u>
Six pickups weekly	\$1,968.58 <u>\$2,034.13</u>

12. Six-yard garbage and refuse dumpster service, monthly:

One pickup weekly	\$501.50 <u>\$518.20</u>
Two pickups weekly	\$979.35 <u>\$1,011.96</u>
Three pickups weekly	\$1,453.91 <u>\$1,502.33</u>
Four pickups weekly	\$1,928.14 <u>\$1,992.35</u>
Five pickups weekly	\$2,402.53 <u>\$2,482.53</u>
Six pickups weekly	\$2,762.92 <u>\$2,854.93</u>

13. Prepaid extra tag for unscheduled collection of a bag on regular garbage collection day; ~~\$5.39~~ \$5.57/each.

14. Extra unscheduled can, bag or box on regular garbage collection day to which a City approved prepaid tag is not attached: ~~\$8.81~~ \$9.10/each.

15. Fees for special pickups, minor ancillary services, and yard waste drop-off site disposal services, other than unscheduled extra cans or material on regular collection day, are established by the City Manager, based on cost of service; to include labor, equipment, distance traveled, and volume of materials as appropriate.

16. City-owned drop boxes: customers will be charged repair fees on boxes which have been burned or damaged:

Ten cubic yards:

Delivery fee	\$71.18 <u>\$76.64</u>	
Daily rental	\$2.45 <u>\$2.64</u>	
Hauling fee	\$216.79 <u>\$233.42</u>	
Dumping charge		Current disposal fee, surcharge and 14.1% <u>15.1%</u> service fee on disposal fee

Twenty cubic yards:

Delivery fee	\$71.18 <u>\$76.64</u>
Daily rental	\$3.15 <u>\$3.39</u>
Hauling fee	\$216.79 <u>\$233.42</u>

Dumping charge		Current disposal fee, surcharge and 14.1% <u>15.1%</u> service fee on disposal fee
Thirty cubic yards:		
Delivery fee	\$71.18 <u>\$76.64</u>	
Daily rental	\$4.37 <u>\$4.71</u>	
Hauling fee	\$216.79 <u>\$233.42</u>	
Dumping charge		Current disposal fee, surcharge and 14.1% <u>15.1%</u> service fee on disposal fee
Forty cubic yards:		
Delivery fee	\$71.18 <u>\$76.64</u>	
Daily rental	\$4.37 <u>\$4.71</u>	
Hauling fee	\$216.79 <u>\$233.42</u>	
Dumping charge		Current disposal fee, surcharge and 14.1% <u>15.1%</u> service fee on disposal fee
Standby or dig out	\$90.00	per hour

17. Customer-owned compactors and special containers. Dumping charges are based on weight at transfer station:

Cubic Yard	Charge Per Haul
10 or less	\$216.79 * <u>\$233.42</u>
15	\$216.79 * <u>\$233.42</u>
20	\$216.79 * <u>\$233.42</u>
25	\$216.79 * <u>\$233.42</u>
30	\$216.79 * <u>\$233.42</u>
35	\$216.79 * <u>\$233.42</u>
40	\$216.79 * <u>\$233.42</u>
42	\$216.79 * <u>\$233.42</u>
	* plus disposal fee plus 14.1% <u>15.1%</u> service charge on disposal fee
Standby or dig out	\$90.00 per hour

No delivery fees or rental fees will be charged for City-owned drop boxes used to haul source-separated yard waste for composting or construction and demolition debris for recycling. If material is contaminated, the customer will be charged current disposal fees and ~~14.1%~~ 15.1% service charge on the disposal fee, plus delivery fee and daily rental fees.

18. City-owned temporary garbage and refuse dumpster services (customers will be charged repair fees for containers which have been burned or damaged):

One cubic yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$44.73 <u>\$46.22</u>

One and 1/2 cubic yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$47.38 <u>\$48.96</u>

Two yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$50.77 <u>\$52.46</u>

Three yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$66.77 <u>\$68.99</u>

Four yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$92.51 <u>\$95.59</u>

Six yard:

Delivery fee	\$54.36 <u>\$56.17</u>
Daily rental fee	\$2.14 <u>\$2.21</u>
Fee per dump	\$126.38 <u>\$130.59</u>

19. City-owned temporary organics dumpster services (customers will be charged repair fees for dumpsters which have been burned or damaged):

One cubic yard:

Fee per dump	\$20.50 <u>\$21.18</u>
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One and 1/2 cubic yard:

Fee per dump	\$30.75 <u>\$31.77</u>
Two yard:	
Fee per dump	\$41.00 <u>\$42.37</u>
Three yard:	
Fee per dump	\$61.50 <u>\$63.55</u>

If material is contaminated, customer will be charged the dump fee, delivery fee and daily rental fee for City-owned temporary garbage and refuse dumpster services as established in Section 16 of this ordinance.

20. An additional surcharge of \$70.00 per month applies to permanent commercial dumpster customers who require Saturday collection and are subject to regular monthly fees set forth in OMC 4.24.010C Subsections 5, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 or 19.

D. STORM AND SURFACE WATER

At the time of issuance of a building/engineering permit, per OMC 13.16.080, a storm and surface water GFC is assessed at the rate of: ~~\$1,309.90/Impervious Unit (2,528 sq. ft.) plus quality GFC is assessed at a rate of \$6.00~~ \$6.60 per average daily vehicle trip based on the Institute of Traffic Engineers' Trip Generation Manual.

1. Storm drainage service charges:

a. Single-Family and Duplex Residential Parcels. All parcels in the City are subject to a monthly charge for storm drainage service in accordance with the following schedule:

Single-family parcels with or without accessory dwelling units (Regardless of date approved)	\$14.05 <u>\$14.55</u> /utility account
Plats approved after 1990 with signed maintenance agreement	\$12.57 <u>\$13.01</u> /utility account
Duplex parcels (Regardless of date approved)	\$14.05 <u>\$14.55</u> /unit (\$28.10 <u>\$29.10</u> when billed as a single account)

b. Commercial, Multi-Family, Industrial and Governmental Parcels. A charge per utility account will be established at the time of issuance of a clearing, filling, excavating or grading permit and assessed monthly as follows:

Administrative fee	\$13.75 <u>\$14.24</u> plus:
For parcels developed after January 1990 (Category I)	\$5.17 <u>\$5.35</u> per billing unit or
For parcels developed between January 1980 and January 1990 (Category II)	\$10.80 <u>\$11.18</u> per billing unit or
For parcels developed before January 1980 (Category III)	\$13.63 <u>\$14.11</u> per billing unit

c. For developed parcels without structural impervious areas, the following construction phase charge is assessed at the time of issuance of a clearing, filling, excavating or grading permit:

Single-family and duplex zoned

~~\$5.90~~ \$6.11 per parcel x total number of parcels identified in preliminary plat x 24 months

d. Undeveloped parcels. No charge.

~~2. State highway charges:~~

~~Monthly fee for state highway rights of way~~

~~30% of the storm drainage service charges~~

~~3. Other roadway charges:~~

~~Monthly fee for roadway rights of way, other than state highways within the City boundary~~

E. RECLAIMED WATER

- | | | |
|--|---|---------------|
| 1. Occupant turning on water after delinquent shutoff penalty | \$10.00 <u>\$40.00</u> | OMC 13.24.330 |
| 2. Delinquency notification penalty | \$10.00 | OMC 13.24.340 |
| 3. Service disconnected/reclaimed water reconnect for nonpayment penalty | \$25.00 | OMC 13.24.340 |
| 4. Reclaimed water for commercial construction purposes | \$50.00 per month plus consumption charge | OMC 13.24.200 |
| 5. Non-emergency after-hours reclaimed water service turn on/shut off | \$110.00 | OMC 13.24.250 |

6. Reclaimed Water Rates

a. Meter Rates – The monthly charge based upon meter size for all reclaimed water customers follows 4.24.010.A.8. Customers with meter sizes not listed in the schedule will be charged at the rate applicable to the next larger meter size listed.

b. Consumption charges

- (1) Indoor use of reclaimed water: 70% of the consumption charges in 4.24.010.A.8.
- (2) Outdoor use of reclaimed water: 70% of the consumption charges in 4.24.010.A.8 for Irrigation.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. 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 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect January 1, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Setting 2020 Development Fee Adjustments

Agenda Date: 12/17/2019
Agenda Item Number: 4.K
File Number: 19-1104

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Setting 2020 Development Fee Adjustments

Recommended Action

Committee Recommendation:

Finance Committee recommends adoption of the ordinance.

City Manager Recommendation:

Move to approve the ordinance adopting 2020 Development Fee Adjustments on second reading.

Report

Issue:

Whether to adjust development fees in 2020 as shown in the draft ordinance.

Staff Contact:

Leonard Bauer, Deputy Director, Community Planning and Development, 360.753.8206

Presenter(s):

Leonard Bauer, Deputy Director, Community Planning and Development

Background and Analysis:

Background and analysis has not changed from first to second reading.

City Council's adopted policy for the Development Services Fund includes a target of 85 percent of the City's cost for review and inspection of development permit applications is to be recovered through application fees. Development engineering fees are adopted in Olympia Municipal Code (OMC) 4.04.010. Building code review and inspection fees are adopted in OMC 4.36.010. Land use development review fees are adopted in OMC 4.04.010.

Annual review of these fees is conducted for closer alignment with this adopted cost recovery target and other City policy goals, as well as comparison with neighboring jurisdictions' fees.

Based on this review, staff recommended the adjustments to land use, engineering and building review/inspection fees included in the attached draft ordinance for 2020. Finance Committee

reviewed the staff proposal and recommends adoption.

[Note: The ordinance also includes proposed changes to document recording fees, to reflect increases in fees assessed by the Thurston County Auditor.]

Neighborhood/Community Interests (if known):

Development review and inspection fees are of interest primarily to applicants for those services.

Options:

1. Approve the attached ordinance adopting 2020 Development Fee Adjustments.
2. Revise the ordinance to adjust specific 2020 Development Fees.
3. Do not approve the ordinance adjusting 2020 Development Fees.

Financial Impact:

The proposed fee adjustments move closer to, but do not completely reach, the adopted policy of 85 percent cost recovery in all cases, due to consideration of neighboring jurisdictions' fees and other policy goals.

Attachments:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE RELATING TO FEES, SPECIFICALLY FEES FOR ENGINEERING APPLICATIONS AND INSPECTIONS, DOCUMENT RECORDING, BUILDING PERMIT INSPECTIONS, AND LAND USE APPLICATION REVIEWS; AND AMENDING SECTIONS 4.04.010, 4.36.010, AND 4.40.010 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, property tax limits are creating greater pressure for development review costs to be fee supported;

WHEREAS, the Development Fee Revenue Fund was created by the Olympia City Council's adoption of Ordinance No. 6983 to more accurately record the fee-supported portion of the City's costs to provide permit review and inspection services; and

WHEREAS, Ordinance No. 6983 also states that the Olympia City Council shall establish a Target Fund Balance and policies for management of the Target Fund Balance for the Development Fee Revenue Fund; and

WHEREAS, Resolution No. 1864 established policies to manage the Development Fee Revenue Fund, including a cost recovery target of 85% of City costs to provide review and permit services; and

WHEREAS, this creates a need to increase certain fees to more closely align them with the target adopted in Resolution No. 1864 for recovery of the City's cost to provide permit review and inspection services;

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

Section 1. Amendment of OMC 4.04.010. Section 4.04.010 of the Olympia Municipal Code is hereby amended to read as follows:

4.04.010 Assessment of fees.

A. Commencing ~~August~~ January 1, 2018 2020, the following fee schedule is in full force and effect.

Application Type

Plan Check Fees

Engineering Fee Schedule

Water Main Extension (For projects outside city limits, fees will increase by 25%)	\$452.00 + \$0.50 per linear foot or part thereof
Sewer Main Extension (For projects outside city limits, fees will increase by 25%)	\$452.00 + \$0.50 per linear foot or part thereof
Reclaimed Water Main or Service Extension	\$452.00 + \$0.50 per linear foot or part thereof
Streets	\$452.00 + \$0.50 per linear foot or part thereof
Curb and Sidewalk	\$452.00 + \$0.50 per linear foot or part thereof

Application Type

Plan Check Fees

Engineering Fee Schedule

Storm On-Site	\$600.00 + \$37.00 per Acre Gross Parcel Area
Storm Pipe	\$452.00 + \$0.50 per linear foot or part thereof
Street Lighting (For projects outside city limits, fees will increase by 25%)	\$452.00 + \$0.50 per linear foot or part thereof
Driveway: Commercial	\$678.00 each
STEP Sewer System: Commercial	\$1,355.00 each
Sewer Pump Station	\$1,355.00 each
On-Site Community Septic System (For projects outside city limits, fees will increase by 25%)	\$1,355.00 each
Traffic Signal	\$1,355.00 each
Solid Waste Pad and/or enclosure	\$350.00
Landscape Plan Review	\$450.00 <u>650.00</u>
Resubmittal Fee	50% of plan review fee starting with second resubmittal after the initial application

Application Type

Permit/Inspection Fees

Single Family Residential Erosion Control Inspection (up to and including 5,000 sq ft)	\$205.00 each
Single Family Residential Erosion Control Inspection (5,001 to 20,000 sq ft)	\$255.00
Residential Subdivision and Commercial Site fee	
Erosion Control and LID Inspection (based on lot size) (new building sites only)	
5,001 – 20,000 sq ft	\$255.00
20,001 – 40,000 sq ft	\$355.00
40,001 – 220,000 sq ft	\$455.00
Over 220,000 sq ft	\$575.00

*Note: Subdivision is based on total subdivision until all improvements are accepted by the City, then individual lot fees apply if a permit is being issued for work that disturbs ground or requires LID

Streets and/or Alleys	\$2.30 per linear foot or part thereof
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Application Type

Permit/Inspection Fees

Curb and/or sidewalk	\$2.30 per linear foot or part thereof
Sidewalk Fee-in-lieu	City Engineer's estimate of actual cost
Street lighting (For projects outside city limits, fees will increase by 25%)	\$1.60 per linear foot or part thereof
Driveways: Residential	\$158.00 each
Driveways: Commercial	\$788.00 each
Sanitary Sewer Main (For projects outside city limits, fees will increase by 25%)	\$3.10 per linear foot or part thereof plus \$1.00 <u>1.50</u> per linear foot for Television Inspection
STEP Sewer System: Residential (For projects outside city limits, fees will increase by 25%)	\$509.00 each
STEP Sewer System: Commercial (For projects outside city limits, fees will increase by 25%)	\$1,019.00 each
Sewer Pump Station	\$1,019.00 each
On-Site Community Septic System (For projects outside city limits, fees will increase by 25%)	\$1,019.00 each
Sewer Lateral Connection at Main	\$368.00 each
Sewer Lateral Connection on Property	\$147.00 each
Storm Sewer Main	\$3.10 per linear foot or part thereof plus \$1.00 <u>1.50</u> per linear foot for Television Inspection
Storm On-Site System	\$677.00 each
Water Main (For projects outside city limits, fees will increase by 25%)	\$3.10 per linear foot or part thereof
Water Connection (New)	\$200.00 each
Water Purity Sampling Test (Collected for second and subsequent tests for the same system)	Actual Costs to be Assessed
Water Main Shutdown (collected for second or subsequent request for the same system)	Actual Costs to be Assessed
Reclaimed Water Main or Service Connection	\$3.10 per linear foot or part thereof
Reclaimed Water Connection (new)	\$200.00 each
Reclaimed Water Sampling Test (Collected for second and subsequent tests for the same system)	Actual Costs to be Assessed

Application Type

Permit/Inspection Fees

Reclaimed Water Main or Service Connection Shutdown (collected for second or subsequent request for the same system)	Actual Costs to be Assessed
Traffic Signal	\$1,575.00 each
Solid Waste Pad and/or enclosure	\$250.00
Landscape	\$375.00
Bicycle Parking	\$125.00
Paving of Parking Lots (including re-paving)	\$0.06 per square foot or part thereof
Right-of-Way Obstruction Permit (No Traffic Control Plan Required)	\$184.00 each
Right-of-Way Obstruction Permit	\$562.00 each
Right-of-Way Obstruction Permit (Traffic Control Plan Required, and on-site signage, cones, or flaggers needed)	
Right-of-Way Excavation/Restoration (Completion Bond Required before Issuance of a Permit equal to 125% value of the work)	\$184.00 each
Right-of-Way Vacation Request	\$1,943.00 each
Latecomer Reimbursement Contract	\$1,943.00 + 5% Administrative Fee (5% of the reimbursement amount shall be deducted by the city for administrative fees each time the city collects a latecomer fee from a property owner within the reimbursement area)
UGA City Utility Availability Authorization	\$175.00 each
Long Term Right-of-Way Use Authorization for Open Right-of-Way Use per Year	\$420.00 per year
Street Closure Permit for Temporary Moving of Structures or Equipment	\$850.00 each
Recording Fees for Bills of Sale, Easements, Deeds	\$80.00 <u>103.00</u>
Recording Fees for Stormwater Maintenance Agreements	\$115.00 <u>153.00</u>

Private Utilities

Application Type

Permit/Inspection Fees

Private Utility (power, natural overhead, gas, telecommunications, CATV) (New development of systems):

New Short Plat – (2-9 Lots)

Plan Check: \$158.00

Permit Fees: \$26.00

New Long Plat – (10-25 Lots)

Plan Check: \$315.00

Permit Fees: \$53.00 + \$0.20 per linear foot or part thereof

New Long Plat – (26+ Lots)

Plan Check: \$525.00

Permit Fees: \$79.00 + \$0.20 per linear foot or part thereof

New Commercial:

Plan Check: \$315.00

Permit Fees: \$53.00

New R-O-W Utilities (New or Extension)

Plan Check: \$263.00 + \$0.9 per linear foot or part thereof

Permit Fees: \$26.00

Repair/Replace Existing

Plan Check: \$0.00

Permit Fees: \$26.00 + \$0.10 per linear foot or part thereof

New/Replace Pole: \$26.00 per Each

Resubmittal fees starting with second resubmittal after the initial application

50% plan check fees

Pavement Restoration Fee

Base Fee

\$25.00 per square foot or part thereof

Year 1 (new pavement)

5X base fee

Year 2

4X base fee

Year 3

3X base fee

Year 4

2X base fee

Year 5

1X base fee

Application Type

Permit/Inspection Fees

Tree Protections and Replacement Ordinance Fee Schedule

Tree Plan Review for New Commercial Development	\$1,575.00 each
Tree Plan Review for New Multi-family Residential Development	\$1,575.00 each
Tree Plan Review for New Subdivisions - 9 lots and less	\$525.00 each
Tree Plan Review for New Subdivisions - 10 lots and more	\$1,575.00 + \$26.00 per lot
Tree Plan Field Inspection for New Commercial Development	\$1,575.00 each
Tree Plan Field Inspection for New Multi-family Residential Development	\$1,575.00 each
Tree Plan Field Inspection for New Subdivisions - 9 lots and less	\$525.00 each
Tree Plan Review for New Subdivisions - 10 lots and more	\$1,575.00 + \$26.00 per lot
Tree Plan Review for Tree Trimming by Private Utility	\$210.00 + \$0.10 per linear foot, or part thereof, of project
Tree Plan Field Inspection for Tree Trimming by Private Utility	\$210.00 + \$0.10 per linear foot, or part thereof, of project
Tree Conversion Option Harvest	\$150.00 per acre, or part thereof, to \$3,000.00 maximum
Technology Fee – applicable to all permits and plan review fees	

Section 2. Amendment of OMC 4.36.010. Section 4.36.010 of the Olympia Municipal Code is hereby amended to read as follows:

4.36.010 Building code review and permit fees

A. The determination of value or valuation under any of the provisions of this code shall be made by the building official based on the valuation data established by the International Code Council under the provisions of building standards valuation data or other supporting data. The value to be used in computing the building and building plan review fees shall be the total of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and other permanent equipment. Single-family and duplex dwellings of wood frame construction having an area of more than 2,500 square feet per unit shall be valued at "good construction" rate. All others will be valued at "average construction" rate. Remodels shall be valued based on the contract price of the project or as determined by the building official.

B. Payment of fees. A permit shall not be valid until the fees prescribed by law have been paid, nor shall an amendment to a permit be released until the additional fee, if any, has been paid.

C. Schedule of permit fees. On buildings, structures, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required using the current fee schedule.

D. Plan Review Fees: When submittal documents are required a plan review fee shall be paid at the time of submitting the submittal documents for plan review. The current fee schedule as adopted shall establish said plan review fee. The actual permit fees and related plan review fee shall be determined upon completion of the plan review and the balance owing shall be paid at the time of permit issuance.

The plan review fee shall be a separate fee from the permit fees specified in this section and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items, an additional plan review fee shall be charged at the rate shown in the current fee schedule.

E. Building permit valuations. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment. Contractor's overhead and profit is also included. The Valuation factor will be used in assessing the building permit for installation of Sign and Commercial Landscaping permits (plan review for Signs and Commercial landscaping will be 65% of the permit).

F. Investigation Fees: Work without a Permit.

1. Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.
2. Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in the currently adopted fee schedule. This fee is an additional, punitive fee and shall not apply to any Grading or Building Permit Fee that may subsequently be issued. Payment of the investigative fee does not vest the illegal work with any legitimacy, nor does it establish any right to a Permit for continued development of that project. If the work done remains illegal for 90 days after service of the Stop Work Order, it shall be considered hazardous and shall be abated per the Olympia Municipal Code.
3. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

G. Fee Refunds.

The building official may authorize the refunding of:

1. 100% of any fee erroneously paid or collected.
2. Up to 80% of the permit fee paid when no work has been done under a permit issued in accordance with this code.
3. Up to 80% of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

H. Fee Exempt Permits:

1. Agricultural/deer fences up to eight (8) feet tall

FEE TABLE -- BUILDING PERMIT FEES

Building Permit Fees (based on valuation)

Total Valuation	Fee
\$1.00 to \$500.00	\$105.00

FEE TABLE -- BUILDING PERMIT FEES

Building Permit Fees (based on valuation)

Total Valuation	Fee
\$501.00 to \$2,000.00	\$105.00 for the first \$500.00 plus \$5.30 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$184.50 for the first \$2,000.00 plus \$16.80 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$570.90 for the first \$25,000.00 plus \$12.71 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$888.65 for the first \$50,000.00 plus \$9.45 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$1,361.15 for the first \$100,000.00 plus \$7.98 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$4,553.15 for the first \$500,000.00 plus \$7.09 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$8,098.15 for the first \$1,000,000.00 plus \$5.93 for each additional \$1,000.00 or fraction thereof

Other Building Inspections and Fees

Inspections outside of normal business hours	\$125.00 per hour* (minimum charge - two hours)
Reinspection fees	\$125.00 per hour*
Inspections for which no fee is specifically indicated	\$125.00 per hour* (minimum charge - one-half hour)
Additional plan review required by changes, additions or revisions to approved plans	\$125.00 per hour* (minimum charge - one-half hour)
For use of outside consultants for plan checking and inspections, or both	Actual Costs*
Certificate of occupancy inspection not related to building permit and as required by Section 110	\$125.00 per hour* (minimum 2 hours)
Inspections requested on expired permits	\$125.00 per hour* (minimum charge - two hours)

* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

** Including administrative and overhead costs.

Other Building Inspections and Fees

For Stop Work issued (work being done without a permit) \$175 per hour (minimum charge – one hour)

State of Washington State Building Code Council charges \$4.50 on every building permit issued

Temporary Certificate of Occupancy (TCO) ~~\$225.00~~ Application filing fee (nonrefundable):
Residential (single-family) \$100

Commercial and multi-family residential \$150 (interior remodel)

Commercial and multi-family residential \$500 (new construction and substantial exterior and interior remodel)

Building Plan Review Fees

SF Plan Review	68% of building permit fee
Tree removal permit	\$25.00 per tree up to \$250.00 total
Commercial Review	68% of building permit fee
Addition/remodel SF, duplex	68% of building permit fee
Sign Review Fee	\$35.00

Mobile/Manufactured Housing or Commercial Permit Fees

*Temporary use (single wide)	\$150.00
*Temporary use (double wide)	\$175.00
Permanent use (single wide)	\$200.00
Permanent use (double wide)	\$225.00
Permanent use (triple wide)	\$250.00
Add-a-room (pre-manufactured addition)	\$150.00
*Temporary commercial use (single)	\$200.00
Permanent commercial use (double)	\$225.00
Permanent commercial use (triple)	\$250.00

Plan check fee of 65% of permit fee will be required for commercial use only.

*Temporary use is considered 180 unless otherwise approved through written request

Demolition Permit Fees

Buildings less than 3,000 sq ft	\$55.00
Buildings between 3,001 and 5,000 sq ft	\$100.00
Buildings between 5,001 and 10,000 sq ft	\$150.00
Buildings greater than 10,000 sq ft	\$200.00
Technology Fee – applicable to all permits and plan review fees	3.9% of permit/plan review

Electrical Permit and Inspection Fees

See OMC 4.36.020.

Mechanical Permit Fees (plus applicable unit fees)

Permit Issuance Fee

For the issuance of each permit	\$105.00
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Single Family Residential (flat fee no permit issuance fee)

New SFR Mechanical Heating system including ducts and vents attached thereto (first unit, up to and including 2,500 sq ft)	\$245.00
Additional Unit/s and/or associated ducts and vents attached thereto (over 2,500 sq ft)	\$280.00

Unit Fee Schedule

Note: The following includes permit issuance fee.

Furnaces

For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance	\$55.00
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Appliance Vents

For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit	\$35.00
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Repairs or Additions

For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by the Mechanical Code	\$55.00
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Boilers, Compressors and Absorption Systems

For the installation or relocation of each boiler or compressor	\$95.00
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Air Handlers

For each air-handling unit to and including 10,000 cubic feet per minute (4,720 L/s), including ducts attached thereto \$55.00

Note: This fee does not apply to an air-handling unit which is a portion of a factory assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere in the Mechanical Code.

For each air-handling unit exceeding 10,000 cubic feet per minute (4,720 L/s) \$55.00

Evaporative Coolers

For each evaporative cooler other than portable type \$55.00

Ventilation and Exhaust

For each ventilation fan connected to a single duct \$35.00

For each ventilation system which is not a portion of heating or air conditioning system authorized by a permit \$35.00

For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood \$35.00

Wood or Gas Stove Insert including vent \$65.00

Incinerators \$125.00

Miscellaneous

For each appliance or piece of equipment regulated by the Mechanical Code but not classed in other appliance categories, or for which no other fee is listed in the code \$35.00

Permit fees for fuel-gas piping shall be as follows:

Single gas pipe repair or connection including flexible connector for up to the first 5 connections \$35.00

Multiple gas pipe repair or connections including flexible gas connectors for 6 or more connections, additional fee of \$2.50 ea

Other Inspections and Fees

Inspections outside of normal business hours, *per hour (minimum charge - two hours) \$175.00*

Reinspection fees \$175.00*

Inspection for which no fee is specifically indicated, per hour (minimum charge - one-half hour) \$175.00*

Additional plan review required by changes, additions or revisions to plans or to plans for which an initial review has been completed (minimum charge - one-half hour) \$175.00*

For use of outside consultants for plan checking and inspections, or both. Actual Cost

For Stop Work issued (work being done without a \$175 per hour (minimum charge – one hour)

* Or the total hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

Plumbing Permit Fees

Permit Issuance

For issuing each permit \$105.00

Single Family Residential (flat fee no permit issuance fee)

New SFR Plumbing system (up to 3 bathrooms, one kitchen, over 3/1 use unit schedule for additional fixtures) \$245.00

Swimming Pools*

For each in-ground swimming pool or spa \$125.00 (fencing requirements apply)

For each above ground swimming pool over 5000 gallons \$62.50 (fencing requirements apply)

*All pools over 24 inches in depth require approved fencing

Plumbing Permits for New Single Family Residential \$225.00

Unit Fee Schedule

Note: The following requires a permit issuance fee in addition to unit fees

Gas Piping System

Single gas pipe repair or connection including flexible gas connector for up to the first 5 connections	\$35.00
Multiple gas pipe repair or connections including flexible gas connectors for 6 or more connections, additional fee of	\$2.50 ea
For each plumbing fixture on one trap or a set of fixtures on one trap (including water, drainage piping and backflow protection)	\$15.00
For each building sewer and each trailer park sewer	\$35.00
Rainwater systems - per drain (inside building)	\$10.00
For each private sewage disposal system/grinder pump (when allowed)	\$75.00
For each water heater and/or vent	\$25.00
For each industrial waste pretreatment interceptor including its trap and vent, except kitchen-type grease interceptors functioning as fixture trap	\$21.00
For each installation, alteration or repair of water piping and/or water treating equipment, each	\$20.00
For each repair or alteration of drainage or vent piping, each fixture	\$20.00
For each lawn sprinkler system on any one meter including backflow protection devices therefor	\$35.00
For atmospheric-type vacuum breakers not included in lawn sprinkler system	\$35.00

Other Inspections and Fees

Inspections outside of normal business hours, per hour (minimum charge - two hours)	\$125.00*
Reinspection fees	\$125.00*
Inspection for which no fee is specifically indicated	\$125.00*

Other Inspections and Fees

Additional plan review required by changes, additions or revisions to approved plans, per hour (minimum charge - one hour)	\$175.00*
For the use of outside consultants for plan checking and/or inspections	*Actual Costs
For Stop Work being issued (work being done without permit)	\$175.00

Grading Plan Permit Fees

\$250.00 base fee plus \$.01 per cubic yard

Other Inspections and Fees

Inspections outside of normal business hours, per hour (minimum charge - two hours)	\$175.00*
Reinspection fees	\$175.00*
Inspection for which no fee is specifically indicated, per hour (minimum charge one-half hour)	\$175.00*

*Or the total hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

Grading Plan Review Fees

65% of the permit fee

Other Fees

Additional plan review required by changes, additions or revisions to approved plans, per hour (minimum charge - one-half hour)	\$175.00*
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* Or the total hourly cost to the jurisdiction, whichever is greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

Section 3. Amendment of OMC 4.40.010. Section 4.40.010 of the Olympia Municipal Code is hereby amended to read as follows:

4.40.010 Land use application review fees

A. Commencing January 1, 2013~~20~~, the following fee schedule is in full force and effect.

Certifications and Appealable Letters

Land Use and Planning Applications¹

Independent Confirmation of Critical Areas Report	\$650 plus any consultant costs
Wetland Report prepared by City staff	\$800 plus any consultant costs
Zoning, Occupancy Status, Flood Hazard, and other staff confirmations	\$200
Staff-Researched Letter, Shoreline Permit Exemption, Discretionary Time Extension, or Appealable Opinion ²	\$360 plus any consultant costs

Actions Independent of Development Review

Presubmission Conference	\$240
SEPA Review (only)	\$480
Variance (staff level)	\$300
Variance and/or Reasonable Use Exception (by Examiner)	\$480 <u>\$850</u> + \$1,000 Hearing Examiner deposit ⁵

Code and Plan Amendments

Comprehensive Plan Amendment (post-screening without rezone)	\$320 <u>\$2,500</u>
Shoreline Program	\$3,200
Original Master Plan (Villages & Centers) (See OMC Chapter 18.05)	\$3,200 + \$ 140 per acre or part thereof + \$2,500 Hearing Examiner deposit ⁵
Master Plan Revision	\$1,600 + \$1,500 Hearing Examiner deposit ⁵
Development Agreement	\$3,200 + \$2,000 Hearing Examiner deposit if referred to examiners ⁵
Zoning and Development Code Maps or Text	\$3,200 + if a site-specific rezone, a \$1,500 Hearing Examiner deposit ⁵

Annexations

Notice of Intent to Annex	\$320
Petition to Annex	\$2,880

Temporary Uses

Temporary Use Permit for three or less consecutive days \$50

Temporary Uses for four or more consecutive days \$200

Subdivision Actions

Lot Consolidation \$360

Boundary Line Adjustment \$320 plus \$160 per boundary line

Preliminary Short or Large-Lot Plat \$600 + \$ 300 per lot

Final Short or Large-lot Plat \$600

Preliminary Full (ten or more lots) Plat \$ 3,600+ \$ 600 per acre, or part thereof + \$2,500 Hearing Examiner deposit⁵

Final Full (ten or more lots) Plat³ \$2,600

Binding Site Plan Any land use review fee; plus sum equivalent to platting fee - latter reduced by 1/2 if concurrent with initial development

Improvements deferral review by Examiner (OMC 17.44.020(E)) \$1,800+ \$2,000 Hearing Examiner deposit⁵

Land Use (Site Plan) Review³

No new structure to 5,000 square feet new gross floor area \$2,600

5,001 to 8,000 square feet of new gross floor area \$4,700

8,001 to 16,000 square feet of new gross floor area \$6,800

16,000 to 24,000 square feet of new gross floor area \$9,200

24,001 or more square feet of new gross floor area \$11,500

Wireless Communication Facility \$3,700, plus any consultant costs of City

Supplemental Actions

Traffic modeling or distribution by City staff No charge, except any consultant fees

Additional SEPA Review (WAC 197-11-335) No charge, except any consultant fees

Environmental Impact Statement \$3,200+ preparation at contract rate to be determined

Design Concept Review --Board Level \$900

Design Details Review-- Board Level \$900

Design Review--Staff Level	\$240
Sign (Design) Review	\$55 per sign to \$330 maximum per occupancy
Examiner Review--Project Subject to SEPA	\$1,200 + \$2,000 Hearing Examiner deposit ⁵
Wireless Communication Facility -- Subject to SEPA	\$4,600+ \$2,000 Hearing Examiner deposit ⁵ plus any consultant costs of City
Examiner Review--Project SEPA Exempt	\$900 + \$750 Hearing Examiner deposit ⁵
Wireless Communication Facility -- SEPA Exempt	\$3,700 + \$750 Hearing Examiner deposit ⁵ plus any consultant costs of City
Modification of an approved application	50% of standard fee plus any Examiner deposit
Consolidated Review (RCW 36.70B.120) ⁴	\$5,000
Impact Fee Appeal to Examiner	\$1,000 + \$500 Hearing Examiner deposit ⁵
Other Appeal to Examiner	\$1,000
Appeals to Council (only if authorized)	\$500
Request for Reconsideration or Clarification by Examiner (OMC 18.75.060 and 070)	\$240 + \$500 Hearing Examiner deposit ⁵

Historic Rehabilitation Tax Exemption

Commercial	\$880
Residential	\$260
Technology Fee – applicable to all planning applications	3.9% of planning fee

NOTES:

1. Additional fees may be applicable, including tree plan and engineering fees.
2. Staff certification or researched letter fees, and need for third-party consultation are at the discretion of the Planning Manager.
3. There is no extra charge for Planned Residential Development Approval.
4. The Consolidated Review Fee is an additional fee that applies to requests to merge review of preliminary development applications with construction permit applications, such as land use review and engineering permits.
5. Where Examiner deposit is required, applicant is responsible and required to pay actual Hearing Examiner costs, which may be higher or lower than the deposit amount.

Section 4. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 5. Severability. The provisions of this ordinance are declared separate and severable. If any provisions 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, is 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 takes effect January 1, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Amending Transportation Impact Fees

Agenda Date: 12/17/2019
Agenda Item Number: 4.L
File Number: 19-1093

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Transportation Impact Fees

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance amending Transportation Impact Fees on second reading.

Report

Issue:

Whether to adopt an ordinance amending Transportation Impact Fees.

Staff Contact:

David Smith, P.E., Transportation Project Engineer, Public Works Department, 360.753.8496

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

The City charges developers a Transportation Impact Fee to offset the impact of new development on the transportation system. Transportation Impact Fees fund future transportation capital improvement projects. The cost is calculated based on the type of land use and the projected number of afternoon, peak-hour vehicle trips generated by the development.

On an annual basis, staff adjusts project costs to remain current with the cost of labor, construction materials, and real property. Staff makes updates to the Transportation Impact Fee Rate Study approximately every three-five years. The last update was in 2016.

Attached are the proposed amendments to the Transportation Impact Fee Ordinance.

Neighborhood/Community Interests (if known):

Public Hearings for the Capital Facilities Plan were held on October 29 and November 19, 2019. The City Council did not receive any comments during these public hearings concerning the increase in Transportation Impact Fees.

Options:

1. Approve the ordinance amending Transportation Impact Fees on first reading and forward to second reading. Project costs will remain current with the cost of labor, construction materials, and real property.
2. Approve the ordinance with changes to some of the proposed Transportation Impact Fee rates. Staff will incorporate any changes recommended by Council in the ordinance for second reading.
3. Do not approve the ordinance amending Transportation Impact Fees.

Financial Impact:

The Transportation Impact Fee will increase from \$2,782 to \$2,787 per new vehicle trip

Attachments:

Ordinance
Cost Distribution

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON AMENDING TRANSPORTATION IMPACT FEES, AND AMENDING SECTION 15.16.040 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, RCW 82.02.050 - .090 authorizes the City of Olympia to adopt an ordinance imposing impact fees; and

WHEREAS, in Ordinance Nos. 5490 and 6164, the City of Olympia did adopt such impact fees, to include "Transportation Impact Fees"; and

WHEREAS, the City Council has called for an annual review of impact fees, concurrent with the annual review of the Capital Facilities Plan (CFP) element of the City's Comprehensive Plan, to consider adjustments to the fees; and

WHEREAS, following said review of the 2020-2025 CFP, the Olympia City Council desires to amend Transportation Impact Fees to account for projects fully funded, completed, removed, costs of labor, construction materials, and real property; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington Constitution; and

WHEREAS, this Ordinance is supported by the staff report, attachments, and documents on file with the Department of Public Works;

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

Section 1. Amendment of OMC 15.16.040. Olympia Municipal Code Section 15.16.040 is hereby amended to read as follows:

15.16.040 Schedule D, Transportation Impact Fees

**SCHEDULE D
TRANSPORTATION IMPACT FEE RATE SCHEDULE
Effective January 1, ~~2019~~2020**

Land Uses	Unit of Measure	Rate
Cost per New Trip Generated:		\$2,782 \$2,787
<i>Residential</i>		
Single Family (Detached), Townhouse & Manufactured Home	dwelling	\$3,213 \$3,219

SCHEDULE D
TRANSPORTATION IMPACT FEE RATE SCHEDULE
Effective January 1, 20192020

Land Uses	Unit of Measure	Rate
Multi Family, Duplex, Triplex, Fourplex, Cottage Housing & Courtyard Apartment	dwelling	-\$1,921 <u>\$1,925</u>
Apartment (3 to 10 levels) includes Studio	dwelling	\$1,510 <u>\$1,512</u>
Senior Housing, Accessory Dwelling & Single-Room Occupancy	dwelling	\$727 <u>\$ 728</u>
Mobile Home	dwelling	\$1,493 <u>\$1,496</u>
<i>Commercial – Services</i>		
Bank	sq ft / GFA	\$21.97 <u>\$22.01</u>
Day Care	sq ft / GFA	\$22.89 <u>\$22.93</u>
Hotel/Motel	room	\$2,226 <u>\$2,230</u>
Service Station ¹	fueling position	\$9,371 <u>\$9,388</u>
Quick Lubrication Vehicle Shop	servicing positions	\$5,727 <u>\$5,738</u>
Automobile Care Center	sq ft / GLA	-\$4.76 <u>\$4.77</u>
Movie Theater	seat	\$127
Health Club	sq ft / GFA	-\$7.61 <u>\$7.62</u>
Marina	berth	\$492
<i>Institutional</i>		
Elementary /Jr. High/ High School	student	\$193
University/College	student	\$426
Church	sq ft / GFA	\$1.89
Hospital	sq ft / GFA	-\$3.45 <u>\$3.46</u>
Assisted Living, Nursing Home, Group Home	bed	-\$571 <u>\$572</u>
<i>Industrial</i>		
Light Industry/Manufacturing/Industrial Park	sq ft / GFA	-\$4.02 <u>\$4.03</u>
Warehousing/Storage	sq ft / GFA	\$1.51 <u>\$1.52</u>

**SCHEDULE D
TRANSPORTATION IMPACT FEE RATE SCHEDULE
Effective January 1, 20192020**

Land Uses	Unit of Measure	Rate
Mini Warehouse	sq ft / GFA	\$1.23
<i>Restaurant</i>		
Restaurant	sq ft / GFA	-\$13.22 <u>\$13.25</u>
Fast Food Restaurant	sq ft / GFA	\$30.28 <u>\$30.33</u>
Coffee/Donut Shop with Drive-Through Window	sq ft / GFA	\$25.80 <u>\$25.84</u>
Coffee/Donut Shop with Drive-Through Window and No Indoor Seating	sq ft / GFA	-\$9.95 <u>\$9.96</u>
<i>Commercial – Retail</i>		
Retail Shopping Center:		
up to 49,999	sq ft / GLA	-\$5.71 <u>\$5.72</u>
50,000-99,999	sq ft / GLA	\$5.04 <u>\$5.05</u>
100,000-199,999	sq ft / GLA	\$4.96 <u>\$4.97</u>
200,000-299,999	sq ft / GLA	\$4.54 <u>\$4.55</u>
300,000-399,999	sq ft / GLA	-\$5.40 <u>\$5.41</u>
over 400,000	sq ft / GLA	-\$6.09 <u>\$6.10</u>
Supermarket > 5,000 SF	sq ft / GFA	\$11.82 <u>\$11.84</u>
Convenience Market < 5,000 SF	sq ft / GFA	\$30.96 <u>\$31.01</u>
Furniture Store	sq ft / GFA	\$0.33
Car Sales - New/Used	sq ft / GFA	\$8.94 <u>\$8.96</u>
Nursery/Garden Center	sq ft / GFA	-\$9.46 <u>\$9.48</u>
Pharmacy/Drugstore	sq ft / GFA	\$6.22 <u>\$6.24</u>
Hardware/Building Materials Store < 25,000 SF	sq ft / GFA	-\$5.25 <u>\$5.26</u>
Discount Merchandise Store (Free Standing)	sq ft / GFA	\$5.79 <u>\$5.80</u>
Video Rental	sq ft / GFA	\$9.65 <u>\$9.67</u>
Home Improvement Superstore > 25,000 SF	sq ft / GFA	-\$2.63 <u>\$2.64</u>

**SCHEDULE D
TRANSPORTATION IMPACT FEE RATE SCHEDULE
Effective January 1, ~~2019~~2020**

Land Uses	Unit of Measure	Rate
Miscellaneous Retail	sq ft / GLA	-\$5.45 <u>\$5.46</u>
<i>Commercial – Office</i>		
Administrative Office:		
0-99,999	sq ft / GFA	-\$11.45 <u>\$11.47</u>
100,000-199,999	sq ft / GFA	-\$6.98 <u>\$6.99</u>
200,000-299,999	sq ft / GFA	-\$6.09 <u>\$6.10</u>
over 300,000	sq ft / GFA	\$5.70 <u>\$5.71</u>
Medical Office/Clinic	sq ft / GFA	\$11.92 <u>\$11.94</u>
<i>Downtown² Fees</i>		
Apartment includes All Multi Family Uses, Townhouse, & Studio	dwelling	-\$901 <u>\$902</u>
Senior Housing, Accessory Dwelling & Single Room Occupancy	dwelling	\$434 <u>\$435</u>
Assisted Living, Nursing Home, Group Home	bed	\$341
Hotel/Motel	room	-\$1,328 <u>\$1,330</u>
Movie Theater	seat	\$82
Marina	berth	-\$293 <u>\$294</u>
Downtown Services/Retail ³	sq ft / GLA	\$3.59 <u>\$3.60</u>
Administrative Office:		
0-99,999	sq ft / GFA	\$7.91 <u>\$7.92</u>
100,000-199,999	sq ft / GFA	\$4.82 <u>\$4.83</u>
200,000-299,999	sq ft / GFA	\$4.20 <u>\$4.21</u>
over 300,000	sq ft / GFA	\$3.94 <u>\$3.95</u>
Medical Office/Clinic	sq ft / GFA	-\$8.23 <u>\$8.25</u>
Industrial Park	sq ft / GFA	\$2.78
Warehousing/Storage	sq ft / GFA	\$1.05
Mini Warehouse	sq ft / GFA	\$0.85

Notes: For uses with Unit of Measure in "sq ft / GFA" or "sq ft/GLA", impact fee is dollars per square foot.

- 1) Service Station can include Mini Mart (less than or equal to 2,500 square feet) and/ or Car Wash. Mini Mart greater than 2,500 square feet is calculated separately.
- 2) Downtown: As defined in Olympia Municipal Code 15.04.020.O.
- 3) Downtown Services/Retail includes Retail Stores, Restaurants, Supermarkets, Convenience Markets, Video Rentals, Banks, Health Clubs, Day Cares, and Libraries.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. 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 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect January 1, 2020, after its passage by the Olympia City Council and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

Transportation Impact Fee Cost Distribution

PROJECT/STREET	A1	A15	A18	A19	A20
	COST	Total Funds Appropriated or Assigned through May 7, 2018	Not Debt Financed	Payment Schedule for Horizon Year Debt Based on Bond Issuance	Total Funds Needed for Horizon Year A18+ A19
Fones Road - 18th Avenue to Pacific	\$15,340,000	\$145,974	\$15,194,026	\$0	\$15,194,026
Henderson Boulevard & Eskridge Boulevard Intersection Improvements	\$1,060,000	\$132,083	\$927,917	\$0	\$927,917
Wiggins Road & 37th Avenue Intersection Improvements	\$764,000	\$253,817	\$510,183	\$0	\$510,183
Cain Road & North Street Intersection Improvements	\$465,000	\$20,387	\$444,613	\$0	\$444,613
US 101/West Olympia Access Project - Design, Environmental Permits and Mitigation, and ROW	\$6,953,000	\$692	\$6,952,308	\$0	\$6,952,308
Debt Service	\$2,616,075	\$0		\$2,616,075	\$2,616,075
	\$0	\$0			\$0
Total	\$27,198,075	\$552,953	\$24,029,047	\$2,616,075	\$26,645,122

Percent of new project traffic due to growth within City of Olympia and UGA	64.8000000%
Project Costs Allowable for Impact Fees	\$17,266,039
New PM Peak Hour Trips	6,241
Cost Per Trip without Administration Fee	\$2,767
Administration Fee	\$20
Cost Per Trip with Administration Fee	\$2,787





City Council

Approval of an Ordinance Amending Olympia Municipal Code Related to Storm and Surface Water Management

Agenda Date: 12/17/2019
Agenda Item Number: 4.M
File Number: 19-1123

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Olympia Municipal Code Related to Storm and Surface Water Management

Recommended Action

Committee Recommendation:

On November 20, 2019, the Finance Committee reviewed and discussed the financial implications of exempting roadways from storm and surface water charges, in combination with elimination of Storm and Surface Water Utility funding of sidewalks and pathways projects in the Capital Facilities Plan. The Finance Committee recommended staff forward this item to Council for approval.

City Manager Recommendation:

Move to approve the ordinance amending Olympia Municipal Code Chapter 13.16 regarding storm and surface water regulations on second reading.

Report

Issue:

Whether to approve an ordinance amending storm and surface water regulations.

Staff Contact:

Eric Christensen, Water Resources Director, Public Works, 360.570-3741

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

Storm and Surface Water Utility staff have reviewed codes relevant to their operations and are proposing revisions. The revisions take into account policies and strategies identified in the City of Olympia Storm and Surface Water Plan (2018).

The majority of the proposed revisions correct inconsistencies in terms. Specific substantial changes

to the chapter include:

- Establishing the Storm and Surface Water Utility's purpose and obligations under the Western Washington Phase II Municipal Stormwater Permit (MS4 permit);
- Making definitions and regulations regarding prohibited discharges and illicit discharges consistent with requirements of the MS4 permit;
- Making explicit that all properties pay storm and surface water utility rates with the only exemptions being undeveloped properties, City streets, Washington State Department of Transportation (WSDOT) highways and private streets;
- Making explicit the two components (stormwater and water quality) of the storm and surface water general facility charge and when they are each applicable;
- Clarifying the process for a commercial property to apply for a lower rate category;
- With the owner or occupant's consent, establishing right of entry for City staff to inspect and repair stormwater facilities; and
- Consistent with the MS4 permit, requiring property owners to inspect and maintain stormwater facilities to function as they were designed.

Neighborhood/Community Interests (if known):

The proposed revisions will help the Utility maintain compliance with the MS4 permit ordinance and are consistent with the Utility's mission to reduce flooding, improve water quality and protect and enhance aquatic habitat in Olympia.

Options:

1. Approve the ordinance amending Olympia Municipal Code Chapter 13.16 regarding storm and surface water regulations on first reading and forward to second reading.
2. Advise staff to revise the ordinance before approval. This incorporates Council input while still correcting code deficiencies and inconsistencies.
3. Do not approve the ordinance. This option would not correct identified code deficiencies and inconsistencies.

Financial Impact:

Exempting City streets and WSDOT highways will reduce the Storm and Surface Water Utility annual revenue by a net value of \$130,000. The Utility has resources above reserves to manage this revenue reduction.

Attachment:

Ordinance

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING CHAPTER 13.16 OF THE OLYMPIA MUNICIPAL CODE RELATED TO THE STORM AND SURFACE WATER UTILITY.

WHEREAS, the City of Olympia owns and operates a municipal separate storm sewer system (MS4); and

WHEREAS, the City is covered under a Western Washington Phase II Municipal Stormwater Permit (Permit) administered by the state of Washington Department of Ecology; and

WHEREAS, the Permit requires that the City implement an ordinance or other regulatory mechanism including escalating enforcement procedures and actions to effectively prohibit non-stormwater, illicit discharges into the City's MS4; and

WHEREAS, the Permit requires that the City implement an ordinance or other enforceable mechanism that addresses runoff from new development, redevelopment, and construction site projects; and

WHEREAS, the Permit requires that the City implement an ordinance or other enforceable mechanism that clearly identifies the party responsible for maintenance, requires inspection of facilities, and establishes enforcement procedures to provide for adequate long-term operation and maintenance of stormwater treatment and flow control facilities; and

WHEREAS, this Ordinance is consistent with the City of Olympia Comprehensive Plan policy to require prevention and treatment practices for businesses and land uses that have the potential to contaminate stormwater; and

WHEREAS, this Ordinance is consistent with the City of Olympia Comprehensive Plan policy to improve programs and management strategies designed to prevent and reduce contamination of street runoff and other sources of stormwater; and

WHEREAS, this Ordinance is consistent with the City of Olympia Comprehensive Plan policy to inspect private and public stormwater systems to identify required maintenance and repairs; and

WHEREAS, this Ordinance meets the goals and requirements of the Growth Management Act; and

WHEREAS, RCW Chapters 35A.63 and 36.70A and Article 11, Section 11 of the Washington State Constitution authorize and permit the City to adopt this Ordinance;

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

Section 1. Amendment of OMC 13.16. Olympia Municipal Code Chapter 13.16 is hereby amended to read as follows:

Chapter 13.16 STORM AND SURFACE WATER UTILITY MANAGEMENT

13.16.000 Chapter Contents

Sections:

- 13.16.005 Purpose.
- 13.16.007 Stormwater Management Program.
- 13.16.010 Definitions.
- 13.16.017 Drainage ~~d~~Design and ~~e~~Erosion ~~e~~Control ~~m~~Manual – Adopted.
- 13.16.018 Drainage Design and Erosion Control mManual – Provisions to prevail in event of conflict.
- 13.16.020 Permit required.
- 13.16.030 ~~Nonpermitted~~Prohibited uses of the storm drainage system.
- 13.16.040 ~~Connection~~Discharge or connection to the storm drainage system.
- 13.16.050 ~~Charges for use of the storm drainage system~~Storm drainage service charges.
- 13.16.060 Provision of abutting storm drainage system facilities.
- 13.16.070 Payment for connection to the ~~storm drainage system~~ MS4.
- 13.16.080 ~~Storm drainage system~~Stormwater general facilities charges.
- 13.16.090 ~~Credit for additional~~Reduction in storm drainage detention/retention-service charge for impervious surface, flow control or water quality-stormwater treatment.
- 13.16.120 Billing date.
- 13.16.130 Adjustment of charges and appeals.
- 13.16.140 ~~Collection of~~Lien for delinquent charges.
- 13.16.150 Right of entry for inspection, code enforcement, and repair.
- 13.16.160 Authority to maintain, operate, maintain-regulate and modify-control the utility.
- 13.16.170 Stormwater facility maintenance.
- 13.16.180 Enforcement – Civil and Criminal Penalties – Public Nuisance.

13.16.005 Purpose

Stormwater runoff poses a potential hazard to the health, safety, and welfare of the residents of Olympia, their property, and the environment. The purpose of the City of Olympia’s Storm and Surface Water Utility is to protect public and environmental health by collecting stormwater runoff and either infiltrating or conveying it to streams, rivers, and Puget Sound with the aim of reducing the frequency and severity of flooding, improving water quality, and protecting, enhancing, and restoring aquatic habitat. The Storm and Surface Water Utility operates a municipal separate storm sewer system that is regulated under the federal Clean Water Act, 33 U.S.C. §1251 et seq. and the state Water Pollution Control Act, RCW 90.48. As required by those laws, the city holds coverage under the Western Washington Phase II Municipal Stormwater Permit (MS4 Permit). The Storm and Surface Water Utility also conducts a number of programs and activities required by the MS4 Permit, including a Stormwater Management Program. The purpose of this chapter is to regulate and control stormwater runoff and to ensure compliance with the MS4 Permit, including the Stormwater Management Program. Storm drainage service charges are assessed to fund the work of the Utility, including the operation, maintenance, and improvement of the MS4, and the Stormwater Management Program.

13.16.007 Stormwater Management Program

The Director of Public Works, or the Director of Public Works' designee, is authorized and directed to prepare a Stormwater Management Program Plan, in accordance with the MS4 Permit. The Stormwater Management Program Plan provides a set of actions and activities designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, and comprising the components required by the MS4 Permit, and any additional actions necessary to meet the requirements of applicable Total Maximum Daily Load requirements. A copy of the Stormwater Management Program Plan shall be kept on file in the offices of the City Clerk and the Public Works Department and made available on the City's website.

13.16.010 Definitions

The following words, when used herein, shall have the following meanings unless the context clearly indicates otherwise:

A. "Best management practice" means a schedule of activities, prohibition of practices, maintenance procedure, managerial practice, or structural features that when used singly or in combination prevents or reduces the release of pollutants and other adverse impacts to waters of Washington State.

AB. "Billing unit" means the same as "equivalent residential unit", two thousand five hundred twenty-eight feet of impervious surface development on a parcel.

BC. "Combined sewer" means a system that collects sanitary sewage and stormwater in a single sewer system.

CD. "Conveyance" means any catch basin, pipe, culvert, curb, gutter, ditch, humanmadeswale, human-made channel, storm drain, or road with a Storm Drainage System that conveys or collects stormwater.

DE. "Developed parcel" means, with respect to a parcel, any parcel which has been altered from a natural state with or without a permit from the city. This includes clearing, grading or filling, whether or not that work accompanies excavation and construction.

EF. "Drainage Design and Erosion Control Manual," or "the Manual" means the 2016 Edition of the Olympia Drainage Design and Erosion Control Manual, as the same may be amended from time to time document adopted in Section 13.16.017.

FG. "Duplex parcel" means a parcel which has been developed and constructed for the purpose of providing habitat for two-family dwelling units on a single property parcel and has been and continues to be used solely for that purpose.

H. "Flow control" means a facility designed to mitigate the impacts of increased stormwater runoff flow rates generated by development. Flow control facilities are best management practices specified in Volume III of the Manual that are engineered to meet the flow control standards of Core Requirement #7 specified in Volume I of the Manual.

GI. "Illicit connection" means any humanmadehuman-made conveyance that is connected to a municipal separate storm sewer without a permit, excluding roof drains and other similar type connections. Examples

include but are not limited to sanitary sewer connections, floor drains, channels, pipelines, conduits, inlets, or outlets that are connected directly to the municipal separate storm sewer system.

~~H~~J. "Illicit discharge" means any direct or indirect non-stormwater discharge to the city's storm ~~drain~~drainage system, except as expressly allowed by this chapter.

~~I~~K. "Impervious surface" means a non-vegetated surface area which (1) either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. ~~A non-vegetated surface area which, or (2)~~ causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads and parking areas, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater.

~~J~~L. "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances: (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- a. Owned or operated by the City; and
- b. Designed or used for collecting or conveying stormwater.

~~A~~The municipal separate storm sewer system does not include combined sewers or a publicly owned treatment works used in treatment of municipal sewage or industrial wastes of a liquid nature.

M. "MS4 Permit" means the National Pollutant Discharge Elimination System and State Waste Discharge General Permit, commonly known as the Western Washington Phase II Municipal Stormwater Permit, issued by the Department of Ecology and periodically re-issued.

~~K~~N. "Nonresidential parcel" means a parcel which has been developed for any purpose other than a single-family dwelling unit or duplex and includes, among others, all multifamily apartments and condominiums with three or more units and all property owned by governmental and nonprofit entities.

~~L~~O. "Non-stormwater discharge" means any discharge, to atthe storm ~~drain~~drainage system; that is not composed entirely of stormwater.

~~P~~. "Owner" has the meaning given in OMC 1.04.010.K. In addition, for purposes of this chapter, "owner" includes a person that controls a parcel on behalf of a parcel's owner.

~~M~~Q. "Parcel" means any area of land within the city/City of Olympia which is deemed a distinct property as identified by the county assessor, whether or not the parcel is considered taxable.

~~N~~. "Publicly Owned Treatment Works" or "POTW" means any device or system used in treatment of municipal sewage or industrial wastes of a liquid nature which is publicly owned.

ØR. "Single-family residential parcel" means a parcel which has been developed and constructed for the purpose of providing a habitat for a single-family dwelling unit with or without an accessory dwelling unit, and has and continues to be used solely for that purpose.

PS. "Storm drainage system" means all ~~humanmade~~~~manmade~~ and natural systems that are used for the collection, conveyance, and disposal of ~~rainfall, from the land~~stormwater. The storm drainage system may include lands outside of the city, but such lands will only be subject to this code when they are annexed to the city or by interlocal agreement with the governmental entity in which the property is located. The storm drainage system includes the MS4; all streets, ditches, pipes, and stormwater facilities; appurtenances; wetlands; streams, whether intermittent or perennial; ponds; lakes; creeks; rivers; tidelands; or outfalls subject to stormwater runoff flows from the land area of the city or from property covered by an interlocal agreement.

T. "Stormwater" means that portion of precipitation, including snowmelt, that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, or other conveyance into a receiving water or storm drainage system.

U. "Stormwater facility" means one or more constructed or natural features, other than the MS4, that collect, convey, channel, hold, inhibit, retain, detain, infiltrate, divert, treat, or filter stormwater. Stormwater facilities include, but are not limited to, conveyances, detention ponds, retention ponds, constructed wetlands, infiltration devices, catch basins, oil/water separators, and biofiltration swales.

V. "Stormwater treatment" means one or more best management practices or facilities that are specified in Volume V of the Manual to remove pollutants from stormwater and engineered to meet the treatment standards in Core Requirement #6 specified in Volume I of the Manual.

QW. "Undeveloped parcel" means any parcel which has not been altered from ~~ait~~its natural state by logging, clearing or grading ~~within twenty-five years since 1996~~, or by filling, excavation, or construction at any act as defined under "developed parcel" above time.

RX. "Utility" means the ~~city~~City of Olympia's storm and surface water utility, which operates and maintains storm or surface water ~~drains, channels~~conveyances and facilities or outfalls for such waters and the rights and interests in other properties relating to the system.

13.16.017 Drainage ~~d~~Design and ~~e~~Erosion ~~c~~Control ~~m~~Manual – Adopted

A certain document entitled Drainage Design and Erosion Control Manual for Olympia, 2016 Edition ("the Manual"), as amended, is adopted by reference as though fully set forth herein. One copy of the Manual is to be placed and held in the office of the director of administrative services for the city and be available to the public.

13.16.018 Drainage Design and ~~e~~Erosion ~~c~~Control ~~m~~Manual – Provisions to prevail in event of conflict

The provisions of the ~~m~~Manual adopted in Section 13.16.017 shall control and prevail over any provisions of current ordinances, development standards and/or policies insofar as a conflict may occur.

13.16.020 Permit required

Before ~~storm drainage runoff~~stormwater may be discharged to any part of the storm drainage system the owner of the parcel on which the runoffstormwater is generated shall apply to the city department of community planning and development for an engineering permit to do the same. The issuance of and terms and conditions to be attached to said ~~permits~~permit shall be governed by the Manual.

13.16.030 ~~Nonpermitted~~ Prohibited uses of the storm drainage system

No one may discharge or cause to be discharged any materials of any kind into the ~~storm drainage system~~MS4, except ~~natural rainfall~~stormwater, clean groundwater, ~~or~~and clean city potable water. ~~This prohibition includes water with chlorine concentrations of less than 0.1 ppm or greater, soil products of erosion and contaminants in runoff from impervious areas on a parcel unless such discharge is through an approved treatment device.~~

~~This prohibition does not include discharges from emergency fire fighting activities or non-stormwater discharges covered by another National Pollutant Discharge Elimination System (NPDES) permit, provided the discharger is in full compliance with all requirements of the permit.~~

This prohibition does not include:

1. Water from emergency fire fighting activities.
2. Non-stormwater discharges covered by a National Pollutant Discharge Elimination System (NPDES) permit, provided the discharger is in full compliance with all requirements of the permit.
3. Air conditioning condensation.
4. Irrigation water from agricultural sources that is commingled with urban stormwater.
5. Springs.
6. Uncontaminated water from crawl space and basement pumps.
7. Discharges from lawn watering and other irrigation runoff, unless the discharges or other runoff are of water from the city's water supply system that has been wasted in violation of OMC 13.04.080.
8. Dechlorinated swimming pool, spa, and hot tub discharges. The discharges must be dechlorinated to a total residual chlorine concentration of 0.1 ppm or less, pH-adjusted and reoxygenized if necessary, volumetrically and velocity controlled to prevent resuspension of sediments in the MS4. Discharges shall be thermally controlled to prevent an increase in temperature of the receiving water. Swimming pool cleaning wastewater and filter backwash shall not be discharged to the MS4.
9. Uncontaminated pumped groundwater.

- 10. Street and sidewalk wash water when the surfaces are swept prior to washing, detergents are not used, and water use is minimized.
- 11. External building wash water when detergents are not used and water use is minimized.
- 12. Water used to control dust when water use is minimized.
- 13. Other non-stormwater discharges that are in compliance with the requirements of a pollution prevention plan that addresses control of such discharges and is approved by the Director.

13.16.040 ~~Connection~~ Discharge or connection to the storm drainage system

~~No work shall be performed which results in runoff from a parcel to the storm drainage system except under the conditions specified in the required storm drainage permit or as provided in the Manual or herein.~~

~~Where the connection involves construction of physical facilities such as pipes, inlets, channels, ditches, or other similar improvements, all work shall be approved and inspected by the department of public works prior to acceptance of the work and prior to any occupancy of development on a parcel.~~

~~The construction, use, maintenance, or continued existence of illicit connections to the municipal separate storm sewer system is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is in violation of this chapter when a person connects a line conveying sewage to the municipal separate storm sewer system, or allows such a connection to continue.~~

A. All stormwater facilities that discharge to the storm drainage system shall be inspected by the department of public works prior to final approval or occupancy to ensure proper installation of such stormwater facilities.

B. The construction, use, maintenance, or continued existence of illicit connections to the MS4, is prohibited. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. A person is in violation of this chapter when that person connects a line conveying sewage to the MS4, or allows such a connection to continue.

C. If, after notice and opportunity to cure as provided in OMC 4.44.030, the owner does not abate the illicit connection(s) as directed by the city, the city shall have the authority to abate such connection(s) and bill the owner for all reasonable costs. Any delinquent payments shall constitute a lien on the parcel.

13.16.050 ~~Charges for use of the storm drainage system~~ Storm drainage service charges

~~A. Any and all use of the storm drainage system shall be subject to the payment of all fees, costs and charges specified herein.~~

~~B. Residential and nonresidential developed parcels that are vacant shall be subject to full payment of all fees, costs and charges for use of the storm drainage system as specified herein, in accordance with the schedule in Section 4.24.010.~~

A. A storm drainage service charge is imposed on every parcel, including vacant parcels, within the city and the owner(s) thereof, except for the following:

1. Undeveloped parcels.

2. City streets, roads, alleys, and rights-of-way. All such streets, roads, alleys, and rights-of-way collect and convey stormwater to the storm drainage system, the value of which is equal to the storm drainage service charge that would otherwise be imposed.

3. State of Washington highways, so long as the State of Washington maintains, constructs, and improves all conveyances associated with such highways in conformance with all city standards, including standards hereafter established, at no cost to the city.

4. Other streets (excluding driveways and parking areas) not dedicated to the city, but established with a separate right-of-way tract, so long as the owner(s) constructs, maintains, and improves all conveyances and stormwater facilities associated with such streets (except for the streets themselves) in conformance with all city standards in effect as of 2017, at no cost to the city.

B. The storm drainage service charges are set forth in the schedule in OMC Section 4.24.010.

13.16.060 Provision of abutting storm drainage system facilities

Whenever a parcel is developed, the applicable development permit shall require the owner(s) to construct that portion of the ~~storm drainage system~~ MS4 abutting said parcel in accordance with the city's comprehensive plan and applicable development policies and standards for ~~storm drainage~~ stormwater. Provided that the department of public works shall establish policies and procedures for applying ~~LIDs~~ local improvement districts, latecomers agreements ~~and~~, city participation, ~~and other exceptions as promulgated for the city's other utility services.~~

13.16.070 Payment for connection to the ~~storm drainage system~~ MS4

The owner(s) of a parcel shall pay all costs of connecting ~~and discharging runoff from its parcel to the storm drainage system~~ MS4. This obligation shall be assumed in addition to any permit fee or other ~~stormwater~~ storm drainage service charges assessed pursuant to this chapter.

13.16.080 ~~Storm drainage system~~ Stormwater general facilities charges

A. In recognition of the city's investment in the ~~storm drainage system~~ MS4, each applicant for a development permit ~~who will discharge into the MS4~~ shall pay a ~~storm drainage system~~ MS4 general facilities charge ("~~Storm Drainage~~ MS4 GFC") in an amount as set forth in Title 4 of this code at the time of issuance of a building/ ~~or~~ engineering permit, ~~except as provided below.~~

B. ~~The Storm Drainage System GFC may be deferred for residential developments in the Downtown Deferred General Facility Charge Payment Option Area. An unpaid Storm Drainage GFC deferred under this section shall constitute a lien against the property for which it is payable. Payment of the Storm Drainage GFC need not be~~

made prior to the time of connection if the payer provides the Community Planning and Development Department with proof that a Voluntary General Facility Charge Lien Agreement, in a form approved by the City Attorney, has been executed by all legal owners of the property upon which the development activity allowed by the building permit is to occur, and the agreement has been recorded in the office of the Thurston County Auditor. When such deferral is sought for a portion of the development activity, the City, at its sole discretion, shall determine the portions of the Storm Drainage GFC to be applied to the portions of the development activity. If a Voluntary General Facility Charge Lien Agreement has been recorded, payment of the general facility charge shall be deferred under the following conditions:

1. — The Storm Drainage GFC will be assessed at the rate in effect at the time of issuance of the building permit for the project, and
2. — Payment of the Storm Drainage GFC will be made at the earlier of the closing of sale of the property or any portion of the property, or three (3) years from the date of the City's issuance of a Certificate of Occupancy for the property against which the Storm Drainage GFC is assessed, and
3. — A GFC payment made within one (1) year of issuance of the Certificate of Occupancy for the development shall pay the fees assessed at the time of issuance of the building permit, or
4. — A GFC payment made within the second year from issuance of the Certificate of Occupancy for the development shall pay the Storm Drainage GFC plus interest, for a total of 105% of the fees assessed at the time of issuance of the building permit, or
5. — A GFC payment made within the third year from issuance of the Certificate of Occupancy for the development shall pay the Storm Drainage GFC plus interest, for a total of 110% of the fees assessed at the time of issuance of the building permit.

In the event that the Storm Drainage GFC and/or interest (if any) is not paid within the time provided in this subsection, all such unpaid charges, fees and interest shall constitute a lien against the property for which they were assessed. The lien may be enforced either by foreclosure pursuant to RCW 61.12 or by termination of water service pursuant to Section 13.04.430 of this Code. The City may use other collection methods at its option. In the event of foreclosure, the owner at the time of foreclosure shall also pay the City's reasonable attorney fees and costs incurred in the foreclosure process. Notwithstanding the foregoing, the City shall not commence foreclosure proceedings less than thirty (30) calendar days prior to providing written notification to the then-present owner of the property via certified mail with return receipt requested advising of its intent to commence foreclosure proceedings. If the then-present owner cures the default within the thirty-day cure period, no attorney fees and/or costs will be owed.

The deferred payment option set forth in this subsection shall terminate on August 1, 2009, unless otherwise re-authorized by the City Council.

C. — All monies collected from the general facilities charge will be deposited in an account to be used for the capital improvements program of this utility.

B. In recognition of the city's investment in stormwater water quality treatment, each applicant for a development permit who will connect to city streets shall pay a water quality general facilities charge ("Water

Quality GFC") in an amount as set forth in Title 4 of this code at the time of issuance of a building or engineering permit.

C. All monies collected from the MS4 GFC will be deposited in an account to be used for the capital improvements program of this utility.

13.16.090 Credit for additional Reduction in storm drainage detention/retention service charge for impervious surface, flow control or water quality stormwater treatment

A. Nonresidential Parcels. Upon application An owner may submit to the department of public works and submittal of an application for reduction in the storm drainage service charge that includes proof of the quantity of impervious surface or proof that an a stormwater facility approved stormwater system by the city is providing detention/retention flow control or water quality stormwater treatment in excess of the policies and standards that existed at the time of development ("Application"). The owner must execute an approved agreement to maintain the stormwater facility prior to approval of a reduction. After reviewing an Application and inspecting the stormwater facility, if deemed appropriate, the director may approve a reduction in the applicable service charges indicated storm drainage service charge for the parcel or parcels receiving flow control or stormwater treatment as provided in Section 4.24.010(4) of this code. That reduction will be accomplished by adjusting reducing the development category of the affected parcel to the next highest by one category (e.g., from Category III to Category II) and calculating stormwater storm drainage service charges accordingly.

B. If the city approves a reduction in the storm drainage service charge for a parcel or parcels and later determines that the stormwater facility for such parcel or parcels is not providing flow control or stormwater treatment, the city may reduce or revoke the reduction.

BC. Residential Plats. Upon application to the department of public works, the director may approve a reduction in the storm drainage service charge assessed under OMC 4.24.010.D (4), for parcels in a plat approved prior to 1990, to that rate provided for plats approved after 1990 if it can be shown that said plat has a stormwater system facility that meets or exceeds the city flow control and stormwater treatment standards enacted in 1990 and the entity/person responsible therefor executes an approved maintenance agreement with the city to maintain the stormwater facility.

13.16.120 Billing date

The monthly or bimonthly billing date for the storm and surface water utility drainage service charges shall coincide with the billing date for the other city utilities, except that those users who the owner(s) of parcels that do not receive only the services of this utility from other city utilities shall be billed on the date established by the director of administrative services as set forth in Chapter 4.24 of this code.

Except as otherwise provided herein, all monies collected from by the storm and surface water utility shall be deposited in the storm and surface water utility fund which was established under Section 3.22.030 of the Olympia Municipal Code.

13.16.130 Adjustment of charges and appeals

Any person who considers that the charges established for their parcel are in error may apply in writing to the public works department for an adjustment. The grounds of the complaint shall be explicitly stated in the

written complaint. The public works department shall review each complaint and respond to it in writing. A copy of the response shall be forwarded to the complainant and the department of administrative services.

13.16.140 ~~Collection of Lien for delinquent charges~~

The city shall have a lien against parcels to which storm drainage service ~~has charges have~~ been furnished ~~assessed~~, which lien shall be in the amount of the charges due and owing.

13.16.150 Right of entry for inspection, code enforcement and repair

Whenever necessary to make an inspection to enforce any provision of this chapter, or whenever there is reasonable cause to believe there exists a violation of this chapter upon a parcel within the jurisdiction of the city, any authorized official of the city may, upon presentation of proper credentials and consent of any owner or occupant, enter such parcel at all reasonable times to inspect the same or to perform any duty imposed upon him or her by this chapter. If no owner or occupant consents to entry, the official may apply to any court of competent jurisdiction for an order allowing such entry.

13.16.160 Authority to maintain, operate, maintain-regulate and modify-control the utility

The city elects to exercise all lawful powers necessary to maintain, operate, regulate, and control a storm and surface water utility as it exists and may be modified in the future.

13.16.170 Stormwater facility maintenance

Parcel owners shall inspect all stormwater facilities located on their parcels and maintain the facilities in accordance with the Manual so they function as designed.

If the city determines that maintenance or repair is required for a stormwater facility on a parcel not owned by the city, the city shall notify the owner of the parcel of the specific maintenance or repair required. The city shall set a reasonable time in which such work is to be completed by the person given notice. If the required maintenance or repair is not completed within the time set, the city will notify the owner that the city intends to perform the maintenance or repair and to bill the owner for the expenses incurred. The expenses charged to the owner shall become a charge on the owner's storm drainage service charge bill and may be collected by the city in the manner authorized for collection of such bills.

If at any time the city determines that a stormwater facility on private property creates an imminent threat to public health or welfare, the city may take immediate measures to remedy such threat, without providing notice to the owner.

13.16.180 Enforcement – Civil and criminal penalties – Public nuisance

A. The Code Enforcement Officer shall enforce the provisions of this chapter.

B. ~~Any person, firm, or corporation who knowingly violates or fails to comply with the following sections of this chapter: 13.16.017, 13.16.020, 13.16.030 and 13.16.040 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 imprisonment not to exceed ninety (90) days or both such fine and imprisonment. Each day shall be a~~

~~separate violation. Each day of such violation or noncompliance 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.~~

~~EB. As an additional and concurrent remedy, it~~ It shall be a civil infraction for any person, firm, or corporation to violate or fail to comply with the provisions of Olympia Municipal Code Sections 13.16.017, 13.16.020, 13.16.030, and 13.16.040, and 13.16.170. Each day shall be a separate infraction. A person 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.

~~D. See also OMC Chapter 4.44, Uniform Code Enforcement.~~

~~C. As a separate and concurrent remedy, any person who violates or fails to comply with the following sections of this chapter~~ Section 13.17.170 shall be liable to the City for the actual expense of cleanup or required maintenance or repair.

~~ED. It shall be a public nuisance to violate or fail to comply with any of the following sections of this chapter: 13.16.017, 13.16.020, 13.16.030 and 13.16.040.~~

~~See also OMC Chapter 4.44, Uniform Code Enforcement.~~

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. 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 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Amending Olympia School District Impact Fees

Agenda Date: 12/17/2019
Agenda Item Number: 4.N
File Number: 19-1122

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Amending Olympia School District Impact Fees

Recommended Action

Committee Recommendation:

Not referred to a Committee

City Manager Recommendation:

Move to approve the ordinance amending the Olympia School District Impact Fees on second reading.

Report

Issue:

Whether to approve the ordinance amending the Olympia School District Impact Fees on first reading and forward to second reading.

Staff Contact:

Debbie Sullivan, Administrative Services Director, 360.753.8499

Presenter(s):

None - Consent calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

The proposed update to the Olympia School District (OSD) Impact fees is based on the adoption by the School Board's 2020-2025 Capital Facilities Plan (CFP). The Assistant Superintendent presented their CFP on October 29 and proposed impact fee changes to the City Council on November 12. A public hearing was held on October 29 and November 19.

The impact fee rates are calculated based, in part, on the projects identified in the District's CFP that are needed to address future growth. School impact fees are charged only to residential projects inside Olympia city limits. The City collects the fees on behalf of the school district and remits the

fees with interest to them on a monthly basis. Based on the school district's approved CFP, the fees are as follows:

January 1 - June 30 2020

	2019	2020
Single Family	\$4,972	\$5,177 (\$205 increase from 2019)
Multi-Family: Non-Downtown	\$2,575	\$2,033 (\$542 decrease from 2019)
Multi-Family: Downtown	\$ 0	\$ 0 (No change from 2019)

July 1 - December 31, 2020

	2019	2020
Single Family	\$4,972	\$5,177 (\$205 increase from 2019)
Multi-Family: Non-Downtown	\$2,575	\$2,033 (\$542 decrease from 2019)
Multi-Family: Downtown	\$ 0	\$1,627 (\$1,627 increase from 2019)

Neighborhood/Community Interests (if known):

Impact fees collected will help pay for new or expanded school facilities when the demand for services is created by new development.

Options:

1. Move to approve the ordinance amending the Olympia School District impact fees on first reading and forward to second reading.
2. Do not approve the Ordinance amending the Olympia School District impact fees. The City will not be able to collect OSD impact fees in 2020.

Financial Impact:

Varies based on the number of new single-family or multi-family residential permits issued in 2020.

Attachments:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, AMENDING SCHOOL IMPACT FEES, AND AMENDING SECTION 15.16.030 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, RCW 82.02.050 - .090 authorizes the City of Olympia to adopt an ordinance imposing impact fees; and

WHEREAS, in Ordinance Nos. 5490 and 6164, the City of Olympia did adopt such impact fees, to include "School Impact Fees"; and

WHEREAS, the Olympia School District has updated its capital facility plan and revised its proposed impact fees as reflected in the School District's adopted 2020-2025 Capital Facility Plan; and

WHEREAS, the City Council has called for an annual review of impact fees, concurrent with the annual review of the Capital Facilities Plan (CFP) element of the City's Comprehensive Plan, to consider adjustments to the fees; and

WHEREAS, following said review of the 2020-2025 CFP, the Olympia City Council desires to revise School Impact Fees as adopted in the Olympia School District's 2020-2025 Capital Facility Plan; and

WHEREAS, this Ordinance is adopted pursuant to Article 11, Section 11, of the Washington State Constitution; and

WHEREAS, this Ordinance is supported by the staff report, attachments, and documents on file with the Department of Administrative Services;

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

Section 1. Amendment of OMC 15.16.030. Section 15.16.030 of the Olympia Municipal Code is hereby amended to read as follows:

15.16.030 - Schedule C, School Impact Fees

For complete building permit applications submitted after the effective date of this title, the following schedule shall apply:

(Applies to residential development only)

Housing Type:	
Single Family - detached (including manufactured homes on individual lots)	\$4,972 <u>\$5,177</u>
Multifamily per unit (including townhouses) <u>(Non-Downtown)</u>	\$2,575 <u>\$2,033</u>
Downtown Multi Family per units (including townhouses) - <u>Effective July 1, 2020</u>	\$-0 <u>\$1,627</u>

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Severability. The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances, shall be unaffected.

Section 4. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. Effective Date. This Ordinance shall be in force and effect on January 1, 2020, after its passage by the Olympia City Council and publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance Authorizing State-Mandated Amendments to the Model Business and Occupation Tax Ordinance

Agenda Date: 12/17/2019
Agenda Item Number: 4.O
File Number:19-1124

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Authorizing State-Mandated Amendments to the Model Business and Occupation Tax Ordinance

Recommended Action

Committee Recommendation:

The Finance Committee recommends approving the State-mandated changes to the Model Business and Occupation Tax Ordinance

City Manager Recommendation:

Move to approve the ordinance authorizing State-mandated amendments to the Model Business and Occupation Tax ordinance on second reading.

Report

Issue:

Whether to approve the State-mandated changes to the Model Business and Occupation Tax Ordinance

Staff Contact:

Thomas Donnelly, Fiscal Services Accounting Manager, Administrative Services, 360.570.3816

Presenter(s):

None - Consent calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

A task force of Business and Occupation (B&O) cities, business community representatives and the Association of Washington Cities developed recommendations for the legislature at the beginning of the 2019 legislative session for the purposes of clarifying definitions within existing local laws and extending the period of time for annual filings. These recommendations were incorporated into House Bills 1403 and 1059.

House Bill 1403 amends the apportionment rule simplifying the calculation clarifying definitions related to business and occupation taxes. House Bill 1059 changes the annual filing deadline for taxpayers who file annual returns. Both House Bills passed and were signed into legislation. The bills require all cities with a B&O Tax ordinance to adopt the following changes and put them into effective January 1, 2020:

1. Effective January 1, 2020 - Change the service income apportionment method used for calculating business and occupation tax; and
2. Effective January 1, 2021 - Change the due date for annual tax filers from January 31 to April 15.

Neighborhood/Community Interests

Staff will communicate these changes on the B&O Tax filing forms and update the City's website. Additional notification from the State's business licensing service will be provided when applying for, or renewing a business license.

Options:

1. Approve changes to the City's B&O Tax Ordinance to comply with recently passed State legislation.
2. Direct staff to perform additional analysis and reschedule for further discussion.
3. Direct staff to modify with recommended changes and approve as amended which may put the City out of compliance with the recently enacted State legislation.

Financial Impact:

Unable to determine at this time. Fiscal Services will report after year one and year two as to any financial impacts relating new legislation.

Attachments:

Ordinance
Model Apportionment Rule for Taxpayer Use

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, RELATING TO BUSINESS AND OCCUPATION TAX; AMENDING SECTIONS 5.04.040, 5.04.105, 5.05.110, AND 5.05.040 OF THE OLYMPIA MUNICIPAL CODE.

WHEREAS, in order to provide for a more uniform system of city business and occupation (B&O) taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities, in 2003 the Washington State Legislature passed SHB 2030 (codified as Chapter 35.102 RCW) requiring all Washington cities imposing a B&O tax to adopt the mandatory provisions of the Model B&O Ordinance for their individual tax codes; and

WHEREAS, in 2004, the City of Olympia enacted Ordinance No. 6328, which substantially adopted the Model B&O Ordinance consistent with the provisions of RCW 35.102.040, while tailoring it where permitted to reflect the unique local characteristics of Olympia; and

WHEREAS, in 2019, the Washington State Legislature passed SHB 1403, which changed the service income apportionment method used for the purpose of computing B&O tax and the filing deadline for annual B&O tax returns, and 2SHB 1059, which extended the tax filing deadline to April 15 for annual tax returns; and

WHEREAS, the 2019 legislation required amendments to the Model B&O Ordinance, and it is therefore necessary to amend the Olympia Municipal Code accordingly to conform with the Model B&O Ordinance;

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

Section 1. Amendment of OMC 5.04.040. Olympia Municipal Code 5.04.040 is hereby amended to read as follows:

5.04.040 Definitions

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

"Advance" "reimbursement":

1. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.
2. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

"Agricultural product" "farmer":

1. "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal

that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.

2. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packinghouse. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

"Artistic or cultural organization":

1. "Artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (10) of this section, for viewing or attendance by the general public.

2. The organization must be a not-for-profit corporation under Chapter 24.03 RCW.

3. The organization must be managed by a governing board of not less than eight (8) individuals, none of whom is a paid employee of the organization or by a corporation sole under Chapter 24.12 RCW.

4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees, except in the form of services rendered by the corporation in accordance with its purposes and bylaws.

5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.

6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.
9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, sexual orientation, Vietnam or disable veteran status, or the present of any mental or physical disability.
10. The term "artistic or cultural exhibitions, presentation, or performances or cultural or art education programs" is limited to:
 - a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
 - b. A musical or dramatic performance or series of performances; or
 - c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

"Business": "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

"Business and occupation tax": "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

"By Product": See Product.

"Casual Sale": See Sale.

"Commercial" or "industrial use": Means the following uses of products, including by-products, by the extractor or manufacturer thereof:

1. Any use as a consumer;
2. The manufacturing of products including articles, substances or commodities;

"Company": See Person.

"Competitive Telephone Service": "Competitive telephone service" means the providing by any person or telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are

not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

"Consumer": "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for a consumer other than for the purpose of:
 - a. resale as tangible or intangible personal property in the regular course of business;
 - b. incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;
 - c. incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or
 - d. consuming the property in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;
2. Any person engaged in any business activity taxable under Section 5.04.060(G);
3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in this section, other than for resale in the regular course of business;
5. Any person who is an end user of software;
6. Any person engaged in the business of "public road construction" in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

7. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

8. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

9. Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

"Delivery": "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

"Digital Automated Service", "digital code", and "digital goods": "Digital Automated Service", "digital code", and "digital goods" have the same meaning as in RCW 82.04.192.

"Digital products": "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

"Director": "Director" means the Clerk-Treasurer of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

"Eligible gross receipts tax": "Eligible gross receipts tax" means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within Section 5.04.060; and
2. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
3. Is not, pursuant to law or custom, separately stated from the sales price; and
4. Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
5. Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

“Engaging in business”:

1. The term “Engaging in business” means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
2. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de ~~minimis-minimis~~ business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of “engaging in business” in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.
3. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.
 - a. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.
 - b. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.
 - c. Soliciting sales.

- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- f. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- h. Collecting current or delinquent accounts.
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architects, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
- n. Investigating, resolving, or otherwise assisting in resolving customer complaints.
- o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
- p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.

- a. Meeting with suppliers of goods and services as a customer.
- b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
- c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
- d. Renting tangible or intangible property as a customer when the property is not used in the City.
- e. Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

"Extracting": "Extracting" in the activity engaged in by an extractor and is reportable under the extracting classification.

"Extractor": "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. "Extractor" does not

include persons performing under contract the necessary labor or mechanical services for others; Or persons meeting the definition of farmer.

"Extractor for Hire": "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Government contracting": See Sale at Retail.

"Gross income of the business": "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Gross proceeds of sales": "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"In this City" or "within this City": "In this City" or "within this City" includes all federal areas lying within the corporate city limits of the City of Olympia.

"Isolated Sale": See Sale.

"Magazine": See Newspaper.

"Manufacturing": "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

"Manufacturer" "to manufacture" "processing for hire":

1. "Manufacturer" means every person whom, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire and not a manufacturer. A business not located in this City that is the owner of materials or ingredients processed

for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.

2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- a. the production of special made or custom made articles;
- b. the production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; and
- c. crushing and/or blending of rock, sand, stone, gravel, or ore; and
- d. the producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

3. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

"Newspaper" "magazine" "periodical": "Newspaper" means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. "Magazine" or "periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

"Non-profit corporation or non-profit organization": "Non-profit corporation or non-profit organization" means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code, as may hereafter be amended, or is specifically exempted from the requirement to apply for its tax exempt status under Sec. 501(c)(3) of the Internal Revenue Code, or as may hereafter be amended. Where the term "non-profit organization" is used, it is meant to include non-profit corporations.

"Office" "place of business": "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

1. Whose address the person uses as its business mailing address;
2. Where the place of primary use is shown on a telephone billing or a location contains a telephone line listed in a public telephone directory or other similar publication under the business name; and
3. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and
4. Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.
5. A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

"Person": "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, social, non-profit, or otherwise and the United States or any instrumentality thereof.

"Precious metal bullion or monetized bullion": "Precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of

exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

"Processing for hire": See Manufacturer.

"Product" "Byproduct": "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort. "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

"Public road construction": See Sale at Retail.

"Retailing": "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

"Retail Sale": See Sale at Retail.

"Retail Service": "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;
5. Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
6. Service charges associated with tickets to professional sporting events; and

7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.

8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

"Royalties": "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

"Sale" "Casual or isolated sale":

1. "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail", "retail sale", or "retail service". It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

2. "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

"Sale at retail" or "Retail sale":

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity that is taxable under OMC 5.04.060 (G).

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

g. The installing, repairing, altering, or improving of digital goods for consumers;

h. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), (f) and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. a. "Sale at retail" or "retail sale" shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection 5(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activated prewritten computer software and put the software into use. There is no separate

sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser. The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

- i. custom software
 - ii. the customization of prewritten software
- b. i. The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.
- ii. The service described in this subsection 5(b)(i) includes the right to access and use prewritten software to perform data processing.

For purposes of this subsection 5(b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. "Sale at retail" or "retail sale" shall also include Public Road Construction, which is the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

7. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

8. "Sale at retail" or "retail sale" shall also include Government Contracting, which is the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to

chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation.

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This is reported under the service or other classification).

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This is reported under the service and other classification.)

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

"Sale at wholesale" "wholesale sale": "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in Subsection 5.b.i, which is not a retail sale, and any charge made for labor and services

rendered for persons who are not customers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company for the purpose of resale, as contemplated by RCW 35.21.715.

"Service": shall include the sale of or charge for personal, business or professional activities, including amounts designated as internet, rent, fees, admission, and other service emoluments however designated, received by persons engaging in business activities not included in the designation of "retail service," "sale at retail," or "sale at wholesale." By way of example only, "service" includes but is not limited to legal and engineering services, consulting, and appraisal services.

"Software" "prewritten or canned software" "custom software" "customization of canned software" "master copies" "retained rights":

1. "Prewritten or canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.
2. "Custom software" means software created for a single person.
3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.
4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

6. "Software" means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

"Taxpayer": "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

"Tuition fee": "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit corporation or a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as may hereafter be amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

"Value proceeding or accruing": "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

"Value of products":

1. The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which

shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

2. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

3. Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

“Wholesale sale”: See Sale at Wholesale.

“Wholesaling”: “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

Section 2. Amendment of OMC 5.04.105a. Olympia Municipal Code Section 5.04.105a is hereby amended to read as follows:

5.04.105a Allocation and apportionment of income when activities take place in more than one jurisdiction

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

- A. Gross income derived from all activities other than those taxed as service or royalties under OMC 5.04.060.G shall be allocated to the location where the activity takes place.
- B. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

C. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

1. The seller's place of business if the purchaser receives the digital product at the seller's place of business;
2. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;
3. If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;
4. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and
5. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

D. If none of the methods in Subsection 5.04.105a (C) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 5.04.105a (C) (1) through (5), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 5.04.105a (C) (4). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in Subsections 5.04.105a (C) (1) through (5) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

~~For purposes of subsections 5.04.105a (C) (1) through (5), "Receive" has the same meaning as in RCW 82.32.730.~~

E. For purposes of subsections 5.04.105a.C.1 through 5, the following definitions apply:

1. "Digital automated services", "digital codes", and "digital goods" have the same meaning as in RCW 82.02.192.

2. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6) (c).

3. "Receive" has the same meaning as in RCW 82.32.730(9)(f).

EF. Gross income derived from activities taxed as services and other activities taxed under OMC 5.04.060.G shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

1. The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

- a. The individual is primarily assigned within the city;
- b. The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of the employee's service for the tax period in the city; or
- c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of the individual's service in any city and the employee resides in the city.

2. The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if: the customer location is in the city.

- a. ~~The customer location is in the city; or~~
 - b. ~~The income-producing activity is performed in more than one location and a greater proportion of the service income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or~~
 - c. ~~The service income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.~~
3. ~~If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer~~

may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

a.—Separate accounting;

b.—The use of a single factor;

c.—The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

d.—The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

D. The definitions in this subsection apply throughout this section.

1.—"Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city; less any exemptions or deductions available.

2.—"Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

3.—"Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

4.—"Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

5.—"Primarily assigned" means the business location of the taxpayer where the individual performs the individual's duties.

6.—"Service taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

7.—"Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

~~8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.~~

~~9. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.~~

a. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (F) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (F)(a), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

b. If the allocation and apportionment provisions of this subsection (a) do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

i. Separate accounting;

ii. The exclusion of any one or more of the factors;

iii. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

iv. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

c. The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (2 (b)) of this subsection must prove by a preponderance of the evidence:

- i. That the allocation and apportionment provisions of this subsection (F) do not fairly represent the extent of the taxpayer's business activity in the city; and
- ii. That the alternative to such provisions is reasonable.

The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

d. If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).

e. A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

f. The following definitions apply throughout this section:

i. "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

ii. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

iii. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

iv. "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

v. "Customer location" means the following:

(a). For a customer not engaged in business, if the service requires the customer to be physically present where the service is performed.

(b) For a customer not engaged in business, if the service does not require the customer to be physically present:

(1). The customer's residence; or

(2). If the customer's residence is not known, the customer's billing/mailling address.

(c) For a customer engaged in business:

(1). Where the services are ordered from;

(2). At the customer's billing/mailling address if the location from which the services are ordered is not known; or

(d). At the customer's commercial domicile if none of the above are known.

vi. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

vii. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

viii. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

ix. Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

g. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Section 3. Amendment of OMC 5.04.110. Olympia Municipal Code 5.04.110 is hereby amended to read as follows:

5.04.110 Exemptions

The provisions of this chapter shall not apply to the following:

A. This chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons; provided, however, that the exemption set forth in the foregoing provision of this OMC 5.04.110(A) shall not apply to medical services, including a hospital, as defined in RCW 70.41, if gross income of the business of the medical service or hospital, net of exemptions and deductions (if any) permitted to be taken under OMC 5.04.110 and OMC 5.04.120, exceeds \$30 million.

B. Certain social and beneficiary organizations. This chapter shall not apply to social benefit societies or social fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

C. Certain corporations furnishing aid and relief. This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States of America and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

D. Operation of sheltered workshops. This chapter shall not apply to income received from the Department of Social and Health Services for the cost of care, maintenance, support, and training of persons with developmental disabilities at non-profit group training homes as defined by Chapter 71A.22 RCW or to the business activities of non-profit organizations from the operation of sheltered workshops. For the purposes of this subsection, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such non-profit organizations which are performed for the primary purpose of:

1. Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market do not exist; or
2. Providing evaluation and work adjustment services for handicapped individuals.

E. Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.

F. Health maintenance organization, health care service contractor, certified health plan.

1. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. However, per RCW 48.14.0201(7), this exemption is not intended to, and shall not, impair the City's ability to impose a tax hereunder upon the health care services directly delivered by the employees of a health maintenance organization under RCW chapter 48.46.

G. Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Olympia Municipal Code Chapter 5.84.

H. Investments – dividends from subsidiary corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

I. International banking facilities. This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

J. Insurance business. This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the State pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

K. Farmers - agriculture. This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats or any other agricultural product that is raised, caught, produced, or manufactured by such persons.

L. Boxing/Wrestling exhibitions. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Department of Licensing.

M. Racing. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.

N. Ride sharing. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.

O. Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as may be amended hereafter.

2. A booth renter is an independent contractor for purposes of this chapter.

P. Amounts derived from sale, lease or rental of real estate. This chapter shall not apply to gross proceeds derived from the sale, lease or rental of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

Q. Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

R. Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW ~~82.36.010~~ 82.38.020 and exempt under RCW ~~82.35.0440~~ 82.38.280, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

S. Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 65.04.010 and exempt in RCW 66.08.120.

T. Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

U. Community Events and Farmers Markets. This chapter shall not apply to community events licensed under OMC 5.17, and farmers markets licensed under OMC 5.18, as specified in OMC 5.17 and OMC 5.18.

V. Accommodation sales. This Chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

W. Taxes collected as trust funds. This Chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

X. United States gross income. The gross income received by the United States or any instrumentality thereof and by the state or any municipal subdivision thereof.

Section 4. Amendment of OMC 5.04.120. Olympia Municipal Code 5.04.120 is hereby amended to read as follows:

5.04.120 Deductions

In computing the license fee or tax, there may be deducted from the measure of tax the following items:

A. Membership fees and certain service fees by non-profit youth organization. For purposes of this subsection, "non-profit youth organization" means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or
2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

B. Fees, dues, charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. initiation fees;

2. dues;
3. contributions;
4. donations;
5. tuition fees;
6. charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public; charges made for operation of privately operated kindergartens;
7. and endowment funds.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

C. Artistic and cultural organizations -- income from business activities. In computing tax, there may be deducted from the measure of tax those amounts received by artistic or cultural organizations, as defined in this chapter, which represent:

1. Income derived from business activities conducted by the organization, provided that this deduction does not apply to retail sales made by artistic and cultural organizations;
2. Amounts received from the United States or any instrumentality thereof or from the State of Washington, or any municipal corporation or subdivision thereof as compensation for; or to support artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public; or
3. Amounts received as tuition charges collected for the privilege of attending artistic or cultural education programs.

D. Artistic or cultural organization -- Deduction for tax under the manufacturing classification -- Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs. In computing tax, there may be deducted from the measure of tax by persons subject to payment of the tax under the manufacturing classification, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization, as defined in this chapter, solely for the purpose of

manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

E. Day care activities. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

F. Compensation from public entities for health or social welfare services -- exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, "employee benefit plan" includes the military benefits program authorized in 10 USC Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.

G. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

H. Interest on loans to farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives. In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers, or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

I. Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

~~J. Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.~~ Receipts from the sale of tangible personal property and retail services delivered outside the City but within the State of Washington. Effective January 1, 2008, amounts included in the gross

receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification

K. Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

L. Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

M. Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership; or

b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area that all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

- a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;
- b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association; and,
- c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. Sales at wholesale or retail of precious metal bullion and monetized bullion. In computing tax, there may be deducted from the measure of tax amounts representing the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salespeople or other employees.

O. Amounts representing rental of real estate for assisted living facilities. In computing tax, there may be deducted from the measure of the tax amounts derived from the value of the rental of real estate for "assisted living facilities." To qualify for the deduction, the assisted living facility must meet the definition of "assisted living facility" and licensed by the State of Washington under RCW 18.20. The deduction shall be in the amount of twenty-five percent (25%) of the gross monthly billing when the boarder has resided within the assisted living facility for longer than thirty (30) days.

P. Radio and television broadcasting - advertising agency fees - national, regional, and network advertising - interstate allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

1. advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;
2. actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and
3. local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

Q. Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the city is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

R. Receipts from the sale of tangible personal property delivered outside the City but within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classification. (Note: The cities which tax retail services under the retailing classification, and not the service and other classification, should also include retail services in this deduction (both in the title and in the deduction itself)).

S. Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

Section 5. Amendment of OMC 5.05.040. Olympia Municipal Code 5.05.040 is hereby amended to read as follows:

5.05.040 When due and payable -- Reporting periods -- Monthly, quarterly, and annual returns -- Threshold provisions or Relief from filing requirements -- Computing time periods -- Failure to file returns

A. Other than any annual license fee or registration fee assessed under this Title, the tax imposed by this Title or Chapter 5.04 of the Code shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to an annual or monthly reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time provided in RCW 82.32.045 (1) thru (3).

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is full and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. Notwithstanding subsection (A) of this section, a person shall not owe any tax under this chapter and Chapter 5.04 of this Code if the following conditions are met:

1. The person's gross income of the business from all activities taxable under Chapter 5.04 of this Code is less than \$20,000 dollars per year or is equal to or less than \$5,000 during any quarter if reporting on a quarterly basis; and

2. The person is not required to collect or pay to the City any other tax or fee which the City is authorized to collect.

Regardless of reporting period assigned, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, does not exceed the threshold amount in the current calendar year or calendar quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

E. A taxpayer who commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity subject to the conditions set forth in subsection D above.

F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 6. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 7. 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 8. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 9. 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:

Model Rule

Apportionment of Service Receipts beginning January 1, 2020

(1) Introduction.

Substitute House Bill 1403 simplifies the administration of municipal business and occupation tax apportionment primarily by changing the definition of customer location to adopt market-based sourcing in the income factor. SHB 1403 further simplifies the administration of municipal business and occupation tax apportionment by excluding service receipts from the income factor denominator attributable to jurisdictions where the taxpayer would not be subject to tax and establishing guidelines for the application of an alternative apportionment method. No changes are made to the payroll factor. The intent of this rule is to provide guidance on the new method of apportioning service income beginning January 1, 2020.

(2) Apportionable Service revenue apportioned beginning January 1, 2020.

Gross income derived from service activities taxed under _____ [*insert city code reference to .050(1)(g) – any other business activity than those enumerated*] after January 1, 2020, shall be apportioned to the City by multiplying the apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two (2).

- (a) The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in the City during the tax period by the taxpayer and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the City if:
- (i) The individual is primarily assigned within the City;
 - (ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or
 - (iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city, and the employee resides in the city.

Per [*insert city code reference to .077(7)(f) – Individual*], “Individual” means any individual who, under the usual common law rules applicable in determining

Apportionment of Service Receipts beginning January 1, 2020

the employer-employee relationship, has the status of an employee of that taxpayer.

- (b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the City during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the City if the customer location is in the City.
- (c) Income Factor Denominator – Excluded Income. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this section (2) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable.
- (d) If the allocation and apportionment provisions of this section (2) do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
 - (i) Separate accounting;
 - (ii) The exclusion of any one or more of the factors;
 - (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
 - (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (e) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this section (2) must prove by a preponderance of the evidence:
 - (i) That the allocation and apportionment provisions of this section (2) do not fairly represent the extent of the taxpayer's business activity in the city; and
 - (ii) That the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method

Apportionment of Service Receipts beginning January 1, 2020

to effectuate an equitable allocation and apportionment of the taxpayer's income.

- (f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section (2).
 - (g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.
- (3) Definitions. The definitions in this section apply throughout this rule.
- (a) **"Apportionable income"** means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.
 - (b) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether denominated a gross receipts tax or a tax imposed on the privilege of doing business.
 - (c) **"Compensation"** means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.
 - (d) **"Customer"** means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.

Apportionment of Service Receipts beginning January 1, 2020

- (e) **"Customer Location"** means the following:
- (i) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.
 - (ii) For a customer not engaged in business, if the service does not require the customer to be physically present:
 - (A) The customer's residence; or
 - (B) If the customer's residence is not known, the customer's billing/ mailing address.
 - (iii) For a customer engaged in business:
 - (A) Where the services are ordered from; or
 - (B) At the customer's billing/ mailing address if the location from which the services are ordered is not known; or
 - (C) At the customer's commercial domicile if none of the above are known.

The customer location of a customer under (3)(e)(ii) and (3)(e)(iii) is determined based on a cascading method or series of steps. Only if the first step is unknown may the taxpayer move to the next step and so forth.

- (f) **"Individual"** means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
- (g) **"Not Taxable"** means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.
- (h) **"Primarily assigned"** means the business location of the taxpayer where the individual performs his or her duties.
- (i) **"Service taxable income"** or "service income" means gross income of the business subject to tax under either the service or royalty classification.
- (j) **"Tax period"** means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

Apportionment of Service Receipts beginning January 1, 2020

- (4) Examples. The following examples identify a number of facts and then state a conclusion. The tax status of each circumstance must be determined after a review of all the facts and circumstances.
- (a) **Example 1:** An individual with health insurance seeks medical services at a doctor's office in Seattle. The individual is the customer for purposes of determining customer location even though the individual may utilize their insurance to pay for the medical services provided to them. The individual is required to be present at the doctor's office to receive the services, therefore the service receipts are sourced to the location of the doctor's office where the services are performed.
- (b) **Example 2:** PCA Co. provides electronic design plans for residential homeowners in Washington, Oregon and Idaho. The service is designed to allow home owners to be their own general contractors. Homeowners upload pictures of their home to PCA's website and PCA delivers electronic plans and projected work plans to the customer's email. PCA reports under the service activity classification and has its only business location in Seattle. Because PCA's service does not require the customer to be physically present and their customers are not engaged in business, PCA would source their receipts first to the customer residence. Only if the customer's residence is not known, PCA would source their receipts to the customer's billing/ mailing address.
- (c) **Example 3:** MNO Co. provides professional services to customers engaged in business throughout Washington. MNO maintains billing address information for all of its customers. In addition, MNO also has information about the location from which the services are ordered, contracts, invoices, and other communication with the customer. MNO must follow the sourcing hierarchy in subsection 3(e) above for sourcing service receipts to the customer location. MNO would first determine the location from which the services are ordered; if the location from which the services were ordered was not known, MNO would use the customer's billing or mailing address; and finally, if MNO did not know its customer's billing or mailing address, MNO would source the service income to the customer's place of domicile or where it is headquartered. In this example, MNO has information in its business records to identify the location from which the services were

Apportionment of Service Receipts beginning January 1, 2020

ordered. Therefore, MNO will source its service receipts to the location from which services were ordered and will not use the customer billing addresses.

- (d) **Example 4:** QRS LLC is located in Tacoma, Washington and provides architectural services to customers engaged in business throughout Washington State. TUV Co., a software company located in Seattle, contracts with QRS to draft plans to renovate their branch office in Bellevue. The order was made by TUV personnel located in Seattle. QRS will source the TUV service receipts to Seattle, the location from which the services were ordered.
- (e) **Example 5:** Safe-T Service LLC is a security company that provides building security to customers engaged in business throughout Washington State. Huge Software Co. contracts with Safe-T Service to perform afterhours security for their sales office in Seattle. The services were ordered from the sales office in Seattle and approved by the company's main office and procurement department in Bellevue. Safe-T Service will source Huge Software Co. service receipts to Seattle, the location from which the services were ordered and not from where the order was approved.
- (f) **Example 6:** Company MMM reports under the service classification and has its only business location in Seattle. MMM has employees but also maintains contracts with independent contractors who sell the company's services. The independent contractors are paid by commissions. The independent contractors are located partly outside of the state and partly within the state. MMM employs managers who visit the independent contractors but are assigned to the Seattle office. Company MMM has nexus outside of the state due to their independent contractors working with MMM's ultimate customer. MMM should compute their taxable service income using the two-factor method. Since their employees and the traveling managers are assigned to the Seattle office, 100% of the payroll is assigned to Seattle. Assuming that 75% of the service income is attributable to customer locations outside of Seattle (see subsection (3)(e) for definition of customer location) and 25% inside of Seattle, then the two-factor apportionment would be as follows:

$$\text{Apportionment Factor} = \frac{100\% (\text{Seattle payroll factor}) + 25\% (\text{Seattle income factor})}{2} = \frac{125\%}{2} = 62.5\%$$

Apportionment of Service Receipts beginning January 1, 2020

(g) **Example 7:** MNO Corp, a service corporation based in Seattle, provides web-based services through the means of the Internet to individual customers who are residents of Seattle and elsewhere. Sales of 20 percent of MNO Corp’s web-based services are attributed to customers within Seattle (see subsection (3)(e)) and 40 percent of MNO Corp’s service employees are located in Seattle. Assuming that no service income is excluded from the denominator because the taxpayer is taxable in all customer locations, the two-factor apportionment would be as follows:

$$\text{Apportionment Factor} = \frac{40\% \text{ (Seattle payroll factor)} + 20\% \text{ (Seattle income factor)}}{2} = \frac{60\%}{2} = 30\%$$

(h) **Example 8:** Same as Example 7, however 10 percent of MNO Company’s sales are attributable to cities in which MNO is “not taxable” (the taxpayer is not subject to a business activities tax and the taxpayer is not deemed to have substantial nexus in the customer location , see subsection 3(g) above). Furthermore, some of the service activity is performed in Seattle. As a result, 10 percent of MNO’s sales must be excluded from the income factor denominator. Therefore, the service apportionment factor and the two-factor apportionment would be as follows:

$$\text{Service activity income factor} = \frac{20\% \text{ (Service income)}}{100\% \text{ (Worldwide service activity income)} - 10\% \text{ (Excluded income)}} = \frac{20\%}{90\%} = 22.2\%$$

$$\text{Apportionment Factor} = \frac{40\% \text{ (Payroll factor)} + 22.2\% \text{ (20/90 Service income factor)}}{2} = \frac{62.2\%}{2} = 31.1\%$$

(i) **Example 9:** Hobbs & Smith Co. provides engineering consulting services to businesses. Hobbs & Smith has offices in Seattle, Bellingham and Tacoma. Hobbs & Smith’s service income is attributed 40-percent in Seattle, 40-percent in Bellingham, and 20-percent in Tacoma. Their office staffing is 60-percent in Seattle, 30-percent in Bellingham and 10-percent in Tacoma. Projects are shared among the various offices. A staff working a project may sit in one office and report to a specialist and managers that are in different offices. Therefore, some of the service activity is performed in all of Hobbs & Smith’s offices. The service income apportionment factor and two-factor apportionment would be as follows:

Apportionment of Service Receipts beginning January 1, 2020

$$\text{Seattle Apportionment Factor} = \frac{60\% (\text{Seattle payroll factor}) + 40\% (\text{Seattle income factor})}{2} = \frac{100\%}{2} = 50.0\%$$

$$\text{Bellingham Apportionment Factor} = \frac{30\% (\text{Bellingham payroll factor}) + 40\% (\text{Bellingham income factor})}{2} = \frac{70\%}{2} = 35.0\%$$

$$\text{Tacoma Apportionment Factor} = \frac{10\% (\text{Tacoma payroll factor}) + 20\% (\text{Tacoma income factor})}{2} = \frac{30\%}{2} = 15.0\%$$

(j) **Example 10:** Same as Example 9, however Hobbs & Smith only has offices in Seattle and Tacoma. Hobbs & Smith service income is 50-percent in Seattle, 30-percent in Tacoma, and 20-percent in Fife under (e) of section (3) above. Their office staffing is 40-percent in Seattle and 60-percent in Tacoma. Hobbs & Smith is “not taxable” in Fife because Fife does not impose a business activities tax and the taxpayer is not deemed to have a substantial nexus in Fife (see subsection (g) of section (3)). Fife customers travel to the Tacoma office for business meetings with Hobbs & Smith. Projects are shared among the various offices. A staff working a project may sit in one office and report to a specialist and managers that are in different offices. Therefore, some of the service activity is performed in all of Hobbs & Smith’s offices. The service income apportionment factor and the two-factor apportionment would be as follows:

$$\text{Seattle service income factor} = \frac{50\% (\text{Service income})}{100\% (\text{Worldwide service income}) - 20\% (\text{Excluded income})} = \frac{50\%}{80\%} = 62.5\%$$

$$\text{Seattle Apportionment Factor} = \frac{40\% (\text{Seattle payroll factor}) + 62.5\% (50/80 \text{ Service income factor})}{2} = \frac{103\%}{2} = 51\%$$

$$\begin{aligned} \text{Tacoma service income factor} &= \frac{30\% (\text{Service income})}{100\% (\text{Worldwide service income}) - 20\% (\text{Excluded income})} = \frac{30\%}{80\%} = 37.5\% \\ &= \frac{60\% (\text{Tacoma payroll factor}) + 37.5\% (30/80 \text{ Service income factor})}{2} = \frac{98\%}{2} = 49\% \end{aligned}$$

Apportionment of Service Receipts beginning January 1, 2020

Tacoma Apportionment Factor **2** **2**

(k) **Example 11:** Same as Example 10, except all work is done in the Seattle office and the Tacoma office handles the administrative operations of the business. Hobbs & Smith have nexus in Tacoma because of the presence of the office. However, because none of the work is done in Tacoma, none of the Fife income would be excluded from the service income factor for Tacoma. The service income apportionment factor and the two-factor apportionment would be as follows:

$$\text{Seattle service income factor} = \frac{50\% \text{ (Service income)}}{100\% \text{ (Worldwide service income)} - 20\% \text{ (Excluded income)}} = \frac{50\%}{80\%} = 62.5\%$$

$$\text{Seattle Apportionment Factor} = \frac{40\% \text{ (Seattle payroll factor)} + 62.5\% \text{ (50/80 Service income factor)}}{2} = \frac{103\%}{2} = 51\%$$

$$\text{Tacoma service income factor} = \frac{30\% \text{ (Service income)}}{100\% \text{ (Worldwide service income)}} = \frac{30\%}{100\%} = 30\%$$

$$\text{Tacoma Apportionment Factor} = \frac{60\% \text{ (Tacoma payroll factor)} + 30\% \text{ (30/100 Service income factor)}}{2} = \frac{90\%}{2} = 45\%$$



City Council

Approval of an Ordinance Adopting the 2020 Operating, Special Funds, Capital Budget, Capital Facilities Plan, and 2020-2025 Financial Plan

Agenda Date: 12/17/2019
Agenda Item Number: 4.P
File Number: 19-1149

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Adopting the 2020 Operating, Special Funds, Capital Budget, Capital Facilities Plan, and 2020-2025 Financial Plan

Recommended Action

Committee Recommendation:

The Finance Committee considered public testimony received at Public Hearings held on October 29 and November 19, as well as the Council budget balancing discussion on November 26.

City Manager Recommendation:

Move to approve the ordinance adopting the 2020 Operating, Special Funds and Capital budgets, and the Capital Facilities Plan: 2020-2025 Financial Plan on second reading.

Report

Issue:

Whether to approve the ordinance adopting the 2020 Operating, Special Funds and Capital budgets, and the Capital Facilities Plan: 2020-2025 Financial Plan on second reading.

Staff Contact:

Debbie Sullivan, Administrative Services Director, 360.753.8499

Presenter(s):

None - Consent calendar item

Background and Analysis:

Background and analysis has not changed from first to second reading.

State law requires the City Manager to present a balanced Preliminary Operating budget and Capital budget to Council each year. By State law the budget must be adopted no later than December 31. The City Council's Finance Committee met throughout the year to review, discuss, and provide direction to the City Manager on the 2020 Preliminary Operating budget, Capital budget, and the

Capital Facilities Plan (CFP) and 2020-2025 Financial Plan.

The 2020 Preliminary Operating, Special Funds, and Capital budgets include resources to provide services such as police and fire protection, developing and maintaining parks, open space and recreational centers, and building and maintaining City streets and utility infrastructure.

Operating Budget

The Operating Budget was presented to Council on October 29. A public hearing was held on November 19. Finance Committee met on November 20 to prepare a final recommendation which was presented to the full Council on November 26. Since the Preliminary Operating budget was presented on October 29, changes in revenue and expenditures were adjusted. The following major changes to the Operating budget were discussed with Council on November 26 and made to the final document:

1. Increase of General Fund Revenues of \$100,000. This is a result of updated revenue projections.
2. Increase General Fund Expenditures of \$100,000, which includes City Council changes to preliminary budget to fund a Police Auditor; "Five Things" mailed to renters; increased hours of Olympia Fire Department (OFD) Cares; adding fire vehicles to the equipment reserve fund; and increasing Council Goal money.
3. Increase utility expenditures to account for a 1 percent increase in Municipal Utilities, and adopt corresponding utility rates presented to Council on November 12.

Capital Budget and Capital Facilities Plan: 2020-2025 Financial Plan

The Capital Facilities Plan (CFP) is a Chapter in the City's 20-Year Comprehensive Plan adopted by Council in 2014. The CFP portion of the Plan is updated annually. The first year of the six-year financial plan serves as the City's annual Capital budget.

The Planning Commission received a briefing on the CFP and a copy of the Olympia School District's draft 2020-2025 CFP on August 19. On September 16, the Planning Commission held a public hearing. The City's Preliminary CFP and 2020-2025 Financial Plan also went to the Bicycle Pedestrian and Advisory Committee (BPAC); Parks and Recreation Committee (PRAC); and the Utility Advisory Committee (UAC) for review and comment. The Planning Commission, BPAC, PRAC, and UAC submitted comments for Council's consideration.

City Council held public hearings on October 29 and November 26 to hear testimony on both the

2020 Preliminary Capital Budget and the CFP: 2020-2025 Financial Plan.

Since the Preliminary Capital budget and CFP: 2020-2025 Financial Plan was presented on August 13, the following major changes to the Capital budget were discussed with Council on November 26 and made to the final document:

1. Real Estate Excise Tax. Increase 2020 revenue by \$500,000 and allocate to Transportation - Street Repair & Reconstruction
2. Sidewalk & Pathways. Change Funding Source of \$150,000 from Stormwater Utility to General Fund
3. Olympia Metropolitan Park District. Increase revenue by \$354,611. Allocate \$280,000 to Lions Park Sprayground and \$74,611 to Percival Landing Repair Reserve.
4. New project pages for the Lee Creighton Justice Center Reconstruction, Waste ReSources Maintenance Center Construction, Public Works & Parks Maintenance Center Reconstruction, and West Olympia Commercial Property projects.

Special Funds

The budget also includes Special funds such as Home Fund, Lodging Tax, Parking & Business Improvement Area, Farmers Market Repair & Replacement, and Hands on Children's Museum. Since the Preliminary budget was presented on October 29, changes in revenue and expenditures were adjusted. The following major changes to the Special Funds were made to the final document:

1. Home Fund. Increase Housing and Homelessness Expenditures of \$1,579,656 to include appropriations related to the six Housing programs: Community Health & Safety, Shelter, Housing, Staffing and Affordable and Supportive Housing. Funding from previously approved interfund loans and HB-1406.

Neighborhood/Community Interests (if known):

City Council held public hearings on October 29 and November 19 to hear testimony on the CFP: 2020-2025 Financial Plan. Council also held a public hearing on November 19 to hearing testimony on the Preliminary Operating Budget.

The Planning Commission received a briefing on the CFP and a copy of the Olympia School District's draft 2020-2025 CFP on August 19. On September 16, the Planning Commission held a public hearing. The City's Preliminary CFP and 2020-2025 Financial Plan also went to the Bicycle

Pedestrian and Advisory Committee (BPAC); Parks and Recreation Committee (PRAC); and the Utility Advisory Committee (UAC) for review and comment. The Planning Commission, BPAC, PRAC, and UAC prepared comments for Council's consideration.

Options:

1. Approve the Ordinance Adopting the 2020 Operating, Special Funds and Capital budgets and the Capital Facilities Plan: 2020-2025 Financial Plan on first reading and move to second reading.
2. Direct staff to make changes to the Ordinances and/or the Capital Facilities Plan: 2020-2025 Financial Plan and move to second reading.

Financial Impact:

Total 2020 Appropriations:

- Operating Funds - \$178,151,013
- Special Funds - \$11,560,724
- Capital Funds - \$34,153,377
- Totals \$223,865,114

Attachments:

Ordinance

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, ADOPTING THE CITY OF OLYMPIA'S 2020 OPERATING, SPECIAL, AND CAPITAL BUDGETS AND 2020-2025 CAPITAL FACILITIES PLAN; SETTING FORTH THE ESTIMATED REVENUES AND APPROPRIATIONS.

WHEREAS, the tax estimates and budget for the City of Olympia, Washington, for the 2020 calendar year have been prepared and filed as provided by the laws of the State of Washington; and

WHEREAS, the Olympia City Manager submitted to the City Council a recommended "Capital Facilities Plan," herein referred to as "CFP," for the fiscal years 2020 through 2025; and

WHEREAS, the preliminary budget was printed for distribution and notice published in the official paper of the City of Olympia, setting the time and place for hearing on the budget and stating that all taxpayers requesting a copy from the City Clerk would be furnished a copy of the preliminary budget to review; and

WHEREAS, the CFP projects the proposed locations and capacities of expanded or new capital facilities needed to serve growth projected in the City's comprehensive plan, along with a six-year plan that will finance such capital facilities and the anticipated capital expenditures required to construct them for said period; and

WHEREAS, the Olympia City Council held a public hearing on the preliminary budget on November 19, 2019, as required by law, and has considered the public testimony presented; and

WHEREAS, the Olympia School District's Capital Facilities Plan is being incorporated as a component of the City's CFP to allow for the collection of school impact fees; and

WHEREAS, the CFP element of the Comprehensive Plan Goals and Policies is included in the CFP; and

WHEREAS, the City Council has held public hearings and reviewed the recommended CFP along with the CFP Goals Policies and has made revisions thereto; and

WHEREAS, the revisions made by the City Council have been incorporated into the recommended CFP; and

WHEREAS, the CFP meets the requirements of the Washington State Growth Management Act, including RCW 36.70A.070(3);

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

Section 1. The 2020 Estimated Revenues and Appropriations for each Fund are as follows:

Operating Budget

FUND	USE OF FUND BALANCE	ESTIMATED REVENUE	APPROP	ADDITION TO FUND BALANCE
General, Regular Operations	\$291,797	\$85,558,562	\$85,850,359	\$0
General, Special Sub-Funds				
Special Accounts	129,477	1,214,795	1,344,272	0
Development Fee Revenue	421,394	3,677,069	4,098,463	0
Parking	22,721	1,510,840	1,533,561	0
Post Employment Benefits	370,000	1,005,000	1,375,000	0
Washington Center Endowment	0	10,500	10,500	0
Washington Center Operating	0	530,500	530,500	0
Municipal Arts	0	59,544	59,544	0
Equipment & Facilities Reserve	179,678	1,359,047	1,538,725	0
Total General Fund	\$1,415,067	\$94,925,857	\$96,340,924	\$0
LID Control				0
LID Guarantee				0
4th/5th Avenue Corridor Bridge Loan	0	539,099	539,099	0
UTGO Bond Fund - 2009 Fire	0	1,190,757	1,190,757	0
City Hall Debt Fund - 2009	0	2,419,518	2,419,518	0
2010 LTGO Bond - Street Projects	0	438,613	438,613	0
L.O.C.A.L. Debt Fund - 2010	0	89,142	89,142	0
2010B LTGO Bonds - HOCCM	0	457,088	457,088	0
2013 LTGO Bond Fund	0	675,775	675,775	0
2016 LTGO Parks BAN	0	14,673,000	14,673,000	0
Water Utility O&M	0	15,729,920	15,257,101	472,819
Sewer Utility O&M	123,899	21,553,824	21,677,723	0
Solid Waste Utility	0	13,593,875	13,356,483	237,392
Stormwater Utility	638,475	5,710,756	6,349,231	0
Water/Sewer Bonds	0	2,042,382	2,042,382	0
Stormwater Debt Fund	0	123,650	123,650	0
Water/Sewer Bond Reserve	0	0	0	0
Equipment Rental	10,884	2,509,643	2,520,527	0
Subtotal Other Operating Funds	\$773,258	\$81,747,042	\$81,810,089	\$710,211
Total Operating Budget	\$2,188,325	\$176,672,899	\$178,151,013	\$710,211

Special Funds Budget

FUND	USE OF FUND BALANCE	ESTIMATED REVENUE	APPROP	ADDITION TO FUND BALANCE
HUD Fund	\$0	\$600,000	\$591,819	\$8,181
Lodging Tax Fund	0	1,132,309	1,019,083	113,226
Parking Business Improvement Area Fund	0	100,000	98,500	1,500
Farmers Market Repair and Replacement Fund	0	0	0	0
Hands On Children's Museum	132,854	543,634	676,488	0
Home Fund Operating Fund	0	2,432,135	2,432,135	0
Fire Equipment Replacement Fund	0	200,000	200,000	0
Equipment Rental Replacement Reserve Fund	122,762	2,217,238	2,340,000	0
Unemployment Compensation Fund	0	112,500	85,000	27,500
Insurance Trust Fund	0	2,463,199	2,463,199	0
Workers Compensation Fund	204,000	1,450,500	1,654,500	0
Total Special Funds Budget	\$459,616	\$11,251,515	\$11,560,724	\$150,407

Capital Budget

FUND	USE OF FUND BALANCE	ESTIMATED REVENUE	APPROP	ADDITION TO FUND BALANCE
Impact Fee	\$2,141,104	\$467,191	\$2,608,295	\$0
SEPA Mitigation Fee Fund	0	0	0	0
Parks & Recreational Sidewalk, Utility Tax Fund	0	2,668,536	2,662,182	6,354
Real Estate Excise Tax Fund	0	2,274,752	1,500,000	774,752
Capital Improvement Fund	304,758	10,542,832	10,847,590	0
Olympia Home Fund Capital Fund	0	1,561,310	1,561,310	0
Water CIP Fund	1,551,706	6,221,294	7,773,000	0
Sewer CIP Fund	2,755,699	1,692,301	4,448,000	0
Waste ReSources CIP Fund	0	368,000	0	368,000
Storm Water CIP Fund	294,560	2,458,440	2,753,000	0
Storm Drainage Mitigation Fund	0	0	0	0
Total Capital Budget	\$7,047,827	\$28,254,656	\$34,153,377	\$1,149,106

Total City Budget	\$9,695,768	\$216,179,070	\$223,865,114	\$2,009,724
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Section 2. Administration. The City Manager shall administer the budgets 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 above.

Section 3. Salaries and Compensation. The salaries and compensation for the City of Olympia employees for the calendar year 2020 shall be as set forth in the "Supplementary Information" section of the 2020 Adopted Budget document, or as the same may be amended by the City Manager as part of their 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. Capital Facilities Plan. That certain document entitled the "Capital Facilities Plan," covering the years 2020 through 2025, 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 6. City Manager Authorization. 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 7. Change in Funding Source and Construction Schedule. 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 36.70A130.

Section 8. Director of Administrative Services Authorization. The Director of Administrative Services is hereby authorized to bring forward into fiscal year 2020 all appropriations and allocations not otherwise closed, completed, or deleted from prior fiscal years' Capital and Special Fund budgets.

Section 9. 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

Section 10. Ratification. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 11. Effective Date. This Ordinance shall take effect January, 1, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



City Council

Approval of an Ordinance to Vacate a Portion of Bethel Street NE between State Avenue and Olympic Drive

Agenda Date: 12/17/2019
Agenda Item Number: 4.Q
File Number: 19-1143

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance to Vacate a Portion of Bethel Street NE between State Avenue and Olympic Drive

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance vacating a portion of Bethel Street NE between State Avenue and Olympic Drive on second reading.

Report

Issue:

Whether to approve an ordinance vacating a portion of Bethel Street NE between State Avenue and Olympic Drive.

Staff Contact:

Fran Eide, P.E., City Engineer, Public Works Engineering, 360.753.8422

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

A property owner next to Bethel Street NE asked the City to vacate a portion of Bethel Street NE between State Avenue and Olympic Drive. On October 15, 2019, Council adopted a resolution setting the date of November 12, 2019, for a Public Hearing to hear public comment regarding the request.

On November 12, 2019, a Public Hearing was held, and Council directed staff to draft a Vacation Ordinance for Council approval.

City staff reviewed the request using the criteria outlined in Olympia Municipal Code Section 12.16.100.

Staff recommends approval of the partial street vacation with the requirement that the property owner make payment of one-half appraised value to the City.

Neighborhood/Community Interests (if known):

The public hearing provided an opportunity for Council to hear comments from the community regarding the requested vacation.

Options:

- Option 1: Move to approve on first reading and forward to second reading the ordinance to vacate a portion of Bethel Street NE between State Avenue NE and Olympic Drive NE. This option allows the vacation to occur, consistent with the adjacent property development approvals.
- Option 2: Move to approve on first reading and forward to second reading the ordinance to vacate a portion of Bethel Street NE between State Avenue NE and Olympic Drive NE with additional conditions.
- Option 3: Do not move to approve the ordinance to vacate a portion of Bethel Street NE between State Avenue NE and Olympic Drive NE. This option will require the developer of the adjacent property to revise plans for installation of a retaining wall.

Financial Impact:

The applicant will be required to pay \$4,053, one-half of the appraised value of the property to be vacated, before the vacation takes effect.

Attachments:

- Ordinance
- Petition to Vacate
- Proposed Development Site Plan
- Vicinity Map

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON VACATING AS A PUBLIC THOROUGHFARE A PORTION OF BETHEL STREET NE.

WHEREAS, the Olympia City Council adopted Resolution No. M-2058 on October 15, 2019, setting a public hearing to allow public comment relating to the vacation of a portion of Bethel Street NE; and

WHEREAS, notice of this proposed vacation and hearing was posted physically on site, and mailed to adjoining neighbors; and

WHEREAS, a public hearing was held by the Olympia City Council on said petition on November 12, 2019, at the City Council's regular 7:00 p.m. meeting; and

WHEREAS, the City has received no comments objecting to the vacation from utility providers with regard to this vacation; and

WHEREAS, the Public Works Department has indicated that the property has no known current or foreseeable future use to the City as a right-of-way; and

WHEREAS, this vacation is deemed to be in the public interest and to serve the public welfare;

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

Section 1. As recommended by the City of Olympia Public Works Department and as requested by the owner of the abutting parcel(s), the Olympia City Council, pursuant to RCW 35.79.010, hereby vacates as a public thoroughfare the following described public thoroughfare situated in the City of Olympia, Thurston County, State of Washington, to wit:

The West 5 feet of the Right of Way of Bethel Street adjacent to Lot 1 of Block 3 of J.R. Pattison's Addition to the City of Olympia, according to the Plat thereof, recorded in Volume 3 of Plats, Page 120, records of Thurston County, Washington; described as follows:

Beginning at the Southeast corner of said Lot 1 of Block 3 of J.R. Pattison's Addition, thence North 85°55' 18" East parallel with the South line of said Lot 1, 5.03 feet; thence North 1°49'46" East parallel with the East line of said Lot 1, 105.57 feet; thence South 85° 55'12" West parallel with the North line of said Lot 1, 5.03 feet to the Northeast corner of said Lot 1, thence South 01°49'26" West along the East line of said Lot 1 to the Point of Beginning.

Containing 528 square feet, more or less.

Section 2. The vacation meets the criteria set forth in OMC 12.16.100, which is summarized below as follows:

- The proposed vacation will not be materially detrimental to other properties in the vicinity, nor will it endanger public health, safety or welfare.
- The subject right-of-way is not needed for general access, emergency services, utility facilities or other similar public purposes, nor is it necessary as part of a long range circulation plan, pedestrian/bicycle pathway plan or street improvement plan.
- The subject vacation is consistent with the adopted Olympia Comprehensive Plan and all other related land use and circulation regulations and policies.
- The subject vacation would not directly or indirectly result in an adverse impact on historical or cultural resources, the natural environment or otherwise negatively affect environmentally sensitive areas.

Section 3. Effective Date. This Ordinance shall not become effective until the owners of the abutting property make payment required under OMC 12.16.080, OMC 12.16.090 and RCW 35.79.030 for the area so vacated. Failure of the abutting property owners to make payment within ninety (90) days of the passage of this Ordinance shall automatically (without further Council action) void the petition and the vacation of right of way approved by this Ordinance. If payment is made immediately upon approval of the Ordinance, the Ordinance shall take effect five (5) days after passage and publication.

Section 4. Certification of Payment. I, Debbie Sullivan, City Clerk, hereby certify that an amount equal to one-half of the appraised value of property above vacated was was not received within the required timeframe.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:



Petition to Vacate Public Right-of-Way

19-1765


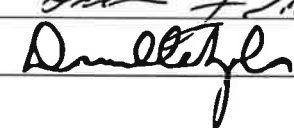
OFFICIAL USE ONLY			
Applicant:		Address:	
Phone:	File#:	Receipt #:	Date:

HONORABLE MAYOR AND CITY COUNCIL:

We, the undersigned, do hereby petition the Olympia City Council to vacate the following described public right-of-way:

LEGAL DESCRIPTION OF AFFECTED RIGHT-OF-WAY:
Please see attached

PURPOSE OF REQUEST AND STATEMENT OF PUBLIC BENEFIT: *
Please see attached
<i>*See submittal requirements and criteria for approval on the reverse side of this form</i>

PETITIONERS*		
Owner's signature	Owner's Names	Parcel Number
x 	Tim Zola	68200300100
x 	Danielle Zola	68200300100
<i>*Attach additional sheets as necessary</i>		

I verify that each of the above signatures represents a legal and registered owner of the property abutting the above-described right-of-way.



5-2-19

Applicant's Signature

Date

May 2, 2019

RE: Bethel Street Outpatient Clinic, Petition to Vacate as per OMC 12.16.020
205 Bethel St. NE, Olympia, WA 98506
PN: 68200300100

To Whom It May Concern:

Pursuant to Olympia Municipal Code which governs Petitions to Vacate, please accept the following notes regarding criteria which must be met per OMC 12.16.100.

No petition to vacate a street or alley shall be approved unless all of the following criteria can be met:

- A. *The proposed vacation will not be materially detrimental to other properties in the vicinity, nor will it endanger public health, safety or welfare. Typical detriments or endangerments include, but are not limited to: depriving property of reasonable and convenient access; increasing traffic safety hazards; or decreasing transportation service levels.*

The approval of the petition under consideration will not be detrimental to the public welfare or injurious to the vicinity. Indeed, the improvements that are proposed which require the requested Vacation will provide enormous public benefit and valuable enhancement to all properties in the vicinity.

- B. *The subject rights-of-way is not needed for general access, emergency services, utility facilities or other similar public purposes, nor is it necessary as part of a long range circulation plan, pedestrian/bicycle pathway plan or street improvement plan. Providing easements, relocating facilities or implementing other similar alternatives equal or superior to the existing or planned facilities may cause the petition to comply with this criteria;*

The land within the subject rights-of-way is not needed for general access or emergency services. The area of the land under consideration for vacation is not currently available for use by the public due to an existing change in grade. The property owner requesting this petition is proposing improvements to Bethel Street and the adjoining area which will improve public access and overall usability of the street. The area covered by this petition contains no publicly owned utilities and does not negatively affect public access to utilities located nearby.

- C. *The subject vacation is consistent with the adopted Olympia Comprehensive Plan and all other related land use and circulation regulations and policies, including but not limited to the Engineering Design and Development Standards and Titles 17 (Subdivisions) and 18 (Zoning) of the Olympia Municipal Code;*

City staff has indicated that this petition is in keeping with long range plans for the street which will be affected. A related Land Use Review is being applied for, and that review will establish that all required regulations and policies are being adhered to, as will review and approval of engineering and building permits which are required prior to any construction.

D. The subject vacation would not directly or indirectly result in an adverse impact on historical or cultural resources, the natural environment or otherwise negatively affect an environmentally sensitive area as defined by Chapter 18.76 of the Olympia Municipal Code.

The land affected by this petition is not the site of any historical or culturally relevant resource, nor is it within any known environmentally sensitive areas as defined by OMC 18.76.

Thank you for your consideration of this matter.

Sincerely,

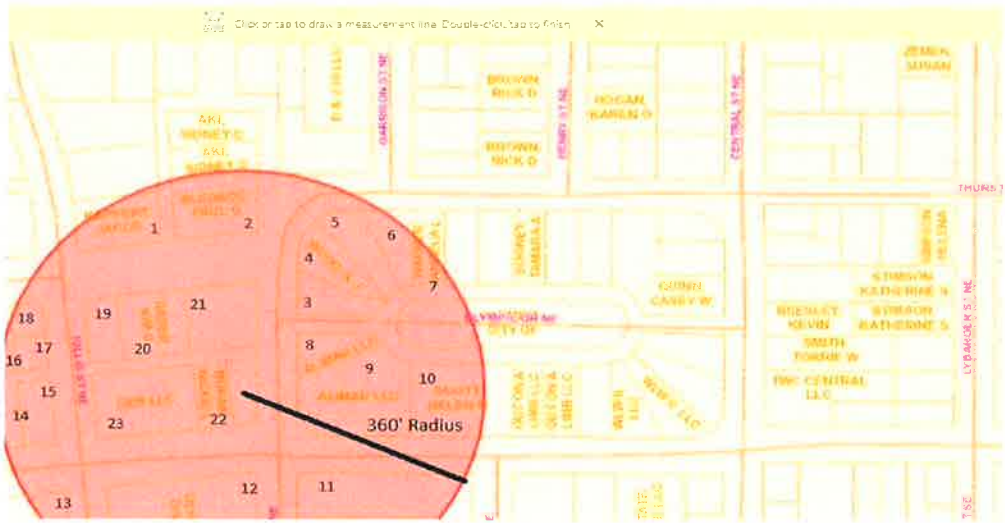
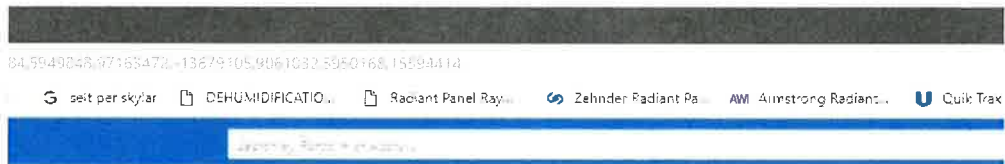
A handwritten signature in black ink, appearing to read "Randy Foster", with a stylized flourish at the end.

Randy Foster

Mailing Address

3139 DONNELLY DR. SE
 2313 BAKER RD SW
 222 BETHEL ST NE
 POB 3735
 1234 SUMMIT LAKE SHORE RD NW
 C/O ANGELINA MORGAN 1215 BOWMAN AVE NW
 1353 THURSTON AVE NE
 POB 12479
 POB 12479
 1321 OLYMPIC DR NE
 1113 LEGION WAY SE
 1113 LEGION WAY SE
 1113 LEGION WAY SE
 1222 STATE AVE NE
 301 HAZELWOOD AVE
 2320 BENSON RD SW
 215 TULLIS ST NE
 1227 OLYMPIA AVE NE
 1135 GARRISON ST NE
 1259 OLYMPIA AVE NE
 217 BETHEL ST NE
 2210 NE 92ND ST # 201
 1910 4TH AVE PMB 196

Zip Code City State
 98501 Olympia WA
 98512 Olympia WA
 98506 Olympia WA
 98509 Lacey WA
 98502 Olympia WA
 98502 Olympia WA
 98506 Olympia WA
 98508-2479 Olympia WA
 98508-2479 Olympia WA
 98506 Olympia WA
 98501 Olympia WA
 98501 Olympia WA
 98501 Olympia WA
 98506 Olympia WA
 94127 San Franci CA
 98512 Olympia WA
 98506 Olympia WA
 98506 Olympia WA
 98506 Olympia WA
 98506 Olympia WA
 98506 Olympia WA
 98506 Olympia WA
 98115 SEATTLE WA
 98501 Olympia WA



Site address

- 304 TULLIS St NE
- 303 BETHEL
- 222 BETHEL ST NE
- 230 BETHEL ST NE
- 1307 THURSTON AVE
- 1317 NE THURSTION ST
- 1353 THURSTON AVE NE
- 210 BETHEL ST NE
- 210 BETHEL ST NE
- 1321 OLYMPIC DR NE
- 1314 4TH AVENUE EAST
- 1314 4TH AVENUE EAST
- 1314 4TH AVENUE EAST
- 1222 STATE AVE NE
- 1226 NE STATE ST
- 1223 NE OLYMPIA AVE
- 215 TULLIS ST NE
- 1227 OLYMPIA AVE NE
- 220 NE TULLIS ST
- 1259 OLYMPIA AVE NE
- 215 BETHEL ST NE # 17
- 1264 NE STATE AVE
- 1250 NE STATE AVE



Subject Property ID Shown in Provided Map View	Owner Name	Mailing Address	Zip Code	City	State	Site address
1	KAPPERT, JACOB	3139 DONNELLY DR. SE	98501	Olympia	WA	304 TULLIS ST NE
2	BLEDSE, PATRICK G	2313 BAKER RD SW	98512	Olympia	WA	303 BETHEL
3	ILLAHEE, LISA MARIE	222 BETHEL ST NE	98506	Olympia	WA	222 BETHEL ST NE
4	WOOD, KJ	POB 3735	98509	Lacey	WA	230 BETHEL ST NE
5	ZABEL, KENNETH E JR	1234 SUMMIT LAKE SHORE RD NW	98502	Olympia	WA	1307 THURSTON AVE
6	SILVER, GRACE D	C/O ANGELINA MORGAN 1215 BOWMAN AVE NW	98502	Olympia	WA	1317 NE THURSTON ST
7	WARNER, ANGELA L	1353 THURSTON AVE NE	98506	Olympia	WA	1353 THURSTON AVE NE
8	ALIMAR LLC	POB 12479	98508-2479	Olympia	WA	210 BETHEL ST NE
9	ALIMAR LLC	POB 12479	98508-2479	Olympia	WA	210 BETHEL ST NE
10	SCOTT, HELEN M	1321 OLYMPIC DR NE	98506	Olympia	WA	1321 OLYMPIC DR NE
11	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
12	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
13	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
14	NORTH & NORTH LLC	1222 STATE AVE NE	98506	Olympia	WA	1222 STATE AVE NE
15	SINCLAIR STATE STREET PROPERTIES LLC	301 HAZELWOOD AVE	94127	San Franc	CA	1226 NE STATE ST
16	CRABTREE, WILLIAM M	2320 BENSON RD SW	98512	Olympia	WA	1223 NE OLYMPIA AVE
17	KWIECINSKI, PATRICK J	215 TULLIS ST NE	98506	Olympia	WA	215 TULLIS ST NE
18	LIVINGSTON, TIM	1227 OLYMPIA AVE NE	98506	Olympia	WA	1227 OLYMPIA AVE NE
19	GENDELMAN, IRINA	1135 GARRISON ST NE	98506	Olympia	WA	220 NE TULLIS ST
20	RADER, KIM V	1259 OLYMPIA AVE NE	98506	Olympia	WA	1259 OLYMPIA AVE NE
21	PRICKETT, ERIK J	217 BETHEL ST NE	98506	Olympia	WA	215 BETHEL ST NE # 17
22	MORAN, NICKIE L	2210 NE 92ND ST # 201	98115	SEATTLE	WA	1264 NE STATE AVE
23	GEB LLC	1910 4TH AVE PMB 196	98501	Olympia	WA	1250 NE STATE AVE

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7	WARNER, ANGELA L	1353 THURSTON AVE NE	98506	Olympia	WA	1353 THURSTON AVE NE
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10	SCOTT, HELEN M	1321 OLYMPIC DR NE	98506	Olympia	WA	1321 OLYMPIC DR NE
11	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
12	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
13	OLYMPIA SCHOOL DISTRICT NO 111	1113 LEGION WAY SE	98501	Olympia	WA	1314 4TH AVENUE EAST
14	NORTH & NORTH LLC	1222 STATE AVE NE	98506	Olympia	WA	1222 STATE AVE NE
15	SINCLAIR STATE STREET PROPERTIES LLC	301 HAZELWOOD AVE	94127	San Franc	CA	1226 NE STATE ST
16	CRABTREE, WILLIAM M	2320 BENSON RD SW	98512	Olympia	WA	1223 NE OLYMPIA AVE
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23	GEB LLC	1910 4TH AVE PMB 196	98501	Olympia	WA	1250 NE STATE AVE

EXHIBIT A

Right of Way Vacation Legal Description

The West 5 feet of the Right of Way of Bethel Street adjacent to Lot 1 of Block 3 of J.R. Pattison's Addition to the City of Olympia, According to the Plat Thereof recorded in Volume 3 of Plats, Page 120, records of Thurston County, Washington; described as follows:

Beginning at the Southeast corner of said Lot 1 of Block 3 of J.R. Pattison's Addition, thence North 85°55'18" East parallel with the South line of said Lot, 5.03 feet; thence North 1°49'46" East parallel with the East line of said Lot, 105.57 feet; thence South 85°55'12" West parallel with the North line of said Lot, 5.03 feet to the Northeast corner of said Lot 1 and the terminus of said Right of Way vacation.



Kristina Horton

From: Tiffani King
Sent: Wednesday, August 7, 2019 3:07 PM
To: Kristina Horton; Fran Eide; Steve Sperr
Cc: David Smith; Tim Smith; Chuck Dower
Subject: RE: Zola Mixed Use - LU 19-2862

Follow Up Flag: Follow up
Flag Status: Flagged

Update on the vacation application –

Looks like it did not show up on Kristina's to do list. I will be working with chuck to figure out why it happened and get it fixed so that it can be processed.

Tiffani King
Engineering Plans Examiner
City of Olympia
Community Planning & Development
(360) 753-8257
tking@ci.olympia.wa.us

From: Tiffani King
Sent: Wednesday, August 07, 2019 12:06 PM
To: Kristina Horton <khorton@ci.olympia.wa.us>; Fran Eide <feide@ci.olympia.wa.us>; Steve Sperr <ssperr@ci.olympia.wa.us>
Cc: David Smith <dsmith3@ci.olympia.wa.us>; Tim Smith <tsmith@ci.olympia.wa.us>
Subject: Zola Mixed Use - LU 19-2862

Hi Everyone –

The Zola mixed use project is here for review and we are looking like we may be able to go straight to approval with some conditions.

I was not originally assigned to this project – but have been assigned to it from this point forward. I was looking at this one and realized that there has been a vacation request here since May 2019 (**19-1765**). There hasn't been any action taken on that application and I wanted to check in on it to make sure it hasn't dropped off the radar.

I guess there were some meetings earlier in the year – the customer needs to install a retaining wall that would encroach into the right of way (unless we approve the vacation request) and would result in a 6 foot sidewalk instead of the typical 10 ft sidewalk. In concept it appears that the City was in agreement with this proposal. Do we also need a deviation request – or does/can this be included with the reasons for the vacation and the approval language of the vacation request?

I am just reaching out – thinking we need to include this in the conditions of approval – and again just to check the status of the vacation request.

Tiffani King

Kristina Horton

From: Steve Sperr
Sent: Wednesday, August 7, 2019 1:19 PM
To: Tiffani King
Cc: Kristina Horton; Fran Eide; David Smith; Tim Smith
Subject: Re: Zola Mixed Use - LU 19-2862

Follow Up Flag: Follow up
Flag Status: Flagged

Tiff,
I don't think we need Deviation Request per se, since we plan to include the explanation of what we agreed to allow there in the staff report for the street vacation to City Council

-Steve
(Sent from my iPhone)

On Aug 7, 2019, at 12:06 PM, Tiffani King <tking@ci.olympia.wa.us> wrote:

Hi Everyone –

The Zola mixed use project is here for review and we are looking like we may be able to go straight to approval with some conditions.

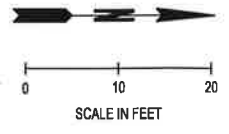
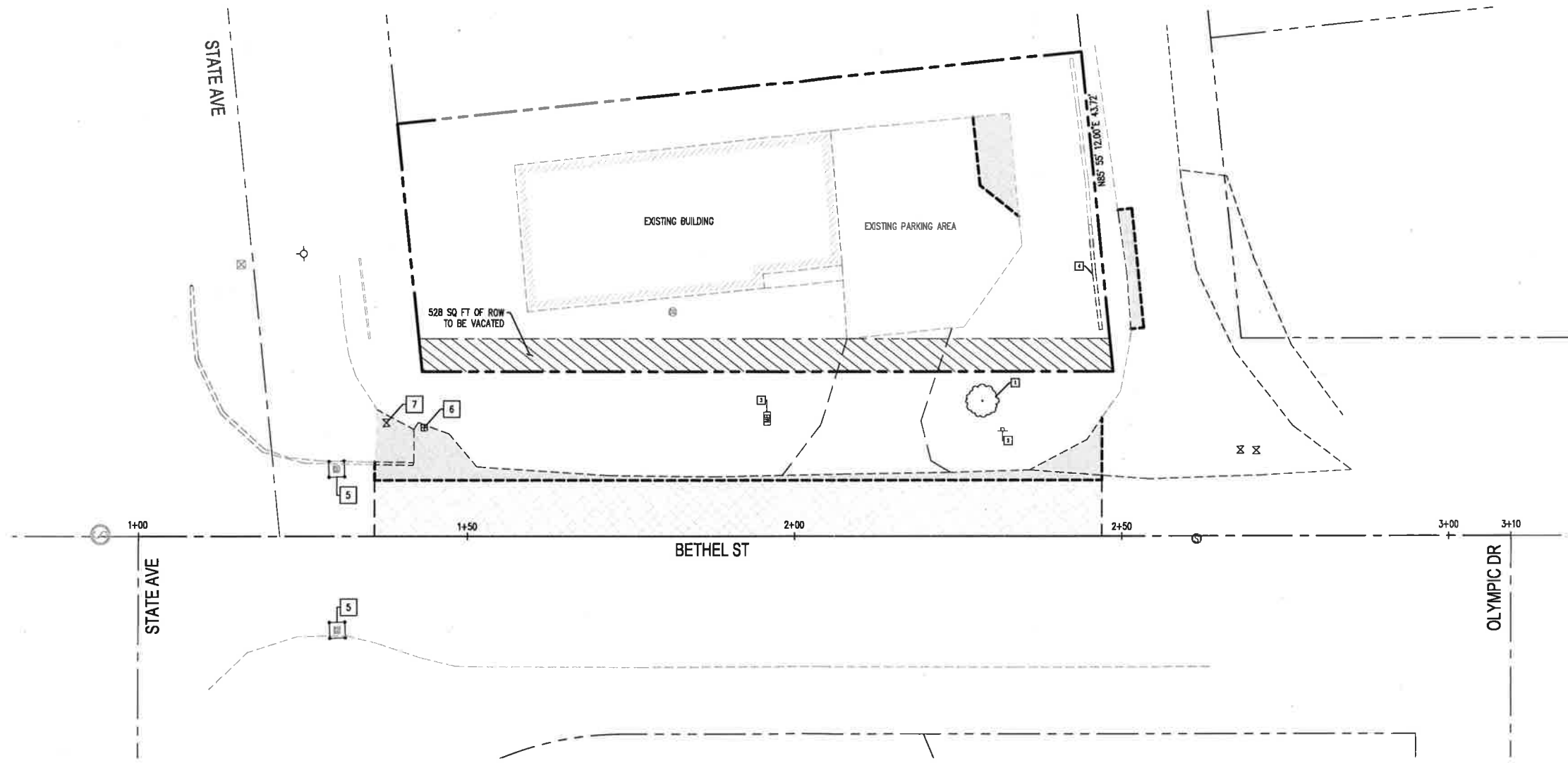
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Tiffani King
Engineering Plans Examiner
City of Olympia
Community Planning & Development
(360) 753-8257
tking@ci.olympia.wa.us

May 03, 2019 10:00:12am - User: csever
 N:\PROJECTS\3247 SR_7\MOBILE_ZOLA\3247 01 ZOLA CLINIC FRONTAGE IMPROVEMENTS\3247 01 SP-01.DWG



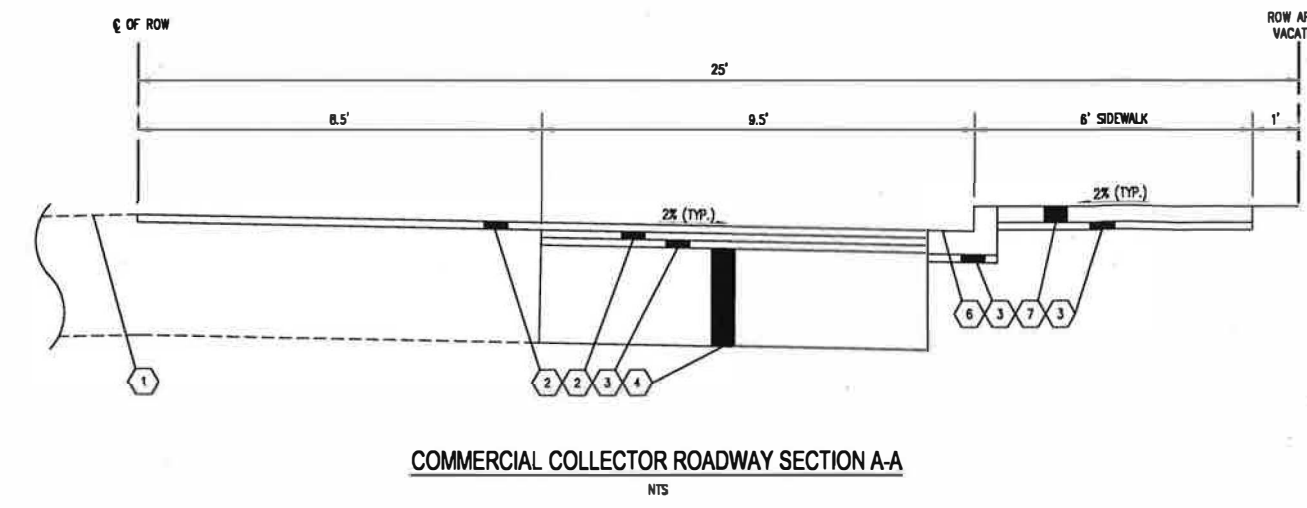
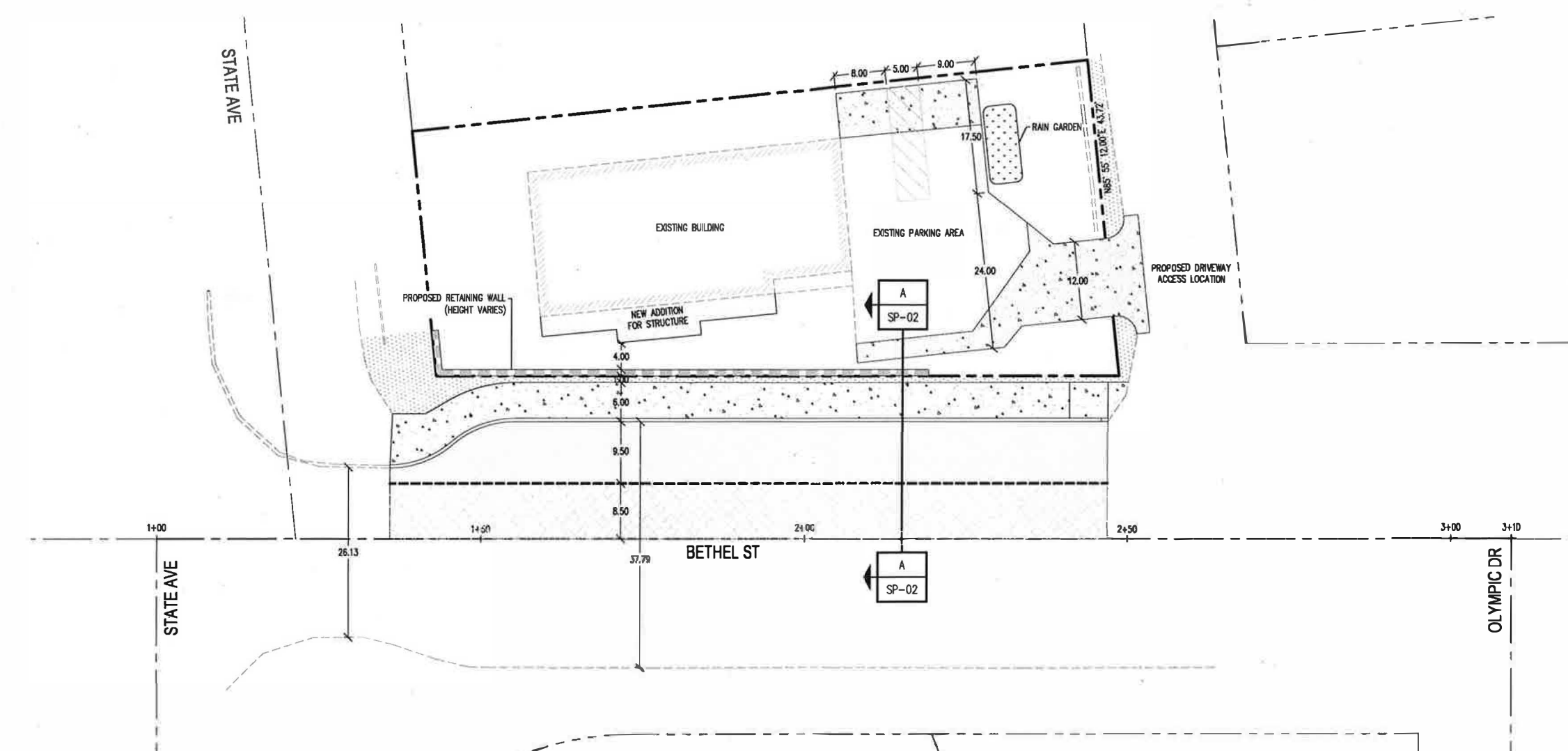
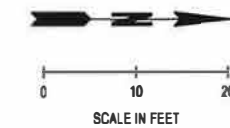
[X] DEMOLITION NOTES:

1. REMOVE & DISPOSE OF EXISTING TREE
2. REMOVE & DISPOSE OF EXISTING SIGN
3. RELOCATE EXISTING MAILBOX
4. REMOVE & DISPOSE OF EXISTING BLOCK WALL
5. INLET PROTECTION DEVICE
6. ADJUST EXISTING WATER METER TO FINISHED GRADE
7. ADJUST EXISTING GATE VALVE TO FINISHED GRADE

LEGEND

- PROPERTY LINE
- ROW CENTERLINE
- EDGE OF EXISTING PAVEMENT
- EDGE OF EXISTING GRAVEL
- EXISTING BLOCK WALL
- EXISTING BUILDING
- SAWCUT
- INLET PROTECTION
- ASPHALT TO BE REMOVED
- MILL & OVERLAY 0.17' OF EXISTING ASPHALT
- ROW TO BE VACATED

REVISIONS	DATE	BY	
△			
 SCJ ALLIANCE CONSULTING SERVICES 212 N TOWER AVE, CENTRALIA, WA 98531 P: 360.669.0700 F: 360.352.1509 SCJALLIANCE.COM			
SHEET TITLE: EROSION CONTROL & DEMOLITION PLAN		PROJECT NAME: ZOLA CLINIC 205 BETHEL STREET OLYMPIA, WA 98502	
DESIGNER: C. SEVERS			
DRAWN BY: C. DAHM			
APPROVED BY: C. SEVERS			
DATE: APRIL, 2019			
JOB NO: 3247 01			
DRAWING FILE NO: 3247.01 SP-01			
DRAWING NO: SP-01			
SHEET NO: 1 OF 2			



- CONSTRUCTION KEY NOTES**
- 1 EXISTING ROADWAY PAVEMENT TO REMAIN
 - 2 0.17" DEPTH HMA CL. 1/2" PG 64-22
 - 3 0.17" CRUSHED SURFACING TOP COURSE (5/8" MINUS)
 - 4 2.08" CRUSHED SURFACING BASE COURSE
 - 5 0.67" CRUSHED SURFACING BASE COURSE
 - 6 CEMENT CONCRETE CURB & GUTTER PER CITY OF OLYMPIA STD. DTL. 4-14A
 - 7 CEMENT CONCRETE SIDEWALK PER CITY OF OLYMPIA STD. DTL. 4-9C

- GENERAL NOTES**
1. ALL FRONTAGE IMPROVEMENTS SHALL BE COMPLETED IN ACCORDANCE WITH THE CITY OF OLYMPIA ENGINEERING DESIGN & DEVELOPMENT STANDARDS.
 2. ALL SURFACING AND PAVING DEPTHS ARE COMPACTED DEPTHS.
 3. ALL SAWCUT LINES SHALL BE CLEANED AND TACK COAT SHALL BE APPLIED BEFORE ASPHALT PLACEMENT.

LEGEND

	PROPERTY LINE
	ROW CENTERLINE
	EDGE OF EXISTING PAVEMENT
	EDGE OF EXISTING GRAVEL
	EXISTING WALL
	EXISTING BUILDING
	CEMENT CONCRETE CURB & GUTTER
	CEMENT CONCRETE SIDEWALK
	CEMENT CONCRETE PAVEMENT
	ASPHALT PAVEMENT
	MILL & OVERLAY 0.17" OF EXISTING ASPHALT
	LANDSCAPING PER CITY OF OLYMPIA REQUIREMENTS

REVISIONS									
DATE									
BY									

SCJ ALLIANCE
CONSULTING SERVICES
212 N TOWER AVE, CENTRALIA, WA 98531
P: 360.669.0700 F: 360.352.1509
SCJALLIANCE.COM

SITE PLAN

ZOLA CLINIC
205 BETHEL STREET
OLYMPIA, WA 98502

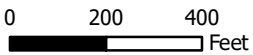
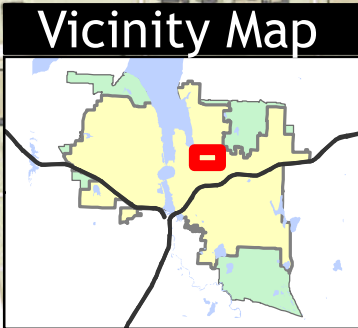
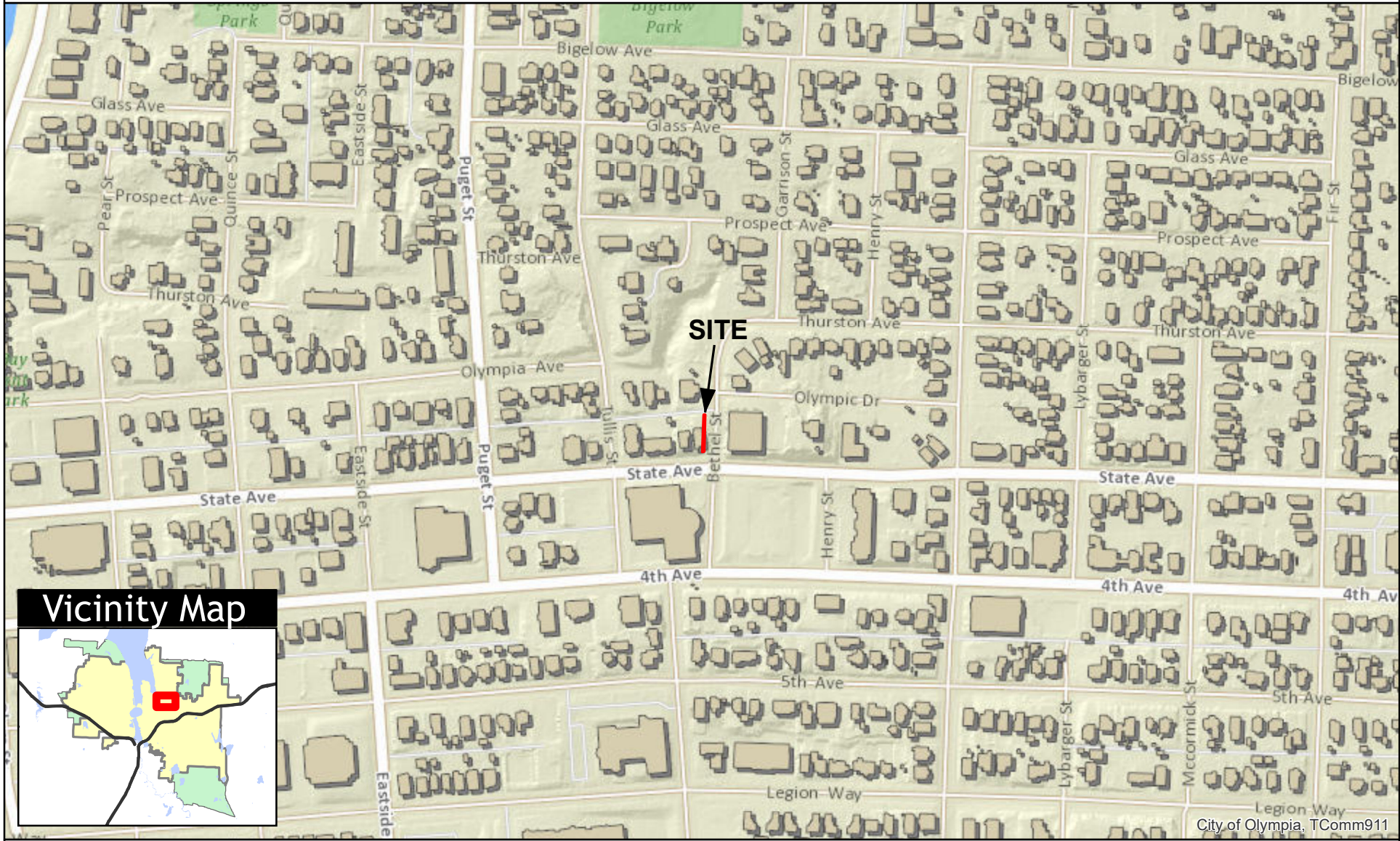
PRELIMINARY
04-29-2019

DESIGNER:	C. SEEVERS
DRAWN BY:	C. DAHM
APPROVED BY:	C. SEEVERS
DATE:	APRIL, 2019
JOB NO:	3247.01
DRAWING FILE NO:	3247.01 SP-02
DRAWING NO:	SP-02
SHEET NO:	2 OF 2

May 03, 2018 10:05:15am - User: csever@scj.com
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Bethel Street Vacation Petition



1 inch = 400 feet

Map printed 9/20/2019

The City of Olympia and its personnel cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. The parcels, right-of-ways, utilities and structures depicted hereon are based on record information and aerial photos only. It is recommended the recipient and/or user field verify all information prior to use. The use of this data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may not assert any proprietary rights to this information. The City of Olympia and its personnel neither accept or assume liability or responsibility, whatsoever, for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.





City Council

Approval of an Ordinance to Grant a Master Permit to Noel Communications

Agenda Date: 12/17/2019
Agenda Item Number: 4.R
File Number: 19-1144

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance to Grant a Master Permit to Noel Communications

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance granting Noel Communications a Master Use Permit on second reading.

Report

Issue:

Whether to approve the ordinance granting Noel Communications a Master Use Permit.

Staff Contact:

Fran Eide, P.E., City Engineer, Public Works Engineering, 360.753.8422

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

A Master Permit, as defined in the Olympia Municipal Code, is an agreement whereby the City may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities.

Noel Communications has made a request to install fiber optic lines throughout the Olympia area (see attached map) to provide telecommunications, internet access, and private line services to potential customers. These lines would be in addition to the lines Noel Communications currently has in the City's right of way, installed under a previous permit.

Staff evaluated the routes proposed by the applicant and found there is sufficient capacity to

accommodate the new lines, both overhead and underground. The addition of these lines will not impact City utilities.

A hearing was held on November 26, 2019, to hear public comment regarding the request. There were no comments against the proposed renewal of the Master Permit. Council directed staff to draft a Master Permit Ordinance for Council approval.

The applicant has acquired all required licenses and approvals to place the new lines on existing power poles.

Neighborhood/Community Interests (if known):

Service to affected customers will not be interrupted.

Options:

- Option 1: Move to approve first reading and forward to second reading an Ordinance to grant Noel Communications a Master Permit. This option allows Noel Communications to continue to serve existing customers and located current and future planned facilities in City of Olympia right of way.

- Option 2: Move to approve first reading and forward to second reading an Ordinance to grant Noel Communications a Master Permit to occupy City of Olympia right of way with additional conditions.

- Option 3: Do not approve an ordinance to allow Noel Communications to occupy City of Olympia right of way. This option will require Noel Communications to remove existing facilities and work with current customers to transfer to other providers of telecommunication services.

Financial Impact:

The applicant will be required to pay fees associated with permits to do work within the City right of way.

Attachments:

Ordinance
Map

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING A NON-EXCLUSIVE MASTER PERMIT TO NOEL COMMUNICATIONS INC., LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING TELECOMMUNICATIONS TRANSMISSION LINES IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, NOEL COMMUNICATIONS INC. is a competitive telecommunications company providing communications and telecommunications services; and

WHEREAS, NOEL COMMUNICATIONS INC.'s route through the City of Olympia ("City") requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

WHEREAS, the City Council held a public hearing on November 26, 2019, where it was presented with information demonstrating that NOEL COMMUNICATIONS INC. satisfies the requirements set forth in Olympia Municipal Code ("OMC") 11.06.020. In particular, the City Council was presented with information confirming and demonstrating the following: That NOEL COMMUNICATIONS INC. has submitted all required licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by NOEL COMMUNICATIONS INC. That the capacity of the public ways can accommodate NOEL COMMUNICATIONS INC.'s Facilities if the Master Permit is granted. That the City's rights-of-way will accommodate additional utility and facilities if the Master Permit is granted. That NOEL COMMUNICATIONS INC. confirms that there are currently no additional Facilities planned and there is no anticipated damage or disruption to the City's rights-of-way. That construction of additional Facilities will comply with the City's Engineering Design and Development Standards ("EDDS"). That there will be minimal effect, if any, on public health, safety, and welfare if the Master Permit requested is granted. That the proposed route of NOEL COMMUNICATIONS INC.'s Facilities is appropriate; an alternate route is not needed. And that NOEL COMMUNICATIONS INC. has agreed to comply with all federal, state, and local telecommunications laws, regulations, and policies; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate nonexclusive Master Permits, for the use of public streets, rights-of-way, and other public property, for transmission of communications; and

WHEREAS, the insurance provisions of this Master Permit are updated and supersede the insurance provisions set forth in OMC 11.10.220; and

WHEREAS, this Master Permit contains the following:

- Section 1. Non-exclusive Master Permit Granted
- Section 2. Authority
- Section 3. Master Permit Term
- Section 4. Acceptance of Terms and Conditions

Section 5. Construction Provisions and Standards

- A. Permit Required
- B. Coordination
- C. Construction Standards
- D. Underground Installation Required
- E. Relocation.
- F. Removal or Abandonment
- G. Bond
- H. "One-Call" Location & Liability
- I. As-Built Plans Required
- J. Recovery of Costs
- K. Vacation

Section 6. Master Permit Compliance.

- A. Master Permit Violations
- B. Emergency Actions.
- C. Other Remedies
- D. Removal of System

Section 7. Insurance

Section 8. Other Permits & Approvals

Section 9. Transfer of Ownership.

Section 10. Administrative Fees.

Section 11. Notices.

Section 12. Indemnification.

Section 13. Severability

Section 14. Reservation of Rights

Section 15. Police Powers

Section 16. Future Rules, Regulations, and Specifications

Section 17. Effective Date

Section 18. Law and Venue

Section 19. Ratification

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

Section 1. Non-exclusive Master Permit Granted.

A. The City hereby grants to NOEL COMMUNICATIONS INC., subject to the terms and conditions of this Ordinance ("Master Permit"), the rights to construct, replace, repair, monitor, maintain, use, and operate the Facilities (as defined in OMC 11.02.020 O) necessary for an underground telecommunications transmission system, within the City-owned rights-of-way generally described in Exhibit A, and referred to as the "Master Permit Area."

B. The rights granted by this Master Permit are not exclusive to NOEL COMMUNICATIONS INC. and the granting of this Master Permit does not in any way prohibit or limit the City's ability to grant other Master Permits or rights along, over, or under the Master Permit area, provided that such other uses do not unreasonably interfere with NOEL COMMUNICATIONS INC.'s exercise of the rights granted in this Master Permit, as determined by the City. This Master Permit does not allow for interference

with existing utilities or in any way limit, prohibit, or prevent the City from using the Master Permit Area, and does not in any way affect the City's jurisdiction over that area.

Section 2. Authority. The City Manager or the City Manager's designee is hereby granted the authority to administer and enforce the terms and conditions of this Master Permit, and may develop such rules, policies, and procedures as deemed necessary to carry out this Master Permit.

Section 3. Master Permit Term. This Master Permit is effective for a period of five years from the effective date of this Ordinance. The effectiveness of this Master Permit is contingent upon NOEL COMMUNICATIONS INC.'s delivery of a written acceptance to the City pursuant to Section 4 of this Master Permit. If NOEL COMMUNICATIONS INC. requests a Master Permit renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this Master Permit beyond the expiration date to allow processing of the renewal. If the City elects to extend the term of this Master Permit, the City shall provide written notice of the extension to NOEL COMMUNICATIONS INC. prior to the expiration date.

Section 4. Acceptance of Terms and Conditions. As required by OMC 11.10.020, NOEL COMMUNICATIONS INC. shall, within 30 days of the effective date of this Ordinance or within such other time period as is mutually agreed by the parties, deliver to the City Manager for filing an unconditional acceptance of this Master Permit in the form attached as Exhibit B. NOEL COMMUNICATIONS INC.'s failure to deliver the acceptance within this time period voids and nullifies this Master Permit and terminates any and all rights granted under this Master Permit.

Section 5. Construction Provisions and Standards. NOEL COMMUNICATIONS INC. shall abide by the following construction provisions and standards, and NOEL COMMUNICATIONS INC.'s failure to abide by any of the following construction provisions or standards constitutes non-compliance with the terms and conditions of this Master Permit and may result in imposition of some or all of the remedies specified in Section 6.

A. Permit Required. Neither NOEL COMMUNICATIONS INC., nor any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, may perform any construction, installation, maintenance, repair, or restoration activities (except for emergency repairs) in the Master Permit Area without first obtaining appropriate permits from the Community Planning and Development Department (CP&D). In case of an emergency, NOEL COMMUNICATIONS INC. shall within 24 hours of the emergency, obtain a permit from CP&D.

B. Coordination. All construction, installation, maintenance, repair, or restoration activities are subject to City inspection and approval, as provided in the OMC. NOEL COMMUNICATIONS INC. shall arrange and allow for such inspection. NOEL COMMUNICATIONS INC. shall coordinate all construction, installation, maintenance, repair, or restoration activities and inspections with CP&D to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances.

C. Construction Standards. NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall perform all construction, installation, maintenance, repair, or restoration activities within the Master Permit Area so as to produce the least amount of interference with the free passage of pedestrian, bicycle, and vehicular traffic. NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall perform all

construction, installation, maintenance, repair, or restoration activities in conformance with the EDDS and with Title 11 of the OMC.

D. Underground Installation Required. NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall install any new Facilities underground unless otherwise exempted from this requirement, in writing, by the City Manager, or the City Manager's designee.

E. Relocation.

1. NOEL COMMUNICATIONS INC. shall, at its own expense, temporarily or permanently remove, relocate, place underground, change, or alter the position of any of its Facilities within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any City or other public improvement in or upon the rights-of-way. NOEL COMMUNICATIONS INC. may seek reimbursement for relocation expenses from the City as provided for in the OMC.
2. NOEL COMMUNICATIONS INC. may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must include the use and operation of temporary transmitting facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise NOEL COMMUNICATIONS INC. in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, NOEL COMMUNICATIONS INC. shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by NOEL COMMUNICATIONS INC. full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, NOEL COMMUNICATIONS INC. shall relocate its Facilities as otherwise provided in this Section.

F. Removal or Abandonment. Upon the removal from service of any of NOEL COMMUNICATIONS INC.'s Facilities, NOEL COMMUNICATIONS INC. shall comply with all applicable standards and requirements prescribed by the OMC and the EDDS for the removal or abandonment of the Facilities. No Facilities constructed or owned by NOEL COMMUNICATIONS INC. may be abandoned without the express written consent of the City.

G. Bond. Before undertaking any of the construction, installation, maintenance, repair, or restoration activities authorized by this Master Permit, NOEL COMMUNICATIONS INC. shall upon the request of the City, furnish a bond executed by NOEL COMMUNICATIONS INC. and a corporate surety authorized to operate a surety business in the State of Washington, in an amount determined by the City as sufficient to ensure performance of NOEL COMMUNICATIONS INC.'s obligations under this Master Permit. At NOEL COMMUNICATIONS INC.'s sole option, NOEL COMMUNICATIONS INC. may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of bond or alternate security must be in the form reasonably acceptable to the City. The bond must be conditioned so that NOEL COMMUNICATIONS INC. shall observe all the terms and conditions and shall faithfully perform all of the obligations of this Master Permit, and to repair or replace any defective work or materials discovered in the City's roads, streets, or property. NOEL COMMUNICATIONS INC. may not encumber a bond required by this Section for any other purpose.

H. "One-Call" Location & Liability. NOEL COMMUNICATIONS INC. shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate any of its Facilities upon request. The City is not liable for any damages to NOEL COMMUNICATIONS INC.'s Facilities or for interruptions in service to NOEL COMMUNICATIONS INC.'s customers which are a direct result of work performed for any City project for which NOEL COMMUNICATIONS INC. has failed to properly locate its Facilities within the prescribed time limits and guidelines established by One-Call. The City is also not liable for any damages to NOEL COMMUNICATIONS INC.'s Facilities or for interruptions in service to NOEL COMMUNICATIONS INC.'s customers resulting from work performed under a permit issued by the City.

I. As-Built Plans Required. NOEL COMMUNICATIONS INC. shall maintain accurate engineering plans and details of all Facilities installed within the City limits and shall, at the City's request, provide such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any construction, installation, maintenance, repair, or restoration activities performed by NOEL COMMUNICATIONS INC., or any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, pursuant to this Master Permit. The City shall determine the acceptability of any as-built submittals provided under this Section.

J. Recovery of Costs. NOEL COMMUNICATIONS INC. is subject to all permit fees associated with activities undertaken through the authority granted in this Master Permit or under other ordinances of the City. Where the City incurs costs and expenses for review or inspection of activities undertaken through the authority granted in this Master Permit or any ordinances relating to the subject for which permit fees have not been established, NOEL COMMUNICATIONS INC. shall pay such reasonable costs and expenses directly to the City.

K. Vacation. If, at any time, the City vacates any City road, right-of-way, or other City property which is subject to rights granted by this Master Permit and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 30 days written notice to NOEL COMMUNICATIONS INC., terminate this Master Permit with reference to such City road, right-of-way, or other City property vacated, and the City is not liable for any damages or loss to NOEL COMMUNICATIONS INC. by reason of such termination other than those provided for in RCW chapter 35.99.

Section 6. Master Permit Compliance.

A. Master Permit Violations. If NOEL COMMUNICATIONS INC. fails to fully comply with any of the provisions of this Master Permit, the City may provide written notice to NOEL COMMUNICATIONS INC., which describes the violation(s) of the Master Permit and requests remedial action within 30 days of receipt of the violation notice. If NOEL COMMUNICATIONS INC. has not remedied the violation(s) identified in the violation notice at the end of the 30-day period following receipt of the violation notice, the City may declare an immediate termination of this Master Permit, provided that remedying the violation(s) was reasonably possible within that 30-day period. If the violation(s) identified in the violation notice could not possibly be remedied within the 30-day period, the City may declare an immediate termination of this Master Permit at the end of the period in which the violation could possibly have been remedied.

B. Emergency Actions.

1. If the City determines that any of NOEL COMMUNICATIONS INC.'s actions, or any failure by NOEL COMMUNICATIONS INC. to act to correct a situation caused by NOEL COMMUNICATIONS INC., creates a threat to life or property, the City may order NOEL COMMUNICATIONS INC. to immediately correct the threat or, at the City's discretion, the City may act to correct the threat; provided that, when possible, the City shall notify NOEL COMMUNICATIONS INC. and give NOEL COMMUNICATIONS INC. an opportunity to correct the threat before the City acts to correct the threat. NOEL COMMUNICATIONS INC. is liable to the City for all costs, expenses, and damages resulting to the City from the threat or incurred by the City in acting to correct the threat to the extent that the threat was caused by NOEL COMMUNICATIONS INC. NOEL COMMUNICATIONS INC. shall reimburse the City for any such costs within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by NOEL COMMUNICATIONS INC. to take appropriate action to correct a threat caused by NOEL COMMUNICATIONS INC. and identified by the City is a violation of this Master Permit.
2. If during construction, installation, maintenance, repair, or restoration of any of NOEL COMMUNICATIONS INC.'s Facilities any damage occurs to an underground facility, and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, NOEL COMMUNICATIONS INC. or any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction shall immediately call 911 or other local emergency response number.

C. Other Remedies. Nothing contained in this Master Permit limits the City's available remedies in the event of NOEL COMMUNICATIONS INC.'s failure to comply with this Master Permit, including but not limited to, the City's right to a lawsuit for specific performance, or damages, or both.

D. Removal of System. In the event that this Master Permit is terminated as a result of violations of this Master Permit, NOEL COMMUNICATIONS INC. shall at its sole expense, promptly remove all Facilities, provided that the City, at its sole option, may allow NOEL COMMUNICATIONS INC. to abandon some or all of its Facilities in place.

Section 7. Insurance.

A. NOEL COMMUNICATIONS INC. shall maintain liability insurance written on an occurrence form during the full term of this Master Permit for bodily injuries and property damages. The policy must contain coverage in the amounts and conditions set forth in subsection D of this Section.

B. Such insurance must specifically name, as additional insured, the City, its officers (including its elected and appointed officials), employees, and agents (including its representatives, consultants, engineers, and volunteers); must apply as primary insurance; must stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder; and must further provide that the policy may not be modified or canceled during the term of this Master Permit without giving advanced written notice to the City. Notice must be by certified mail to the City Manager, return receipt requested.

C. If the City determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be

acquired. The City shall provide written notice should the City exercise its right to require additional insurance.

D. NOEL COMMUNICATIONS INC. shall grant, secure, and maintain the following liability insurance policies insuring both NOEL COMMUNICATIONS INC. and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured parties against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights granted to NOEL COMMUNICATIONS INC.:

1. Commercial general liability insurance, written on an occurrence basis and on form to include premises, products, completed operations, explosions, collapse and underground hazards with limits not less than \$5,000,000.00 per occurrence covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each accident covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
4. The liability insurance policies required by this Section must be maintained by NOEL COMMUNICATIONS INC. throughout the term of the Master Permit and such other period of time during which NOEL COMMUNICATIONS INC. is operating without an authorization or is engaged in the removal of its Facilities. NOEL COMMUNICATIONS INC. shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Facilities pursuant to this Master Permit. Any deductibles or self-insured retentions must be declared to and approved by the City. NOEL COMMUNICATIONS INC. shall pay and is solely responsible for any deductibles and self-insured retentions. The liability insurance policies required by this Section must contain a clause stating that coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. NOEL COMMUNICATIONS INC.'s insurance must be primary insurance as respects the City, its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers is in excess of NOEL COMMUNICATIONS INC.'s insurance and does not contribute with it; and
5. In addition to the coverage requirements set forth in this Section, the insurance certificate must state should any of the required insurance be cancelled or not renewed, advanced written notice must be provided to the City Manager of such intent to cancel or not to renew. Within 30 days after receipt by the City of said notice, and in no event later than five days prior to said cancellation or intent not to renew, NOEL COMMUNICATIONS INC. shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 8. Other Permits & Approvals. Nothing in this Agreement relieves NOEL COMMUNICATIONS INC. from any obligation to obtain approvals or permits from applicable federal, state, and City authorities for all activities in the Master Permit Area.

Section 9. Transfer of Ownership.

A. NOEL COMMUNICATIONS INC. shall not sell, transfer, assign, or otherwise encumber its rights provided by this Master Permit without the prior written consent of the City, which the City shall not unreasonably withhold or delay. The City's consent is not required where NOEL COMMUNICATIONS INC.'s transfers or assigns its rights under this Master Permit for the purpose of securing a debt, or where the transfer or assignment is to another person or entity controlling, controlled by, or under common control with NOEL COMMUNICATIONS INC. NOEL COMMUNICATIONS INC. may license the use of its Facilities to other users without the consent of the City, but NOEL COMMUNICATIONS INC. remains solely responsible for complying with the terms and conditions of this Master Permit.

B. In any sale, transfer, or assignment of this Master Permit which requires the City's consent, NOEL COMMUNICATIONS INC. shall demonstrate to the City's satisfaction that the recipient of such sale, transfer, or assignment has the technical ability, financial capability, and any other legal or general qualifications reasonably determined by the City to be necessary to ensure that the recipient can meet the terms and conditions of this Master Permit. The City Council will determine the qualifications of any proposed recipient in a public hearing and will approve or deny the sale, transfer, or assignment by resolution. NOEL COMMUNICATIONS INC. shall, within 30 days of any sale, transfer, or assignment, of this Master Permit reimburse the City for any actual and reasonable administrative costs incurred by the City in approving the sale, transfer, or assignment.

Section 10. Administrative Fees.

A. The City is precluded from imposing Master Permit fees for "telephone businesses," as defined in RCW 82.16.010, except that fees may be collected for administrative expenses related to a Master Permit. NOEL COMMUNICATIONS INC. hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010.

B. NOEL COMMUNICATIONS INC. is subject to a reasonable administrative fee for reimbursement of costs associated with the preparation, processing, and approval of this Master Permit and for reimbursement of administrative costs for issuing any permits and for inspecting, monitoring, or supervising any actions required under Section 5 above. These costs include but are not limited to wages, benefits, overhead expenses, equipment, and supplies associated with such tasks as plan review, site visits, meetings, negotiations, and other functions critical to proper management and oversight of City's right-of-way. Administrative fees exclude normal permit fees as provided in Title 11 of the OMC.

C. In the event NOEL COMMUNICATIONS INC. submits a request for work beyond the scope of this Master Permit, or submits a complex project that requires significant plan review or inspection, NOEL COMMUNICATIONS INC. shall reimburse the City for costs incurred by the City associated with the request or project. NOEL COMMUNICATIONS INC. shall pay such costs within 30 days of receipt of an invoice from the City.

D. Failure by NOEL COMMUNICATIONS INC. to make full payment of invoices within the time specified is grounds for the termination of this Master Permit.

Section 11. Notices. Each party shall deliver any notice to be served on the other party to the following addresses:

CITY:
City of Olympia
ATTN: City Manager
PO Box 1967
Olympia WA 98507

NOEL COMMUNICATIONS INC.:
Nick Guy
Chief Operating Officer
901 Pitcher Street
Yakima, WA 98901-3063

With a copy to:
City of Olympia
ATTN: City Attorney
PO Box 1967
Olympia WA 98507

With a copy to:
Jym Schuler
Facilities & OSP Mgr
901 Pitcher Street
Yakima, WA 98901-3063

Section 12. Indemnification.

A. NOEL COMMUNICATIONS INC. shall use reasonable and appropriate precautions to avoid damage to persons or property in any construction, installation, maintenance, repair, restoration or operation of its Facilities. NOEL COMMUNICATIONS INC. shall indemnify, defend, and hold the City harmless from all claims, actions, or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation, or property to the extent caused in part or in whole by any act or omission of NOEL COMMUNICATIONS INC., its officers, agents, servants, or employees, carried on in the furtherance of the rights granted to NOEL COMMUNICATIONS INC. by this Master Permit, including, but not limited to, any delay or failure to comply with the City's directives to relocate or remove its Facilities. In the event any claim or demand is presented to or filed with the City which gives rise to NOEL COMMUNICATIONS INC.'s obligation pursuant to this Section, the City shall within a reasonable time notify NOEL COMMUNICATIONS INC. of the claim or demand and NOEL COMMUNICATIONS INC. shall have the right, at its election, to settle or compromise the claim or demand. In the event any lawsuit is commenced in which the City is named a party, and which lawsuit is based on a claim or demand which gives rise to NOEL COMMUNICATIONS INC.'s obligation pursuant to this Section, the City shall promptly notify NOEL COMMUNICATIONS INC. of the lawsuit, and NOEL COMMUNICATIONS INC. shall, at its sole cost and expense, defend such lawsuit by attorneys of its own election. In defense of such lawsuit, NOEL COMMUNICATIONS INC. may, at its election and at its sole cost and expense, settle or compromise such lawsuit.

B. To the extent of any concurrent negligence between NOEL COMMUNICATIONS INC. and the City, NOEL COMMUNICATIONS INC.'s obligations under this Section only extend to its share of negligence or fault. The City may at all times participate through its own attorney in any lawsuit which arises out of or relates to this Master Permit when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City is at the City's sole cost and expense.

C. With respect to the performance of this Master Permit and as to claims or demands against the City, its officers, agents, and employees, NOEL COMMUNICATIONS INC. expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its officers, agents, and employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section extends to any claim brought by or on behalf of NOEL

COMMUNICATIONS INC.'s officers, agents or employees. This waiver was mutually negotiated by the parties.

Section 13. Severability. If a court with proper jurisdiction holds that any section, sentence, clause, or phrase of this Master Permit is invalid or unconstitutional, the City may, at its sole option, deem the entire Master Permit to be affected and thereby nullified, or the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Master Permit. If the City elects to enforce the remaining provisions of this Master Permit, NOEL COMMUNICATIONS INC. may elect to terminate this Master Permit.

Section 14. Reservation of Rights. The parties agree that this Master Permit is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Master Permit or any local ordinance which may conflict with or violate the law is invalid and unenforceable, whether enacted before or after the effective date of this Master Permit, it being the intention of the parties to preserve their respective rights and remedies under the law, and that this Master Permit does not constitute a waiver of any rights or obligations by either party under the law.

Section 15. Police Powers. Nothing contained in this Master Permit affects the City's authority to exercise its police powers. NOEL COMMUNICATIONS INC. does not by this Master Permit obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Master Permit. This Master Permit and the permits issued for work related to this Master Permit are governed by applicable City ordinances in effect at the time of application for such permits.

Section 16. Future Rules, Regulations, and Specifications. NOEL COMMUNICATIONS INC. acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to NOEL COMMUNICATIONS INC., thereafter govern NOEL COMMUNICATIONS INC.'s activities under this Master Permit; provided, however, that in no event may regulations:

A. Materially interfere with or adversely affect NOEL COMMUNICATIONS INC.'s rights pursuant to and in accordance with this Master Permit; or

B. Be applied in a discriminatory manner as it pertains to NOEL COMMUNICATIONS INC. and other similar user of such facilities.

Section 17. Effective Date. The City shall cause this Master Permit, or a summary, to be published in the official newspaper of the City, and this Master Permit takes effect five days after passage and publication as provided by law. Effectiveness of this Master Permit is subject to NOEL COMMUNICATIONS INC.'s acceptance of this Master Permit, as required by Section 4, above.

Section 18. Law and Venue. This Master Permit is issued under the laws of the State of Washington, and the forum for any dispute arising under this Master Permit is in Thurston County state Superior Court.

Section 19. Ratification. Any act consistent with the authority and prior to the effective date of this Master Permit is hereby ratified and affirmed.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

PASSED:

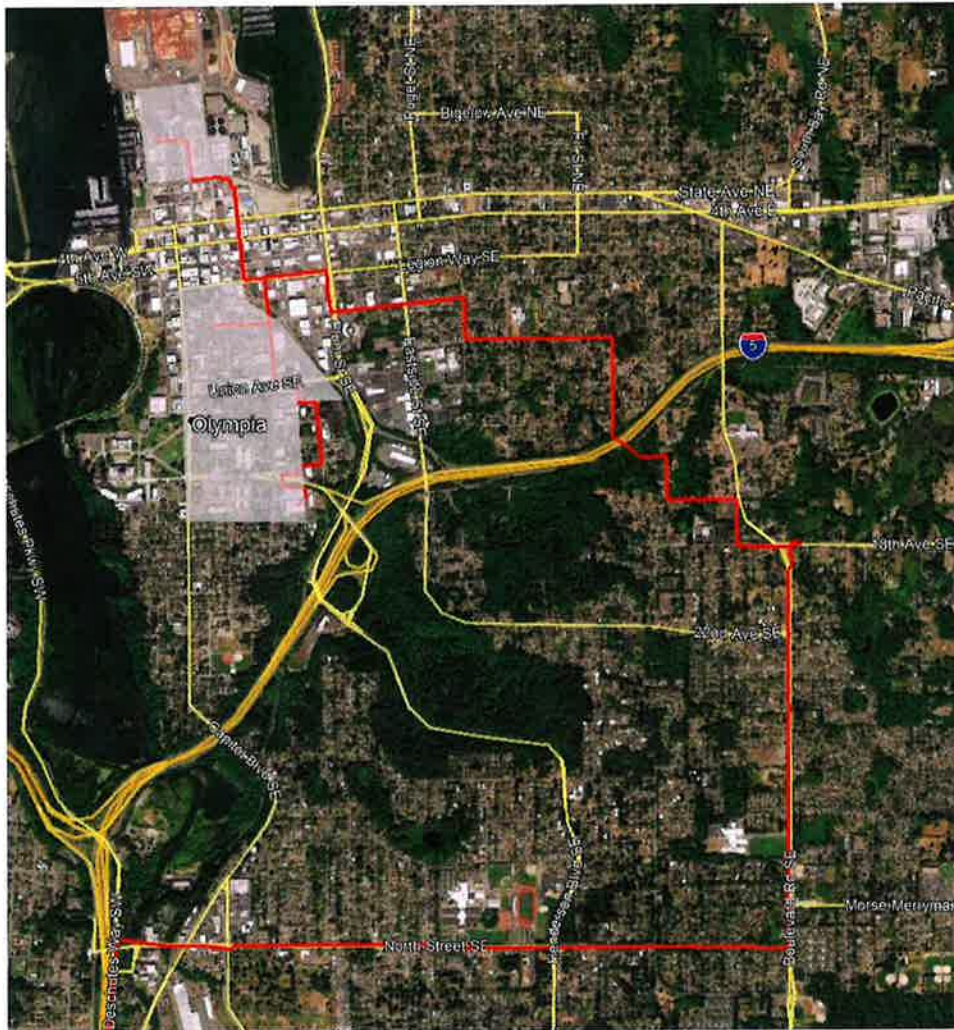
APPROVED:

PUBLISHED:

ATTACHMENTS: ***EXHIBIT A, NOEL COMMUNICATIONS INC. system map (combination NOEL COMMUNICATIONS INC./ facilities)***
EXHIBIT B, Master Permit Acceptance Form, NOEL COMMUNICATIONS INC.

EXHIBIT A

*Noel Communications – Future Wholesail Networks
City of Olympia local fiber network*



Red line indicates 2019 existing facilities

Shaded area indicates future expansion areas

EXHIBIT B

MASTER PERMIT ACCEPTANCE FORM

NOEL COMMUNICATIONS INC.

Date: _____

City of Olympia
City Clerk's Office
PO Box 1967
Olympia, WA 98507

Re: Ordinance No. _____
Adopted _____

In accordance with and as required by Section 4 of the City of Olympia Ordinance referenced above, NOEL COMMUNICATIONS INC. hereby unconditionally accepts the terms, conditions, and obligations to be complied with or performed by it under the Master Permit.

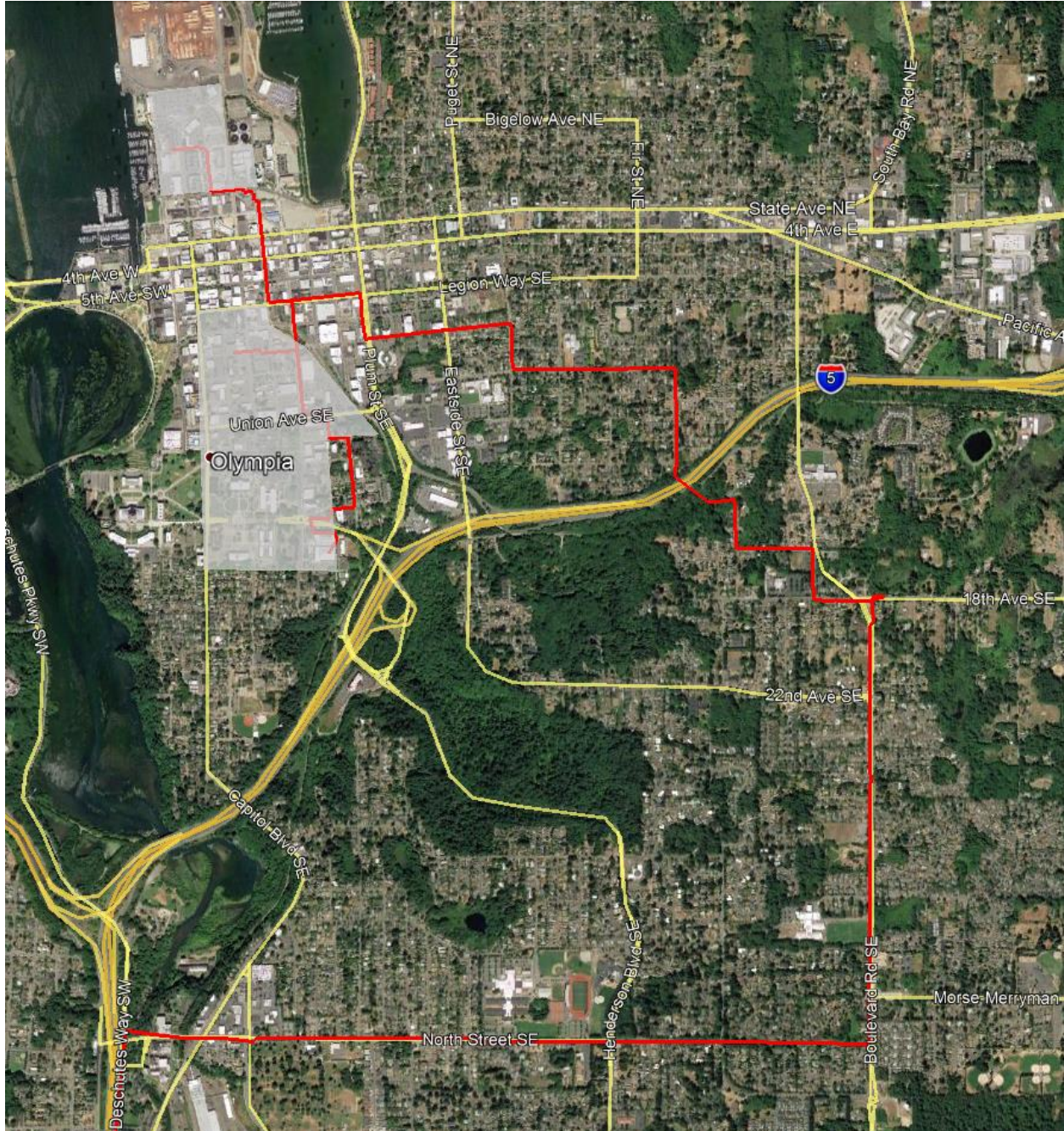
I certify that I am duly authorized to execute this acceptance on behalf of NOEL COMMUNICATIONS INC.

Signature

Printed Name and Title

Exhibit

Noel Communications – City of Olympia local fiber network



Red line indicates 2019 existing facilities

Shaded area indicates future expansion areas



City Council

Approval of an Ordinance to Grant a Master Permit to Astound Broadband

Agenda Date: 12/17/2019
Agenda Item Number: 4.S
File Number: 19-1142

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance to Grant a Master Permit to Astound Broadband

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance granting Astound Broadband a Master Use Permit on second reading.

Report

Issue:

Whether to approve the ordinance granting Astound Broadband a Master Use Permit.

Staff Contact:

Fran Eide, P.E., City Engineer, Public Works Engineering, 360.753.8422

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

A Master User Permit, as defined in the Olympia Municipal Code (OMC), is an agreement whereby the City may grant general permission to a service provider to enter, use, and occupy the right-of-way for the purpose of locating facilities.

Astound Broadband, LLC has made a request to install fiber optic lines throughout the Olympia area (see attached map) to provide telecommunications, internet access, and private line services to potential customers, such as schools, government agencies, and health care facilities, as well as support services to existing cell phone towers. These lines would be in addition to the lines Astound Broadband, LLC currently has in the City's right-of-way, installed under a previous Master Use Permit.

Staff evaluated the routes proposed by the applicant and found there is sufficient capacity to accommodate the new lines, both overhead and underground. The addition of these lines will not impact City utilities.

A hearing was held on September 10, 2019, to hear public comment regarding the request. There were no comments against the proposed renewal of the Master Permit. Council directed staff to draft a Master Permit Ordinance for Council approval.

The applicant has acquired all required licenses and approvals to place the new lines on existing Puget Sound Energy power poles.

Neighborhood/Community Interests (if known):

Service to affected customers will not be interrupted.

Options:

- Option 1: Move to approve first reading and move to second reading an ordinance to grant Astound Broadband a Master Permit. This option allows Astound Broadband to continue to serve existing customers and located current and future planned facilities in City of Olympia right of way.
- Option 2: Move to approve first reading and move to second reading an ordinance to grant Astound Broadband a Master Permit to occupy City of Olympia right of way with additional conditions.
- Option 3: Do not approve an ordinance to allow Astound Broadband to occupy City of Olympia right of way. This option will require Astound Broadband to remove existing facilities and work with current customers to transfer to other providers of telecommunication services.

Financial Impact:

The applicant will be required to pay fees associated with permits to do work within the City right of way.

Attachments:

Ordinance
Map

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING A NON-EXCLUSIVE MASTER PERMIT TO ASTOUND BROADBAND, LLC, LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING TELECOMMUNICATIONS TRANSMISSION LINES IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, ASTOUND BROADBAND, LLC is a competitive telecommunications company providing communications and telecommunications services; and

WHEREAS, ASTOUND BROADBAND, LLC's route through the City of Olympia ("City") requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

WHEREAS, the City Council held a public hearing on September 10, 2019, where it was presented with information demonstrating that ASTOUND BROADBAND, LLC satisfies the requirements set forth in Olympia Municipal Code ("OMC") 11.06.020. In particular, the City Council was presented with information confirming and demonstrating the following: That ASTOUND BROADBAND, LLC has submitted all required licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by ASTOUND BROADBAND, LLC. That the capacity of the public ways can accommodate ASTOUND BROADBAND's Facilities if the Master Permit is granted. That the City's rights-of-way will accommodate additional utility and facilities if the Master Permit is granted. That ASTOUND BROADBAND, LLC confirms that there are currently no additional Facilities planned and there is no anticipated damage or disruption to the City's rights-of-way. That construction of additional Facilities will comply with the City's Engineering Design and Development Standards ("EDDS"). That there will be minimal effect, if any, on public health, safety, and welfare if the Master Permit requested is granted. That the proposed route of ASTOUND BROADBAND, LLC's Facilities is appropriate; an alternate route is not needed. And that ASTOUND BROADBAND, LLC has agreed to comply with all federal, state, and local telecommunications laws, regulations, and policies; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate nonexclusive Master Permits, for the use of public streets, rights-of-way, and other public property, for transmission of communications; and

WHEREAS, the insurance provisions of this Master Permit are updated and supersede the insurance provisions set forth in OMC 11.10.220; and

WHEREAS, this Master Permit contains the following:

- Section 1. Non-exclusive Master Permit Granted
- Section 2. Authority
- Section 3. Master Permit Term
- Section 4. Acceptance of Terms and Conditions
- Section 5. Construction Provisions and Standards

- A. Permit Required
 - B. Coordination
 - C. Construction Standards
 - D. Underground Installation Required
 - E. Relocation.
 - F. Removal or Abandonment
 - G. Bond
 - H. "One-Call" Location & Liability
 - I. As-Built Plans Required
 - J. Recovery of Costs
 - K. Vacation
- Section 6. Master Permit Compliance.
- A. Master Permit Violations
 - B. Emergency Actions.
 - C. Other Remedies
 - D. Removal of System
- Section 7. Insurance
- Section 8. Other Permits & Approvals
- Section 9. Transfer of Ownership.
- Section 10. Administrative Fees.
- Section 11. Notices.
- Section 12. Indemnification.
- Section 13. Severability
- Section 14. Reservation of Rights
- Section 15. Police Powers
- Section 16. Future Rules, Regulations, and Specifications
- Section 17. Effective Date
- Section 18. Law and Venue
- Section 19. Ratification

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

Section 1. Non-exclusive Master Permit Granted.

A. The City hereby grants to ASTOUND BROADBAND, LLC, subject to the terms and conditions of this Ordinance ("Master Permit"), the rights to construct, replace, repair, monitor, maintain, use, and operate the Facilities (as defined in OMC 11.02.020 O) necessary for an underground telecommunications transmission system, within the City-owned rights-of-way generally described in Exhibit A, and referred to as the "Master Permit Area."

B. The rights granted by this Master Permit are not exclusive to ASTOUND BROADBAND, LLC and the granting of this Master Permit does not in any way prohibit or limit the City's ability to grant other Master Permits or rights along, over, or under the Master Permit area, provided that such other uses do not unreasonably interfere with ASTOUND BROADBAND, LLC's exercise of the rights granted in this Master Permit, as determined by the City. This Master Permit does not allow for interference with existing utilities or in any way limit, prohibit, or prevent the City from using the Master Permit Area, and does not in any way affect the City's jurisdiction over that area.

Section 2. Authority. The City Manager or the City Manager's designee is hereby granted the authority to administer and enforce the terms and conditions of this Master Permit, and may develop such rules, policies, and procedures as deemed necessary to carry out this Master Permit.

Section 3. Master Permit Term. This Master Permit is effective for a period of five years from the effective date of this Ordinance. The effectiveness of this Master Permit is contingent upon ASTOUND BROADBAND, LLC's delivery of a written acceptance to the City pursuant to Section 4 of this Master Permit. If ASTOUND BROADBAND, LLC requests a Master Permit renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this Master Permit beyond the expiration date to allow processing of the renewal. If the City elects to extend the term of this Master Permit, the City shall provide written notice of the extension to ASTOUND BROADBAND, LLC prior to the expiration date.

Section 4. Acceptance of Terms and Conditions. As required by OMC 11.10.020, ASTOUND BROADBAND, LLC shall, within 30 days of the effective date of this Ordinance or within such other time period as is mutually agreed by the parties, deliver to the City Manager for filing an unconditional acceptance of this Master Permit in the form attached as Exhibit B. ASTOUND BROADBAND, LLC's failure to deliver the acceptance within this time period voids and nullifies this Master Permit and terminates any and all rights granted under this Master Permit.

Section 5. Construction Provisions and Standards. ASTOUND BROADBAND, LLC shall abide by the following construction provisions and standards, and ASTOUND BROADBAND, LLC's failure to abide by any of the following construction provisions or standards constitutes non-compliance with the terms and conditions of this Master Permit and may result in imposition of some or all of the remedies specified in Section 6.

A. Permit Required. Neither ASTOUND BROADBAND, LLC, nor any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction, may perform any construction, installation, maintenance, repair, or restoration activities (except for emergency repairs) in the Master Permit Area without first obtaining appropriate permits from the Community Planning and Development Department (CP&D). In case of an emergency, ASTOUND BROADBAND, LLC shall within 24 hours of the emergency, obtain a permit from CP&D.

B. Coordination. All construction, installation, maintenance, repair, or restoration activities are subject to City inspection and approval, as provided in the OMC. ASTOUND BROADBAND, LLC shall arrange and allow for such inspection. ASTOUND BROADBAND, LLC shall coordinate all construction, installation, maintenance, repair, or restoration activities and inspections with CP&D to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances.

C. Construction Standards. ASTOUND BROADBAND, LLC, and any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction, shall perform all construction, installation, maintenance, repair, or restoration activities within the Master Permit Area so as to produce the least amount of interference with the free passage of pedestrian, bicycle, and vehicular traffic. ASTOUND BROADBAND, LLC, and any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction, shall perform all construction, installation, maintenance, repair, or restoration activities in conformance with the EDDS and with Title 11 of the OMC.

D. Underground Installation Required. ASTOUND BROADBAND, LLC, and any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction, shall install any new Facilities underground unless otherwise exempted from this requirement, in writing, by the City Manager, or the City Manager's designee.

E. Relocation.

1. ASTOUND BROADBAND, LLC shall, at its own expense, temporarily or permanently remove, relocate, place underground, change, or alter the position of any of its Facilities within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any City or other public improvement in or upon the rights-of-way. ASTOUND BROADBAND, LLC may seek reimbursement for relocation expenses from the City as provided for in the OMC.
2. ASTOUND BROADBAND, LLC may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must include the use and operation of temporary transmitting facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise ASTOUND BROADBAND, LLC in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, ASTOUND BROADBAND, LLC shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by ASTOUND BROADBAND, LLC full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, ASTOUND BROADBAND, LLC shall relocate its Facilities as otherwise provided in this Section.

F. Removal or Abandonment. Upon the removal from service of any of ASTOUND BROADBAND, LLC's Facilities, ASTOUND BROADBAND, LLC shall comply with all applicable standards and requirements prescribed by the OMC and the EDDS for the removal or abandonment of the Facilities. No Facilities constructed or owned by ASTOUND BROADBAND, LLC may be abandoned without the express written consent of the City.

G. Bond. Before undertaking any of the construction, installation, maintenance, repair, or restoration activities authorized by this Master Permit, ASTOUND BROADBAND, LLC shall upon the request of the City, furnish a bond executed by ASTOUND BROADBAND, LLC and a corporate surety authorized to operate a surety business in the State of Washington, in an amount determined by the City as sufficient to ensure performance of ASTOUND BROADBAND, LLC's obligations under this Master Permit. At ASTOUND BROADBAND, LLC's sole option, ASTOUND BROADBAND, LLC may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of bond or alternate security must be in the form reasonably acceptable to the City. The bond must be conditioned so that ASTOUND BROADBAND, LLC shall observe all the terms and conditions and shall faithfully perform all of the obligations of this Master Permit, and to repair or replace any defective work or materials discovered in the City's roads, streets, or property. ASTOUND BROADBAND, LLC may not encumber a bond required by this Section for any other purpose.

H. "One-Call" Location & Liability. ASTOUND BROADBAND, LLC shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate any of its Facilities upon request. The City is not liable for any damages to ASTOUND BROADBAND, LLC's Facilities or for interruptions in service to ASTOUND BROADBAND, LLC's customers which are a direct result of work performed for any City project for which ASTOUND BROADBAND, LLC has failed to properly locate its Facilities within the prescribed time limits and guidelines established by One-Call. The City is also not liable for any damages to ASTOUND BROADBAND, LLC's Facilities or for interruptions in service to ASTOUND BROADBAND, LLC's customers resulting from work performed under a permit issued by the City.

I. As-Built Plans Required. ASTOUND BROADBAND, LLC shall maintain accurate engineering plans and details of all Facilities installed within the City limits and shall, at the City's request, provide such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any construction, installation, maintenance, repair, or restoration activities performed by ASTOUND BROADBAND, LLC, or any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction, pursuant to this Master Permit. The City shall determine the acceptability of any as-built submittals provided under this Section.

J. Recovery of Costs. ASTOUND BROADBAND, LLC is subject to all permit fees associated with activities undertaken through the authority granted in this Master Permit Agreement or under other ordinances of the City. Where the City incurs costs and expenses for review or inspection of activities undertaken through the authority granted in this Master Permit or any ordinances relating to the subject for which permit fees have not been established, ASTOUND BROADBAND, LLC shall pay such reasonable costs and expenses directly to the City.

K. Vacation. If, at any time, the City vacates any City road, right-of-way, or other City property which is subject to rights granted by this Master Permit and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 30 days written notice to ASTOUND BROADBAND, LLC, terminate this Master Permit with reference to such City road, right-of-way, or other City property vacated, and the City is not liable for any damages or loss to ASTOUND BROADBAND, LLC by reason of such termination other than those provided for in RCW chapter 35.99.

Section 6. Master Permit Compliance.

A. Master Permit Violations. If ASTOUND BROADBAND, LLC fails to fully comply with any of the provisions of this Master Permit, the City may provide written notice to ASTOUND BROADBAND, LLC, which describes the violation(s) of the Master Permit and requests remedial action within 30 days of receipt of the violation notice. If ASTOUND BROADBAND, LLC has not remedied the violation(s) identified in the violation notice at the end of the 30-day period following receipt of the violation notice, the City may declare an immediate termination of this Master Permit, provided that remedying the violation(s) was reasonably possible within that 30-day period. If the violation(s) identified in the violation notice could not possibly be remedied within the 30-day period, the City may declare an immediate termination of this Master Permit at the end of the period in which the violation could possibly have been remedied.

B. Emergency Actions.

1. If the City determines that any of ASTOUND BROADBAND, LLC's actions, or any failure by ASTOUND BROADBAND, LLC to act to correct a situation caused by ASTOUND BROADBAND, LLC, creates a threat to life or property, the City may order ASTOUND BROADBAND, LLC to immediately correct the threat or, at the City's discretion, the City may act to correct the threat; provided that, when possible, the City shall notify ASTOUND BROADBAND, LLC and give ASTOUND BROADBAND, LLC an opportunity to correct the threat before the City acts to correct the threat. ASTOUND BROADBAND, LLC is liable to the City for all costs, expenses, and damages resulting to the City from the threat or incurred by the City in acting to correct the threat to the extent that the threat was caused by ASTOUND BROADBAND, LLC. ASTOUND BROADBAND, LLC shall reimburse the City for any such costs within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by ASTOUND BROADBAND, LLC to take appropriate action to correct a threat caused by ASTOUND BROADBAND, LLC and identified by the City is a violation of this Master Permit.
2. If during construction, installation, maintenance, repair, or restoration of any of ASTOUND BROADBAND, LLC's Facilities any damage occurs to an underground facility, and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, ASTOUND BROADBAND, LLC or any person or entity working on ASTOUND BROADBAND, LLC's behalf or at ASTOUND BROADBAND, LLC's direction shall immediately call 911 or other local emergency response number.

C. Other Remedies. Nothing contained in this Master Permit limits the City's available remedies in the event of ASTOUND BROADBAND, LLC's failure to comply with this Master Permit, including but not limited to, the City's right to a lawsuit for specific performance, or damages, or both.

D. Removal of System. In the event that this Master Permit is terminated as a result of violations of this Master Permit, ASTOUND BROADBAND, LLC shall at its sole expense, promptly remove all Facilities, provided that the City, at its sole option, may allow ASTOUND BROADBAND, LLC to abandon some or all of its Facilities in place.

Section 7. Insurance.

A. ASTOUND BROADBAND, LLC shall maintain liability insurance written on an occurrence form during the full term of this Master Permit for bodily injuries and property damages. The policy must contain coverage in the amounts and conditions set forth in subsection D of this Section.

B. Such insurance must specifically name, as additional insured, the City, its officers (including its elected and appointed officials), employees, and agents (including its representatives, consultants, engineers, and volunteers); must apply as primary insurance; must stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder; and must further provide that the policy may not be modified or canceled during the term of this Master Permit without giving advanced written notice to the City. Notice must be by certified mail to the City Manager, return receipt requested.

C. If the City determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be

acquired. The City shall provide written notice should the City exercise its right to require additional insurance.

D. ASTOUND BROADBAND, LLC shall grant, secure, and maintain the following liability insurance policies insuring both ASTOUND BROADBAND, LLC and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured parties against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights granted to ASTOUND BROADBAND, LLC:

1. Commercial general liability insurance, written on an occurrence basis and on form to include premises, products, completed operations, explosions, collapse and underground hazards with limits not less than \$5,000,000.00 per occurrence covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each accident covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
4. The liability insurance policies required by this Section must be maintained by ASTOUND BROADBAND, LLC throughout the term of the Master Permit and such other period of time during which ASTOUND BROADBAND, LLC is operating without an authorization or is engaged in the removal of its Facilities. ASTOUND BROADBAND, LLC shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Facilities pursuant to this Master Permit. Any deductibles or self-insured retentions must be declared to and approved by the City. ASTOUND BROADBAND, LLC shall pay and is solely responsible for any deductibles and self-insured retentions. The liability insurance policies required by this Section must contain a clause stating that coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. ASTOUND BROADBAND, LLC's insurance must be primary insurance as respects the City, its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers is in excess of ASTOUND BROADBAND, LLC's insurance and does not contribute with it; and
5. In addition to the coverage requirements set forth in this Section, the insurance certificate must state should any of the required insurance be cancelled or not renewed, advanced written notice must be provided to the City Manager of such intent to cancel or not to renew. Within 30 days after receipt by the City of said notice, and in no event later than five days prior to said cancellation or intent not to renew, ASTOUND BROADBAND, LLC shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

Section 8. Other Permits & Approvals. Nothing in this Agreement relieves ASTOUND BROADBAND, LLC from any obligation to obtain approvals or permits from applicable federal, state, and City authorities for all activities in the Master Permit Area.

Section 9. Transfer of Ownership.

A. ASTOUND BROADBAND, LLC shall not sell, transfer, assign, or otherwise encumber its rights provided by this Master Permit without the prior written consent of the City, which the City shall not unreasonably withhold or delay. The City's consent is not required where ASTOUND BROADBAND, LLC's transfers or assigns its rights under this Master Permit for the purpose of securing a debt, or where the transfer or assignment is to another person or entity controlling, controlled by, or under common control with ASTOUND BROADBAND, LLC. ASTOUND BROADBAND, LLC may license the use of its Facilities to other users without the consent of the City, but ASTOUND BROADBAND, LLC remains solely responsible for complying with the terms and conditions of this Master Permit.

B. In any sale, transfer, or assignment of this Master Permit which requires the City's consent, ASTOUND BROADBAND, LLC shall demonstrate to the City's satisfaction that the recipient of such sale, transfer, or assignment has the technical ability, financial capability, and any other legal or general qualifications reasonably determined by the City to be necessary to ensure that the recipient can meet the terms and conditions of this Master Permit. The City Council will determine the qualifications of any proposed recipient in a public hearing and will approve or deny the sale, transfer, or assignment by resolution. ASTOUND BROADBAND, LLC shall, within 30 days of any sale, transfer, or assignment, of this Master Permit reimburse the City for any actual and reasonable administrative costs incurred by the City in approving the sale, transfer, or assignment.

Section 10. Administrative Fees.

A. The City is precluded from imposing Master Permit fees for "telephone businesses," as defined in RCW 82.16.010, except that fees may be collected for administrative expenses related to a Master Permit. ASTOUND BROADBAND, LLC hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010.

B. ASTOUND BROADBAND, LLC is subject to a reasonable administrative fee for reimbursement of costs associated with the preparation, processing, and approval of this Master Permit and for reimbursement of administrative costs for issuing any permits and for inspecting, monitoring, or supervising any actions required under Section 5 above. These costs include but are not limited to wages, benefits, overhead expenses, equipment, and supplies associated with such tasks as plan review, site visits, meetings, negotiations, and other functions critical to proper management and oversight of City's right-of-way. Administrative fees exclude normal permit fees as provided in Title 11 of the OMC.

C. In the event ASTOUND BROADBAND, LLC submits a request for work beyond the scope of this Master Permit, or submits a complex project that requires significant plan review or inspection, ASTOUND BROADBAND, LLC shall reimburse the City for costs incurred by the City associated with the request or project. ASTOUND BROADBAND, LLC shall pay such costs within 30 days of receipt of an invoice from the City.

D. Failure by ASTOUND BROADBAND, LLC to make full payment of invoices within the time specified is grounds for the termination of this Master Permit.

Section 11. Notices. Each party shall deliver any notice to be served on the other party to the following addresses:

CITY:

City of Olympia
ATTN: City Manager
PO Box 1967
Olympia WA 98507

ASTOUND BROADBAND, LLC:

Trudy Longnecker
Sr. Manager Tariff and Compliance
650 College Road East, Suite 3100
Princeton NJ 08540

With a copy to:

City of Olympia
ATTN: City Attorney
PO Box 1967
Olympia WA 98507

With a copy to:

Joseph Kahl
VP Regulatory and Public Affairs
650 College Road East, Suite 3100
Princeton NJ 08540

Section 12. Indemnification.

A. ASTOUND BROADBAND, LLC shall use reasonable and appropriate precautions to avoid damage to persons or property in any construction, installation, maintenance, repair, restoration or operation of its Facilities. ASTOUND BROADBAND, LLC shall indemnify and hold the City harmless from all claims, actions, or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation, or property to the extent caused in part or in whole by any act or omission of ASTOUND BROADBAND, LLC, its officers, agents, servants, or employees, carried on in the furtherance of the rights granted to ASTOUND BROADBAND, LLC by this Master Permit, including, but not limited to, any delay or failure to comply with the City's directives to relocate or remove its Facilities. In the event any claim or demand is presented to or filed with the City which gives rise to ASTOUND BROADBAND, LLC's obligation pursuant to this Section, the City shall within a reasonable time notify ASTOUND BROADBAND, LLC of the claim or demand and ASTOUND BROADBAND, LLC shall have the right, at its election, to settle or compromise the claim or demand. In the event any lawsuit is commenced in which the City is named a party, and which lawsuit is based on a claim or demand which gives rise to ASTOUND BROADBAND, LLC's obligation pursuant to this Section, the City shall promptly notify ASTOUND BROADBAND, LLC of the lawsuit, and ASTOUND BROADBAND, LLC shall, at its sole cost and expense, defend such lawsuit by attorneys of its own election. In defense of such lawsuit, ASTOUND BROADBAND, LLC may, at its election and at its sole cost and expense, settle or compromise such lawsuit.

B. To the extent of any concurrent negligence between ASTOUND BROADBAND, LLC and the City, ASTOUND BROADBAND, LLC's obligations under this Section only extend to its share of negligence or fault. The City may at all times participate through its own attorney in any lawsuit which arises out of or relates to this Master Permit when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City is at the City's sole cost and expense.

C. With respect to the performance of this Master Permit and as to claims or demands against the City, its officers, agents, and employees, ASTOUND BROADBAND, LLC expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its officers, agents, and employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section extends to any claim brought by or on behalf of ASTOUND BROADBAND, LLC's officers, agents or employees. This waiver was mutually negotiated by the parties.

Section 13. Severability. If a court with proper jurisdiction holds that any section, sentence, clause, or phrase of this Master Permit is invalid or unconstitutional, the City may, at its sole option, deem the entire Master Permit to be affected and thereby nullified, or the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Master Permit. If the City elects to enforce the remaining provisions of this Master Permit, ASTOUND BROADBAND, LLC may elect to terminate this Master Permit.

Section 14. Reservation of Rights. The parties agree that this Master Permit is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Master Permit or any local ordinance which may conflict with or violate the law is invalid and unenforceable, whether enacted before or after the effective date of this Master Permit, it being the intention of the parties to preserve their respective rights and remedies under the law, and that this Master Permit does not constitute a waiver of any rights or obligations by either party under the law.

Section 15. Police Powers. Nothing contained in this Master Permit affects the City's authority to exercise its police powers. ASTOUND BROADBAND, LLC does not by this Master Permit obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Master Permit. This Master Permit and the permits issued for work related to this Master Permit are governed by applicable City ordinances in effect at the time of application for such permits.

Section 16. Future Rules, Regulations, and Specifications. ASTOUND BROADBAND, LLC acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to ASTOUND BROADBAND, LLC, thereafter govern ASTOUND BROADBAND, LLC's activities under this Master Permit; provided, however, that in no event may regulations:

A. Materially interfere with or adversely affect ASTOUND BROADBAND, LLC's rights pursuant to and in accordance with this Master Permit; or

B. Be applied in a discriminatory manner as it pertains to ASTOUND BROADBAND, LLC and other similar user of such facilities.

Section 17. Effective Date. The City shall cause this Master Permit, or a summary, to be published in the official newspaper of the City, and this Master Permit takes effect five days after passage and publication as provided by law. Effectiveness of this Master Permit is subject to ASTOUND BROADBAND's acceptance of this Master Permit, as required by Section 4, above.

Section 18. Law and Venue. This Master Permit is issued under the laws of the State of Washington, and the forum for any dispute arising under this Master Permit is in Thurston County Superior Court.

Section 19. Ratification. Any act consistent with the authority and prior to the effective date of this Master Permit is hereby ratified and affirmed.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

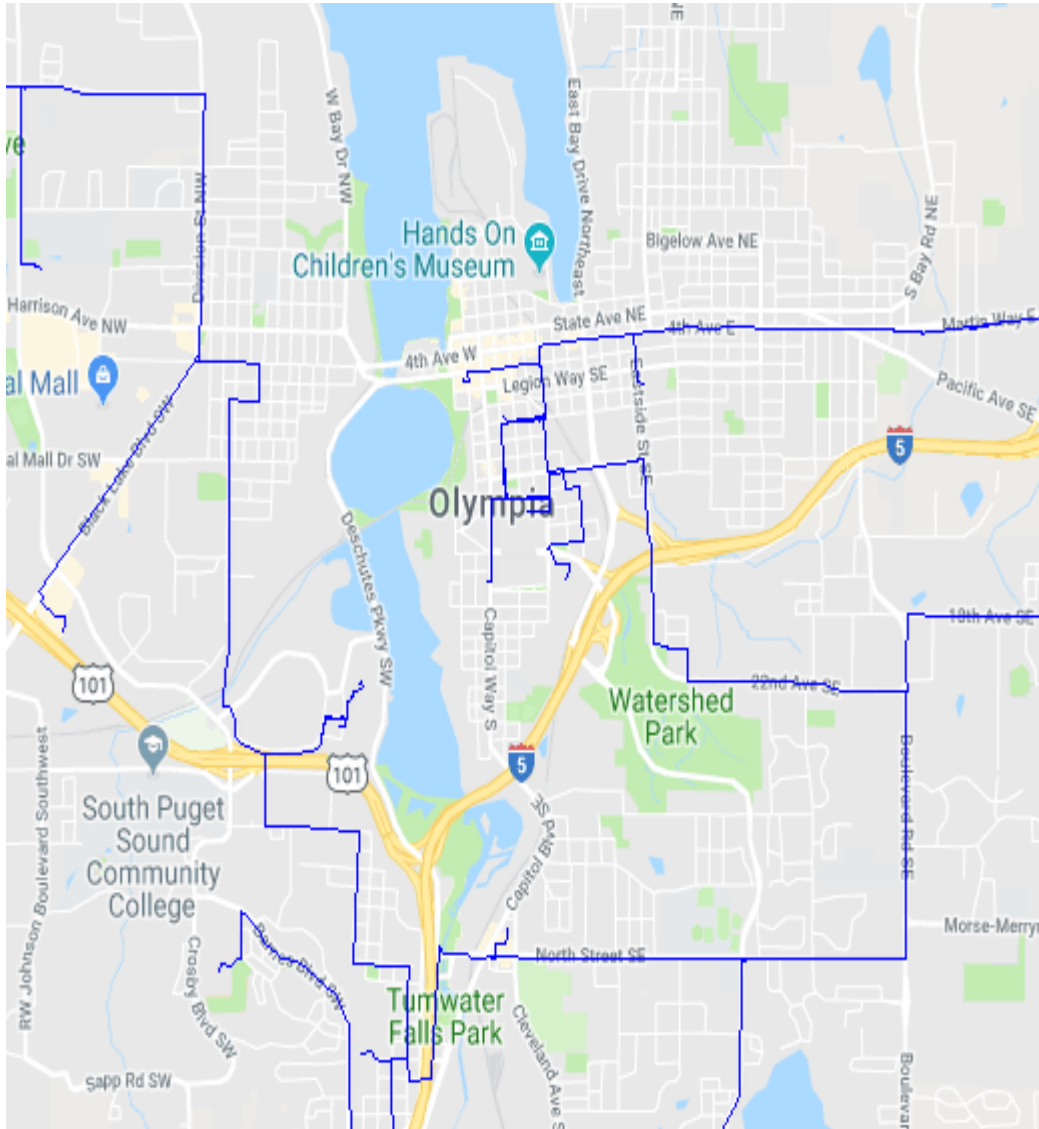
PASSED:

APPROVED:

PUBLISHED:

ATTACHMENTS: *EXHIBIT A, ASTOUND BROADBAND, LLC system map (combination ASTOUND BROADBAND, LLC/ facilities)*
EXHIBIT B, Master Permit Acceptance Form,
ASTOUND BROADBAND, LLC

Exhibit A



Astound Broadband System Map

EXHIBIT B

MASTER PERMIT ACCEPTANCE FORM

ASTOUND BROADBAND, LLC

Date: _____

City of Olympia
City Clerk's Office
PO Box 1967
Olympia, WA 98507

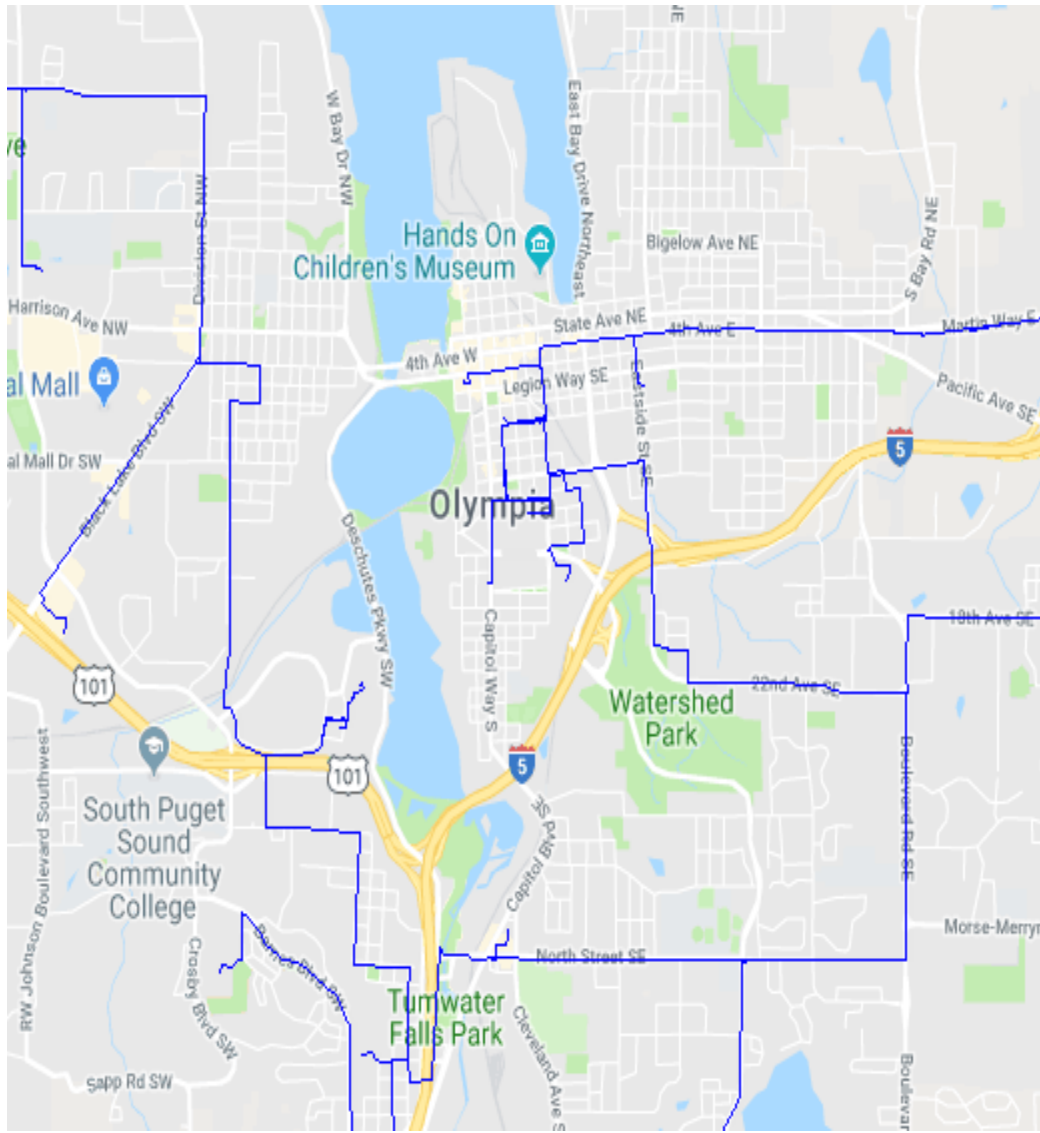
Re: Ordinance No. _____
Adopted _____

In accordance with and as required by Section 4 of the City of Olympia Ordinance referenced above, ASTOUND BROADBAND, LLC hereby unconditionally accepts the terms, conditions, and obligations to be complied with or performed by it under the Master Permit.

I certify that I am duly authorized to execute this acceptance on behalf of ASTOUND BROADBAND, LLC.

Signature

Printed Name and Title





City Council

Approval of an Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC

Agenda Date: 12/17/2019
Agenda Item Number: 4.T
File Number: 19-1049

Type: ordinance **Version:** 2 **Status:** 2d Reading-Consent

Title

Approval of an Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC

Recommended Action

Committee Recommendation:

Not referred to a committee

City Manager Recommendation:

Move to approve the Ordinance extending the term of the cable television franchise with Comcast Cable Communications Management, LLC on second reading.

Report

Issue:

Whether to extend the terms of the City of Olympia's franchise agreement with Comcast Cable through December 31, 2020.

Staff Contact:

Kellie Purce Braseth, Strategic Communications Director, Executive Department, 360.753.8361

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

Background and analysis has not changed from first to second reading.

The City of Olympia's franchise agreement with Comcast Cable was set to expire on March 24, 2019. On March 27, 2018, the City Council approved an interlocal agreement to jointly undertake the franchise renewal process with the cities of Lacey and Tumwater and Thurston County. On Feb. 5, 2019, the Council approved an ordinance extending the franchise agreement through December 31, 2019.

The renewal process continues, with the legal, technical and financial reviews complete and the

negotiations process underway. The proposed ordinance would extend the franchise agreement through December 31, 2020 and give the City additional time to complete the shared franchise renewal/negotiation process with our neighboring jurisdictions.

Neighborhood/Community Interests (if known):

The community has a high interest in high-quality, accessible and affordable cable services.

Options:

1. Approve the Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC on second reading.
2. Do not approve the Ordinance Extending the Term of the Cable Television Franchise with Comcast Cable Communications Management, LLC. The City will be operating with an expired franchise agreement during the renewal negotiations process.

Financial Impact:

The estimated \$26,000 renewal negotiations cost would be paid from Olympia cable franchise fees (PEG Fund).

Attachments:

Ordinance

Ordinance No. _____

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, EXTENDING THE TERM OF THE NONEXCLUSIVE CABLE TELEVISION FRANCHISE WITH COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC.

WHEREAS, in 2009, by Ordinance No. 6625, Comcast of Washington IV, Inc., now known as Comcast Cable Communications Management, LLC, (Comcast) was granted a franchise agreement with the City of Olympia (City); and

WHEREAS, on February 5, 2019, by Ordinance No. 7185, the City and Comcast agreed to extend the existing franchise agreement while a new agreement was being drafted; and

WHEREAS, the current extended Franchise is due to expire on December 31, 2019; and

WHEREAS, the City of Olympia, together with the cities of Tumwater and Lacey, and Thurston County, have engaged a consultant to negotiate a comprehensive franchise agreement covering all four jurisdictions; and

WHEREAS, the parties are still in the process of completing those negotiations and preparing the new franchise agreement and the City wishes to further extend the term of its current extended Franchise with Comcast;

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

Section 1. Franchise Extension. The term of the current extended Franchise between the City of Olympia and Comcast of Washington IV, Inc., now known as Comcast Cable Communications Management, LLC, is extended to December 31, 2020.

Section 2. Other Franchise Terms and Conditions. All other terms and conditions of the Current Franchise agreement remain in effect.

Section 3. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including the correction of scrivener/clerk errors, references, ordinance numbering, section/subsection numbers and any references thereto.

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 thirty (30) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED:

**ACCEPTANCE OF CITY OF OLYMPIA
ORDINANCE NO. _____**

The undersigned, Comcast Cable Communications Management, LLC (Comcast), for itself, its successors and assigns, hereby accepts Ordinance No. _____, which was passed by the City Council of the City of Olympia, Washington on _____, 2020 and is entitled:

AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, EXTENDING THE TERM OF THE
NONEXCLUSIVE CABLE TELEVISION FRANCHISE WITH COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC

IN TESTIMONY WHEREOF, said Comcast has caused this written Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on this ____ day of _____ 20____, and declares that it has carefully read the terms and conditions of the foregoing Ordinance and franchise agreement and the extension of its term, and accepts all of the terms and conditions of the Ordinance and agrees to abide by the same.

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC

Signature

Print Name

Title

STATE OF _____)

) ss.

COUNTY OF _____)

On the _____ day of _____ 20____, before me, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared before me _____, to me known to be the _____ of Comcast Cable Communications Management, LLC, a foreign limited liability corporation, who executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and on oath states that _____ is authorized to execute the said instrument.

WITNESS my hand and official seal the day and year first above written.

Signature
Print Name: _____
NOTARY PUBLIC in and for the State of _____

residing at _____
My commission expires _____



City Council

2019 Year-End Highlights

Agenda Date: 12/17/2019
Agenda Item Number: 6.A
File Number: 19-1162

Type: information **Version:** 1 **Status:** Other Business

Title

2019 Year-End Highlights

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Receive a year-in-review presentation on 2019 highlights.

Report

Issue:

Whether to receive a presentation on 2019 accomplishments.

Staff Contact:

Kellie Purce Braseth, Strategic Communications Director, Executive Department, 360.753.8361

Presenter(s):

Kellie Purce Braseth, Strategic Communications Director

Background and Analysis:

Staff will provide an overview of our significant accomplishments for 2019.

Neighborhood/Community Interests (if known):

N/A

Options:

N/A

Financial Impact:

N/A

Attachments:

None



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

City Council

Remarks from Outgoing Councilmember Jones

Agenda Date: 12/17/2019
Agenda Item Number: 6.B
File Number: 19-1164

Type: discussion **Version:** 1 **Status:** Other Business

Title

Remarks from Outgoing Councilmember Jones