



Meeting Agenda

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, June 2, 2020

5:30 PM

Online and Via Phone

Register to attend:

https://us02web.zoom.us/webinar/register/WN_mtqccyt4StqJOISf23u6DQ

1. ROLL CALL

1.A ANNOUNCEMENTS

1.B APPROVAL OF AGENDA

2. SPECIAL RECOGNITION

2.A [20-0426](#) Proclamation Recognizing Men's Health Month

Attachments: [Proclamation](#)

3. PUBLIC COMMENT

(Estimated Time: 0-30 Minutes) (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 from 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.

REMOTE MEETING PUBLIC COMMENT INSTRUCTIONS:

During this time, the Olympia City Council will hold business meetings remotely using Zoom. Live public comments will be taken during the meeting but advance registration is required. The link to register is at the top of the agenda.

After you complete the registration form, you will receive a link by email to log onto or call into Zoom for use at the meeting day and time. If you plan on calling into the meeting, you will need to provide your phone number at registration so you can be recognized during the meeting.

Once connected to the meeting you will be auto-muted. At the start of the public comment period, the Mayor will call participants by name to speak in the order they signed up. When it is your turn to speak, your microphone will be unmuted, once three minutes concludes your microphone will be muted again.

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)**4. CONSENT CALENDAR***(Items of a Routine Nature)*

- 4.A** [20-0427](#) Approval of May 19, 2020 City Council Meeting Minutes

 Attachments: [Minutes](#)
- 4.B** [20-0256](#) Approval of a Resolution Authorizing a Right-of-Way Agreement for Quince Street Between the City of Olympia and Vine Street Investors, LLC

 Attachments: [Resolution](#)
 [Right-of-Way Permit Agreement](#)
 [Vicinity Map](#)
- 4.C** [20-0423](#) Approval of a Resolution Authorizing an Interagency Agreement between the City of Olympia and the Washington State Department of Commerce for Coronavirus Relief Funds

 Attachments: [Resolution](#)
 [Agreement](#)
- 4.D** [20-0415](#) Approval of a Resolution Authorizing a Public Works Board Emergency Loan Contract for Repair of the Percival Creek Utility Bridge

 Attachments: [Resolution](#)
 [Contract](#)
- 4.E** [20-0418](#) Approval of Resolution Authorizing a Property Lease Agreement with the Low Income Housing Institute for Plum Street Village

 Attachments: [Resolution](#)
 [Agreement](#)
- 4.F** [20-0420](#) Approval of a Resolution Authorizing a Funding Agreement with Low Income Housing Institute for Plum Street Village

 Attachments: [Resolution](#)
 [Agreement](#)
- 4.G** [20-0422](#) Approval of Resolution Authorizing the Purchase of Real Estate Owned by Manke Timber Company and Manke Lumber Company

 Attachments: [Resolution](#)
 [Agreement](#)
 [Property Map](#)

4. SECOND READINGS (Ordinances) - None**4. FIRST READINGS (Ordinances) - None**

5. PUBLIC HEARING - None

6. OTHER BUSINESS - None

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. EXECUTIVE SESSION

- 9.A** [20-0421](#) Executive Session Pursuant to RCW 42.30.110(1)(b); RCW 42.30.110 (1)
(c) - Real Estate Matter

9. ADJOURNMENT

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



City Council

Proclamation Recognizing Men's Health Month

Agenda Date: 6/2/2020
Agenda Item Number: 2.A
File Number: 20-0426

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

Title

Special Recognition - Proclamation Recognizing Men's Health Month

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Proclaim June as Men's Health Month.

Report

Issue:

Whether to proclaim June as Men's Health Month.

Staff Contact:

Susan Grisham, Executive Assistant, 360.753.8244

Presenter(s):

Mayor Selby

Background and Analysis:

Congress designated June as Men's Health Month in 1994 to heighten the awareness of preventable health problems and encourage early detection and treatment of disease among men and boys. According to the Centers for Disease Control and Prevention, the leading causes of death among men are heart disease, cancer, and accidental death.

The month of June gives health care providers, public policy makers, and individuals an opportunity to encourage the men in our lives to encourage men and boys to seek regular medical check-ups, advice and early treatment for disease and injury. This is a time to get familiar with the preventable risks for age, ethnicity, and lifestyle; take steps to create healthful habits; schedule routine tests for early detection of disease; learn risk factors and document family health history with your physician. More information about Men's Health Month can be found at www.menshealthmonth.org.

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

Attachments:

Proclamation

PROCLAMATION

WHEREAS, despite advances in medical technology and research, men continue to live an average of five years less than women with Native American and African American men having the lowest life expectancy; and

WHEREAS, educating the public and health care providers about the importance of a healthy lifestyle and early detection of male health problems will result in reducing rates of mortality from disease; and

WHEREAS, men who are educated about the value that preventive health can play in prolonging their lifespan and their role as productive family and community members will be more likely to participate in health screenings; and

WHEREAS, fathers who maintain a healthy lifestyle are role models and have happier, healthier children; and

WHEREAS, Men's Health Month was created to help educate men, boys, and their families about the importance of positive health attitudes and preventative health practices; and

WHEREAS, Men's Health Month focuses on education on a broad range of men's health issues, including heart disease, mental health, diabetes, and prostate, testicular and colon cancer; and

WHEREAS, citizens of this Olympia are encouraged to increase awareness of the importance of a healthy lifestyle, regular exercise, and medical check-ups; and

NOW THEREFORE, BE IT RESOLVED, that the Olympia City Council do hereby proclaim June as

MEN'S HEALTH MONTH

In the City of Olympia and encourage all Olympians to pursue preventative health practices and early detection efforts.

SIGNED IN THE CITY OF OLYMPIA, WASHINGTON THIS 2nd DAY OF JUNE 2020.

OLYMPIA CITY COUNCIL

**Cheryl Selby
Mayor**



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

City Council

Approval of May 19, 2020 City Council Meeting Minutes

Agenda Date: 6/2/2020
Agenda Item Number: 4.A
File Number:20-0427

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

Title

Approval of May 19, 2020 City Council Meeting Minutes



Meeting Minutes - Draft

City Council

City Hall
601 4th Avenue E
Olympia, WA 98501

Information: 360.753.8244

Tuesday, May 19, 2020

5:30 PM

Online or via phone

Register to attend:

https://us02web.zoom.us/webinar/register/WN_ryEvKxxmTK6wTCOUW2GIXw

1. ROLL CALL

Present: 7 - Mayor Cheryl Selby, Mayor Pro Tem Jessica Bateman, Councilmember Jim Cooper, Councilmember Clark Gilman, Councilmember Dani Madrone, Councilmember Lisa Parshley and Councilmember Renata Rollins

1.A ANNOUNCEMENTS

Mayor Selby thanked officials and the community for efforts in moving toward recovery from COVID-19.

City Manager Jay Burney briefly recapped last week's briefing regarding the City's budget shortfall. Department Directors highlighted work on a framework for reopening City facilities, construction activity, regional consistency in reopening parks and summer day camps, and downtown projects.

1.B APPROVAL OF AGENDA

The agenda was approved.

2. SPECIAL RECOGNITION

2.A [20-0258](#) Special Recognition - Proclamation Recognizing National Public Works Week

Mayor Pro Tem Bateman read a proclamation to proclaim May 17 - 23, 2020, as National Public Works Week to honor the contributions of Public Works employees in protecting the community's health, safety and quality of life. Public Works Director Rich Hoey accepted the proclamation and showed a short video.

The recognition was received.

3. PUBLIC COMMENT - None

COUNCIL RESPONSE TO PUBLIC COMMENT (Optional)

Mayor Selby reported that beginning with the June 2 Council meeting the public will be

able to provide live comments during the Public Comment portion of the meeting.

4. CONSENT CALENDAR

- 4.A** [20-0400](#) Approval of May 12, 2020 City Council Meeting Minutes

The minutes were adopted.

- 4.C** [20-0403](#) Bills and Payroll Certification

Payroll check numbers 92701 through 92721 and Direct Deposit transmissions: Total: \$4,567,404.60; Claim check numbers 3725218 through 3725897: Total: \$10,261,664.72.

The decision was adopted.

- 4.B** [20-0391](#) Approval of a Resolution Authorizing a Release of Utility Easement to Evergreen Plaza Associates, LLC

The resolution was adopted.

4. SECOND READINGS (Ordinances)

- 4.D** [20-0379](#) Approval of an Ordinance Amending Ordinances 7224 (Operating, Special and Capital Budgets) and 7235 (COVID-19 Emergency Appropriation)

The ordinance was adopted on second reading.

Approval of the Consent Agenda

Councilmember Parshley moved, seconded by Councilmember Cooper, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 7 - Mayor Selby, Mayor Pro Tem Bateman, Councilmember Cooper, Councilmember Gilman, Councilmember Madrone, Councilmember Parshley and Councilmember Rollins

4. FIRST READINGS (Ordinances) - None

5. PUBLIC HEARING - None

6. OTHER BUSINESS - None

7. CONTINUED PUBLIC COMMENT - None

8. REPORTS AND REFERRALS

8.A COUNCIL INTERGOVERNMENTAL/COMMITTEE REPORTS AND REFERRALS

Mayor Selby reported the next Council meeting will be June 2. The Council isn't meeting next week due to the Memorial Day holiday.

Councilmember Madrone reported she will bring forward a referral in the next few weeks regarding a farm land preservation policy.

Councilmembers reported on meetings attended.

8.B CITY MANAGER'S REPORT AND REFERRALS

Mr. Burney discussed delaying the mid-year Council retreat in hopes of being able to meet in person. The meeting date has tentatively been moved to July 18.

9. ADJOURNMENT

The meeting was adjourned at 6:33 p.m.



City Council

Approval of a Resolution Authorizing a Right-of-Way Agreement for Quince Street Between the City of Olympia and Vine Street Investors, LLC

Agenda Date: 6/2/2020
Agenda Item Number: 4.B
File Number:20-0256

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

Title

Approval of a Resolution Authorizing a Right-of-Way Agreement for Quince Street Between the City of Olympia and Vine Street Investors, LLC

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the Right-of-Way Agreement and authorizing the City Manager to sign the necessary documents for a Right-of-Way Agreement with Vine Street Investors, LLC.

Report

Issue:

Whether to approve a resolution authorizing a Right-of-Way Agreement between Vine Street Investors, LLC and the City of Olympia for a four-year term.

Staff Contact:

Fran Eide, P.E., City Engineer, Public Works Engineering, 360.753.8422

Presenter(s):

None - Consent Calendar Item

Background and Analysis:

In 1998, Vine Street Investors requested use of a portion of Quince Street between 8th and 9th Avenues for parking associated with an office building located at 927 8th Avenue SE. This portion of Quince Street is unopened right-of-way that has not been improved for public roadway purposes.

Vine Street Investors and the City have maintained this agreement for a period of twenty years, renewing it nearly every four years. The Agreement allows Vine Street Investors to continue to use the unopened right-of-way for parking purposes until such time as the City decides to use the right-of-

way for street purposes. As a condition of the agreement, Vine Street Investors is responsible for maintaining the property and constructing public roadway improvements if and when the City deems it necessary.

The last Agreement expired on March 19, 2018. Vine Street has continued to make payments for use of the right-of-way.

Neighborhood/Community Interests (if known):

- Vine Street is currently using the right-of-way for parking for its adjacent office building.
- Payment for the period March 2018 - April 2020 will be required prior to execution of the new agreement.
- There are no projects listed in the Capital Facilities Plan for a transportation improvement project, nor any known private development projects that will necessitate a change in the use of the right-of-way.

Options:

1. Approve the resolution authorizing the Right-of-Way Agreement and authorizing the City Manager to sign the necessary documents for a Right-of-Way Agreement with Vine Street Investors, LLC.
 - a. Allows for continued use of the Quince Street right-of-way by the adjacent office for parking purposes.
 - b. The City's interests are not negatively impacted.
 - c. The agreement generates revenue annually for the General Fund.
2. Do not approve the resolution authorizing the City Manager to sign the necessary documents for the Right-of-Way Agreement with Vine Street Investors, LLC.
 - a. Requires the owner of the office building to find parking at an alternate location.
 - b. Places the burden of maintenance of the right-of-way back on the City.
 - c. Reduces revenue to the General Fund.

Financial Impact:

The Right-of-Way Permit Agreement generates approximately \$25,000.00 over a four-year period for the General Fund.

Attachments:

Resolution
Agreement
Vicinity Map

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
APPROVING A RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF OLYMPIA AND
VINE STREET INVESTORS, LLC.**

WHEREAS, there exists within the City of Olympia a platted right-of-way known as Quince Street, southerly of 8th Avenue and northerly of the south line of 9th Avenue, which right-of-way has never been opened for public use; and

WHEREAS, the City and Vine Street Investors, LLC entered into a Right-of-Way Use Agreement on March 19th, 2014, that ran for a term of four (4) years; and

WHEREAS, Vine Street seeks to continue to use the property for parking for Vine Street customers until such time as the City elects to vacate the street or requires it to be opened and used as a public street; and

WHEREAS, the City has determined that use of right-of-way for parking purposes is still consistent with proper use of an unopened right-of-way;

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

1. The Olympia City Council hereby approves the form of Right-of-Way Use Agreement between the City of Olympia and Vine Street Investors, LLC for parking 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 Right-of-Way Use 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 _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

**RIGHT-OF-WAY USE AGREEMENT
BETWEEN THE CITY OF OLYMPIA
AND VINE STREET INVESTORS, LLC**

THIS AGREEMENT is made and entered into on the date of the last authorizing signature affixed hereto, by and between the City of Olympia, a Washington municipal corporation, hereinafter referred to as "Olympia" and Vine Street Investors, LLC, a Washington limited liability company, hereafter referred to as "Vine Street." This agreement is intended to provide the terms by which Vine Street may use the unopened City right-of-way for parking purposes.

WITNESSETH:

There exists within the City of Olympia a platted right-of-way known as Quince Street, southerly of 8th Avenue and northerly of the south line of 9th Avenue, which right-of-way has never been opened for public use.

Vine Street is a developer of private buildings and the owner of the underlying fee over which said unopened right-of-way runs. Vine Street seeks to use the property in question for parking for Vine Street customers until such time as Olympia elects to vacate the street or requires it to be opened and used as a public street.

Olympia has determined that use of unopened right-of-way for parking purposes is consistent with proper use of said right-of-way until such time as the City decides to open the right-of-way to public use.

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Olympia hereby grants to Vine Street the right to temporarily use the unopened right-of-way of, as described below, for parking purposes:

That part of Quince Street lying South of the South line of Eighth Avenue and North of the South line of Ninth Avenue, said street being adjacent to Blocks 33, 34, 45 and 46 of Swan's Addition to Olympia as recorded in Volume 1 of Plats, Page 37, Records of Thurston County. In the City of Olympia, Thurston County, Washington. Parcel No. 78203300500

2. The term of this Agreement will be for four (4) years from the date of this Agreement unless it is terminated by the City prior to that date. The City can terminate this Agreement at its discretion by providing written notice of such termination. The effective date of such a termination will be 120 days after the date of receipt by Vine Street of the notice of termination. Upon receipt of a termination

notice, Vine Street shall take the necessary action to ensure that the street may be opened when the termination notice becomes effective. Required street improvements shall be per paragraph 10 of this Agreement.

3. In consideration therefor, Vine Street shall annually pay to Olympia, on or before May 23 of each year, the amount provided for in Exhibit A, attached hereto and incorporated by reference. Exhibit A also includes payment for Vine Street's use of the right of way between agreements, prior to full execution of this 2020 agreement.
4. Vine Street shall construct and maintain parking on said right-of-way at its own expense and shall maintain said facilities in good repair. Olympia is to be liable for no costs or expense of construction, maintenance, or otherwise by reason of this Agreement.
5. Olympia retains the right to construct underground utilities through the entire length and breadth of the right-of-way, but shall, upon completion of any such construction during the term of this Agreement, restore the site to the condition created by Vine Street.
6. Vine Street, its successors and assigns, agrees to defend, indemnify, and hold Olympia harmless from any claim, suit, action, damages, liability, or expense incurred by reason of Vine Street's construction, use, or maintenance of the property for parking facilities. The intent of this paragraph is that Vine Street, its successors, and assigns, will have full, complete, and exclusive care and responsibility for the premises, its construction and use; therefore, ensuring that Olympia will incur no expense by reason of Vine Street's use of the property. Vine Street shall maintain insurance in sufficient amounts to ensure liability coverage.
7. It is recognized that Vine Street may impose restrictions on the use of the temporary parking facilities, including limited the use to be made thereof.
8. This Agreement may be assigned by Vine Street to any successor in interest of taking fee ownership in the surrounding property. To secure a release from liability under this Agreement, Vine Street shall advise Olympia of such change and secure Olympia's consent in writing to the assignment of this Agreement. Such consent shall not be unreasonably withheld if the assignee is a purchaser for value of the surrounding property.
9. Vine Street has the option to petition again for the vacation of the right-of-way described herein and if said petition be granted, the vacated right-of-way shall be sold to abutting property owners as provided under Olympia's Municipal Code.

10. The possibility exists that public interest may require that Quince Street be opened for use as a public right-of-way in which event Vine Street shall improve the right-of-way to Olympia Standards for the length of Vine Street's abutting property. Vine Street shall take immediate action to open the street and construct same to Olympia standards upon notice given by Olympia to Vine Street that the street, if not vacated, is needed for right-of-way purposes. If the street construction is required, Vine Street shall landscape the right of way in accordance with the City's criteria for landscaping parking lots.
11. Vine Street shall post a bond in the form of an assigned savings account or stand-by irrevocable letter of credit in an amount equal to 125% of the cost of improving the referenced right-of-way plus landscaping to Olympia standards. The Public Works Director shall set the amount of bond and Vine Street shall have the opportunity to occupy and use the right-of-way as provided in this Agreement only after the bond has been posted.

The bond referenced in the paragraph above may be released upon the happening of either of two events: (a) Olympia takes such action as is required to vacate the referenced right-of-way, or (b) Olympia has accepted, in writing, the roadway that is constructed by Vine Street after receiving notice pursuant to paragraph 10 of this Agreement.

12. If this Agreement shall be determined invalid by a court of competent jurisdiction, the parties agree that Olympia shall not be liable to Vine Street or its successors in interest for any damages occasioned thereby and Vine Street and successors in interest hereby specifically waive any claim therefor.
13. Any exclusive occupancy prior to the effective date of this Agreement that falls within the scope of this Agreement that is consistent with its terms is hereby ratified and confirmed.
14. In the event a leasehold tax is imposed for occupation of the right of way for the purposes outlined in this Agreement, Vine Street agrees to pay said leasehold taxes to the State of Washington for any time period of Vine Street's exclusive use whether or not there has been a right of way use agreement in place.


CITY OF OLYMPIA:

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right of Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

Steven J. Burney, City Manager

Date

Approved as to Form:



Deputy City Attorney

VINE STREET INVESTORS:

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Right of Way Use Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.



Jeremiah B. McKinley, Vice President

Date: 05/16/2020

EXHIBIT A
QUINCE STREET RIGHT OF WAY AGREEMENT PAYMENTS

March 23, 2018 - May 22, 2020

Retroactive Payments

Annual increase calculated on change in CPI prior to 3/23/2019.

Annual increase is 4% as of 3/23/2019.

<u>Period</u>	<u>Current CPI</u>	<u>Previous CPI</u>	<u>% Δ</u>	<u>2017-2018 Payment</u>	<u>2018-2019 Payment</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2018- 3/22/2019	264.477	255.471	3.5%	\$5,218.60	\$5,401.25	\$693.52	\$6,094.77
				<u>2018-2019 Payment</u>	<u>2019-2020 Payment</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2019– 3/22/2020			4.0%	\$5,401.25	\$5,617.30	\$721.26	\$6,338.56
				<u>2019-2020 Payment</u>	<u>2 months with 4% Increase</u>	<u>Leasehold Excise Tax*</u>	<u>Payment Due</u>
3/23/2020- 5/22/2020			4.0%	\$5,617.30	\$973.67	\$125.02	\$1,098.69

*Leasehold Excise Tax rate = 0.1284 per State Department of Revenue

May 23, 2020 - May 22, 2021

Annual Payment (to increase 4% annually)

<u>Period</u>	<u>New Payment</u>	<u>Lease Tax Amount</u>	<u>Total Due</u>
5/23/2020-5/22/2021	\$5,617.30	\$721.26	\$6,338.56

Total Due to City of Olympia at Signing of Lease:

<u>Due for period 3/23/2018-5/22/2020</u>	<u>Due for Period 5/23/2020-5/22/2021</u>	<u>Total Due</u>
\$11,992.22**	\$6,338.56	\$18,330.78

**Does not include Leasehold Excise Tax to be paid to State Dept. of Revenue by Vine Street Investors for any time period VSI occupied the right of way, regardless of whether there was a formal agreement in place.

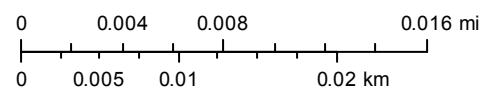


City of Olympia and Vine Street Investors, LLC
Quince Street Right of Way Agreement
Vicinity Map



City of Olympia, TComm911

1:480



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 right to this information. The City of Olympia and its personnel neither accept or assume any 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 a Resolution Authorizing an Interagency Agreement between the City of Olympia and the Washington State Department of Commerce for Coronavirus Relief Funds

Agenda Date: 6/2/2020
Agenda Item Number: 4.C
File Number:20-0423

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

Title

Approval of a Resolution Authorizing an Interagency Agreement between the City of Olympia and the Washington State Department of Commerce for Coronavirus Relief Funds

Recommended Action

Committee Recommendation:

Not referred to a Committee.

City Manager Recommendation:

Approve a resolution authorizing an Interagency Agreement between the City of Olympia and the Washington State Department of Commerce for Coronavirus Relief Funds for Local Governments and authorize the City Manager to sign the agreement.

Report

Issue:

Whether to approve a resolution authorizing an Interagency Agreement between the City of Olympia and the Washington State Department of Commerce for Coronavirus Relief Funds for Local Governments and authorize the City Manager to sign the agreement.

Staff Contact:

Debbie Sullivan, Administrative Services Director, 360.753.8499

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

The Federal Government enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020, to provide immediate relief in response to the COVID-19 pandemic. The CARES Act provided more than \$2.2 trillion of federal funding. Of that, \$150 billion was distributed to states, the District of Columbia, tribal governments, and territories. Washington State received \$2.167 billion dollars based on population.

Governor Inslee announced that nearly \$300 million of the CARES funding would be awarded to local governments who did not receive direct distributions from the Federal Government. The funds are being distributed by the U.S. Treasury Department through the Washington State Department of Commerce (Commerce). The City of Olympia was officially notified by Commerce on May 20, that we received an award of \$1,583,100 and encouraged to immediately enter into an agreement to expedite the distribution of funds.

Funding is available through a reimbursable-style grant. The City can submit for reimbursement for eligible costs that have been incurred between March 1, 2020 through October 31, 2020 once an agreement is in place. There are six (6) primary eligible cost categories:

1. Medical expenses like emergency medical response expenses.
2. Public health expenses like medical and protective supplies, including sanitation and personal protective equipment (PPE).
3. Payroll expenses for public employees dedicated to COVID-19 like public safety, human services, and economic development.
4. Expenses to facilitate compliance with COVID-19 measures like telework capabilities for public employees.
5. Economic support in connection with the public health emergency
6. Other COVID-19 related expenses that are reasonable and necessary.

Funds may not be used to replace a shortfall in revenue.

Staff is identifying eligible expenses that have been incurred since March 1, 2020 and will be prepared to seek reimbursement once the contract is in place.

Neighborhood/Community Interests (if known):

This Interagency Agreement will allow the City to recover expenses incurred that were unplanned yet necessary to respond to the immediate needs of our local businesses, residents, and the general public.

Options:

1. Move to approve the Resolution allowing staff to enter into a contract with Commerce to seek reimbursement for eligible expenses related to COVID-19.
2. Direct staff to make changes to the Resolution. Staff will update the Resolution and return to Council at a future date.
3. Do not approve the Resolution. The City will not be able to seek reimbursement for incurred expenses related to COVID-19.

Financial Impact:

No financial impact.

Attachments:

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
APPROVING AN INTERAGENCY AGREEMENT BETWEEN THE CITY OF OLYMPIA AND
WASHINGTON STATE DEPARTMENT OF COMMERCE FOR THE CORONAVIRUS RELIEF
FUND FOR LOCAL GOVERNMENTS.**

WHEREAS, the Federal Government enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020, to provide immediate relief in response to the COVID-19 pandemic; and

WHEREAS, the CARES Act provides more than \$2.2 trillion of federal funding with \$150 billion distributed to states, the District of Columbia, tribal governments, and territories ;and

WHEREAS, based on population, Washington State received \$2.167 billion dollars, which the Department of Commerce is distributing to local jurisdictions; and

WHEREAS, the City received a letter from the Department of Commerce on May 20, announcing a grant award of \$1,583,100, and encouraging the City to enter into an agreement as soon as possible to expedite the distribution of funds; and

WHEREAS, this grant will reimburse the City for eligible costs incurred between March 1, 2020 through October 31, 2020 that are attributable to the City's COVID-19 response, so long as grant funds aren't used to replace budgeted items or lost revenue;

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

1. The Olympia City Council hereby approves the form of Interagency Agreement between the City of Olympia and Department of Commerce for the Coronavirus Relief Fund for local governments 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 Interagency Agreement, and any other documents necessary to fulfill and implement the terms of 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 _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY



Interagency Agreement with

City of Olympia, WA

through

the Coronavirus Relief Fund for Local Governments

For

Costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru October 31, 2020.

Start date: March 1, 2020

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FACE SHEET

Contract Number: 20-6541C-276

**Washington State Department of Commerce
Local Government Division
Community Capital Facilities Unit
Coronavirus Relief Fund for Local Governments**

1. Contractor City of Olympia PO Box 1967 Olympia, WA 98507-1967		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative Debbie Sullivan Administrative Services Director 360.753.8499 dsulliva@ci.olympia.wa.us		4. COMMERCE Representative «Full_Name» P.O. Box 42525 Project Manager 1011 Plum Street SE «LU_Project_ManagerPhone_Number» Olympia, WA 98504-2525 Fax 360-586-5880 «Mgr_Email»	
5. Contract Amount \$1,583,100	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date March 1, 2020	8. End Date October 31, 2020
9. Federal Funds (as applicable) «Amount»		Federal Agency: US Dept. of the Treasury CFDA Number: 21.999 Indirect Rate (if applicable): «Indirect_Rate»	
10. Tax ID # «TIN_Number»	11. SWV # «SWV_Number»	12. UBI # «UBI_Number»	13. DUNS # «DUNS_Number»
14. Contract Purpose To provide funds for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) during the period of March 1, 2020 thru October 31, 2020. Final invoices must be received by November 15, 2020.			
15. Signing Statement COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment “A” – Scope of Work, Attachment “B” – Budget & Invoicing, Attachment “C” – A-19 Certification, Attachment “D” – A-19 Activity Report			
FOR CONTRACTOR _____ Steven J. Burney, City Manager _____ Date APPROVED AS TO FORM: _____ Annaliese Harksen, Deputy City Attorney		FOR COMMERCE _____ Mark K. Barkley, Assistant Director, Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 05-01-2020. APPROVAL ON FILE.	

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by the Interlocal Cooperation Act, Chapter 39.34 RCW.

2. ACKNOWLEDGMENT OF FEDERAL FUNDS

Funds under the Contract are made available and are subject to Section 601(a) of the Social Security Act, as amended by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and Title V and VI of the CARES Act.

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

“This project was supported by a grant awarded by US Department of the Treasury. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of the Treasury. Grant funds are administered by the Local Government Coronavirus Relief Fund thru the Washington State Department of Commerce.”

3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

4. COMPENSATION

COMMERCE shall pay an amount not to exceed the contract amount listed on the Face Sheet for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work (Attachment A).

5. EXPENSES

Contractor shall receive reimbursement for allowable expenses as identified in the Scope of Work (Attachment A) or as authorized in advance by COMMERCE as reimbursable.

Travel expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

6. INDIRECT COSTS

Contractor shall provide their indirect cost rate that has been negotiated between their entity and the federal government. If no such rate exists a *de minimis* indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

7. BILLING PROCEDURES AND PAYMENT

COMMERCE shall reimburse the Contractor for eligible Project expenditures, up to the maximum payable under this Contract. When requesting reimbursement for expenditures made, Contractor shall submit all Invoice Vouchers and any required documentation electronically through COMMERCE's Contracts Management System (CMS), which is available through the Secure Access Washington (SAW) portal. If the Contractor has constraints preventing access to COMMERCE's online A-19 portal, a hard copy A-19 form may be provided by the COMMERCE Project Manager upon request.

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

The voucher must be certified by an official of the Contractor with authority to bind the Contractor. The final voucher shall be submitted to COMMERCE no later than November 15, 2020.

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, reimbursable expenditures as set forth under the Scope of Work (Attachment A) and Budget & Invoicing (Attachment B). The invoice shall include the Contract Number as stated on the Face Sheet.

Each voucher must be accompanied by an A-19 Certification (Attachment C) and A-19 Activity Report (Attachment D). The A-19 Certification must be certified by an authorized party of the Contractor to certify and attest all expenditures submitted on the voucher are in compliance with the United States Treasury Coronavirus Relief Fund ("Fund") Guidance for State, Territorial, Local, and Tribal Governments:

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

The A-19 Activity Report must be submitted which describes, in Excel spreadsheet and narrative form, a detailed breakdown of the expenditures within each applicable budget sub-category identified in the voucher, as well as a report of expenditures to date. COMMERCE will not release payment for any reimbursement request received unless and until the A-19 Certification and A-19 Activity Report is received. After approving the Invoice Voucher, A-19 Certification and Activity Report, COMMERCE shall promptly remit a warrant to the Contractor.

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

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

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

Should the Contractor be found to spent funds inconsistent with federal laws, rules, guidelines, or otherwise inappropriately, it is the responsibility of the Contractor to reimburse Commerce for any amount spent on disallowed costs.

8. AUDIT

Contractor shall maintain internal controls providing reasonable assurance it is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs; and prepare appropriate financial statements, including a schedule of expenditures of federal awards.

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

- A. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
- B. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Contractor is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Contractor shall notify COMMERCE they did not meet the single audit requirement.

The Contractor shall send all single audit documentation to auditreview@commerce.wa.gov.

9. DEBARMENT

- A. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
 - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
- C. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- D. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

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

10. LAWS

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

**SPECIAL TERMS AND CONDITIONS
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United States Laws, Regulations and Circulars (Federal)

Contractor shall comply with Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Award, 2 CFR 200, Subpart F – Audit Requirements.

Contractor shall comply with the applicable requirements of 2 CFR Part 200, including any future amendments to 2 CFR Part 200, and any successor or replacement Office of Management and Budget (OMB) Circular or regulation.

Contractor shall comply with Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39.

11. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget & Invoicing
- Attachment C – A-19 Certification
- Attachment D – A-19 Activity Report

**GENERAL TERMS AND CONDITIONS
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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

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

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
 - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
- B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality.

**GENERAL TERMS AND CONDITIONS
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COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

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

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

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

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

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

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

**GENERAL TERMS AND CONDITIONS
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9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

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

11. RECAPTURE

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

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

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity.

The Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

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

14. SEVERABILITY

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

15. SUBCONTRACTING

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

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they

**GENERAL TERMS AND CONDITIONS
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relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. Contractor shall incorporate 2 CFR Part 200, Subpart F audit requirements into all subcontracts. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.

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

16. SURVIVAL

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

17. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

18. TERMINATION FOR CONVENIENCE

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

19. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree

**GENERAL TERMS AND CONDITIONS
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with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

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

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Authorized Representative has or may acquire an interest.

20. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract

All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

21. WAIVER

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

Scope of Work

This funding is made available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and Section V and VI of the CARES Act, for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19). Under the CARES Act, the Coronavirus Relief Fund may be used to cover costs that:

- 1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); AND**
- 2. Are not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government.**

These funds may be used to reimburse for expenditures incurred during the period of March 1, 2020 thru Oct. 31, 2020. Please note: In order to ensure all funds have been fully utilized prior to the US Treasury's December 30, 2020 end date, the State of Washington must closeout contracts by October 31, 2020. All final requests for reimbursement must be received no later than November 15, 2020.

Expenditures must be used for necessary actions taken to respond to the public health emergency. These may include expenditures incurred to allow the local government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

Payments may be used only to cover costs not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either:

1. The cost cannot lawfully be funded using a line item, allotment, or allocation within that budget; OR
2. The cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The "most recently approved" budget is the enacted budget for the relevant fiscal period for the particular government. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Allowable expenditures include, but are not limited to:

1. Medical expenses such as:
 - a. COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - b. Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - c. Costs of providing COVID-19 testing, including serological testing.
 - d. Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - e. Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:

- a. Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - b. Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - c. Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
 - d. Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - e. Expenses for public safety measures undertaken in response to COVID-19.
 - f. Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - a. Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - b. Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - c. Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - d. Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - e. COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - f. Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - a. Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - b. Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - c. Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Budget & Invoicing

The Contractor shall determine the appropriate budget and use of funds within the following 6 budget categories and their sub-categories:

1. Medical
2. Public Health
3. Payroll
4. Actions to Comply with Public Health Measures
5. Economic Support
6. Other Covid-19 Expenses

The Contractor shall submit invoice reimbursement requests to the Commerce Representative using the Commerce Contract Management System's (CMS) Online A-19 Portal. Each reimbursement request must include:

1. A-19 Certification form – An authorized party of the local government will certify each invoice (A19) submitted for reimbursement and attest that all incurred expenditures meet the US Treasury Department's guidance: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>
2. A-19 Activity Report
3. A detailed breakdown of the expenditures incurred within each applicable budget sub-category on the A-19 Activity Report.

The A-19 Certification and Activity Report templates will be provided with the executed contract. The documents are included in Attachment C and Attachment D for reference.

Receipts and proof of payment for costs incurred do not need to be submitted with A-19s. All contractors are required to maintain accounting records in accordance with state and federal laws. Records must be sufficient to demonstrate the funds have been used in accordance with section 601(d) of the Social Security Act. Commerce reserves the right to audit any costs submitted for reimbursement. The Contractor shall comply with Commerce A-19 audits and provide the appropriate records upon request.



LOCAL GOVERNMENT CORONAVIRUS RELIEF FUNDS CERTIFICATION

I, **<FIRST, LAST NAME>**, am the **<TITLE>** of **<LOCAL GOVERNMENT>**, and I certify that:

1. I have the authority and approval from the governing body on behalf of the Local Government to request reimbursement from the Department of Commerce (Commerce) per contract number **<COMMERCE CONTRACT NUMBER>** from the allocation of the Coronavirus Relief Fund as created in section 5001 of H.R.748, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") for eligible expenditures included on the corresponding A-19 invoice voucher for report period **<REPORT PERIOD FROM A-19>**.
2. I understand that as additional federal guidance becomes available, a contract amendment to the agreement between Commerce and the Local Government may become necessary.
3. I understand Commerce will rely on this certification as a material representation in processing this reimbursement.
4. I certify the use of funds submitted for reimbursement from the Coronavirus Relief Funds under this contract were used only to cover those costs that:
 - a. Are *necessary expenditures* incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 - b. Were not accounted for in the budget most recently approved as of March 27, 2020; and
 - c. Were incurred during the period that begins on March 1, 2020, and ends on October 31, 2020.
5. I understand the use of funds pursuant to this certification must adhere to official federal guidance issued or to be issued on what constitutes a necessary expenditure. We have reviewed the guidance established by U.S. Department of the Treasury¹ and certify costs meet the required guidance. Any funds expended by the Local Government or its subcontractor(s) in any manner that does not adhere to official federal guidance shall be returned to the State of Washington.

Footnote:

1 – Guidance available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf> (4/30/2020)

LOCAL GOVERNMENT CORONAVIRUS RELIEF FUNDS CERTIFICATION

Page 2 of 2

6. I understand the Local Government receiving funds pursuant to this certification shall retain documentation of all uses of the funds, including but not limited to invoices and/or sales receipts in a manner consistent with §200.333 *Retention requirements for records* of 2 CFR Part 200 *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Such documentation shall be produced to Commerce upon request and may be subject to audit by the State Auditor.
7. I understand any funds provided pursuant to this certification cannot be used as a revenue replacement for lower than expected tax or other revenue collections.
8. I understand funds received pursuant to this certification cannot be used for expenditures for which the Local Government has received any other emergency COVID-19 supplemental funding (whether state, federal or private in nature) for that same expense.

I certify that I have read the above certification and my statements contained herein are true and correct to the best of my knowledge.

_____
Printed Name_____
Title_____
Signature_____
Date:

CRF A-19 Activity Report
INSTRUCTIONS

INSTRUCTIONS:

A completed CRF A-19 Certification and Activity Report must be submitted with each A-19 reimbursement request. The A-19 Activity Report must be submitted as an Excel spreadsheet, not a PDF. You must also include a detailed breakdown of the individual expenditures reported in **Column F** for each applicable sub-category included on the A-19 Activity Report.

There are 6 primary budget categories;

1. Medical Expenses
2. Public Health Expenses
3. Payroll expenses for public employees dedicated to COVID-19
4. Expenses to facilitate compliance with COVID-19-measures
5. Economic Supports
6. Other COVID-19 Expenses

Each primary budget category includes sub-categories and provides an option to add "other" sub-categories not listed.

Follow the below instructions when completing the A-19 Activity Report:

- 1 **REPORT PERIOD** - Enter the report period into **Cell D1** of the A-19 Activity Report.
 - a This should match the report period entered on the corresponding A-19.
 - b Report period should include MM/YY to MM/YYYY, i.e. 03/20, March 2020, 03/2020, etc.
- 2 **COLUMN E** - Enter the total amount of all previous reimbursement requests submitted to Commerce for each applicable sub-category.
- 3 **COLUMN F** - Enter the total amount being requested in the current reimbursement request for each applicable sub-category.
- 4 **COLUMN H: USE OF FUNDS** - You must include a general description of the use of the funds being requested for each applicable sub-category. Keep descriptions as concise as possible, but include adequate context to demonstrate how these funds helped address the COVID-19 emergency. If applicable, please consider:
 - a Providing a brief description of the specific activities performed.
 - b Identifying specific populations served.
 - c Identifying specific programs created or utilized.
 - d Including any known or intended outcomes, results, or community impacts.
- 5 **OTHER SUB-CATEGORIES** - Budget categories 1-5 include a placeholder to add an additional sub-category if necessary.
 - a Enter a **Title** for other expenses added within the appropriate budget category.
 - b Enter titles into **Cells: D10, D19, D27, D36, and D41**.
 - c There is only one "other" placeholder in each budget category section. Please combine multiple "other" sub-categories added to the same budget category.
- 6 **OTHER BUDGET CATEGORIES** - Budget category 6 is where you should include any eligible expenditures that don't fall under budget categories 1-5.
 - a Enter a **Title** for these "other" expenses within budget category 6.
 - b Enter titles into **Cells D44 - D48**.
 - c There are only 5 entry fields available within Budget Category 6.

Coronavirus Relief Fund
A-19 Activity Report

Report Period:

Eligible Expenditures	Previously Reported Expenditures	Current Expenditures this Invoice	Total Cumulative Expenditures	Brief Description of Use of Funds
1 Medical Expenses				
A. Public hospitals, clinics, and similar facilities	\$ -	\$ -	\$ -	
B. Temporary public medical facilities & increased capacity	\$ -	\$ -	\$ -	
C. COVID-19 testing, including serological testing	\$ -	\$ -	\$ -	
D. Emergency medical response expenses	\$ -	\$ -	\$ -	
E. Telemedicine capabilities	\$ -	\$ -	\$ -	
F. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
2 Public Health Expenses				
A. Communication and enforcement of public health measures	\$ -	\$ -	\$ -	
B. Medical and protective supplies, including sanitation and PPE	\$ -	\$ -	\$ -	
C. Disinfecting public areas and other facilities	\$ -	\$ -	\$ -	
D. Technical assistance on COVID-19 threat mitigation	\$ -	\$ -	\$ -	
E. Public safety measures undertaken	\$ -	\$ -	\$ -	
F. Quarantining individuals	\$ -	\$ -	\$ -	
G. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
3 Payroll expenses for public employees dedicated to COVID-19				
A. Public Safety	\$ -	\$ -	\$ -	
B. Public Health	\$ -	\$ -	\$ -	
C. Health Care	\$ -	\$ -	\$ -	
D. Human Services	\$ -	\$ -	\$ -	
E. Economic Development	\$ -	\$ -	\$ -	
F. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
4 Expenses to facilitate compliance with COVID-19-measures				
A. Food access and delivery to residents	\$ -	\$ -	\$ -	
B. Distance learning tied to school closings	\$ -	\$ -	\$ -	
C. Telework capabilities of public employees	\$ -	\$ -	\$ -	
D. Paid sick and paid family and medical leave to public employees	\$ -	\$ -	\$ -	
E. COVID-19-related expenses in county jails	\$ -	\$ -	\$ -	
F. Care and mitigation services for homeless populations	\$ -	\$ -	\$ -	
G. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
5 Economic Supports				
A. Small Business Grants for business interruptions	\$ -	\$ -	\$ -	
B. Payroll Support Programs	\$ -	\$ -	\$ -	
C. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
6 Other COVID-19 Expenses				
A. Other:	\$ -	\$ -	\$ -	
B. Other:	\$ -	\$ -	\$ -	
C. Other:	\$ -	\$ -	\$ -	
D. Other:	\$ -	\$ -	\$ -	
E. Other:	\$ -	\$ -	\$ -	
Sub-Total:	\$ -	\$ -	\$ -	
TOTAL:	\$ -	\$ -	\$ -	



City Council

Approval of a Resolution Authorizing a Public Works Board Emergency Loan Contract for Repair of the Percival Creek Utility Bridge

Agenda Date: 6/2/2020
Agenda Item Number: 4.D
File Number:20-0415

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

Title

Approval of a Resolution Authorizing a Public Works Board Emergency Loan Contract for Repair of the Percival Creek Utility Bridge

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve a resolution authorizing a Public Works Board emergency loan contract for repair of the Percival Creek utility bridge and authorize the City Manager to sign the loan contract.

Report

Issue:

Whether to approve a Public Works Board emergency loan contract for repair of the Percival Creek utility bridge and authorize the City Manager to sign the loan contract.

Staff Contact:

Eric Christensen, Water Resources Director, Public Works Water Resources, 360.570.3741

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

On February 7, 2020, a windstorm caused a tree to fall severing the center span of a utility and pedestrian bridge spanning Percival Creek approximately 0.4 miles west of Deschutes Parkway. The bridge supported a drinking water main and a sewer main which were both also broken.

The broken sewer main released approximately 31,000 gallons of raw sewage to Percival Creek before being temporarily bypassed. Sewer service has been restored, temporarily using aboveground bypass piping. The sewer main serves approximately 765 residential units and 42 commercial accounts including the Thurston County Courthouse.

The broken water main has yet to be repaired. As a result, the ability to provide drinking and fire protection water to an area serving approximately 2,100 residential units and 64 commercial accounts is reduced.

The Public Works Board approved the City for a one million dollar, 20-year, 1.58% emergency loan on March 5, 2020. The attached contract will execute that loan.

Neighborhood/Community Interests (if known):

All customers are receiving water and sewer service at this time. More permanent mid-term restoration of utility services is underway and will be completed by mid-June. Long-term, more sustainable solutions will take approximately 2 years to design and construct.

Options:

1. Approve a resolution authorizing a Public Works Board emergency loan contract for repair of the Percival Creek utility bridge and authorize the City Manager to sign the loan contract. This will let the repair project continue to proceed as planned. The funding for other Drinking Water Utility (Utility) capital projects will not need to be reallocated and Utility rates increases can be minimized.
2. Do not approve the resolution, reject the loan, and direct staff to investigate other potential funding sources for the project. The funding for other Utility capital projects will need to be reallocated to this project and there may be more severe implications for Utility rates.

Financial Impact:

Total cost for this project is approximately \$2 million dollars. Funding for this project is through the Drinking Water Utility (Utility). The loan amount is \$1 million dollars financed at a 1.58% interest rate over 20 years. The loan allows the utility to smooth capital expenditures and moderate rate increases. The Utility has the funds to make these payments for the duration of the loan period. The loan will allow the Drinking Water Utility to smooth utility rate increases and potentially avoid selling bonds.

Attachments:

Resolution
Contract

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA WASHINGTON, APPROVING A
PUBLIC WORKS BOARD EMERGENCY LOAN CONTRACT FOR REPAIR OF THE PERCIVAL CREEK
UTILITY BRIDGE**

WHEREAS, a windstorm on February 7, 2020, caused a tree to fall, severing the center span of a utility and pedestrian bridge spanning Percival Creek; and

WHEREAS, the bridge supports a drinking water main and a sewer main, which were both broken as well; and

WHEREAS, the broken sewer main released approximately 31,000 gallons of raw sewage into Percival Creek before being temporarily bypassed; and

WHEREAS, sewer service has only temporarily been restored using aboveground bypass piping; and

WHEREAS, the sewer main serves approximately 765 residential units and 42 commercial accounts, including the Thurston County Courthouse; and

WHEREAS, the broken water main reduces the ability to provide drinking and fire protection water to an area serving approximately 2,100 residential units and 64 commercial accounts; and

WHEREAS, the City Engineer determined the situation constituted an emergency as defined in RCW 39.04.280 and documented the emergency declaration in a memorandum dated February 13, 2020; and

WHEREAS, the City Council declared the situation an emergency on March 24, 2020; and

WHEREAS, the City has been awarded a \$1 million emergency loan by the Public Works Board on the condition that the City Council make an emergency declaration;

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

1. The Olympia City Council hereby approves the Public Works Board Emergency Loan Contract and conditions contained therein.
2. The City Manager is authorized and directed to execute on behalf of the City of Olympia the Public Works Board Emergency Loan Contract, and any other documents necessary to execute said Contract, and to make any minor modifications as may be required and are consistent with the intent of the Loan Contract, or to correct any scrivener's errors,

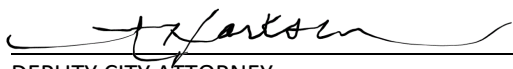
PASSED BY THE OLYMPIA CITY COUNCIL this 2nd day of June 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

CONTRACT FACE SHEET**Contract Number: PE20-96103-103****PUBLIC WORKS BOARD
EMERGENCY LOAN CONTRACT**

1. Contractor City of Olympia PO Box 1967 Olympia, WA 98507		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative N/A		4. Public Works Board Representative N/A	
5. Contract Amount \$1,000,000.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date June 1, 2039
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID #	11. SWV # 0008653-00	12. UBI # 342-000-433	13. DUNS # N/A
14. Contract Purpose Fund a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, drinking water systems, stormwater systems, sanitary sewage systems, or solid waste facilities, including recycling facilities.			
The Board, defined as the Washington State Public Works Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including Declarations Page, and Attachment I: Attorney's Certification.			
FOR THE CONTRACTOR		FOR PUBLIC WORKS BOARD	
_____ Signature		_____ Scott Hutsell, Public Works Board Chair	
_____ Print Name		_____ Date	
_____ Title		APPROVED AS TO FORM ONLY	
_____ Date		_____ October 22, 2018	
		_____ Signature on file Sandra Adix Assistant Attorney General	



DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Olympia
Loan Number: PE20-96103-103

PROJECT INFORMATION

Project Title: Percival Creek Utility and Bridge Repair
Project City: Olympia
Project State: Washington
Project Zip Code: 98507

LOAN INFORMATION

Loan Amount: **\$1,000,000.00**
Total Estimated Cost: **\$1,000,000.00**
Loan Term: **20**
Interest Rate: **1.58%**
Payment Month: June 1st
Loan Reimbursement Start Date: **February 7, 2020**
Time of Performance: 12 months from Execution Date of this Contract to Project Completion.

SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a revenue obligation of the CONTRACTOR payable solely from the net revenue of the Sanitary Sewer Wastewater and Water system. Payments shall be made from the net revenue of the utility after the payment of the principal and interest on any revenue bonds, notes, warrants or other obligations of the utility having a lien on that net revenue. As used here, "net revenue" means gross revenue minus expenses of maintenance and operations. The BOARD grants the CONTRACTOR the right to issue future bonds and notes that constitute a lien and charge on net revenue superior to the lien and charge of this loan agreement.

SCOPE OF WORK

Repairs associated with the Percival Creek utility bridge (including site and site access preparation, tree removal, equipment mobilization and geotechnical work). Replacement of a 10-inch diameter ductile iron sewer main and 10-inch diameter ductile iron water main. Removal and replacement of damaged glulam beams to stabilize the bridge. Replacement of bridge decking material and handrails. Evaluation of sustainability of full restoration of the bridge and identification of alternatives.

The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, bid documents and construction. The project needs to meet all applicable Local, State, and/or Federal standards.





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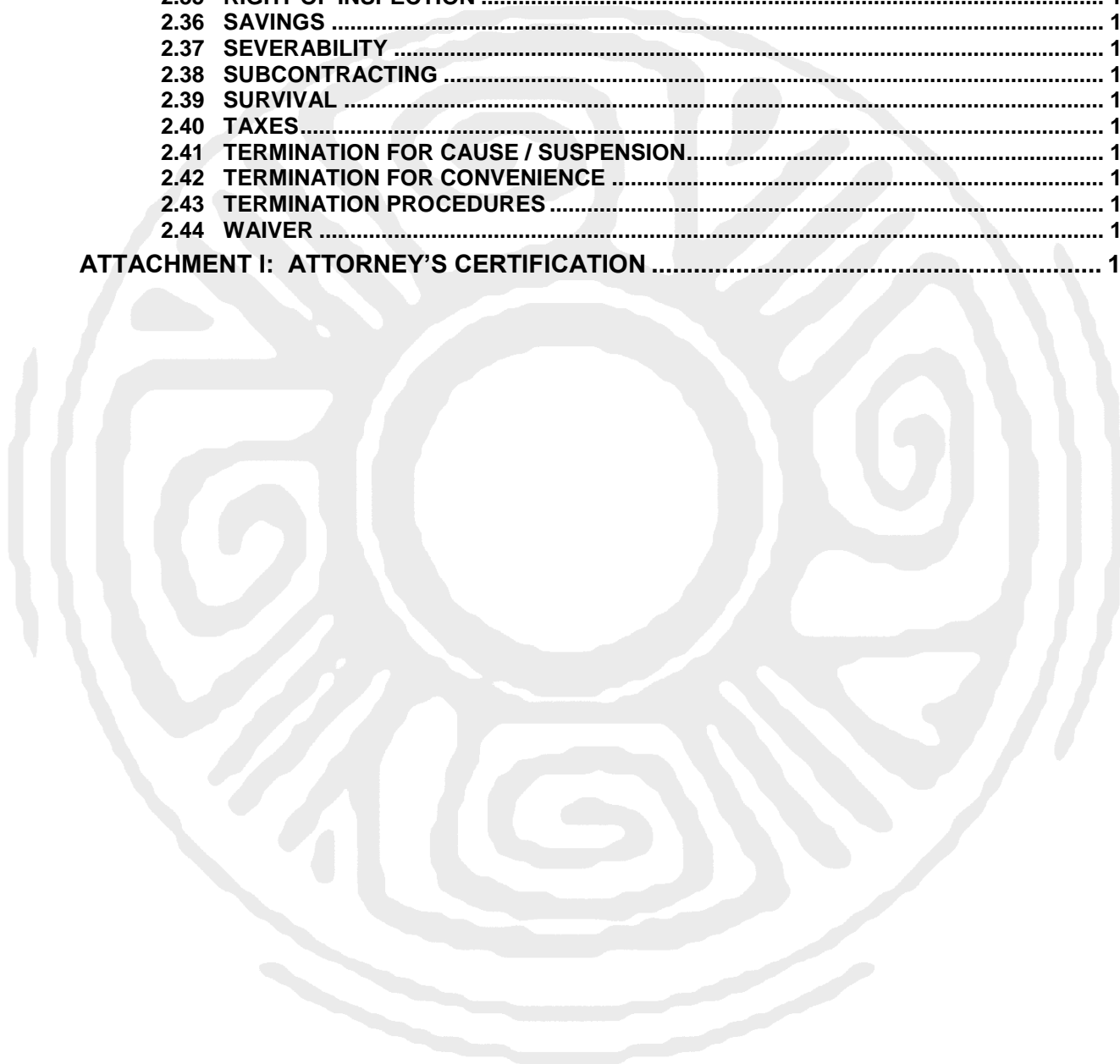
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CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD EMERGENCY LOAN PROGRAM

Part 1. SPECIAL TERMS AND CONDITIONS

1.1 Definitions

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

- A. "Contract" shall mean this Emergency Loan Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Loan Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2 Authority

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Public Works Board emergency loan for an approved public works project.

1.3 Purpose

The Board and the Contractor have entered into this Contract to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the loan terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4 Order of Precedence

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

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5 Competitive Bidding Requirements

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

1.6 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 1.18 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time the Project Completion Amendment is submitted, as provided for in Section 1.13.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency.

The Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

1.7 Sub-Contractor Data Collection

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by sub-contractors and the portion of the Contract funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.8 Eligible Project Costs

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in declared **SCOPE OF WORK**. Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after **LOAN REIMBURSEMENT START DATE** shown in the Declarations are eligible for reimbursement under this Contract.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with Public Works Board loans.

These terms supersede the terms in Section 2.2. Allowable Costs.

1.9 Historical and Cultural Resources

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as an alternative to completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act, as applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to cultural resources as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural resources are discovered during construction, the Contractor shall immediately stop work and notify the local historical preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to the declared **SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44.040 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.10 Project Completion Amendment and Certified Project Completion Report

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete. The Board will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the loan amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, term, and interest rate.

1.11 Rate and Term of Loan

The Board shall loan the Contractor a sum not to exceed the LOAN AMOUNT shown on the Contract Face Sheet and declared on the Contract Declarations Page. The interest rate shall be the declared INTEREST RATE per annum on the outstanding principal balance. The length of the loan shall not exceed the declared LOAN TERM in years, with the final payment due by the CONTRACT END DATE as shown on the Contract Face Sheet.

1.12 Recapture

The right of recapture Section 2.32. Recapture, shall exist for a period not to exceed six (6) years following contract termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the Board shall be entitled to its costs thereof, including attorney's fees.

1.13 Reimbursement Procedures and Payment

If funding or appropriation is not available at the time, the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriations become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this contract, as identified in Section 1.10. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor provides:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.9, and
- Signed Public Works Board Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract.

The Contractor shall submit all Invoice Vouchers and all required documentation to:

Public Works Board
Attn: (Project Manager)
PO Box 42525
Olympia, WA 98504-2525

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

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

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

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

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the Board for that cost.

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

In no event shall the total Public Works loan exceed 100% of the eligible actual project costs. At the time of project completion, the Contractor shall submit to the Board a Project Completion Amendment certifying the total actual project costs and local share. The final Public Works loan disbursement shall bring the total loan to the lesser of 100% of the eligible project costs or the total declared **LOAN AMOUNT**. The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the Contractor has received Public Works Board monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the Public Works Board by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

1.14 Repayment

Loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of contract execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the **CONTRACT END DATE** shown on the Declarations page, of an amount sufficient to bring the loan balance to zero.

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

1.15 Reports

The Contractor shall furnish the Board with:

- A. Project Status Reports with each Invoice Voucher;
- B. Project Quarterly Reports (if no funds have been reimbursed in the quarter) and/or Quarterly Expenditures Report;
- C. Certified Project Completion Report at project completion (as described in Section 1.13); and
- D. Other reports as the Board may require.

1.16 Termination for Cause

If the Contractor fails to comply with the terms of this Contract, or fails to use the loan proceeds only for those activities identified in the **SCOPE OF WORK**, the Board may terminate the Contract in whole or in part

at any time. The Board shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.41 Termination for Cause/Suspension.

1.17 Termination for Convenience

The Board may terminate this contract in the event that state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this contract. Termination will be effective when the Board sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.42 Termination for Convenience.

1.18 Time of Performance

No later than twelve (12) months after the date of contract execution, the Contractor must reach project completion.

Failure to meet Time of Performance shall constitute default of this contract. In the event of extenuating circumstances, the Contractor may request, in writing, that the Board extend the deadline for project completion. The Board may extend the deadline.

The term of this contract shall be for the entire term of the loan, regardless of actual project completion, unless terminated sooner as provided herein.

1.19 Contract Suspension

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work will be suspended effective July 1. The Contractor shall immediately suspend work and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

THE BOARD shall notify the Contractor immediately upon lifting of the contract suspension.

1.20 Special Conditions

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

1.21 Loan Security

Loan Security payments shall be made as stated on the attached Declarations Page, and identified therein as LOAN SECURITY.

Part 2. GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

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

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2 ALLOWABLE COSTS

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

2.3 ALL WRITINGS CONTAINED HEREIN

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

2.4 AMENDMENTS

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

2.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

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

2.6 APPROVAL

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

2.7 ASSIGNMENT

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

2.8 ATTORNEYS' FEES

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

2.9 AUDIT

A. General Requirements

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

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

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

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

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

B. State Funds Requirements

In the event an audit is required, if the Contractor is a local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

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

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

C. Documentation Requirements

The Contractor must send a copy of any required audit no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Department of Commerce
ATTN: Audit Review and Resolution Office
PO Box 42525
Olympia WA 98504-2525

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

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

If the Contractor is required to obtain a Single Audit in accordance with 2 CFR Part 200, a copy must be provided to Commerce; no other report is required.

2.10 CODE REQUIREMENTS

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

2.11 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
2. All material produced by the Contractor that is designated as "confidential" by the Board; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.12 CONFORMANCE

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

2.13 COPYRIGHT PROVISIONS

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

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

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

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

2.14 DISALLOWED COSTS

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

2.15 DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

2.16 DUPLICATE PAYMENT

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

2.17 ETHICS/CONFLICTS OF INTEREST

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

2.18 GOVERNING LAW AND VENUE

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

2.19 INDEMNIFICATION

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

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

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

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

2.20 INDEPENDENT CAPACITY OF THE CONTRACTOR

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

2.21 INDUSTRIAL INSURANCE COVERAGE

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

2.22 LAWS

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

Washington State Laws and Regulations

- A.** Affirmative Action, RCW 41.06.020 (11).
- B.** Boards of Directors or Officers of Non-profit Corporations – Liability - Limitations, RCW 4.24.264.
- C.** Disclosure-Campaign Finances-Lobbying, Chapter 42.17 RCW.
- D.** Discrimination-Human Rights Commission, Chapter 49.60 RCW.
- E.** Ethics in Public Service, Chapter 42.52 RCW.
- F.** Housing Assistance Program, Chapter 43.185 RCW.

- G. Interlocal Cooperation Act, Chapter 39.34 RCW.
- H. Noise Control, Chapter 70.107 RCW.
- I. Office of Minority and Women's Business Enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open Public Meetings Act, Chapter 42.30 RCW.
- K. Prevailing Wages on Public Works, Chapter 39.12 RCW.
- L. Public Records Act, Chapter 42.56 RCW.
- M. Relocation Assistance - Real Property Acquisition Policy, Chapter 8.26 RCW.
- N. Shoreline Management Act of 1971, Chapter 90.58 RCW.
- O. State Budgeting, Accounting, and Reporting System, Chapter 43.88 RCW.
- P. State Building Code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State Environmental Policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

2.23 LICENSING, ACCREDITATION AND REGISTRATION

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

2.24 LIMITATION OF AUTHORITY

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

2.25 LOCAL PUBLIC TRANSPORTATION COORDINATION

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

2.26 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's, non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.27 PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar

working conditions. Job titles alone are not determinative of whether employees are similarly employed;

- B.** Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential, and account for the entire differential.

This Contract may be terminated by the BOARD, if the Department of Commerce or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

2.28 POLITICAL ACTIVITIES

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

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

2.29 PREVAILING WAGE LAW

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

2.30 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

2.31 PUBLICITY

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

2.32 RECAPTURE

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

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

2.33 RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.34 REGISTRATION WITH DEPARTMENT OF REVENUE

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

2.35 RIGHT OF INSPECTION

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

2.36 SAVINGS

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

2.37 SEVERABILITY

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

2.38 SUBCONTRACTING

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

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

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal

conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

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

2.39 SURVIVAL

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

2.40 TAXES

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

2.41 TERMINATION FOR CAUSE / SUSPENSION

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

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

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

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

2.42 TERMINATION FOR CONVENIENCE

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

2.43 TERMINATION PROCEDURES

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

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

- D.** Preserve and transfer any materials, contract deliverables and/or the Board property in the Contractor's possession as directed by the Board.

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

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

2.44 WAIVER

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

ATTACHMENT I: ATTORNEY'S CERTIFICATION

PUBLIC WORKS BOARD EMERGENCY LOAN PROGRAM

City of Olympia
PE20-96103-103

I, Mark Barber, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Olympia (the Contractor); and

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

Based on the foregoing, it is my opinion that:

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

Mark Barber
Signature of Attorney

5/7/2020
Date

Mark Barber
Name

P.O Box 1967, Olympia, WA 98507-1967
Address



City Council

Approval of Resolution Authorizing a Property Lease Agreement with the Low Income Housing Institute for Plum Street Village

Agenda Date: 6/2/2020
Agenda Item Number: 4.E
File Number:20-0418

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

Title

Approval of Resolution Authorizing a Property Lease Agreement with the Low Income Housing Institute for Plum Street Village

Recommended Action

Committee Recommendation:

Not referred to a committee

City Manager Recommendation:

Move to approve the resolution authorizing a new lease agreement with the Low Income Housing Institute for the Plum Street Village Tiny Home Project.

Report

Issue:

Whether to approve the resolution authorizing a new lease agreement with the Low Income Housing Institute for the Plum Street Village Tiny Home Project.

Staff Contact:

Cary Retlin, Home Fund Manager, Community Planning and Development, 360.570.3956

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

On September 18, 2018, the City Council approved a funding plan for implementing homeless response strategies, including a Plum Street Village tiny house project. The Low Income Housing Institute (LIHI) has leased property owned by the City of Olympia for operation of the Plum Street Village facility as described in the lease agreement. The new lease agreement must be approved by the City Council.

Plum Street Village opened in February 2019 and has provided services to approximately 38 adults in 29 tiny houses since that time. LIHI works with the Community Action Council to screen vulnerable homeless adults in the county Coordinated Entry system and place them at Plum Street Village.

Two staff provide security and connection to case management and social services for residents. There is a communal kitchen area and hygiene services are provided on site in a hygiene trailer (that includes bathrooms, showers and laundry).

Since Plum Street Village began providing shelter last year, 17 households have transitioned to permanent housing.

Neighborhood/Community Interests (if known):

There is significant public interest in the City's actions to address homelessness.

Options:

1. Move to approve the resolution authorizing a lease agreement with the Low Income Housing Institute.
2. Modify the lease agreement before approving. Note that services are ongoing on the site.
3. Do not approve the lease agreement with the Low Income Housing Institute at this time. (This action would impact ongoing operations on the site.)

Financial Impact:

The City of Olympia will lease the property to LIHI for an annual cost of One Dollar (\$1) per year based and the public benefit to the homeless individuals sheltered on the property.

Attachments:

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING
A LEASE AGREEMENT BETWEEN THE CITY OF OLYMPIA AND THE LOW INCOME HOUSING
INSTITUTE FOR A TINY HOUSE VILLAGE.**

WHEREAS, the City of Olympia declared a public health emergency related to homelessness on July 17, 2018 that has been ongoing; and

WHEREAS, the City continues to work to find solutions that will assist in alleviating the homeless crisis in Olympia; and

WHEREAS, the Low Income Housing Institute (LIHI) is a non-profit entity with experience in assisting those who are homeless by establishing tiny house villages as transitional housing and connecting residents with essential services to allow them the best chance of success in transitioning to permanent housing; and

WHEREAS, the City owns real property located at Plum Street and Union Avenue (the Property) in Olympia that has demonstrated its suitability for use as a tiny house village to provide temporary housing for homeless persons, including a community kitchen, meeting facility, and areas for sanitary shower, toilet, laundry facilities, solid waste collection, and for other related case management services for the temporary residents of the tiny house village; and

WHEREAS, LIHI has been leasing the property from the City for this purpose and the City Council determines it to be in the best interest of the City of Olympia to continue to lease the Property to the non-profit entity LIHI for use as a tiny house village;

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

1. The Olympia City Council hereby approves the form of Lease Agreement between the City and LIHI for continued use of the property as a tiny house village in Olympia 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 Lease 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 _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

LEASE AGREEMENT

This LEASE AGREEMENT ("Lease") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Lessor"), and Low Income Housing Institute, a Washington non-profit corporation, also commonly known as LIHI, ("Lessee"), jointly referred to as "the Parties." This Lease shall not be effective until the "Effective Date" (as defined in Paragraph 13.15 below).

RECITALS

Lessor is the owner of a certain real property commonly located at Plum Street & Union Avenue in Olympia, Thurston County, Washington, consisting of approximately 13,000 square feet and shown on Exhibit "A" (general vicinity sketch) attached hereto and by this reference incorporated herein.

Lessee wishes to continue to lease the property from Lessor for the sole purpose of using it for a tiny house village to provide temporary housing for homeless persons in tiny houses. Lessee will maintain on the site a community kitchen, meeting facility, and areas for sanitary shower, toilet, laundry facilities, solid waste collection, and for other related case management services for the temporary residents of the tiny house village.

The signatories to this Lease acknowledge that they are authorized to execute this lease and any associated documents, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Lease.

The Parties now enter into this Lease to memorialize the terms and conditions under which Lessor will lease the property to Lessee.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Leased Property. Lessor agrees to lease to Lessee the property located at Plum Street & Union Avenue in Olympia, Thurston County, Washington, located as shown on Exhibit "A" (general vicinity sketch) attached hereto and by this reference incorporated herein. Lessor further agrees that Lessee is granted access to and from the Leased Property upon a road which is also the entrance into the Lee Creighton Justice Center as to that portion lying upon Lessor's real property, and as it appears on Exhibit "A." The Leased Property described in this Paragraph 1 is collectively referred to in this Lease as the "Property."

2. Use and Occupancy. The Parties agree that Lessee shall use the Property herein as a site to provide shelter to homeless persons in tiny houses, together with associated facilities for a shared kitchen, meeting facility, sanitary facilities (showers, sinks, toilets and laundry), site management, solid waste, storage, and security, and for no other purpose or use without the express written consent of Lessor.

3. Term. The term of this Lease shall be until January 31, 2021, and may be renewed for an additional term upon mutual agreement of the Parties, subject to the terms herein and any modifications or amendments. In the event Lessee ceases to use the Property for the purpose stated herein, the tenancy shall automatically terminate without further notice and the Lessee, shall be required to vacate the property. Lessor may terminate this lease with sixty (60) days written notice to Lessee, with or without cause.

4. Acceptance of Property As Is. Lessee accepts and acknowledges use of the Property in its "as is" condition.

5. Maintenance and Repairs. Lessee shall be responsible for any and all repairs to the Property or structures thereon, including but not limited to appliances, water heater, laundry washer-dryer, electrical, plumbing, roof, carpet, sinks, showers, kitchen appliances and fixtures, interior and exterior paint, flooring or walls, doors or windows, screens, or window coverings, landscaping or rodents or pest control.

6. Utilities. Lessee shall pay and be financially responsible for any and all utility services to the Property, including but not limited to electricity, telephone, cable television, internet or wi-fi access. Lessor shall provide water, sewer, storm water, solid waste and recycling services.

7. Insurance, Indemnification and Hold Harmless Agreement. Lessee shall defend, indemnify and hold harmless Lessor, its agents, officers, officials, employees and volunteers from and against any and all claims, suits, actions, liabilities for injuries, death of any person, or for loss or damages to property which arises out of Lessee's use of the Property, or from the conduct of Lessee's business, or from any activity, work or thing done, permitted, or suffered by Lessee in or about the Property, except only such injury or damage as shall have been occasioned by the sole negligence of Lessor. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated and agreed to by the Lessee and Lessor. The provisions of this paragraph shall survive the expiration or termination of this Lease.

7.1 Concurrent negligence. Should a court of competent jurisdiction determine that this Lease is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Lessee and the Lessor, or their respective officers, officials, agents, employees, and volunteers, the Lessee's liability, including the duty and cost to defend, hereunder shall be only to the extent of Lessee's negligence.

7.2 Insurance term. Lessee shall procure and maintain for the duration of the Lease, insurance against claims for injuries to persons or damage or loss to property, which may arise from or in connection with the Lessee's operation and use of the leased Property.

7.3 No Limitation. The Lessee's maintenance of insurance as required by this Lease shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the Lessor's recourse to any remedy available at law or in equity.

7.4 Minimum scope of insurance. The Lessee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The Public Entity shall be named as an additional insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing at least as broad coverage.
2. Property insurance shall be written on an all risk basis.

7.5 Minimum amounts of insurance. The Lessee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, and \$10,000,000 of umbrella or excess insurance.
2. Property insurance shall be written covering the full value of Lessee's property and improvements with no coinsurance provisions.

7.6 Other insurance provisions. The Lessee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the Lessor. Any insurance, self-insurance, or self-insured pool coverage maintained by the Lessor shall be excess of the Lessee's insurance and shall not contribute with it.

7.7 Acceptability of insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

7.8 Verification of coverage. The Lessee shall furnish the Lessor with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee.

7.9 Waiver of subrogation. Lessee and Lessor hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the premises or said any building or structures on the Property. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7.10 Lessor's property insurance. Lessor shall purchase and maintain during the term of the lease all-risk property insurance covering any building or other structures for its full replacement value without any coinsurance provisions.

7.11 Notice of cancellation. The Lessee shall provide the Lessor with written notice of any policy cancellation within two business days of Lessee's receipt of such notice.

7.12 Failure to maintain insurance. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of the Lease, upon which the Lessor may, after giving five (5) business days' notice to the Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Lessor on demand.

7.13 Lessor full availability of Lessee limits. If the Lessee maintains higher insurance limits than the minimums shown above, the Lessor shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Lessee, irrespective of whether such limits maintained by the Lessee are greater than those required by this Lease or whether any certificate of insurance furnished to the Lessor evidences limits of liability lower than those maintained by the Lessee.

8. Acknowledgment and Acceptance.

8.1 Rent. As a result of negotiations and mutual benefits and consideration exchanged between the Parties, it is agreed that Lessee shall pay Lessor the sum of One Dollar and No Cents (\$1.00) per year as rent. Said rental payment shall be due and payable upon commencement of the Lease.

8.2 Taxes and assessments. In the event a leasehold tax is imposed upon Lessee's tenancy by the State of Washington during the term of this Lease, Lessor agrees to pay said leasehold tax amount to the State of Washington during the period Lessee has occupied such property.

8.3 Mechanics' liens. In the event Lessee causes any labor, material or services to be furnished in, on or about the Leased Property, or any part thereof, Lessee hereby agrees to pay, resolve, settle or compromise such liens or claims and to fully satisfy same so as to prevent or remove any liens against Lessor's Property. Lessee will not allow any lien to attach to the Leased Property. Lessee further agrees to fully indemnify and hold harmless the Lessor from any and all claims of liens against the Leased Property incurred by Lessee, including any attorney's fees, costs or other litigation expenses incurred by Lessor in connection with such claims of lien.

8.4 Subleases and other agreements. Lessee shall not enter into any leases, subleases, licenses, or easements with any person(s) or entities for profit or other charge or consideration upon the Leased Property. Lessee agrees that the Leased Property shall be solely

used for the homeless tiny house village, and associated facilities as set forth in Paragraph 2 above, during the term of this Lease.

8.5 Motor vehicle parking. Lessee agrees that any motorized vehicle of any kind or nature, whether owned or operated by Lessee or its guests, shall be parked on the Property or other legal parking provided by Lessor.

8.6 Storage of personal property. Any personal property of Lessee or its guests shall be stored upon the Leased Property. Lessee shall not store Lessee's or its guests' personal property upon any adjacent property owned by Lessor or others, except with express written consent from Lessor or other property owner.

8.7 Due authority. Lessee and Lessor have all requisite power and authority to execute and deliver this Lease and to carry out its obligations hereunder and the transactions contemplated hereby. This Lease has been, and the documents contemplated hereby will be, duly executed and delivered by Lessor and Lessee and constitute their legal, valid and binding obligation enforceable against Lessor and Lessee in accordance with its terms.

9. Covenants of Lessee. Lessee covenants and agrees as follows:

9.1 Perform obligations. From the effective date of this Lease, Lessee will perform any monetary and non-monetary obligations they have regarding the Leased Property.

9.2 No encumbrances. From the date of this Lease, Lessee will not grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Leased Property or any part thereof.

9.3 Environmental. Lessee shall defend, indemnify, and hold Lessor harmless with respect to any loss, liability, claim, demand, damage, or expense of any kind, including attorneys' fees, costs, and expenses (collectively, "Loss") arising out of the release or threatened release of Hazardous Substances on, under, above, or about the Leased Property by Lessee, except for any release or threatened release of any Hazardous Substance on, under, above, or about the Leased Property caused or contributed by Lessor, or any employee, agent, or contractor of Lessor.

9.4 Definitions. The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," or "solid wastes" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; (d) chlorinated solvents; and (e) asbestos. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances.

9.5 Compliance with laws. Lessee covenants and agrees to comply with any and all statutes, codes, regulations, covenants or laws that may affect the use and occupancy of

the Leased Property. Violation of this covenant by Lessee shall be grounds for termination of this Lease.

9.6 Nuisance or waste. Lessee shall not permit any nuisance upon the Leased Property or permit any waste or destruction of the property.

9.7 Indemnification. Lessee shall pay, protect, pay the defense costs of, indemnify and hold Lessor and its successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Lessee set forth in this Lease, (b) the failure of Lessee to perform any obligation required by this Lease to be performed by Lessee, (c) the maintenance, and/or operation of the Leased Property by Lessee not in conformance with this Lease, or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Lessee, its representatives, agents, employees, contractors or suppliers.

9.8 Access to leased property. Lessee shall permit Lessor or its agents, employees, officials, officers or contractors to access the Property for the purpose of any environmental studies or work for restoration purposes that is required by permitting agencies.

10. Casualty. If any fire, windstorm, earthquake, volcanic eruption or casualty occurs and materially affects all or any portion of the Leased Property on or after the date of this Lease, Lessor is under no duty or obligation to repair, replace or rebuild any structure, dwelling or outbuilding located upon the Leased Property.

11. Legal Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Lessor:	Steven J. Burney, City Manager City of Olympia 601 4 th Ave E P.O. Box 1967 Olympia, WA 98507-1967 Email: jburney@ci.olympia.wa.us
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With a copy to: Mark Barber, City Attorney
City of Olympia
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967
Email: mbarber@ci.olympia.wa.us

To Lessee: Sharon Lee, Executive Director
Low Income Housing Institute
2407 1st Avenue
Seattle, WA 98121
206-571-5730
Email: sharonl@lihi.org

With a copy to: Lynne Behar
Chief Financial Officer
lynneb@lihi.org
206-957-8023

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

12. Contract Manager. For routine issues of contract management such as insurance, invoices, and issues related to routine management of this Lease, please contact:

Lessor's Manager: Cary Retlin, Home Fund Manager
City of Olympia
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967
(360)570-3956
Email: cretlin@ci.olympia.wa.us

Lessee's Manager: Lynne Behar, Chief Financial Officer
Low Income Housing Institute
lynneb@lihi.org
206-957-8023

Sharon Lee, Executive Director
Low Income Housing Institute
2407 1st Avenue
Seattle, WA 98121
(206)571-5730
Email: sharonl@lihi.org

13. Miscellaneous.

13.1 Applicable law. This Lease shall in all respects, shall be governed by the laws of the State of Washington.

13.2 Further assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the Parties hereto.

13.3 Modification or amendment, waivers. No amendment, change or modification of this Lease shall be valid, unless in writing and signed by all of the Parties hereto. No waiver of any breach of any covenant or provision in this Lease shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Lease. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

13.4 Successors and assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, and successors, if applicable. No assignment shall be permitted by Lessee of this Lease.

13.5 Entire agreement and no third party beneficiaries. This Lease constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Lease to any person, firm or corporation other than the immediate Parties.

13.6 Attorneys' fees. Should either party bring suit to enforce the terms of this Lease, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

13.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Lease. This Lease shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it.

13.8 Partial Invalidity. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

13.9 Survival. The covenants, agreements, obligations to indemnify, representations and warranties made in this Lease shall survive unimpaired. The Parties agree this Lease shall not be recorded, but a Memorandum of Lease may be recorded at the request of a party.

13.10 Time. Time is of the essence of every provision of this Lease.

13.11 Risk of loss. All of Lessee's personal property, of any kind or description whatsoever that is on the Leased Property shall be at Lessee's sole risk of loss. Lessor shall not insure Lessee's personal property of whatever kind or nature. Any such insurance must be obtained by Lessee.

13.12 Force majeure. Performance by Lessee or Lessor of their obligations under this Lease shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

13.13 Recitals. The Recitals set forth above are incorporated by this reference into this Lease and are made a part hereof.

13.14 Counterparts. This Lease may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Lease; but in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Lease may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Lease shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Lease.

13.15 Effective Date. This lease shall be effective as of the date of the last authorizing signature affixed hereto.

13.16 Ratification. Occupancy of Lessee between December of 2019 and final Execution of this Lease for the purposes stated herein is hereby ratified and confirmed.

14. Event of Default. In the event of a default under this Lease by Lessee (including a breach of any representation, warranty or covenant set forth herein), Lessor shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Lessee's obligations hereunder or termination of this Lease.

*****SIGNATURES APPEAR ON THE FOLLOWING PAGE*****

LESSEE:

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Lease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

LOW INCOME HOUSING INSTITUTE,
a Washington nonprofit corporation

Sharon Lee

Sharon Lee, Executive Director

Date: 05/22/2020

LESSOR:

I hereby declare under penalty of perjury pursuant to the laws of the State of Washington that I have read the foregoing Lease Agreement, I am authorized to execute the same, I know the contents thereof, and I sign the same as my free act and deed.

CITY OF OLYMPIA, a Washington
municipal corporation

Steven J. Burney, City Manager

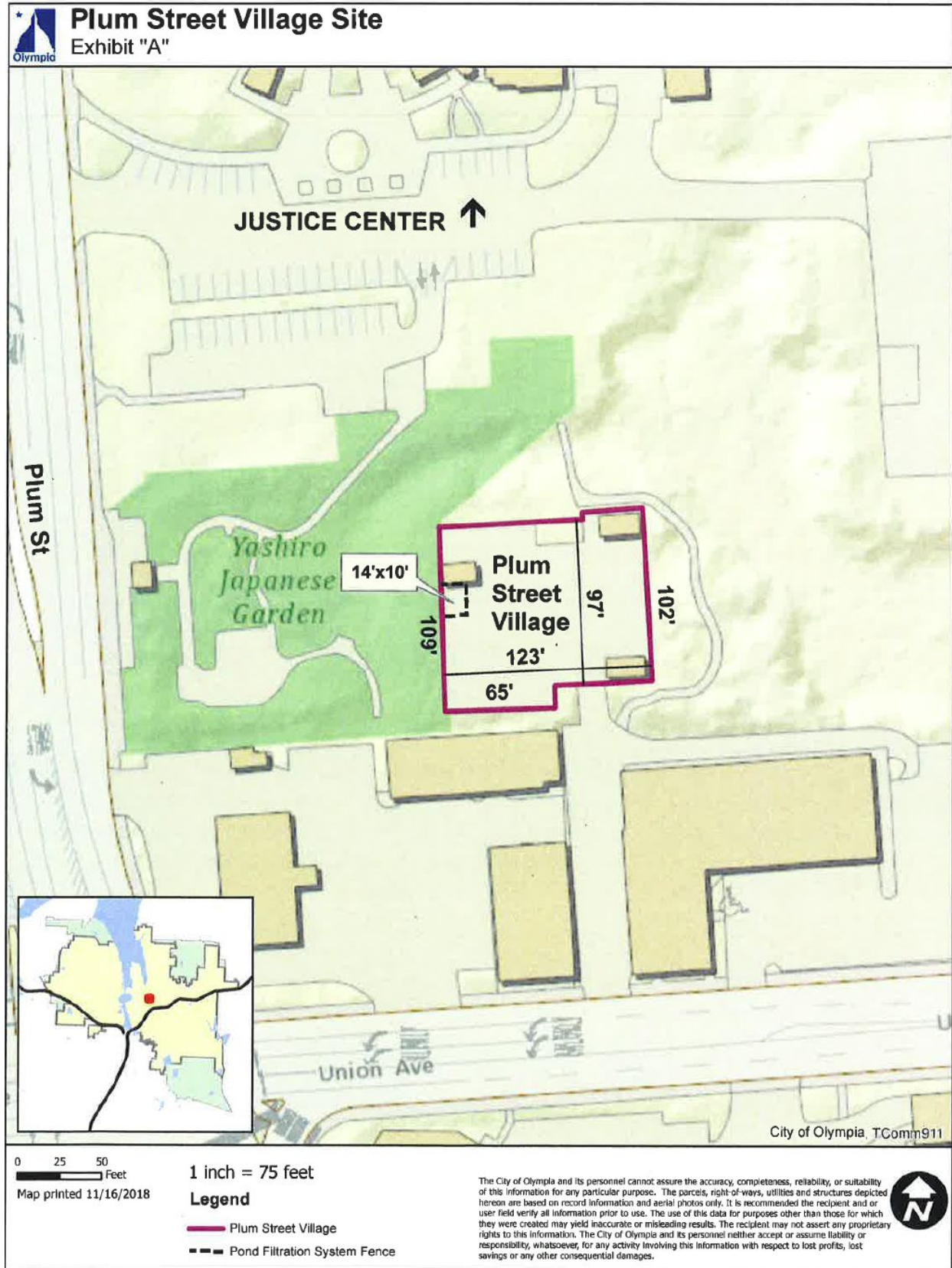
Date: _____

APPROVED AS TO FORM:



Annaliese Harksen, Deputy City Attorney

Date: 05/22/2020





City Council

Approval of a Resolution Authorizing a Funding Agreement with Low Income Housing Institute for Plum Street Village

Agenda Date: 6/2/2020
Agenda Item Number: 4.F
File Number:20-0420

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

Title

Approval of a Resolution Authorizing a Funding Agreement with Low Income Housing Institute for Plum Street Village

Recommended Action

Committee Recommendation:

Not referred to a committee

City Manager Recommendation:

Move to approve the resolution authorizing a funding agreement with the Low Income Housing Institute for the Plum Street Village Tiny Home Project.

Report

Issue:

Whether to approve the resolution authorizing a funding agreement with the Low Income Housing Institute for the Plum Street Village Tiny Home Project.

Staff Contact:

Cary Retlin, Home Fund Manager, Community Planning and Development, 360.570.3956

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

On September 18, 2018, the City Council approved the first funding plan for implementing homeless response strategies, including a Plum Street Village tiny house project. In February 2019 Plum Street Village opened and has been in constant operation to shelter up to 40 homeless individuals and couples in 29 houses since that time. The City of Olympia funds staffing and other services which are operated by the Low Income Housing Institute (LIHI).

This funding agreement with LIHI must be approved by City Council to continue operations through 2020.

LIHI works with the Community Action Council to screen vulnerable homeless adults in the county Coordinated Entry system and place them at Plum Street Village. Since Plum Street Village began providing shelter last year, 17 households have transitioned to permanent housing.

Hygiene services (bathrooms, showers and laundry), a communal kitchen area and connection to social services are provided. LIHI is responsible for 24/7 staffing as well as providing on-site case management.

Last year a separate contract was developed for the City to fund LIHI to provide case management at the eight tiny houses at Westminster Presbyterian Church on Boulevard Road. This year that case manager is included in this funding agreement.

Neighborhood/Community Interests (if known):

There is significant public interest in the City's actions to address homelessness.

Options:

1. Move to approve the resolution authorizing a funding agreement with the Low Income Housing Institute.
2. Modify the funding agreement before approving.
3. Do not approve the funding agreement with the Low Income Housing Institute at this time (this may disrupt services at these sites).

Financial Impact:

Annual operating costs are currently \$475,820 which includes two case managers (one for Westminster) and 24-7 staffing on site at Plum Street Village. Some supplies and some food for residents are other examples of project expenses. Staff and LIHI are currently negotiating an amendment - so staffing costs are likely to increase from this current budget.

In November City Council's Finance Committee directed staff to try to reduce 2020 operating costs at Plum Street Village. Staff worked with LIHI managers to identify ways to reduce costs in this year's agreement. A budget amendment is being negotiated for 2020 but it will still be below 2019 operating costs.

2019 Agreement operating costs \$640,986 (including Westminster case manager)

2020 Agreement operating costs \$475,820 (any amendments will not exceed 2019 operating costs).

Attachments:

Resolution
Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON, APPROVING
A FUNDING AGREEMENT BETWEEN THE CITY OF OLYMPIA AND THE LOW INCOME HOUSING
INSTITUTE FOR OPERATION OF A TINY HOUSE VILLAGE.**

WHEREAS, the City of Olympia declared a public health emergency related to homelessness on July 17, 2018;
and

WHEREAS, the City continues to work since then to find solutions that will assist in alleviating the homeless
crisis in Olympia; and

WHEREAS, the Low Income Housing Institute (LIHI) is a non-profit entity with experience in assisting those
who are homeless by establishing tiny house villages as transitional housing and connecting residents with
essential services to allow them the best chance of success in transitioning to permanent housing; and

WHEREAS, the City would like to continue to fund the operation of a tiny house village within Olympia to
assist with addressing the homelessness crisis; and

WHEREAS, the City Council determines it to be in the best interest of the City of Olympia to continue to provide
funding to the non-profit entity LIHI to enable LIHI to operate a tiny house village in Olympia;

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

1. The Olympia City Council hereby approves the form of Funding Agreement between the City and LIHI
to provide funding to LIHI for the operation of a tiny house village in Olympia 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 Funding
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 _____ 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY

**2020 FUNDING AGREEMENT
BETWEEN
THE CITY OF OLYMPIA AND LOW INCOME HOUSING INSTITUTE**

This Funding Agreement ("Agreement") is effective as of the date of the last authorizing signature affixed hereto. The parties ("Parties") to this Agreement are the City of Olympia, a Washington municipal corporation ("City"), and the Low Income Housing Institute, a Washington non-profit corporation ("LIHI").

The City of Olympia declared a public health emergency related to homelessness on July 17, 2018. Since that date, the City has worked to find solutions that will assist in alleviating the homeless crisis in Olympia and to reduce human suffering. LIHI has experience assisting those who are homeless by establishing tiny house villages as transitional housing and connecting residents with essential services to allow them the best chance of success in transitioning to permanent housing.

NOW, THEREFORE, the Parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide funding to LIHI, a Washington non-profit corporation to enable LIHI to establish and operate a tiny house village in Olympia, Washington.

LIHI will work with residents of the village to ensure they obtain the services necessary to enable each resident to transition to permanent housing within a reasonable period of time.

2. Term/Termination.

The term of this Agreement shall commence on the date of the last authorizing signature affixed hereto and shall continue until December 31, 2020, unless otherwise terminated as provided in this Agreement. Prior to the expiration of the Term, this Agreement for funding may be terminated upon sixty (60) days' written notice to LIHI, with or without cause by the City. Once termination notice has been provided, the City shall only be responsible for funding the work that is currently in progress and can be completed prior to the date of termination.

3. Location of the Site.

LIHI shall continue to staff the tiny house village located upon City owned property that has been leased to LIHI at Plum Street & Union Avenue in Olympia, the exact location of which is shown on **Exhibit "A,"** and hereafter referred to as "Plum Street Village" or "Village." The site area is approximately 13,000 square feet.

4. Structures on the Site.

Any significant changes to the site must be approved by the City of Olympia prior to commencement of changes. Plum Street Village currently consists of:

- Tiny house shelter for approximately 40 people
 - Each tiny house is equipped with electrical power, windows, locking door;
 - furniture (bed, chair);
 - necessary fixtures (heat, lighting).
- On-site security;
- 3 Resident Common Areas include:
 - Case Management Office
 - Two community areas
- 1 Hygiene Trailer:
 - 3 showers
 - 4 toilets – one ADA
 - 1 washer/1 dryer
- 1 Cooking/Eating area:
 - Equipped with kitchen appliances
- Fencing capable of locking surrounding the perimeter of two main areas
 - Six feet high chain link

5. Funding. LIHI will operate the existing tiny house village which serves approximately 40 people as outlined in the Scope of Operations in **Exhibit B**, in exchange for reimbursement funding not to exceed the total amount set forth in **Exhibit C**.

A. Total Funding. The City agrees to fund LIHI in an amount not to exceed four hundred seventy-five thousand, eight hundred twenty and no/100 dollars (\$475,820) as provided in this Agreement.

B. Method of Funding. Funding by the City will be provided on a reimbursement basis only with proper receipts for items purchased or staff employed, accompanying a properly completed invoice, the requirement of which are outlined in **Exhibit D**, Invoice Requirements. A spreadsheet to assist LIHI in tracking and submitting invoices is included as **Exhibit D-1**. **In the event LIHI fails to submit an invoice that includes proper documentation to the City within 60 days from the end of the month in which the expense is incurred, LIHI forfeits any right to reimbursement for that expense.**

C. LIHI Responsible for Taxes. LIHI shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of LIHI's business operations.

6. Compliance with Laws.

In using the funding authorized under this Agreement, LIHI shall comply with and all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies, as now existing or hereafter adopted or amended.

7. Assurances.

LIHI affirms that it has the requisite training, skill and experience necessary to establish, manage, and operate the Plum Street Village for the purpose stated in this Agreement in a manner that will ensure the stability, safety, and health of residents and that will promote safety in the community. This includes necessary skill and training in accounting matters so that expenses are tracked and invoicing is properly and timely provided to the City for reimbursement. LIHI further affirms that any employees, officers, officials and volunteers are appropriately trained, accredited and licensed by any and all applicable agencies and governmental entities, including but not limited to being licensed to do business in the state of Washington and within the City of Olympia.

8. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that LIHI is operating independently from the City and the City shall be neither liable nor obligated to pay any LIHI employee any benefits provided to City employees such as sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other employment related tax. LIHI shall pay all income and other taxes due for LIHI employees. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to LIHI, shall not be deemed to convert this Agreement to an employment contract. Even though funding for this Agreement may include reimbursement for certain LIHI staff and benefits, LIHI employees shall not be considered employees of the City.

9. Equal Opportunity Employer.

A. In all LIHI services, programs or activities, and all hiring and employment made possible by or resulting from this Funding Agreement, there shall be no unlawful discrimination by LIHI or by LIHI's employees, agents, subcontractors or representatives against any person based on any legally protected class status including but not limited to: sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, veteran status, sexual orientation, gender identity, genetic information or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position.

This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. LIHI shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the LIHI's breach, may result in ineligibility for further City agreements.

B. In the event of LIHI's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated in whole or in part, and LIHI may be declared ineligible for further agreements or contracts with the City. LIHI, shall, however, be given a reasonable time in which to correct this noncompliance.

C. To assist the City in determining compliance with the foregoing nondiscrimination requirements, LIHI must complete and return the *Statement of Compliance with Nondiscrimination* attached as **Exhibit E**. Because the contract amount is over \$50,000, LIHI shall execute the attached Equal Benefits Declaration - **Exhibit F**.

10. Responsibilities for Communication.

LIHI shall operate the Plum Street Village in a manner consistent with the accepted practices for other similar Tiny House Villages, being particularly mindful of the surrounding neighborhood in which Plum Street Village is sited and its proximity to schools and businesses. LIHI shall:

- Host ongoing community meetings to share information, hear concerns, and answer questions about Plum Street Village, its development and operations.
- Organize meetings made up of neighborhood stakeholders, faith-based organizations, service providers, and businesses, which will provide ongoing advisory input to the Village that meets at least four times a year. LIHI shall invite the city's homeless response coordinator to attend all stakeholder meetings.
- Engage with interested parties through presentations and educational tools.
- Publicize telephone numbers, email addresses, and staff contacts for any community member seeking to contact the Village or LIHI staff, and LIHI shall respond promptly.
- Organize a public open house of the Village and coordinate tours as needed.
- Respond promptly to any citizen request for documentation relating to the establishment or operations of Plum Street Village or its communications.

11. Indemnification/Insurance.

A. Indemnification / Hold Harmless. LIHI shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of LIHI in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of LIHI and the City, its officers, officials, employees, and volunteers, LIHI's liability hereunder shall be only to the extent of the LIHI's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the LIHI's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. Insurance Term. LIHI shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by LIHI, its agents, representatives, or employees.

C. No Limitation. LIHI's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of LIHI to the coverage provided by such insurance, or otherwise limit the LIHI's recourse to any remedy available at law or in equity.

D. Minimum Scope of Insurance. LIHI shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as ISO occurrence form (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, stop gap liability, personal injury and advertising injury. The City shall be named as an additional insured under the LIHI's Commercial General Liability insurance policy with respect to the work performed as a part of this Agreement using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to LIHI's profession.

E. Minimum Amounts of Insurance. LIHI shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$3,000,000 general aggregate, with excess or umbrella coverage in the sum of \$10,000,000.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

F. Other Insurance Provisions. LIHI's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of LIHI's insurance and shall not contribute with it.

G. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage. LIHI shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of LIHI before commencement of the work.

I. Notice of Cancellation. LIHI shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of LIHI to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to LIHI to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due LIHI from the City.

K. City's Full Access to LIHI's Limits. If LIHI maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by LIHI, irrespective of whether such limits maintained by LIHI are greater than those required by this Agreement or any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by LIHI.

12. City Contributions to Preparation of the Site.

The City will contribute to the preparation of the Site only as specifically outlined in **Exhibit B.**

13. Treatment of Assets.

A. Title to all nonexpendable personal property and buildings purchased by LIHI, the cost of which LIHI has been reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the City at the conclusion of this Agreement.

B. Nonexpendable personal property purchased by LIHI under the terms of this Agreement in which title will be vested in the City at the end of the Agreement shall not be rented, loaned or otherwise passed to any person, partnership, corporation/association or organization without the prior express written approval of the City or its authorized representative, and such property shall, unless otherwise provided herein or approved by the City or its authorized representative, be used only for the performance of this Agreement.

C. As a condition precedent to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City, LIHI agrees to execute such security agreements and other documents as shall be necessary for the City to perfect its interest in such property in accordance with the "Uniform Commercial Code--Secured Transactions" as codified in Article 9 of Title 62A, the Revised Code of Washington.

D. LIHI shall be responsible for any loss or damage to the property of the City including expenses entered thereunto which results from negligence, willful misconduct, or lack of good faith on the part of LIHI, or which results from the failure on the part of LIHI to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City in like condition to that in which it was furnished or purchased, fair wear and tear excepted.

E. Upon the happening of loss or destruction of, or damage to, any City property, LIHI shall notify the City or its authorized representative and shall take all reasonable steps to protect that property from further damage.

F. LIHI shall surrender to the City all property of the City within thirty (30) days after rescission, termination or completion of this Agreement unless otherwise mutually agreed upon by the parties.

14. Books and Records/Public Records.

LIHI agrees to maintain books, records, and documents which sufficiently and properly reflect the funding provided by the City for the establishment and operation of Plum Street Village, as well as direct and indirect costs, related to the performance of this Agreement. In

addition, LIHI shall maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. All LIHI records related in any way to this Agreement shall be subject, at all reasonable times, to inspection, review, copying or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Records prepared, owned, used, or retained by the City that meet the definition of a “public record” in Chapter 42.56 RCW, even if records are created by and in the possession of LIHI, are subject to disclosure under Washington’s Public Records Act. Whether or not the records meet the definition of a public record is the City’s determination. If LIHI disagrees with the City’s determination or believes the records to be subject to an exemption, the City agrees to provide LIHI with ten (10) calendar days to obtain and serve on the City a court order specifically preventing release of such records.

Should LIHI fail to provide records related to this Agreement to the City within ten (10) calendar days of the City’s request for such records, LIHI agrees to indemnify, defend, and hold the City harmless for any public records judgment (including fines and penalties) against the City for failure to disclose and/or release such records, including costs and attorney’s fees. This section shall survive expiration of the Agreement.

15. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to continue the Agreement after the end of the current fiscal period, and this Agreement will automatically terminate upon the completion of all remaining operations for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

16. Contract Manager. For routine issues of contract management such as insurance, invoices, and issues related to this contract, please contact:

City Contract
Manager:

Cary Retlin, Home Fund Manager
City of Olympia
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967
(360) 570-3956
Email: cretlin@ci.olympia.wa.us

With a copy to: Connie Cobb, Sr, Program Specialist
City of Olympia
601 4th Ave E
P.O. Box 1967
Olympia, WA 98507-1967
(360)753-8451
Email: ccobb@ci.olympia.wa.us

LIHI Contract
Manager: Sharon Lee, Executive Director
Low Income Housing Institute
2407 1st Avenue
Seattle, WA 98121
206-571-5730
Email: sharonl@lihi.org

With a copy to: Lynne Behar
Chief Financial Officer, LIHI
lynneb@lihi.org
206-957-8023

17. General Provisions.

A. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

B. Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

C. Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

D. Assignment. Neither LIHI nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

1. If LIHI desires to assign this Agreement or subcontract any of its work hereunder, LIHI shall submit a written request to the City for approval not less than thirty (30) days prior to the commencement date of any proposed assignment or subcontract.

2. LIHI is responsible for ensuring that any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Agreement.

3. Any technical/professional service subcontract not listed in this Agreement, which is to be charged to this Agreement, must have prior written approval by the City.

4. The City reserves the right to inspect any assignment or subcontract document.

E. Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

F. Attorney Fees. In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party.

G. No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

H. Governing Law. This Agreement is made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

I. Authority. Each individual executing this Agreement on behalf of the City and LIHI represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of LIHI or the City, respectively.

J. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

K. Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

L. Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the establishment or operations is essential to LIHI's performance of this Agreement.

M. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

N. Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

O. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

P. Venue. All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Thurston County Superior Court, state of Washington.

Q. Ratification. Any work performed in 2020 prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

R. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

1. By signing the agreement below, LIHI certifies to the best of its knowledge and belief, that it and its principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records,

making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and

d. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where LIHI is unable to certify to any of the statements in this certification, LIHI shall attach an explanation to this proposal.

S. Early Retirement from the State of Washington- Certification. By signing this form, LIHI certifies that no one being directly compensated for their services pursuant to this Agreement has retired from the Washington State Retirement System using the 2008 Early Retirement Factors with restrictions on returning to work.

*******SIGNATURES APPEAR ON THE FOLLOWING PAGE*******

CITY OF OLYMPIA

By: _____

Steven J. Burney, City Manager

P.O. Box 1967

Olympia WA 98507-1967

Date

APPROVED AS TO FORM:



Annaliese Harksen, Deputy City Attorney

LIHI

I certify that I am authorized to execute this Agreement on behalf of the Low Income Housing Institute.

By: *Sharon Lee* _____

Sharon Lee, Executive Director

LIHI

2407 First Ave

Seattle, WA 98121

206-443-9935

05/27/2020

Date

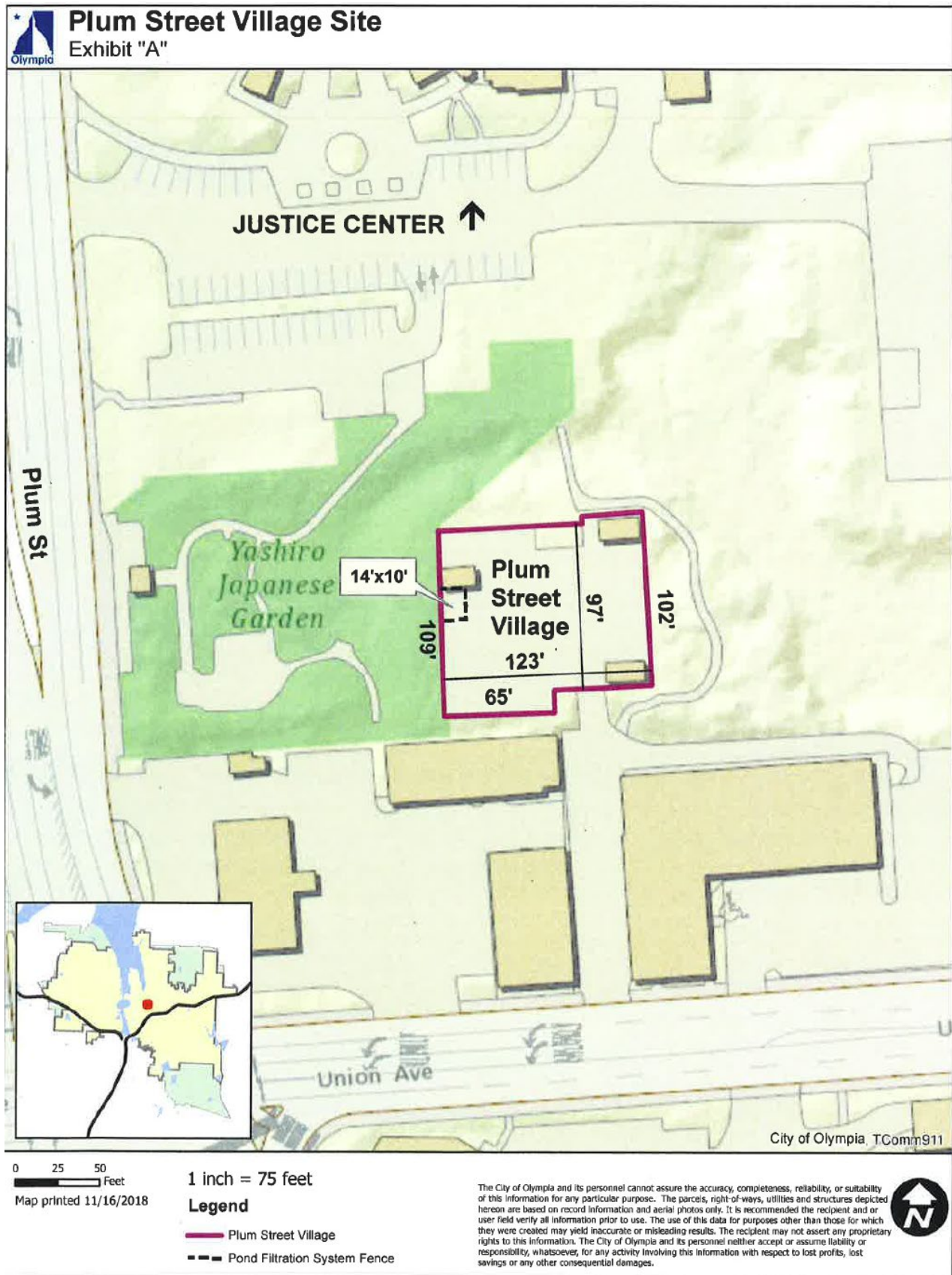


EXHIBIT “B”
LIHI’s SCOPE OF OPERATIONS
for
PLUM STREET VILLAGE
Olympia, WA

I. Overview

The Low Income Housing Institute (LIHI) has been a partner in operating Tiny House Shelters and sanctioned encampments in Seattle, WA since 2015. Each village community serves to help residents reclaim their dignity and get on a path to permanent housing by providing a heated and secure structure, kitchen and hygiene facilities, and ready access to case management. As an alternative to traditional shelter, Tiny Villages are a crisis response to homelessness where tiny houses can be set up quickly and cost effectively.

II. Community Engagement

- Host at least four community meetings annually to share information, hear concerns, and answer questions about Plum Street Village operations. LIHI shall invite the City’s Homeless Response Coordinator to participate in each meeting.
- Support a committee made up of neighborhood stakeholders, faith-based organizations, service providers, and businesses, which will provide ongoing advisory input to the village. LIHI shall invite the City’s Homeless Response Coordinator to participate in all stakeholder meetings.
- Engage with interested parties through presentations and educational tools.
- Publicize telephone numbers, email addresses, and staff contacts for any community member seeking to contact the village or LIHI staff, and LIHI shall respond promptly.
- Organize a public open house of the village and coordinate tours as needed.
- Respond promptly to any citizen request for documentation relating to the or operations of Plum Street Village or its communications.

III. Site Changes

- Changes to the site must be approved by the City of Olympia prior to commencement of changes.

EXHIBIT “B”

Page 2

IV. Operations

- LIHI Staff Oversight and Support: Hire, onboard, and support staff with a special projects manager and oversight from the LIHI property management team.
- Security: Ensure a secure site with a closed perimeter, monitored entrance, and secure facilities.
- Site Management: Work with residents to ensure cleanliness and adherence to a code of conduct developed by LIHI that is consistent with community expectations.
- Village Resident Community: Work with residents to foster harmony and collaboration within the Village.
- Maintenance: Conduct maintenance visits and perform required maintenance tasks as needed.
- 24/7 Communication: Ensure that LIHI staff are available around the clock to answer questions and communicate with emergency services.
- Intakes: Work effectively with referring service providers on the intake of new residents to the program.
- Food-drive Calendar: Maintain a calendar of food and meal donations.
- Manage Donations: Manage donations and storage of donated supplies within the Village.
- Develop an emergency management plan, addressing weather, fire, and security issues.
- Ensure engagement and compliance with Thurston County Housing Information Management System.
- Ensure clients are entered into the HMIS system. Track intakes, exits, and progress with HMIS reporting procedures provided by Thurston County. Maintain records of individuals served, service provided, outreach activities conducted, surveys completed and other reporting as requested by City of Olympia and submit reports monthly with invoices to the City of Olympia.
- Ensure coordination with Thurston County Coordinated Entry System in consultation with City of Olympia.

EXHIBIT “B”

Page 2

V. Case Management

- Staff Oversight & Support: Hire, onboard, and support case management staff with LIHI’s experienced case management supervisory team.
- Housing Case Management: Help refer residents to transitional and permanent housing using vouchers, Section 8, Social Security, public assistance, earned income and income support.
- One additional case manager will support cases at other sites including Westminster Village, and other locations, until second case manager has a caseload similar to Plum Street Village.
- Assist residents in filling out necessary paperwork and help each resident through the process requirements to obtain any assistance applicable to the individual resident’s situation.
- Education & Health Service Coordination: Connect clients with agencies that improve health and education outcomes and help them through any process requirements to obtain necessary services.
- Data Management: Track intakes, exits, and progress with HMIS reporting procedures.
- Intake Coordination: Coordinate with referring agencies for successful program outcomes.

VI. Administrative

- Insurance: Maintain ample insurance coverage the site and LIHI operations, naming the City of Olympia as an additional insured.
- Accounting: Document purchases, track finances, and bill accurately.
- Hiring: Manage all hiring and staffing needs with LIHI’s human resources team.
- LIHI will perform background screening, including national criminal history checks, on all hired staff and volunteers.
- LIHI will perform background screening through the Washington State Patrol as necessary to screen Residents for compliance with LIHI’s Residency standards at the Plum Street Village.

EXHIBIT C				
BUDGET FOR PLUM STREET VILLAGE 2020				
	Monthly Estimated Limit		Annual Limit	
Staffing (including .5 time manager and 2020 COLA)	\$ 13,208		\$ 158,500	
Staff Benefits (at .25 percent)	\$ 3,367		\$ 40,400	
LIHI Maintenance and Support Staff	\$ 800		\$ 9,600	
Case Manager	\$ 3,992		\$ 47,900	
Case Manager Benefits	\$ 883		\$ 10,600	
Westminster/offsite Case Manager	\$ 3,992		\$ 47,900	
Westminster/offsite Case Manager benefits	\$ 1,017		\$ 12,200	
Staff Training	\$ 250		\$ 3,000	
Staffing total	\$ 27,508		\$ 330,100	
Recurring Monthly Expenses				
Electricity	\$ 667		\$ 8,000	
Site Maintenance	\$ 700		\$ 8,400	
Cutlery, garbage bags, sanitation and other supplies	\$ 667		\$ 8,000	
Daily Meals	\$ 2,250		\$ 27,000	
Special Needs for Food and Supplies	\$ 100		\$ 1,200	
WIFI	\$ 410		\$ 4,920	
Smartphones (3)	\$ 450		\$ 5,400	
Landlines (1) Residents (2) Security	\$ 260		\$ 3,120	
Office Supplies	\$ 200		\$ 2,400	
Insurance	\$ 190		\$ 2,280	
Mileage	\$ 250		\$ 3,000	
Client Assistance	\$ 833		\$ 10,000	
HMIS/Admin/Accounting Fee (15%)	\$ 5,167		\$ 62,000	
Expenses total	\$ 12,143		\$ 145,720	
2020 TOTALS	\$ 39,652		\$ 475,820	

EXHIBIT "C"

Page 2

ADDITIONAL DETAIL FOR CERTAIN TYPES OF REIMBURSABLE BUDGET ITEMS

Training: Can include such training as CPR, First Aid, use of NARCAN, de-escalation, domestic violence, boundary, anti-discrimination, HMIS, how to work with difficult people. LIHI internal staff trainings. Conferences and workshops may relate to homelessness or affordable housing. Training for villagers on self governance, dispute resolution, domestic violence, financial literacy, anger management.

WIFI: May include hotspots for staff and residents or ongoing internet services.

Telephone line and service: Two land lines. (1) Security office to include fax capability
(2) Residents for local calls only.

Smart phones service: Three smart phones. (1) Special Projects Manager (2) Case Manager (3) Village Organizer/Security Attendant.

Mileage: Staff trips include attending meetings and trainings, purchasing supplies, working with clients getting them to appointments, etc.

Client Assistance: Emergency hotel stays, bus or train transportation out of state, first and last month rent to move into housing, moving costs, clothing, shoes and supplies for starting employment, books and tools for school or work, hotel stays in emergency situations, etc.

Administration Fee: This covers items such as human resources, hiring and advertising, management, supervision, administration, program support, fundraising, volunteer coordination, background checks through WSP, etc. **NOTE: Payroll and other supporting documentation is required to accompany requests for administration reimbursement. There will be no reimbursement for items that do not have appropriate supporting documentation.**

EXHIBIT D

INVOICE REQUIREMENTS

Each monthly invoice must be submitted by email by the 15th of the next month and must include:

1. A primary contact for LIHI invoice questions who will respond to the City within 24 hours regarding any invoice question.
2. A spreadsheet furnished by the City of Olympia will be required to be filled out monthly that includes (See **Exhibit D-1**):
 - The billing period
 - Total invoice amount
 - A total for the invoice period
 - The remaining budget available for the contract term
3. Supplemental documentation (receipts that support staffing expenditures and other expenses)
4. Any cost not included in the contract budget, or beyond the monthly budget amount, must be pre-approved by email in order to assure payment.
5. A monthly progress report that includes total number of guests, length of stay, exits for behavioral (or other) reasons, exits into permanent housing.
6. Invoices must be emailed to these city email addresses:
homelessness@ci.olympia.wa.us; cretlin@ci.olympia.wa.us; ccobb@ci.olympia.wa.us

And your primary contract contact:

Cary Retlin
Home Fund Program Manager
cretlin@ci.olympia.wa.us
(360)570-3956

City Responsibilities:

1. Payment shall be made on a monthly basis, within thirty (30) days after receipt of an invoice.
2. City Contract Manager will inform LIHI of need for additional documentation or disputed costs in writing.

[illegible]

EXHIBIT E**STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT**

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Indicate below the methods you will employ to ensure that this policy is communicated to your employees, officers, officials, and volunteers, if applicable. LIHI affirms compliance with the City of Olympia's nondiscrimination ordinance and contract provisions. **Please check all that apply:**

- ☐ Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
What type, and how often? _____
- ☐ Nondiscrimination provisions are posted on applications for service.
- ☐ Nondiscrimination provisions are posted on the agency's web site.
- ☐ Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- ☐ Nondiscrimination provisions are shared during meetings.
What type of meeting, and how often? _____
- ☐ If, in addition to two of the above methods, you use other methods of providing notice of nondiscrimination, please list: _____
- ☐ If the above are not applicable to the contract agency or vendor, please check here and sign below to verify that you will comply with the City of Olympia's nondiscrimination ordinance.

Failure to implement the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance.

Sharon Lee, LIHI Executive Director

(Date)

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

(Sole Proprietor Signature)

(Date)

EXHIBIT F
EQUAL BENEFITS COMPLIANCE DECLARATION

City agreements or contracts estimated to cost \$50,000 or more shall comply with Olympia Municipal Code, Chapter 3.18. This provision is to ensure that those who contract with the City provide benefits on a non-discriminatory basis. Those who contract with the City must have policies in place prohibiting such discrimination, prior to any contract taking effect.

I declare that the Entity listed below complies with the City of Olympia Equal Benefits Ordinance, that the information provided on this form is true and correct, and that I am legally authorized to bind LIHI.

Low Income Housing Institute (LIHI):

Sharon Lee, Executive Director

Date



City Council

Approval of Resolution Authorizing the Purchase of Real Estate Owned by Manke Timber Company and Manke Lumber Company

Agenda Date: 6/2/2020
Agenda Item Number: 4.G
File Number:20-0422

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

Title

Approval of Resolution Authorizing the Purchase of Real Estate Owned by Manke Timber Company and Manke Lumber Company

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the resolution authorizing the City Manager to execute all documents necessary to acquire 2.51 acres of real estate from the Manke Timber Company and Manke Lumber Company.

Report

Issue:

Whether to approve the purchase of real estate from Manke Timber Company and Manke Lumber Company for an additional access to Kaiser Woods Park.

Staff Contact:

Paul Simmons, Director, Parks, Arts & Recreation, 360.753.8462

Mark Barber, City Attorney, 360.753.8338

Presenter(s):

None - Consent Calendar Item.

Background and Analysis:

In 2016, the City purchased the 68-acre Kaiser Woods property as an open space. In 2019, the City began a master planning process for the park. While the master planning process is not yet complete, preliminary designs include a network of dedicated mountain bike trails and hiking trails.

During the initial public input process for the master plan, several neighbors on Park Drive expressed concern that Park Drive was being proposed as the only vehicular access to the park. Park staff have explored additional vehicular access options and have concluded that this property owned by Manke Timber Company provides the best additional access.

This property would provide vehicular road access from Black Lake Boulevard directly into the park. The property is 60 feet wide and has an existing gravel road that Manke Timber Company utilizes to access their large property holding west of the Kaiser Woods property. Should this property be acquired, staff would submit a Recreation and Conservation Office grant to seek partial reimbursement of the acquisition and to help fund development of an access road through this parcel with an associated 15-stall parking lot for the park.

Staff has concluded negotiations with the seller and has prepared the Real Estate Purchase and Sale Agreement. The purchase price is \$210,000, which is the appraised value of the property.

Neighborhood/Community Interests (if known):

The community has expressed great interest in the Kaiser Woods Master Plan with over 200 people attending a public meeting and over 500 people submitting comments through Engage Olympia. There is strong interest from the local mountain bike community for this park to have Olympia's first dedicated mountain bike trails and strong interest from hikers to have dedicated hiking trails in the park as well. The top concern raised by residents of Park Drive is having the only vehicular access to the park being via Park Drive. Acquiring and developing this access would address that concern.

Options:

1. Approve the resolution authorizing the City Manager to execute all documents necessary to acquire 2.51 acres of real estate from the Manke Timber Company and Manke Lumber Company.
2. Do not authorize the purchase of real estate from the Manke Timber Company and Manke Lumber Company. Park Drive would remain as the sole vehicular access point to Kaiser Woods.

Financial Impact:

Land Acquisition funds allocated in the 2020 Capital Facilities Plan will be used for this acquisition.

Attachments:

Resolution
Agreement
Property Map

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
AUTHORIZING THE PURCHASE OF REAL ESTATE FOR THE CITY OF OLYMPIA OWNED BY
THE MANKE TIMBER COMPANY AND THE MANKE LUMBER COMPANY**

WHEREAS, the City desires to provide a secondary vehicular access point to Kaiser Woods Park; and

WHEREAS, the Manke Timber Company and the Manke Lumber Company own real property located at 2549 Black Lake Boulevard SW, Tumwater, Washington consisting of 2.51 acres, more or less (the Manke Property); and

WHEREAS, purchase of the Manke Property would allow the opportunity to provide an access road connecting Kaiser Woods Park to Black Lake Boulevard; and

WHEREAS, the City and the Manke Timber Company and the Manke Lumber Company have negotiated terms and conditions for the City's purchase of the Manke Property; and

WHEREAS, the Olympia City Council hereby accepts terms, among others, to purchase the Manke Property for Two Hundred Ten Thousand Dollars and No/100 Cents (\$210,000.00) U.S;

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

1. The Olympia City Council hereby accepts the terms and conditions negotiated with the Manke Timber Company and the Manke Lumber Company to purchase the real property located at 2549 Black Lake Boulevard SW, Tumwater, Washington for park access upon the agreed terms within the real estate purchase and sale agreement.
2. The City Manager is directed and authorized to execute all documents necessary to purchase the aforesaid real property from the Manke Timber Company and the Manke Lumber Company, upon the terms and conditions negotiated in the real estate purchase and sale agreement and make any minor modifications consistent with the intent of the agreement as may be necessary, or to correct any scrivener's errors.

PASSED BY THE OLYMPIA CITY COUNCIL this 2nd day of June 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Mark Barber

CITY ATTORNEY

REAL ESTATE PURCHASE AND SALE AGREEMENT

This REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is between the City of Olympia, a municipality organized under the laws of the State of Washington ("Buyer"), and Manke Timber Company, Inc. and Manke Lumber Company, Inc., both Washington corporations ("Sellers"), jointly referred to as "the Parties." This Agreement shall not be effective until the "Effective Date" (as defined in Paragraph 17.16 below).

RECITALS

Sellers are the owners of certain real property located in Thurston County, Washington, consisting of approximately 2.51 acres, more or less, and more particularly described on **Exhibit "A"** (legal description) and shown on **Exhibit "B"** (general vicinity sketch) attached hereto and by this reference incorporated herein.

Buyer has determined that the Property is suitable for public park purposes for the citizens and residents of the City of Olympia.

The signatories to this Agreement acknowledge they are authorized to execute associated documents, to correct legal descriptions if need be, and to correct scrivener's errors and other errors or omissions that are otherwise in substantial conformance with this Agreement.

The Parties now enter into this Agreement to memorialize the terms and conditions under which Sellers will sell the Property to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Property. Subject to the terms and conditions of this Agreement, Sellers agree to sell and convey to Buyer, and Buyer agrees to purchase from Sellers, the following:

1.1 Land. The approximately 2.51 acres, more or less, constituting the Property legally described on **Exhibit "A"** to this Agreement and generally shown on a sketch attached as **Exhibit "B"** to this Agreement.

1.2 Appurtenances. All rights, privileges, and easements appurtenant to the Property owned by Sellers, including without limitation any and all leases, subleases, easements, rights-of-way, water and mineral rights, and any other appurtenances, also including any buildings, structures or fixtures located upon and used in connection with the beneficial use and enjoyment of the Property (the "Appurtenances").

The Property and Appurtenances described in Paragraph 1 above are collectively referred to in this Agreement as the "Property."

2. Escrow. Within three (3) business days of the Effective Date of this Agreement, the Parties shall confirm that an escrow account is opened for the transaction contemplated by this Agreement with Thurston County Title Company (in such capacity, "Escrow Company"). Darla Wilkins or another designee of Escrow Company will serve as escrow agent for Closing of this Agreement ("Escrow Agent"). The Parties shall deliver a fully executed copy of this Agreement to Escrow Agent.

3. Purchase Price. The purchase price to be paid by Buyer to Sellers for the Property (the "Purchase Price") is TWO HUNDRED AND TEN THOUSAND DOLLARS and NO CENTS (\$210,000.00) U.S.

3.1 Additional Consideration. In addition to the cash set forth in Paragraph 3 above, Buyer agrees to grant Sellers a nonexclusive access and utility easement to, over, across under and upon the Property described in Paragraph 1 above. Sellers' nonexclusive access and utility easement shall be for any lawful purpose upon Sellers' adjacent properties. The nonexclusive easement to Sellers shall be in the form set forth in **Exhibit "E"** attached hereto. The Escrow Company shall record the nonexclusive easement after recording of Sellers' statutory warranty deed conveying the Property to Buyer.

4. Payment of Purchase Price. On the Closing Date, Buyer shall deposit with Escrow Company the sum of TWO HUNDRED AND TEN THOUSAND DOLLARS and NO CENTS (\$210,000.00) for the Purchase Price of the Property upon Closing.

5. Closing Date. The Closing (the "Closing") of the purchase and sale of the Property under this Agreement shall be held at the offices of the Escrow Company, and shall occur on a date no later than thirty (30) business days after the waiver or expiration of the Feasibility Contingency in Paragraphs 7.4 and 7.5 of this Agreement (the "Closing Date"), unless an earlier or later time is agreed upon between the Parties. Closing shall occur when the Deed (as hereinafter defined) to Buyer is executed and recorded, and the Purchase Price as described in Paragraph 4 is delivered to the Escrow Company for delivery to Sellers.

6. Title and Survey Matters.

6.1 Title Binder. Buyer shall order a preliminary commitment for an ALTA owner's standard coverage title insurance policy provided by Thurston County Title Insurance Company ("Title Company") describing the Property, showing all matters of record pertaining to the Property and listing Buyer as the prospective named insured. Following the mutual execution of this Agreement, Buyer shall obtain from Title Company a written supplemental report to such preliminary commitment in a form acceptable to Buyer, updating the preliminary commitment to the execution date of the Agreement. Such preliminary commitment, supplemental reports and true, correct and legible copies of all documents referred to in such preliminary commitment and supplemental reports as conditions or exceptions to title to the Property are collectively referred to herein as the "Title Binder."

6.2 Title Review. Within fourteen (14) business days after Buyer's receipt of the updated Title Binder, Buyer shall review the Title Binder and any surveys of the Property, and

shall notify Sellers what exceptions to title, if any, affect the marketability or insurability of the title to the Property or which adversely affect the use of the Property (the "Title Review Period"). If no title matters appear in the updated Title Binder since the initial preliminary commitments, then the Parties shall proceed to Closing as set forth in this Agreement. If any title matters appear and Buyer objects to any of the same during the Title Review Period, then Sellers shall have ten (10) business days after receiving Buyer's objections to notify Buyer if Sellers will remove any of the exceptions objected to prior to the Closing Date or if Sellers elect not to remove such objected to exceptions. If Sellers shall fail to remove any such exceptions objected to by Buyer from title prior to the Closing Date, and Buyer is unwilling to take title subject thereto, Buyer may elect to either terminate this Agreement, or take title despite the existence of such exception. If Buyer elects to terminate, neither Buyer nor Sellers shall have any further liabilities, obligations or rights with regard to this Agreement which shall then become null and void and of no further force or effect. Sellers shall not be required to incur any expense in order to render their title marketable or to remove any matter disapproved by Buyer; provided that, Sellers shall not refuse to remove any disapproved item that involves only payment of a monetary obligation of Sellers' secured by a lien or other encumbrance on the Property.

6.3 Title Policy. At Closing, Sellers and Buyer shall cause Title Company to issue a standard ALTA owner's policy ("Title Policy") to Buyer, at Sellers' cost. The Title Policy shall (a) be satisfactory to Buyer, (b) be issued in the amount of the total Purchase Price and (c) insure fee simple, indefeasible title to the Property in Buyer. The Title Policy shall contain endorsements as Buyer may require; provided that Buyer shall be solely responsible for all additional costs and requirements to obtain such endorsements. Buyer's obligation to Close this transaction shall be contingent on Buyer's approval, in its sole and absolute discretion of the Title Policy required under this Paragraph 6.

7. Conditions and/or Contingencies to Buyer's Obligations.

7.1 Documents and Reports. Within fifteen (15) business days after the execution and delivery of this Agreement (the "Document Delivery Date"), Sellers shall deliver to Buyer copies of the documents and reports listed on attached **Exhibit "C"** to this Agreement and in Sellers' possession. Sellers shall certify to Buyer, as of the Document Delivery Date, as to any documents listed on **Exhibit "C"** not in Sellers' possession.

7.2 Inspection of the Property. Buyer shall have the right and permission from the date Sellers sign this Agreement through the Closing Date (or earlier termination of this Agreement) to enter upon the Property or any part thereof at all reasonable times and from time to time for the purpose, at Buyer's cost and expense, of making all tests and/or studies of the Property that Buyer may wish to undertake, including, without limitation, soils tests (including borings), toxic and hazardous waste studies, surveys, structural studies and review of zoning, fire, safety and other compliance matters; provided, however, Buyer shall indemnify and hold harmless Sellers from and against any mechanic's or other liens or claims that may be filed or asserted against the Property or Sellers as a direct result of any actions taken by Buyer in connection with the Property, including but not limited to permitting Sellers to review a written description of Buyer's proposed testing and work to ensure same is properly done and will not exacerbate any existing condition of contamination on the property. Buyer shall also provide

Sellers with a copy of all soil or environmental test results for the property upon Sellers' request. Buyer shall reasonably restore the Property to its condition immediately prior to any invasive testing. The effect of the representations and warranties made by Sellers in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

7.3 Appraisal of the Property. Buyer shall have the right to obtain an appraisal. Buyer's appraiser may enter onto the property as is necessary to appraise the Property.

7.4 Approval of Property/Feasibility Contingency. Buyer's obligation to purchase the Property shall be subject to and contingent upon Buyer's approval, in its sole and absolute discretion, prior to the expiration of the Contingency Period, of all aspects of the Property, including, without limitation, the physical condition of the Property and documents delivered by Seller pursuant to Paragraph 7.1 above, or otherwise obtained by Buyer regarding the Property. Buyer's approval and obligation to purchase the Property under this paragraph shall be twenty-one (21) business days from the last date this Agreement was executed by a Party to sign same.

7.5 Contingency/Feasibility Period. As used herein, the term "Contingency or Feasibility Period" shall be twenty-one (21) business days from the last date this Agreement was executed by a Party to sign same.

7.6 Buyer's Right to Terminate. If Buyer's conditions set forth in Paragraph 7.4 above are not satisfied in Buyer's sole and absolute discretion, Buyer shall have the right to terminate this Agreement by sending written notice to Sellers and Escrow Agent (such notice referred to as a "Termination Notice") prior to the expiration of the Contingency/Feasibility Period. If Buyer gives its Termination Notice to Sellers, this Agreement shall terminate and neither Buyer nor Sellers shall have any further liability to the other under this Agreement.

7.7 Additional Closing Conditions. Buyer's obligation to purchase the Property shall also be subject to the following conditions that must be satisfied as of Closing.

(i) Prior to Closing, all Contracts or Leases (whether written or oral), with respect to the Property shall be terminated in writing, except for any Assumed Contracts or Leases. Sellers shall provide Buyer, prior to Closing, with written termination agreements with respect to all Contracts or Leases, in a form acceptable to Buyer;

(ii) All representations and warranties of Sellers contained herein, to the best of Sellers' knowledge, shall be true, accurate and complete at the time of the Closing as if made again at such time;

(iii) Sellers shall have performed all obligations to be performed by them hereunder on or before Closing (or, if earlier, on or before the date set forth in this Agreement for such performance);

(iv) At Closing, title to the Property shall be in the condition required by Paragraph 6 of this Agreement and Escrow Agent shall deliver the Title Policy to Buyer; and

(v) At Closing, the physical condition of any buildings or structures, forest and ground cover shall be substantially the same as on the date hereof, ordinary wear and tear excepted.

If the conditions set forth in Paragraph 7 are not satisfied as of the Closing Date and Buyer does not waive the same, Buyer may terminate this Agreement by written notice given to Sellers, and thereafter Buyer shall have no further liability to Sellers under this Agreement.

7.8 As-is Condition. Buyer acknowledges the Property is sold in its “As-is where is” condition. Buyer hereby waives the right to any seller disclosure statement, which would otherwise be required under RCW Chapter 64.06. Further, in the event a seller’s disclosure statement or any portion thereof is required under RCW Chapter 64.06 pursuant to RCW 64.06.040(3), Buyer hereby waives any right of rescission of this Agreement that Buyer might otherwise have under RCW Chapter 64.06.

8. Sellers’ Representations and Warranties. Sellers hereby make the following representations and warranties, to the best of Sellers’ knowledge, which representations and warranties shall be deemed made by Sellers to Buyer also as of the Closing Date:

8.1 Title. Sellers are the sole owners of the Property, except for reservations of record. At Closing, Sellers shall convey the entire fee simple estate and right, title and interest in and to the Property by statutory warranty deed to Buyer, free and clear of unapproved encumbrances of record.

8.2 Compliance with Law; Compliance with Property Restrictions. The Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property related to zoning, building, subdivision, and engineering.

8.3 Bankruptcy, etc. No bankruptcy, insolvency, rearrangement or similar action involving Sellers or the Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Sellers.

8.4 Taxes and Assessments. Other than amounts disclosed by the Title Binder, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property.

8.5 Foreign Person. Sellers are not a foreign person and are a “United States Person” as such term is defined in Section 7701(a) (30) of the Internal Revenue Code of 1986, as amended (the “Code”) and shall deliver to Buyer prior to the Closing an affidavit evidencing such fact and such other documents as may be required under the Code.

8.6 Mechanics' Liens. No labor, material or services have been furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborer's or materialmen's liens or claims might arise.

8.7 Underground Storage Tanks. Sellers acknowledge and represent there are no subterranean storage or underground storage tanks on the Property.

8.8 Leases and Other Agreements. Sellers represent that there are no leases, occupancy agreements, service agreements, licenses, easements, or option agreements with regard to the Property, except those of record or disclosed pursuant to Paragraph 7.1.

8.9 Assumption of Liabilities. Buyer, by virtue of the purchase of the Property, will not be required to satisfy any obligation of Sellers arising prior to the Closing Date.

8.10 Defaults. Sellers are not in default and there has occurred no uncured event which, with notice, the passage of time or both would be a default, under any contract, agreement, lease, encumbrance, or instrument pertaining to the Property.

8.11 Utilities. The Property may or may not be served by water, storm and sanitary or septic sewer, electricity, and telephone supplied directly to the Property by facilities of public utilities. All such utilities are located within the boundaries of the Property or within lands dedicated to public use or within recorded easements for the same.

8.12 Public Improvements. Sellers have no knowledge of any federal, state, county, municipal or other governmental plans to change the road system in the vicinity of the Property.

8.13 Subdivision. The conveyance of the Property will not constitute a violation of any subdivision ordinance. The improvements on the Property comply in all material respects with all applicable subdivision ordinances and statutes.

8.14 Due Authority. Sellers and Buyer have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Sellers and Buyer and constitute their legal, valid and binding obligation enforceable against Sellers and Buyer in accordance with its terms.

8.15 No Omissions. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be and contain no untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained therein not misleading.

9. Covenants of Sellers. Sellers covenant and agree as follows:

9.1 Perform Obligations. From the date of this Agreement to the Closing Date, Sellers will perform any monetary and non-monetary obligations they have regarding the Property.

9.2 No Liens. From the date of this Agreement to the Closing Date, Sellers will not allow any lien to attach to the Property, nor will Sellers grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

9.3 Provide Further Information. From the date of this Agreement to the Closing Date, Sellers will notify Buyer of each event of which Sellers become aware affecting the Property or any part thereof immediately upon learning of the occurrence of such event.

10. Closing.

10.1 Time and Place. Provided that all the contingencies set forth in this Agreement have been previously fulfilled, the Closing shall take place at the place and time determined as set forth in Paragraph 5 of this Agreement.

10.2 Documents to be Delivered by Sellers. For and in consideration of, and as a condition precedent to the payment to Sellers of the Purchase Price, Sellers shall obtain and deliver to Buyer at Closing the following documents (all of which shall be duly executed and acknowledged where required):

(i) Title Documents. Such other documents, including, without limitation, lien waivers, indemnity bonds, indemnification agreements, and certificates of good standing as shall be required by Buyer, or by the Title Company as a condition to its insuring Buyer's good and marketable fee simple title to the Property.

(ii) Authority. Such evidence as the Title Company shall require as to authority of Sellers to convey the Property to Buyer.

(iii) Surveys and Drawings. All surveys, site plans and plans and specifications relating to the Property as are in the possession or control of Sellers, if any.

(iv) Assignment. Sellers and Buyer agree any assignment of Buyer's rights under this Agreement shall be subject to Sellers' approval, which shall not be unreasonably withheld, conditioned or denied.

(v) Warranty Deed. A statutory warranty deed ("Deed") conveying to Buyer a good, marketable and indefeasible title in fee simple absolute to the Property in the form set forth in **Exhibit "D"** attached hereto.

10.3 Payment of Costs. At Closing, Sellers shall pay all charges for title insurance for a standard ALTA owner's title policy insuring Buyer's title, one-half of the escrow fee, the recording fees, the technology fee, and real property excise taxes. Buyer shall pay one-half of the escrow fee.

10.4 Taxes. Buyer is exempt from payment of real property excise taxes for the Property pursuant to WAC 458-61A-205(3).

10.5 Monetary Liens. Sellers shall pay or cause to be satisfied at or prior to Closing all monetary liens on or with respect to all or any portion of the Property, including, but not limited to, mortgages, deeds of trust, security agreements, assignments of leases, rents and/or easements, judgment liens, tax liens (other than those for taxes not yet due and payable) and financing statements, except where Sellers are exempt by statute or administrative rule or regulation.

10.6 Possession. Possession of the Property shall be delivered to Buyer at Closing. The Property, including without limitation the improvements and appurtenances, if any, shall be delivered to Buyer in good order.

10.7 Proration. All amounts required to be prorated hereunder as of Closing, shall be calculated as if Buyer were in possession of the Property as of the date of Closing.

11. Environmental.

11.1 Hazardous Substances. Notwithstanding anything to the contrary in this Agreement or otherwise, the Parties agree that Sellers shall defend, indemnify, or hold Buyer harmless with respect to any loss, liability, claim, demand, damage, or expense of any kind, including attorneys' fees, costs, and expenses (collectively, "Loss") arising out of the past release or threatened release of Hazardous Substances on, under, above, or about the Property before Closing, except for the past release or threatened release of any Hazardous Substance on, under, above, or about the Property caused or contributed to by Buyer, or any employee, agent, or contractor of Buyer.

11.2 Definitions. The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," or "solid wastes" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; (d) chlorinated solvents; and (e) asbestos. The term "Environmental Law" includes any federal, state, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or hazardous substances.

12. Indemnification. Sellers shall pay, protect, pay the defense costs of, indemnify and hold Buyer and their successors and assigns harmless from and against any and all loss, liability, claim, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Sellers set forth in this Agreement, (b) the failure of Sellers to perform any obligation required by this Agreement to be performed by Sellers, (c) the

ownership, maintenance, and/or operation of the Property by Sellers prior to the Closing not in conformance with this Agreement, or (d) any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of the Sellers, their representatives, employees, contractors or suppliers that occurred before Closing; provided, however, that nothing in this Paragraph 12 applies to Losses arising out of the presence of Hazardous Substances on, under, above, or about the Property, including Hazardous Substances that migrate or migrated to or from the Property caused or contributed to by Buyer, or any employee, agent, or contractor of Buyer.

13. Condemnation. In the event of any commenced, to be commenced or consummated proceedings in eminent domain or condemnation (collectively "Condemnation") respecting the Property or any portion thereof, Buyer may elect, by written notice to Sellers, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement, neither Buyer nor Sellers shall have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, there shall be no reduction in the Purchase Price, and Sellers shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, Sellers' entire right, title and interest in and to any condemnation award or settlement made or to be made in connection with such Condemnation proceeding. Buyer shall have the right at all times to participate in all negotiations and dealings with the condemning authority and approve or disapprove any proposed settlement in respect to such matter. Sellers shall forthwith notify Buyer in writing of any such Condemnation respecting the Property.

14. Casualty. If any fire, windstorm or casualty occurs and materially affects all or any portion of the Property on or after the date of this Agreement and prior to the Closing, Buyer may elect, by written notice to Sellers, to terminate this Agreement and the escrow created pursuant hereto and be relieved of its obligation to purchase the Property. If Buyer terminates this Agreement neither Buyer nor Sellers, have any further liability to the other hereunder. If Buyer fails to make such election prior to the Closing Date, this Agreement shall continue in effect, the Purchase Price shall be reduced by the amount of loss or damage occasioned by such casualty not covered by insurance, and Sellers shall, prior to the Closing Date, assign to Buyer, by an assignment agreement in form and substance satisfactory to Buyer, its entire right, title and interest in and to all insurance claims and proceeds to which Sellers may be entitled in connection with such casualty. Buyer shall have the right at all times to participate in all negotiations and other dealings with the insurance carrier providing such coverage and to approve or disapprove any proposed settlement in respect to such matter. Sellers shall forthwith notify Buyer in writing of any such casualty respecting the Property.

15. Notices. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "Notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by FedEx, UPS, USPS or other overnight delivery service of recognized standing, or if deposited in the United States mail, certified, registered, or express mail with postage prepaid. If such Notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such Notice is delivered by FedEx or

other overnight delivery service of recognized standing, it shall be deemed given twenty-four (24) hours after the deposit thereof with such delivery service. If such Notice is mailed as provided herein, such shall be deemed given forty-eight (48) hours after the deposit thereof in the United States mail. Each such Notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To Buyer: Steven J. Burney, City Manager
City of Olympia
601 4th Ave E
Olympia, WA 98501
Email: jburney@ci.olympia.wa.us

With a copy to: Mark Barber, City Attorney
City of Olympia
601 4th Ave E
Olympia, WA 98501
Email: mbarber@ci.olympia.wa.us

To Sellers: Joel A. Manke
Manke Timber Company, Inc.
Manke Lumber Company, Inc.
1717 Marine View Drive
Tacoma WA 98422
Email: joel@mankelumber.com

Any party hereto may change its address for receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

16. Event of Default. In the event of a default under this Agreement by Sellers (including a breach of any representation, warranty covenant set forth herein), Buyer shall be entitled, in addition to all other remedies, to seek monetary damages and specific performance of Sellers' obligations hereunder.

17. Miscellaneous.

17.1 Applicable Law. This Agreement shall in all respects, be governed by the laws of the State of Washington.

17.2 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, to carry out the intent of the Parties hereto.

17.3 Modification or Amendment, Waivers. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by all of the Parties

hereto. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

17.4 Successors and Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns. Any assignment shall be subject to Sellers' approval, which shall not be unreasonably withheld, conditioned or denied. Buyer must notify and, if required, request approval by Sellers of any such assignment prior to the Closing. Any such assignee shall for all purposes be regarded as Buyer under this Agreement.

17.5 Entire Agreement and No Third Party Beneficiaries. This Agreement constitutes the entire understanding and agreement of the Parties with respect to its subject matter and any and all prior agreements, understandings or representations with respect to its subject matter are hereby canceled in their entirety and are of no further force or effect. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

17.6 Attorneys' Fees. Should either party bring suit to enforce this Agreement, the prevailing party in such lawsuit shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection with such lawsuit.

17.7 Construction. Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Sellers are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

17.8 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17.9 Survival. The covenants, agreements, obligations to indemnify, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

17.10 Finders' or Brokers' Fees. Sellers represent and warrant that if they have engaged the services of any broker or finder to which a commission or other fee is due in connection with any of the transactions contemplated by this Agreement, that Sellers shall pay such fee in connection with the transactions contemplated by this Agreement. Sellers agree to indemnify, defend and hold harmless Buyer against any loss, liability, damage, cost, claim or

expense, including interest, penalties and reasonable attorneys' fees that Buyer shall incur or suffer due to a breach by Sellers of the representation and warranty set forth above.

17.11 Time. Time is of the essence of every provision of this Agreement.

17.12 Risk of Loss. All of Sellers' personal property, of any kind or description whatsoever that is on the Property after Closing, shall be at Sellers' sole risk of loss.

17.13 Force Majeure. Performance by Sellers or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, epidemic, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused).

17.14 Recitals. The Recitals set forth above are incorporated by this reference into this Agreement and are made a part hereof.

17.15 Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one Agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. Additionally, (i) the signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts; and (ii) a facsimile signature or an electronically scanned signature, where permitted by law, shall be deemed to be an original signature for all purposes. All executed counterparts of this Agreement shall be deemed to be originals, but all such counterparts, when taken together, shall constitute one and the same Agreement.

17.16 Effective Date. The term "date of this Agreement" or "date hereof" or "Effective Date," as used in this Agreement, shall mean the later of the following dates: (1) the date of Buyer's signature on this Agreement; or (2) the date of Sellers' signatures on this Agreement.

18. Expiration. This offer will expire if not executed by Sellers and Buyer on or before 5:00 p.m. on June 12, 2020.

[Signatures appear on the following page]

SELLERS:

MANKE TIMBER COMPANY, INC., a
Washington corporation


Joel A. Manke, Authorized Officer

Date: 05/27/2020

MANKE LUMBER COMPANY, INC., a
Washington corporation


Joel A. Manke, Authorized Officer

Date: 05/27/2020

BUYER:

CITY OF OLYMPIA, a Washington
municipal corporation

Steven J. Burney, City Manager

Date: _____

APPROVED AS TO FORM:

Mark Barber
Mark Barber, City Attorney

Date: 05/27/2020

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel B of Boundary Line Adjustment No. BLA-1363, as recorded April 28, 1993 under Auditor's File No. 9304280020.

Situated in Thurston County, Washington.

EXHIBIT "B"

GENERAL VICINITY SKETCH

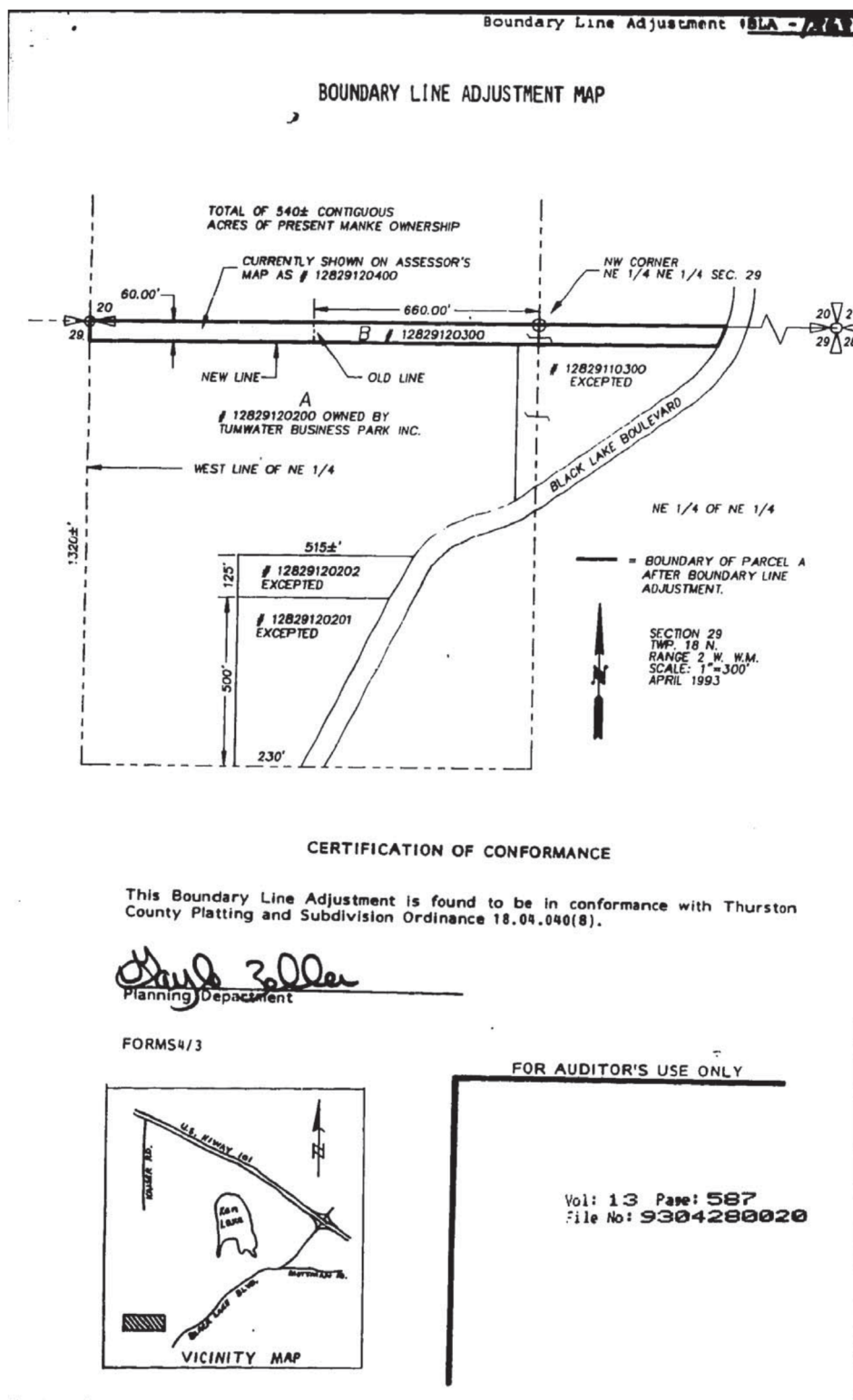


EXHIBIT “C”
DOCUMENTS AND REPORTS

1. Copies of all of leases, subleases or other occupancy agreements relating to the Property, including but not limited to any agricultural leases or agreements if any, with originals to be delivered at Closing.
2. Copies of all licenses, permits and approvals, if any, issued by governmental authorities for the use and occupancy of the Property or any facility or structure located thereon.
3. Any other information about the Property reasonably requested by Buyer if in the possession or control of Sellers.
4. Any service contracts or other similar agreements related to the Property.
5. Reports of environmental conditions related to the Property, if any.
6. Surveys, if any.
7. Soils reports, if any.

EXHIBIT "D"
FORM OF STATUTORY WARRANTY DEED

AFTER RECORDING MAIL TO:

City of Olympia
Attn: Legal Department
P.O. Box 1967
Olympia WA 98507-1967

Document Title:	Statutory Warranty Deed
Grantors:	Manke Timber Company, Inc., a Washington corporation, and Manke Lumber Company, Inc., a Washington corporation
Grantee:	City of Olympia, a Washington municipal corporation
Abbreviated Legal Description:	Parcel B of Boundary Line Adjustment No. BLA-1363 under Auditor's File No. 9304280020
Assessor's Tax Parcel Number:	12829120300; 12829120400

The Grantors, **MANKE TIMBER COMPANY, INC.**, a Washington corporation and **MANKE LUMBER COMPANY, INC.**, a Washington corporation, for and in consideration of the sum of TEN and NO/100---(\$10.00) Dollars, and other valuable considerations, in hand paid, hereby convey and warrant to the Grantee, **CITY OF OLYMPIA**, a Washington municipal corporation, the following described real estate and all rights thereto, situated in the City of Olympia, County of Thurston, in the State of Washington, including all after acquired title:

Parcel B of Boundary Line Adjustment No. BLA-1363, as recorded April 28, 1993 under Auditor's File No. 9304280020.

Situated in Thurston County, Washington.

Subject to the matters set forth on Exhibit A attached hereto. [Permitted Exceptions to be attached]

GRANTORS:

MANKE TIMBER COMPANY, INC., a Washington corporation

Print Name: _____

Title: _____

Date: _____

EXHIBIT A
Permitted Exceptions

EXHIBIT "E"
FORM OF NONEXCLUSIVE ACCESS AND UTILITY EASEMENT

AFTER RECORDING MAIL TO:

City of Olympia
Attn: Legal Department
P.O. Box 1967
Olympia WA 98507-1967

Document Title:	Nonexclusive Access and Utility Easement
Grantor:	City of Olympia, a Washington municipal corporation
Grantees:	Manke Timber Company, Inc., a Washington corporation, and Manke Lumber Company, Inc., a Washington corporation
Abbreviated Legal Description:	Parcel B of Boundary Line Adjustment No. BLA-1363 under Auditor's File No. 9304280020
Assessor's Tax Parcel Number:	12829120300; 12829120400

NONEXCLUSIVE ACCESS AND UTILITY EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantor, CITY OF OLYMPIA, a Washington municipal corporation, does grant and convey to Grantees, MANKE TIMBER COMPANY, INC., a Washington corporation, and MANKE LUMBER COMPANY, INC., a Washington corporation, a nonexclusive easement for access and utility purposes to, over, upon, under and across the following described real property situated in the City of Olympia, County of Thurston, State of Washington, and legally described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof.

Said nonexclusive easement shall be for Grantees' ingress and egress to, over, upon, under and across said real property described in Exhibit "A" at all times, for any lawful purpose of Grantees. Grantees' nonexclusive easement shall be for access and utility purposes and exercised in a manner so as not to interfere with Grantor's use of the easement area for road access purposes for ingress and egress and utilities to Grantor's properties.

Grantees agree that they shall repair any damage to the roadway and easement area described in Exhibit "A" attached hereto, at their own expense, and to the extent reasonably practicable, restore the surface of the land to the same conditions that existed prior to grant of this

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel B of Boundary Line Adjustment No. BLA-1363, as recorded April 28, 1993 under Auditor's File No. 9304280020.

Situated in Thurston County, Washington.



Kaiser Woods Access Parcels - Manke Timber Company

2459 Black Lake Blvd SW, Parcel #12829120300 and #12829120400, 2.51 Acres



Vicinity Map



Manke Parcels

0 750 1,500 Feet 1 inch = 750 feet

This map is intended for 8.5x11" landscape printing.

Map printed 3/31/2020

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

City Council

Executive Session Pursuant to RCW 42.30.110 (1)(b); RCW 42.30.110 (1)(c) - Real Estate Matter

Agenda Date: 6/2/2020
Agenda Item Number: 9.A
File Number:20-0421

Type: executive session **Version:** 1 **Status:** Executive Session

Title

Executive Session Pursuant to RCW 42.30.110(1)(b); RCW 42.30.110 (1)(c) - Real Estate Matter