



BUCKLEY CITY COUNCIL MEETING AGENDA
April 26, 2016
Multi-Purpose Center, 811 Main Street
City Council Meeting
Opening 7:00 P.M.

Call to Order
Pledge of Allegiance
Roll Call of Council Members

Next Ordinance #12-16
Next Resolution #16-06
Next Agenda Bill #AB16-057

A. Citizen Participation

Time Limit of Three Minutes (Must sign up at City Hall by Wednesday prior to the Council Meeting)

B. Staff Reports

C. Main Agenda

- | | | |
|----|--|----------------|
| 1. | ORD No. __-16: Adopting New BMC 11.35 “Truck Routes” | Pg. 8 |
| 2. | RES No. 16-__: Approving RCO Grant Submittal | Pg. 15 |
| 3. | Agreement - Operation & Maintenance of the Buckley City Cemetery (Weeks) | Pg. 58 |
| 4. | AHBL SOW for Additional Services – CAO Ordinance | Pg. 81 |
| 5. | CWA Culvert Replacement Project - Contaminated Soil Haul & Disposal | Pg. 84 |
| 6. | Declaring City Council Position #7 Vacant | Pg. 105 |
| 7. | Agreement: Lease Agreement with WIC for Buckley Hall – Amendment #3 | Pg. 114 |

D. Consent Agenda **Pg. 120**

8. A. Approve Minutes of April 12, 2016 City Council Meeting
B. Claims

E. Committee Reports **Pg. 125**

- | | | |
|-----|---|---------------|
| 9. | Mayor’s Report | Johnson |
| | Proclamation: Relay For Life | |
| | Proclamation: Paint The Town Purple | |
| 10. | Administration, Finance & Public Safety | Boyle Barrett |
| 11. | Transportation & Utilities | Tremblay |
| 12. | Community Services | Rose |
| 15. | Council Member Comments & Good of the Order | |

Council may add and take action on other items not listed on this agenda



CITY OF BUCKLEY ♦ PO BOX 1960 ♦ BUCKLEY, WA 98321
360-829-1921 ♦ Fax 360-829-2659 ♦ <http://www.cityofbuckley.com>

CITY OF BUCKLEY MEETING LIST

~~Apr 21 4:00 PM Community Services - CANCELLED~~

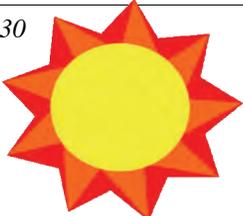
Apr 26	2:00 PM	Community Services
Apr 26	7:00 PM	City Council
May 2	7:00 PM	Planning Commission
May 3	9:30 AM	Admin, Finance & Public Safety (City Hall)
May 3	7:00 PM	City Council Study Session
May 9	10:30 AM	Buckley Hall Board
May 10	7:00 PM	City Council
May 16	7:00 PM	Planning Commission
May 17	9:30 AM	Admin, Finance & Public Safety (City Hall)
May 17	7:00 PM	Transportation & Utilities (City Hall)
May 19	4:00 PM	Community Services
May 24	7:00 PM	City Council

The above meetings will be held in the Multi-Purpose Center located at 811 Main Street unless otherwise noted.

Last Revised April 21, 2016

April 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
					 2	
3	4 7 PC	5 9:30 AM Admin, Finance & PS 7 City Council Study Session	6	7	8	9
10	11	12 7 City Council	13	14	15	16
17	18 7 PC	19 9:30 AM Admin, Finance & PS 7 Transportation & Utilities	20	21 4 Community Ser- vices	22 	23
24	25	26 7 City Council	27	28	29 	30 

May 2016



Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2 7 Planning Commission	3 9:30 Admin, Fin & PS 7 City Council Study Session	4	5	6	7
8	9 10:30 Buckley Hall Board	10 7 City Council	11	12	13	14
15	16 7 Planning Commission	17 9:30 Admin, Fin & PS 7 Transportation & Utilities	18	19 4 Community Services	20	21
22	23	24 7 City Council	25	26	27	28
29	30	31				

A. CITIZEN PARTICIPATION

B. STAFF REPORTS

C. MAIN AGENDA



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION

SUBJECT:	Agenda Date: April 26, 2016		AB16-057	
ORD No. __-16: Repealing and Replacing BMC 11.36 "Truck Routes"	Department/Committee/Individual	Created	Reviewed	
	Mayor Pat Johnson			X
	City Administrator – Dave Schmidt	X		X
	City Attorney – Phil Olbrechts			X
	City Engineer – Dominic Miller			X
	City Clerk – Joanne Starr			X
	Finance Dept – Sheila Bazzar			
	Building Official – Mike Deadmond			
	Fire Dept – Chief Predmore			X
	Parks & Rec Dept – Ellen Boyd			
	Planning Dept – Kathy Thompson			
	Police Dept – Chief Arsanto			X
	Municipal Court – Jessica Cash			

Attachments: Ordinance

SUMMARY STATEMENT: Due to outdated regulations concerning the use of truck traffic on City streets, staff along with the Transportation & Utilities Committee has drafted new regulations for the City Council to consider. Adoption of the new regulations updates and designates arterial roadways and defines them as truck routes. The new provisions also clarify exemptions, weight classifications and provide a parking permit process for trucks in certain areas of the City.

COMMITTEE REVIEW AND RECOMMENDATION: Trans & Utilities 4/19/16

RECOMMENDED ACTION: **MOVE to Approve ORD No. __-16: Repealing Chapter BMC 11.36 entitled Vehicles Exceeding Gross Weight and Replacing it with a new Chapter BMC 11.36 entitled Truck Routes.**

RECORD OF COUNCIL ACTION

<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>

ORDINANCE NO. ____- 16

**AN ORDINANCE OF THE CITY OF BUCKLEY,
WASHINGTON, REPEALING MUNICIPAL CODE
CHAPTER 11.36 ENTITLED VEHICLES EXCEEDING
GROSS WEIGHT LIMIT AND REPLACING IT WITH A
NEW CHAPTER 11.36 ENTITLED TRUCK ROUTES.**

WHEREAS, RCW 46.44.080 allows local authorities to prohibit operation of motor vehicles or impose limits as to the weight thereof with respect to public highways under their jurisdiction; and

WHEREAS, the City currently regulates vehicles and weight limitations under BMC 11.36 which was originally adopted Ordinance #781 in 1969; and

WHEREAS, the provisions in the existing ordinance are outdated and have led to confusion and misuse within the City which includes but is not limited to the use of truck traffic on roads not designed to accommodate the loads and the parking of tractor trailers in residential areas; and

WHEREAS, the City has a future street plan with designated arterials that are designed to accommodate heavier loads from truck traffic; and

WHEREAS, City staff along with the City engineer and Transportation & Utilities Committee have reviewed this issue as well as the current code and concluded that the development of new regulations are warranted; and

WHEREAS, City staff along with the City engineer and Transportation & Utilities Committee have developed a set of draft regulations that are designed to replace the current regulations in BMC 11.36 and are recommending that the City Council adopt the new regulations; and

WHEREAS, the City Council concurs with the Committee's recommendation and desires to replace the existing BMC 11.36 with the new draft regulations entitled Truck Routes;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Chapter 11.36 of the Buckley Municipal Code entitled “Vehicles Exceeding Gross Weight” is repealed in its entirety and replaced with a new Chapter 11.36 entitled “Truck Routes” to read as follows:

11.36.010 Purpose.

The purpose of this chapter is to confine the operation of trucks and other vehicles weighing in excess of 24,000 pounds to designated streets and highways within the city.

11.36.020 Definitions.

For purposes of this chapter:

A. "Semitrailer" means that term as defined in RCW 46.04.530, as now or hereafter amended, which definition is: "'Semitrailer' includes every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor."

B. "Trailer" means that term as defined in RCW 46.04.620, as now or hereafter amended, which definition is: "'Trailer' includes every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof."

C. "Truck" means "motor truck" as defined in RCW 46.04.310, as now or hereafter amended, which definition is: "'Motor truck' means any motor vehicle designed or used for the transportation of commodities, merchandise, produce, freight, or animals."

D. "Truck tractor" means that term as defined in RCW 46.04.650, as now or hereafter amended, which definition is: "'Tractor' means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn."

E. "Vehicle" means that term as defined in RCW 46.04.670, as now or hereafter amended, which definition is: "'Vehicle' includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, including bicycles. The term does not include power wheelchairs or devices other than bicycles moved by human or animal power or used exclusively upon stationary rails or tracks. Mopeds shall not be considered vehicles or motor vehicles for the purposes of Chapter 46.70 RCW. Bicycles shall not be considered vehicles for the purposes of Chapter 46.12, 46.16, or 46.70 RCW. Electric personal assistive mobility devices are not

considered vehicles or motor vehicles for the purposes of Chapter 46.12, 46.16, 46.29, 46.37, or 46.70 RCW."

11.36.030 Designation of truck routes.

It is the purpose of this chapter to restrict truck traffic in the City of Buckley to the maximum extent possible to the state highway system or to authorized truck routes, and to prohibit truck traffic on City arterials and streets except where no alternative state highway route or authorized truck route is available. In furtherance of this purpose, all trucks, truck tractors, truck and trailer combinations, and/or truck tractor and semitrailer combinations over eight feet in width, over 26 feet in length, or over 24,000 pounds licensed gross vehicle weight shall be restricted to the state highway system or one of the following authorized routes while traveling to and from locations within the City of Buckley; provided, that when such locations are not immediately adjacent to a state highway route or an authorized truck route, vehicles described in this chapter shall use the shortest and most direct City arterial route between the nearest state highway route or authorized truck route and such departure location or destination location, and such vehicles may not use City nonarterial streets except when traveling directly between such locations and the nearest arterial, state highway, or authorized truck route. The following streets and highways shall be designated as approved truck routes in the city:

- A. SR410;
- B. SR 165;
- C. Main Street; SR410 to Collins Road
- D. Collins Road to Levesque Road;
- E. Levesque Road;
- F. Ryan Road; SR165 to Levesque Road
- G. 112th Street East; SR165 to Mundy Loss Road
- H. Jefferson Avenue; "A" Street to SR 410
- I. "A" Street; Park Avenue to Spiketon Road
- J. Cedar Street; Main Street to Coul Avenue
- K. Coul Avenue; Cedar Street to Spiketon Road
- L. Spiketon Road; Ryan Road to LaPierre Avenue /City Limits
- M. Mason Avenue; SR 410 to Hinkleman Extension
- N. Mundy Loss Road; Hinkleman Road to 112th Street East
- O. Main Street; Naches Street to SR-410
- P. Naches Street; Park Avenue to W. Mason Avenue
- Q. Park Avenue; River Avenue to Naches Street
- R. River Avenue; Ryan Road to Dieringer Avenue
- S. Hinkleman Extension; Mason Ave to 112th Street East

The council may approve, on an emergency temporary basis, use of routes not designated as truck routes under this code, when the council finds that it is in the best interests of the public health, safety and welfare to allow for such temporary limited use of routes other than designated

truck routes, subject to such conditions as the council deems advisable and necessary to protect the interests of the public. Such conditions and limitations may be in the way of signalization, times of use and operation, maintenance condition, weight limitation, and other such conditions and controls necessary and advisable to preserve the spirit of this code in keeping truck and related heavy equipment traffic to a minimum on non-truck-route-designated streets of the city.

11.36.040 Maximum weight limitation on streets not designated as truck routes.

The weight of any vehicle operating on city streets not designated as truck routes shall not exceed 24,000 pounds; provided, that the following exceptions shall be applicable:

- A. School buses, regardless of weight, shall be authorized to use all city streets.
- B. Emergency vehicles may utilize all city streets for emergency or other suitable municipal purposes.
- C. Public and Private Utility Vehicles. The operation of trucks owned or operated by the city, other public utilities, private utilities, or any company, while engaged in the repair, maintenance or construction of streets, street improvements, public utilities, or private utilities within the city;
- D. Government Vehicles. All vehicles owned and operated by governmental agencies and school districts in the performance of their duties;
- E. Solid waste collection vehicles serving individual properties within the city;
- F. Municipal transit vehicles;
- G. Detoured Trucks. The operation of trucks upon any officially established detour;
- H. Recreational vehicles including motor homes, campers, and travel trailers;
- I. Motor vehicles exceeding the weight limitation may transport commodities and make deliveries to and pickups from points in the city; provided that such vehicles are not driven for more than a minimum distance necessary for the purpose.
- J. Motor vehicles exceeding the weight limitations may make pickup from and deliveries to commercial and light industrial businesses located on Hinkleman Road when the property does not have direct access onto a designated truck route listed in BMC 11.36.030.

11.36.050 Special permits.

A. Owners or drivers of trucks or vehicles exceeding 24,000 pounds may obtain an annual permit from the city to park such a vehicle on the right-of-way adjacent to property owned or occupied by such individual or within a designated public parking area for truck or tractor parking. The cost of such permit shall be as established by the city council by periodic resolution. Such permit shall be valid from January 1st through December 31st. The site where parking is proposed shall be reviewed by the city engineer and the chief of police, who shall review such proposed parking site to make sure that the parking of such vehicle will not do any damage to the public right-of-way, impair access to and from the public right-of-way, obstruct traffic on any city street, obstruct visibility of motorists or pedestrians, or in any other way infringe on public interests. Travel to and from any permitted parking site shall not be more than a minimum distance necessary for the purpose from approved truck routes in the city. Such permit to park on city right-of-way or designated public parking area for truck or tractor parking shall be subject to review at least annually. Such permit may be revoked at any time if it is determined that the parking of the vehicle is damaging the public right-of-way, impairing access to and from the public right-of-way, obstructing visibility of other motorists or pedestrians, or in any other way infringing on public interests.

B. Every special parking permit issued under this section shall be carried in the vehicle to which it applies and displayed within the lower left corner of the driver's side windshield.

C. Parking permits are limited to one valid permit for any property at any given time.

11.36.060 Action by police officer.

Whenever any police officer of the city shall have probable cause that a vehicle is being driven in violation of this chapter, then such police officer is authorized to stop such vehicle and direct that the vehicle be driven to the nearest state or local weighing station.

11.36.070 Violation – Penalty.

Violation of any of the provisions enumerated above constitutes a civil infraction. As provided by law, the Buckley municipal court is hereby vested with jurisdiction to hear civil infraction cases under this chapter. Said cases shall be heard by the court without jury and upon a finding that the infraction has been committed by a preponderance of the evidence; the defendant shall be subject to civil penalties at the discretion of the court not to exceed \$250.00 for each such separately charged violation. Each day that the violation continues shall be deemed a separate and distinct violation.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

APPROVED by the Buckley City Council this 26th day of April, 2016.

MAYOR, PAT JOHNSON

ATTEST/AUTHENTICATED:

JOANNE STARR, CITY CLERK

APPROVED AS TO FORM

OFFICE OF THE CITY ATTORNEY:

PUBLISHED:

EFFECTIVE:

BY _____



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: RES No. 16-__ : Approving RCO Grant Submittal for the SR410 Spray Park and Phase I Miller Park Development	Agenda Date: April 26, 2016		AB16-058
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		X
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		X
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		X
Municipal Court – Jessica Cash			
Attachments: Resolution & Sample RCO Agreement			
<p>SUMMARY STATEMENT: Per the City Council’s direction, staff is preparing to submit grant application to the Washington State RCO for funding the SR410 Spray Park and Phase 1 Miller Park Projects. Prior to submission of the application(s) RCO requires that the legislative body adopt a Resolution in the attached format authorizing the submission of the applications.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Full Council			
<p>RECOMMENDED ACTION: MOVE to Approve Resolution No. 16 -__ Authorizing the Submittal of RCO Grant Application(s) for the SR410 Spray Park and Phase I Miller Park Development.</p>			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

CITY OF BUCKLEY, WASHINGTON

RESOLUTION NO. 16-___

**Recreation and Conservation Office
Washington Wildlife and Recreation Program (WWRP)
Application Resolution/Authorization**

Organization Name: ***City of Buckley***

Resolution No. **16-___**

Project Name and Number (s) ***SR410 Spray Park and Phase I of the Miller Park***

This form authorizes submitting application(s) for grant funding assistance for Washington Wildlife and Recreation Program (WWRP) project(s) to the Recreation and Conservation Funding Board as provided in Chapter 79A.15 and 79A.25 RCW, WAC 286, and other applicable authorities.

WHEREAS, our organization has approved a comprehensive parks and recreation or habitat conservation plan that includes this project; and

WHEREAS, under provisions of the WWRP program, state grant assistance is requested to aid in financing the cost of facility development for the ***SR410 Spray Park and Phase 1 development of the Miller Park***; and

WHEREAS, our organization considers it in the best public interest to complete the project described in the application(s).

NOW, THEREFORE, BE IS RESOLVED that:

1. The ***Recreation Services Director, Ellen Boyd*** is authorized to make formal application to the Recreation and Conservation Funding Board for grant assistance.
2. Our organization has reviewed the sample project agreement on the Recreation and Conservation Office's web site at: <http://www.rco.wa.gov/documents/manuals&forms/SampleProjAgreement.pdf> and authorizes ***David Schmidt, City Administrator*** to enter into such a project agreement, if funding is awarded. We understand and acknowledge that the project agreement will contain the indemnification (applicable to any sponsor) and waiver of sovereign immunity (applicable to Tribes) and other terms and conditions that are contained in the sample project agreement. The sample project agreement may be revised periodically by the Recreation and Conservation Office. Our organization recognizes that such changes might occur prior to our authorized representative signing the actual project agreement, and we accept the responsibility and the presumption that our authorized representative shall have conferred with us as to any such changes before he/she executes the project agreement on behalf of our organization and so executes with our authorization.
3. Any grant assistance received will be used for only direct eligible and allowable costs that are reasonable and necessary to implement the project(s) referenced above.
4. Our organization expects our matching share of project funding will be derived ***from Local Capital Sources and Impact Fees*** and that pursuant to WAC 286-13-040 we must certify the availability of match at least one month before funding approval. In addition, our organization understands it is responsible for supporting all non-cash commitments to this project should they not materialize.

5. We acknowledge that if the Recreation and Conservation Funding Board approves grant assistance for the project(s), the Recreation and Conservation Office will pay us on only a reimbursement basis. We understand reimbursement basis means that we will only request payment from the Recreation and Conservation Office after we incur eligible and allowable costs and pay them. The Recreation and Conservation Office may also determine an amount of retainage and hold that amount until the project is complete.
6. We acknowledge that any property owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant in perpetuity after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
7. We acknowledge that any property not owned by our organization that is developed, renovated or restored with grant assistance must be dedicated for the purpose of the grant for at least twenty-five (25) years after the project is complete unless otherwise provided and agreed to by our organization and the Recreation and Conservation Funding Board in the project agreement or an amendment thereto.
8. This application authorization becomes part of a formal application to the Recreation and Conservation Funding Board for grant assistance.
9. We provided appropriate opportunity for public comment on this application.
10. We certify that this application authorization was properly and lawfully adopted following the requirements of our organization and applicable laws and policies and that the person signing as authorized representative is duly authorized to do so.

This application authorization was adopted by our organization during the meeting held:

Location: [Buckley Multi-Purpose Center, 811 Main Street](#)

Date: [April 26, 2016](#)

Signed and approved on behalf of the resolving body of the organization by the following authorized representative:

Signed _____

Title: [Mayor](#) Date _____

Washington State Attorney General's Office

Approved as to form  March 15, 2016

Assistance Attorney General

Date

Funding Board Project Agreement

Project Sponsor:

Project Number:

Project Title:

Approval Date:

A. PARTIES OF THE AGREEMENT

This Project Agreement (Agreement) is entered into between the State of Washington by and through the [Recreation and Conservation Funding Board (RCFB or funding board) and/or the Salmon Recovery Funding Board (SRFB or funding board)] and the Recreation and Conservation Office, P.O. Box 40917, Olympia, Washington 98504-0917 and [parent organization name if it exists] [by and through the] [child organization name] (sponsor), [Address, City, State, Zip Code] and shall be binding on the agents and all persons acting by or through the parties. [The sponsor's Data Universal Numbering System (DUNS) Number is XXXXX.]

B. PURPOSE OF AGREEMENT

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

C. DESCRIPTION OF PROJECT

[project description]

D. PERIOD OF PERFORMANCE

The period of performance begins on [Project Start Date] (project start date) and ends on [Project End Date] (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement or specifically provided for by WAC Titles 286, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

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

The sponsor has obligations beyond this period of performance as described in Section E: On-going Obligations.

E. ON-GOING OBLIGATION

For [acquisition, development, renovation and restoration projects] the sponsor's on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 24: Restriction of Conversion) that all lands acquired and or facilities and areas [developed, renovated, or restored] with funding assistance remain in the public domain in perpetuity.

For maintenance projects, the sponsor's on-going obligations shall be in for a period of useful service life based on improvements made and shall survive the completion/termination of this Agreement, unless otherwise identified in the Agreement or as approved by the funding board. It is the intent of the funding board's conversion policy (see Section 24: Restrictions on Conversion) that all facilities and areas maintained with funding assistance remain in the public domain until the facilities reach their useful service life, unless otherwise provided in the Agreement or as approved by the board.

For education, education and enforcement, enhancement, planning, and monitoring projects, the sponsor's on-going obligation shall be the same as the period of performance identified in Section D: Period of Performance.

F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed [RCO total]. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's percentage as identified below. The sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the sponsor shall be as indicated below:

[Grant Program-account - category]	Percentage	Dollar Amount
	_____	_____
Sponsor Match	_____	_____
Total Project Cost	100.00%	_____

G. FEDERAL FUND INFORMATION

A portion or all of the funds for this project are provided through the following federal funding source(s):.

Federal Agency: _____

Catalog of Federal Domestic Assistance Number and Name: _____

Federal Award Identification Number: _____ Federal Fiscal Year: _____

Federal Award Date: _____ Total Federal Award: _____

Federal Award Project Description: _____

Sponsor's Indirect Cost Rate: _____

If federal funding information is included in this section, this Agreement is funded by a federal subaward from a portion of the total federal award. This funding is not research and development (R & D).

If the sponsor's total federal expenditures are \$750,000 or more during the sponsor's fiscal-year, the sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F – Audit Requirements, Section 500 (2013). The sponsor must provide a copy of the final audit report to RCO within nine months of the end of the sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

RCO may suspend all reimbursements if the sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any RCO Agreements with the sponsor if such noncompliance is not promptly cured.

H. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement shall be interpreted in light of the information provided in the sponsor's application and the project summary under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities and milestones report incorporated herein by reference. Provided, to the extent that information contained in such documents is inconsistent with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definition of the Standard Terms and Conditions.

I. AMENDMENTS MUST BE IN SIGNED WRITING

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by both parties. Except, extensions of the period of performance and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

J. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable [federal accounting rules], RCW [REVISED CODE OF WASHINGTON SECTION(S)], WAC Title [286 or 420], and RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement, all of which are incorporated herein by this reference as if fully set forth.

K. SPECIAL CONDITIONS

[special conditions]

L. AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Project Contact

Name:
Title:
Address:
E-mail Address:

RCFB-SRFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. ENTIRE AGREEMENT

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

M. EFFECTIVE DATE

This Agreement, for project [Number], shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the sponsor and the RCO, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: Period of Performance are allowed only when this Agreement is fully executed and an original is received by RCO.

The sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

[Project Sponsor]

By: _____ Date: _____

Name: (printed) _____

Title: _____

State of Washington, Recreation and Conservation Office

On behalf of the [Recreation and Conservation Funding Board or Salmon Recovery Funding Board]

By: _____ Date: _____

[RCO DIRECTOR NAME]

Director, Recreation and Conservation Office

Pre-approved as to form:

By: _____/s/ _____ Date: July 20, 2015 _____

Assistant Attorney General

**STANDARD TERMS AND CONDITIONS
OF THE PROJECT AGREEMENT
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Standard Terms and Conditions of the Project Agreement

Project Sponsor:

Project Number:

Project Title:

Approval Date:

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version at the date of project Agreement and/or any revisions in the future.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

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

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

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

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

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a sponsor. A contract is a legal instrument by which a non-Federal entity (sponsor) purchases property or services to carry out the project or program under a Federal award. A contractor is not the same as the sponsor or subrecipient. A contract is for the purpose of obtaining goods and services for the non-Federal entity’s (sponsor’s) own use and creates a procurement relationship with the contractor (2 C.F.R § 200.23 (2013)).

development project – A project that results in the construction of or work resulting in new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

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

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

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

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

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

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

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

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

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

match or matching share – The portion of the total project cost provided by the sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

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

period of performance – The time during which the sponsor may incur new obligations to carry out the work authorized under this Agreement (2 C.F.R. § 200.77 (2013)).

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

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

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

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

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

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

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

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

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

RCW – Revised Code of Washington

RTP - Recreational Trails Program – A federal grant program administered by RCO that allows for the development and maintenance of backcountry trails.

secondary sponsor - one of two or more eligible organizations that sponsors a grant-funded project. Of these two sponsors, only one – the primary sponsor – may be the fiscal agent.

sponsor or primary sponsor – The eligible applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees, agents and successors. For projects funded with federal money, the sponsor is a subrecipient, which is a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (2 C.F.R. § 200.93 (2013)).

subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (2 C.F.R. § 200.92 (2013)). A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a Federal subaward, the subaward amount is the grant program amount in Section F: Project Funding.

subrecipient - Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of

such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a Federal subaward, the sponsor is the subrecipient.

WAC – Washington Administrative Code.

SECTION 2. PERFORMANCE BY THE SPONSOR

The sponsor and secondary sponsor where applicable, shall undertake the project as described in this Agreement, the sponsor's application, and in accordance with the sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein. Also see Section 36: Order of Precedence.

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

SECTION 3. ASSIGNMENT

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

SECTION 4. RESPONSIBILITY FOR PROJECT

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

SECTION 5. INDEMNIFICATION

The sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence of, or the breach of any obligation under this Agreement by, the sponsor or the sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

Provided that nothing herein shall require a sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and agents for for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the sponsor or the sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the sponsor's negligence or the negligence of the sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

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

The sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the sponsor or the sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of

methods, processes, designs, information or other items furnished or communicated to State, its agents, officers and employees pursuant to the Agreement; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to State, its agents, officers and employees by the sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

The sponsor specifically assumes potential liability for actions brought by the sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The RCO is included within the term State, as are all other agencies, departments, boards, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or 28B.

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

SECTION 7. CONFLICT OF INTEREST

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

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

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

The sponsor will implement the Agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies regardless of whether the sponsor is a public or non-public organization.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

- A. Nondiscrimination Laws.** The sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the sponsor may be declared ineligible for further grant awards from the funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.
- B. Wages and Job Safety.** The sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety. The sponsor agrees when state

prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

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

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

- E. Debarment and Certification.** By signing the Agreement with RCO, the sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on the "Contractors not Allowed to Bid on Public Works Projects" list.

SECTION 9. RECORDS

- A. Maintenance.** The sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: Project Reimbursements. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- B. Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or Agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the sponsor's reports, including computer models and methodology for those models.
- C. Public Records.** Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04.

Additionally, in compliance with RCW 77.85.130(8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the state sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 10. PROJECT FUNDING

- A. Authority.** This agreement is funded through a grant award from the recreation and conservation funding board per WAC 286-13-050 and/or the salmon recovery funding board per WAC 420-04-050. The director of RCO enters into this agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.
- C. Before the Agreement.** No expenditure made, or obligation incurred, by the sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. Requirements for Federal Subawards.** Pre-agreements costs before the federal award date in Section F: Project Funding are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. PROJECT REIMBURSEMENTS

- A. Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. The sponsors may only request reimbursement for eligible and allowable costs incurred during the period of performance. The sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section F: Project Funding. Reimbursement shall not be approved for any expenditure not incurred by the sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations, which the sponsor may use as part of its percentage. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. Reimbursement Request Frequency.** Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.
- C. Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement by the sponsor.
- D. Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of up to the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the Agreement are done;

2. On-site signs are in place (if applicable);
3. A final project report is submitted to and accepted by RCO;
4. Any other required documents are complete and submitted to RCO;
5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed; and
8. Fiscal transactions are complete.
9. RCO has accepted a final boundary map, if required for the project, for which the Agreement terms will apply in the future.

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

1. Are verifiable from the non-Federal entity's (sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;
4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section G: Federal Fund Information of this Agreement; and
7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

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

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the sponsor.
2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.
4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

SECTION 12. ADVANCE PAYMENTS

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

SECTION 13. RECOVERY OF PAYMENTS

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

- B. Overpayment Payments.** The sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.
- C. Requirements for Federal Subawards.** The pass-through entity (RCO) may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

SECTION 14. COVENANT AGAINST CONTINGENT FEES

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

SECTION 15. INCOME AND USE OF INCOME

- A. RCFB Projects.** See WAC 286-13-110 for additional requirements for projects funded from the RCFB.
- B. Income.**
1. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement.
 2. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
 - a. Value of any service(s) furnished;
 - b. Value of any opportunities furnished; and
 - c. Prevailing range of public fees in the state for the activity involved.
 - d. Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
- C. Use of Income.** Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state or federal law, the revenue may only be used to offset:
1. The sponsor's matching resources;
 2. The project's total cost;
 3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
 5. Capital expenses for similar acquisition and/or development and renovation.
- D. Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

SECTION 16. PROCUREMENT REQUIREMENTS

- A. Procurement Requirements.** If Sponsors have a procurement process that follows applicable state and/or required federal procurement principles, it must be followed. If no such process exists the sponsor must follow these minimum procedures:
1. Publish a notice to the public requesting bids/proposals for the project;
 2. Specify in the notice the date for submittal of bids/proposals;

3. Specify in the notice the general procedure and criteria for selection; and
4. Comply with the same legal standards regarding unlawful discrimination based upon race, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any other entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. Requirements for Federal Subawards.

1. For all Federal subawards except RTP projects, non-Federal entities (sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT

A. Discontinued Use. Equipment shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the equipment for the purpose for which it was funded, RCO will require the sponsor to deliver the equipment to RCO, dispose of the equipment according to RCO policies, or return the fair market value of the equipment to RCO. Equipment shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by RCO in writing.

B. Loss or Damage. The sponsor shall be responsible for any loss or damage to equipment which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that equipment in accordance with sound management practices.

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

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.
5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

D. Requirements for RTP Subawards. The subrecipient (sponsor) shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award (2 C.F.R § 1201.313 (2013)).

SECTION 18. RIGHT OF INSPECTION

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

If a landowner agreement or other form of control and tenure as described in Section 22.B: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 19. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 20. PREFERENCES FOR RESIDENTS

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

SECTION 21. ACKNOWLEDGMENT AND SIGNS

- A. Publications.** The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. Signs.** The sponsor also shall post signs or other appropriate media during the period of performance and in the future at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.
- C. Ceremonies.** The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
 - 1. The fund source;
 - 2. The percentage of the total costs of the project that is financed with federal money;
 - 3. The dollar amount of federal funds for the project; and
 - 4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

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

- A. Document Review and Approval.** The sponsor agrees to submit one copy of all construction plans and specifications to RCO for review prior to implementation or as otherwise identified in the milestones. Review and approval by RCO will be for compliance with the terms of this Agreement. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- B. Control and Tenure.** The sponsor must provide documentation that shows appropriate tenure (landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for

construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement.

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

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

- D. Use of Best Management Practices.** Sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

SECTION 23. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition project:

- A. Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title.** The sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this project Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the Agreement before final payment.
- D. Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
- 1. Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. See WAC 420-12 or 286-13. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
 - 2. Assignment of Rights.** The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 - 3. Easements and Leases.** The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance.

1. **Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
2. **State Acquisition Policies.** When state funds are part of this Agreement, the sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.

F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with Section 8.C.: Archaeological and Cultural Resources before structures are removed or demolished.

G. Hazardous Substances.

1. **Certification.** The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
 - a. No hazardous substances were found on the site, or
 - b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
2. **Responsibility.** Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. **Hold Harmless.** The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the sponsor is acquiring.

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

SECTION 24. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES

The sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. Also see WAC Title 286 or 420. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed, renovated, and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the Agreement or as approved by the funding board. Determination of whether a conversion has occurred shall be based upon applicable law and RCFB/SRFB policies.

For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

SECTION 25. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

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

- A. Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:
 - 1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
 - 2. In a reasonably safe condition for the project's intended use.
 - 3. Throughout its estimated useful service life so as to prevent undue deterioration.
 - 4. In compliance with all federal and state nondiscrimination laws, regulations and policies.

- B. Open to the public.** Facilities open and accessible to the general public must:
 - 1. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.
 - 2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 - 3. Be available for use by the general public without reservation at reasonable hours and times of the year, according to the type of area or facility.

SECTION 26. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate sponsor, including any nonprofit sponsor, shall:

- A.** Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the Agreement.
- B.** Notify RCO prior to corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.
- C.** Sites or facilities open to the public may not require exclusive use, (e.g., members only).

SECTION 27: PROVISIONS FOR FEDERAL SUBAWARDS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section G: Federal Fund Information.

- A. Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964, 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity,” and implementing regulations at 41 C.F.R. § 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

Federally assisted construction contract means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work. (41 C.F.R. § 60-1.3)

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

- B. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities (sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

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

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section G: Federal Fund Information.

- C. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity (sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

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

- D. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R § 401.2(a) and the recipient or subrecipient (sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient (sponsor) must comply with the requirements of 37 C.F.R Part

401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- E. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section G: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- G. Procurement of Recovered Materials.** A non-Federal entity (sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- H. Required Insurance.** The non-Federal entity (sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- I. Debarment and Suspension (Executive Orders 12549 and 12689).** The sponsor must not award a contract (see 2 C.F.R § 180.220) to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

SECTION 28. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

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

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

- B. Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
- C. Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this Agreement in Section E: On-going Obligation.
- D. Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.
- E. Government Agencies.** The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

SECTION 29. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Land and Water Conservation Fund.

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

SECTION 30. PROVISIONS FOR FARMLAND PRESERVATION ACCOUNT PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Washington Wildlife and Recreation Program Farmland Preservation Account.

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement:

- A.** Section 15 - Income and Income Use;
- B.** Section 19 - Stewardship and Monitoring;
- C.** Section 21 - Acknowledgement and Signs;
- D.** Section 23 – Provisions applying to Acquisition Projects, Sub-sections D, F, and G;
- E.** Section 24 – Restriction on Conversion of Real Property and/or Facilities to Other Uses; and
- F.** Section 25 – Construction, Operation and Maintenance of Assisted Projects.

SECTION 31. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded by the SRFB.

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

SECTION 32. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

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

The sponsor agrees to the following terms and conditions:

- A. Cost Principles/Indirect Costs for State Agencies.** Sub-Recipient (sponsor) will comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement and in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. Audit Requirements.** Sub-recipient (sponsor) shall meet the provisions in Office of Management and Budget (OMB) Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the sponsor expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The sponsor shall forward a copy of the audit along with the sponsor's response and the final corrective action plan to RCO within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.
- C. Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- D. Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.
- E. Drug Free Workplace Certification.** Sub-recipient (sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.
- F. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs which are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- G. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a Sub-recipient (sponsor), and all sub-awardees of sub-recipient (sponsor), if any. Sub-recipient (sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

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

Sub-recipient (sponsor), and all sub-awardees of sub-recipient (sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

Federal agency funding this agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

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

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

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

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

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

- I. Reimbursement Limitation.** If the sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the sponsor for costs incurred in excess of the RCO approved budget.
- J. Disadvantaged Business Enterprise Requirements.** Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- K. Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

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

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

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

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

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

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. \$3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

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

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

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

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

M. SIX GOOD FAITH EFFORTS, 40 C.F.R., Part 33, Subpart C. Pursuant to 40 C.F.R. § 33.301, the sponsor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

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

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

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

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

Certification Regarding Lobbying, EPA Form 6600-06:
http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf

Disclosure of Lobbying Activities, SF LLL: http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf

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

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

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

As of January 1, 2014, the limit is \$602.24 per day \$75.28 per hour.

- P. Peer Review.** Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.

SECTION 33. PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM AND MARINE SHORELINE PROTECTION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program or the Marine Shoreline Protection program.

The sponsor shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

A. Administrative Conditions

- 1. Cost Principles.** The sponsor agrees to comply with the cost principles of 2 C.F.R Part 200 (2013). Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.
- 2. Audit Requirements.** The sponsor shall fully comply with requirements of 2 C.F.R. Part 200, Subpart F- Audit Requirements (2013), if applicable. See also Section F: Project Funding.
- 3. Hotel-Motel Fire Safety Act.** Pursuant to 40 C.F.R. 30.18, if applicable, and 15 U.S.C 2225a, sponsor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). The sponsor may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

4. Recycled Paper

- a. **Institutions of Higher Education Hospitals and Non-Profit Organizations.** In accordance with 40 C.F.R. 30.16, sponsor agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.
- b. **State Agencies and Political Subdivisions.** In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 C.F.R. 247.
- c. **State and Local Institutions of Higher Education and Non-Profit Organizations.** In accordance with 40 C.F.R. § 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.
- d. **State Tribal and Local Government Recipients.** In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the sponsor agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

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

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure. See also Section 11: Compliance with Applicable Federal Laws.

- a. **Part 30 Recipients.** All contracts awarded by the sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30.

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

- b. **Lobbying and Litigation.** The sponsor's chief executive officer shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The sponsor shall abide by its respective Appendix in 2 C.F.R. Part 200, which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

6. **Suspension and Debarment.** The sponsor shall fully comply with Subpart C of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Responsibilities of Participants Regarding Transaction (Doing

Business with Other Persons)'. The sponsor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Covered Transactions', includes a term or condition requiring compliance with Subpart C. The sponsor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The sponsor acknowledges that failing to disclose the information as required at 2 C.F.R. § 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The sponsor may access the Excluded Parties List System at: <http://www.epls.gov>. This term and condition supersedes EPA Form 5700-49, 'Certification Regarding Debarment, Suspension, and Other Responsibility Matters'. See also Section 27: Provisions for Federal Subawards Only.

7. **Drug-Free Workplace Certification.** The sponsor must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the sponsor must identify all known workplaces under its federal award; and keep this information on file during the performance of the award.
 - a. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C.
 - b. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E. The sponsor can access 2 C.F.R Part 1536 at <http://ecfr.gpoaccess.gov>.
8. **Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
9. **Reimbursement Limitation.** If the sponsor expends more than the grant amount in this Agreement in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse the sponsor for costs incurred in excess of the approved budget. See also Section 11: Project Reimbursements.
10. **Trafficking in Persons.** The following prohibition statement applies to the sponsor, and all sub-awardees of the sponsor. The sponsor must include this statement in all sub-awards made to any private entity under this Agreement.

"YOU AS THE SUB-RECIPIENT, YOUR EMPLOYEES, SUB-AWARDEES UNDER THIS AWARD, AND SUB-AWARDEES' EMPLOYEES MAY NOT ENGAGE IN SEVERE FORMS OF TRAFFICKING IN PERSONS DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; PROCURE A COMMERCIAL SEX ACT DURING THE PERIOD OF TIME THAT THE AWARD IS IN EFFECT; OR USE FORCED LABOR IN THE PERFORMANCE OF THE AWARD OR SUB-AWARDS UNDER THIS AWARD."
11. **Disadvantaged Business Enterprise Requirements, General Compliance.** The sponsor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 C.F.R. Part 33.
12. **Sub-Awards.** If the sponsor makes sub-awards under this Agreement, the sponsor is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. The sponsor agrees to:
 - a. Establish all sub-award agreements in writing;

- b. Maintain primary responsibility for ensuring successful completion of the approved project (SPONSORS CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-AWARDEE);
- c. Ensure that any sub-awards comply with the standards in 2 C.F.R. Part 200, and are not used to acquire commercial goods or services for the sub-awardee;
- d. Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
- e. Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- f. Obtain RCO's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- g. Obtain approval from RCO for any new sub-award work that is not outlined in the approved work plan in accordance with 40 C.F.R. Parts 30.25 and 31.30, as applicable.

13. Federal Employees. No Subcontract or grant funds may be used to provide any Federal Employee transportation assistance, reimbursement, and any other expense.

14. Fly America Act. The sponsor agrees to comply with 49 U.S.C. 40118 (the "Fly America" act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The sponsor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The sponsor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

15. Recovered Materials. The sponsor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. See also Section 27: Provisions for Federal Subawards Only.

16. Copeland "Anti-Kickback" Act. All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 C.F.R, Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.

17. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7). When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.

- 18. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333).** Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. See also Section 27: Provisions for Federal Subawards Only.
- 19. Rights to Inventions Made Under a Contract or Agreement.** Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. See also Section 27: Provisions for Federal Subawards Only.
- 20. FY12 APPR ACT: Unpaid Federal Tax liabilities and Federal Felony Convictions.** This Agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under and Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to such action is not necessary to protect the Government's interests. If the recipient fails to comply with these provisions, EPA will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.

B. Programmatic Conditions:

1. **Semi-Annual FEATS Performance Reports.** The sponsor is required to submit performance reports every six months, unless a different reporting frequency is outlined in the Scope of Work, using the reporting tool supplied by RCO. The sponsor agrees to include brief information on each of the following areas:
 - a. Comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
 - b. The reasons for slippages if established outputs/outcomes were not met; AND
 - c. Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

Reporting periods are from October 1 to March 31 and April 1 to September 30. Performance reports are due to RCO 15 calendar days after the end of each reporting period.
2. **Final Performance Report.** In addition to the periodic performance reports, the sub-recipient will submit a final performance report to RCO within 60 calendar days after the expiration or termination of the award. The report shall be submitted to the RCO Grant Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period.

3. **Recognition of EPA Funding.** Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

“THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER ASSISTANCE AGREEMENT [*EPA agreement number*] TO WASHINGTON DEPARTMENT OF FISH AND WILDLIFE. THE CONTENTS OF THIS DOCUMENT DO NOT NECESSARILY REFLECT THE VIEWS AND POLICIES OF THE ENVIRONMENTAL PROTECTION AGENCY, NOR DOES MENTION OF TRADE NAMES OR COMMERCIAL PRODUCTS CONSTITUTE ENDORSEMENT OR RECOMMENDATION FOR USE.”

4. **Copyrighted Material.** EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

RCO acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

5. **Peer Review.** The results of this project may affect management decisions relating to Puget Sound. Prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the RCO Grants Manager prior to releasing any final reports or products resulting from the funded study.
6. **Quality Assurance Requirements.** Acceptable Quality Assurance documentation must be submitted to the Grant Program within 30 days of acceptance of this agreement or another date as negotiated with the RCO Grants Manager. The National Estuary Program (NEP) Quality Coordinator supports quality assurance for EPA-funded NEP projects. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under an agreement until RCO or the NEP Quality Coordinator has approved the quality assurance document. The sponsor will submit all Quality Assurance documentation to the following address. Please copy the Grant Program on all correspondence with the NEP Quality Coordinator. Thomas H. Gries, NEP Quality Coordinator Department of Ecology Tgri460@ecy.wa.gov 360.407.6327.
7. **Environmental Data and Information Technology.** Sub-recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the EPA's Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DFW grant manager and sub-recipient. More information about STORET can be found at <http://www.epa.gov/STORET>.

SECTION 34: PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program.

A. DUNS and CCR Requirements

1. Unless otherwise exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the CCR until submission of its final financial report required under this Agreement or receive the final payment, whichever is later.
2. The sponsor may not make a sub-award to any entity unless the entity has provided its DUNS number to the sponsor.

- B. **FY2011 ACORN Funding Restriction.** No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

SECTION 35. PROVISIONS FOR MARINE SHORELINE PROTECTION PROGRAM PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Marine Shoreline Protection program.

The Sub-Recipient shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

- A. **Federal Finance Report (FFR).** Recipients (sponsor) shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at www.epa.gov/ocfo/finservices/forms.htm. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, 4220 S. Maryland Pkwy Bldg C, Rm 503, Las Vegas, NV 89119, or by FAX to: 702-798-2423. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients (sponsor) will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement. EPA may take enforcement actions in accordance with 40 C.F.R. § 30.62 and 40 C.F.R. § 31.43 if the recipient does not comply with this term and condition.
- B. **Reimbursement Limitation.** If the sponsor expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.
- C. **DUNS and CCR Requirements**
 - 1. **Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM).** Unless the sponsor is exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the SAM until the sponsor submits the final financial report required under this award or receive the final payment, whichever is later. This requires that the sponsor review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
 - 2. **Requirement for Data Universal Numbering System (DUNS) numbers.** If the sponsor is authorized to make subawards under this award, the sponsor:
 - a. Must notify potential subrecipients that no entity may receive a subaward from the sponsor unless the entity has provided its DUNS number to the sponsor.
 - b. May not make a subaward to an entity unless the entity has provided its DUNS number to the sponsor.
 - 3. **Definitions. For purposes of this award term:**
 - a. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.
 - b. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

- c. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R Part 25, subpart C:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization; and
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

- d. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMS Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

- e. Subrecipient means an entity that:
 - i. Receives a subaward from you under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

D. CIVIL RIGHTS OBLIGATIONS

1. **General.** This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 4248 or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

2. **Statutory Requirements.** In carrying out this agreement, the recipient must comply with:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving
 - d. Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

3. **Regulatory Requirements.** The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 - a. For Title IX obligations, 40 C.F.R. Part 5; and
 - b. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
 - c. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.
4. **Title VI - LEP, Public Participation and Affirmative Compliance Obligation.**
 - a. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
 - b. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

E. Additional Term and Condition for Agricultural Landowners - Riparian Buffer Term for Agricultural Landowners. To be eligible for NEP implementation funding, provided directly or through a subaward, a private agricultural land owner whose property borders fresh or estuarine waters must establish and maintain a riparian buffer on all water courses on the property consistent with the National Marine Fisheries Service (NMFS) guidelines for Riparian Buffers Along Agricultural Water Courses in NW Washington and NRCS guidance on the NMFS guidelines. A land owner may be excluded from meeting this requirement if the funding is used solely for removal of shoreline armoring, onsite sewage system repair or replacement, engineered dike setbacks, or culvert or tide-gate replacements that provide for fish passage at all life stages. In some cases, the NJL1FS recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel (e.g. transportation corridors, structures, naturally occurring).

SECTION 36. ORDER OF PRECEDENCE

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

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency;
- E. State law;

- F. Washington Administrative Code;
- G. Project Agreement;
- H. Board policies and procedures.

SECTION 37. AMENDMENTS

Amendments to this Agreement shall be binding only if writing and signed by personnel authorized to bind each of the parties except period of performance extensions in and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension or scope adjustment is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

SECTION 38. LIMITATION OF AUTHORITY

Only RCO or RCO's delegate by writing (delegation 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 Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by RCO.

SECTION 39. WAIVER OF DEFAULT

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

SECTION 40. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 41. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

SECTION 42. TERMINATION

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

- A. **For Cause.** The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this Agreement:
 1. In the event of any breach by the sponsor of any of the sponsor's obligations under this Agreement; or
 2. If the sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines

In the event this Agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

- B. Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the sponsor.
- C. For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 43. DISPUTE HEARING

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

- A.** The disputed issues;
- B.** The relative positions of the parties;
- C.** The sponsor's name, address, project title, and the assigned project number.

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

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

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written Agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

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

SECTION 44. ATTORNEYS' FEES

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

SECTION 45. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper;

otherwise venue shall be in a county where the project is situated. The sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

SECTION 46. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR

In the cases where this Agreement is between the funding board (State) and a federally recognized Indian Tribe, the following governing law/venue applies, but only between those parties:

- A. Notwithstanding the above venue provision, if the State of Washington intends to initiate a lawsuit against a federally recognized Indian tribe relating to the performance, breach or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such a lawsuit in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such lawsuit in federal court; otherwise the State may sue the Tribe in the Thurston County Superior Court. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such a lawsuit arising out of this agreement, including any third party claims relating to any work performed under this agreement, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, employees, and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F: Project Funding of the Agreement in order to satisfy the judgment.
- C. The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purpose of allowing the State to bring such actions as it determines necessary to give effect to this section and to the enforcement of any judgment relating to the performance, or breach of this Agreement. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the RCO and any other state agencies that may be assigned or otherwise obtain the right of the RCO to enforce this Agreement.

SECTION 47. SEVERABILITY

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

Eligible Scope Activities

Project Sponsor:

Project Number:

Project Title:

Project Type:

Program

Approval

Project Metrics

Project Acquisition

Project acres by purpose type:

Habitat Conservation 18.00

Public Access 32.00

Miles of shoreline protected: 1.00

Sites Improved

Project areas developed: 2.00

Project areas renovated: 0.00

Acquisition Metrics

Property: Worksite #1

Real Property

Land

Acres by Acreage Type (fee simple):

Uplands 17.00

Tidelands 33.00

Existing structures on site: No structures on site

Clean up of hazardous substances required (yes/no): Unknown

Incidentals

Signs (Acq)

Number of permanent signs that identify site and funding partners 1

Development Metrics

Property: Worksite #1

Buildings and Structures

Construct / install restroom

Number of restrooms: 1 new, 0 renovated

Select the restroom type: Vault toilets

General Site Improvements

Develop paths/walkways

Select the surface of the path/walkway: Compacted gravel

Linear feet of path/walkway: 1200

Walkway lighting provided (yes/no): No

Number of walkway bridges: 0 new, 0 renovated

Develop viewpoint

Number of designated viewpoints: 1 new, 0 renovated

Select the viewpoint structures: Benches/seating

Install signs/kiosk

Number of kiosks: 0 new, 0 renovated

Number of interpretive signs/displays: 5 new, 0 renovated

Number of permanent entrance signs: 1 new, 0 renovated

Project involves installation of informational signs (yes/no):

Parking and Roads

Parking development

Number of vehicle parking stalls:	8 new, 0 renovated
Number of vehicle with trailer parking stalls:	0 new, 0 renovated
Number of accessible parking stalls:	
Vehicle with trailers	0
Vehicle	1
Select the parking surfaces:	Gravel
Select the parking enhancements:	Entry gate, Wheel stops

Legal Description

Project Sponsor:

Project Number:

Project Title:

RCO Approval:

Worksite Name
Property Name
Legal Description

Worksite #1

The legal description of the property purchased with funding assistance provided through this Project Agreement (and protected by a recorded Deed-of-Right) shall be amended into the Project Agreement prior to reimbursement of the final payment.

Milestone Report by Project

Project Number:

Project Name:

Sponsor:

Project Manager:

X	!	Milestone	Target Date	Comments/Description
X		Project Start	08/01/2014	
X		Baseline Documentation to RCO	10/01/2014	Please provide the preliminary title report for the property prior to closing
X		Survey Complete	10/31/2014	
X		Order Appraisal(s)	11/01/2014	
X	!	Progress Report Submitted	01/15/2015	
X	!	Order Appraisal Review(s)	03/15/2015	
X	!	Purchase Agreement Signed	03/31/2015	
X	!	Acquisition Closing	06/30/2015	
X		Funding Acknowl Sign Posted	06/30/2015	
X	!	Progress Report Submitted	06/30/2015	
X		Recorded Acq Documents to RCO	07/30/2015	
X	!	Annual Project Billing	07/31/2015	
X	!	Cultural Resources Complete	12/31/2015	
X	!	Progress Report Submitted	01/15/2016	
		RCO Final Inspection	02/01/2016	
	!	Agreement End Date	06/30/2016	
		Final Billing to RCO	07/31/2016	
		Final Report in PRISM	07/31/2016	

X=Milestone Complete

!=Critical Milestone



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Agreement: Operation & Maintenance of the Buckley City Cemetery	Agenda Date: April 26, 2016		AB16-059
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: Agreement with Attachments			
<p>SUMMARY STATEMENT: The draft Agreement being presented for consideration is to contract with Weeks' Funeral Homes for operation and maintenance of the City Cemetery. This is an issue that the Council directed staff to work on approximately 1 ½ years ago; however, it has taken this long to navigate through structuring terms of the Agreement and negotiating with the Local #286 for release of Bargaining Unit positions that coincide with contracting out services.</p> <p>Due to dwindling Cemetery revenues and steadily rising operational costs, the City is no longer able to cost effectively manage and maintain the Cemetery. Since Weeks is already providing this same level of service to Enumclaw they are able to consolidate and more effectively manage the operation and maintenance. The Agreement turns over full operation and maintenance, as well as all revenue from receipts to Weeks Funeral Home; however, the City will retain ownership of the Cemetery and all facilities and equipment. Due to the concern over falling revenues, the City also guarantees Weeks at least \$50,000 per year in revenue so that their costs to maintain the facility are at least met at a basic level.</p> <p>The draft Agreement being included in the packet is still going through final review by Weeks and their legal counsel so there may be minor changes to this document which will be presented on Tuesday night. Staff is recommending that the City Council approve the Agreement.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve the Agreement Between the City and Weeks' Funeral Homes Inc. for Operation & Maintenance of the Buckley City Cemetery.			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

**BUCKLEY CITY CEMETERY
OPERATION, MANAGEMENT AND PROPERTY USE AGREEMENT**

THIS AGREEMENT is made this ____ day of _____, 20__ by and between the City of Buckley, a municipal corporation, organized under Title 35A RCW, Optional Municipal Code, hereinafter referred to as "City"; and Weeks' Funeral Homes Inc, hereinafter referred to as "Operator."

WHEREAS, the City operates a municipal cemetery consisting of approximately 11 acres, with structures and improvements, commonly known as the Buckley City Cemetery and herein referred to as the Cemetery, located at 600 Cemetery Road; and

WHEREAS, the City desires to transfer operation of the Cemetery through an agreement to a private operator as being the most efficient and effective means of continued services at the Cemetery; and

WHEREAS, the City desires to ensure that the landscape and grounds maintenance continue at the current level of presentation; and

WHEREAS, Weeks Funeral Homes owns and operates a Funeral Home immediately adjacent to the City Cemetery and the City has coordinated funeral services for many years with Weeks Funeral Homes and desires to enhance that partnership; and

WHEREAS, through negotiations, the City and Weeks Funeral Homes has reached an acceptable agreement as set forth herein, and

WHEREAS, Weeks Funeral Homes desires to operate the Cemetery and maintain it in a professional and fiscally responsible manner to carry out the objectives as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the City and the Operator (collectively, "the Parties") hereby agree as follows :

1. **Premises:** The City does hereby grant to the Operator the right and privilege to occupy and use the Buckley City Cemetery transfer management of the Cemetery to the Operator as provided in this Section.

1.1 **Use and Occupancy.** The City grants to the Operator the right and privilege to occupy and use the Buckley City Cemetery, and commonly known as the Cemetery located within the City limits of Buckley at 600 Cemetery Road, which shall also include the right to use the office and front one-half (½) of the storage shed and located on Cemetery property (“Cemetery Premises”). The Operator agrees that the City shall continue to have the right to utilize the rear one-half (½) of the storage shed with separate access for storage of city equipment and property.

1.2 **“As is” Condition.** The Operator accepts the Cemetery Premise “AS IS” and “WITH ALL FAULTS,” any the City makes no warranty of any kind, express or implied, with respect thereto. Without limiting the generality of the preceding sentence, it is expressly agreed that the City makes no warranty as to the marketability, habitability, or fitness for any particular purpose of the Cemetery Premises.

1.3 **Management Obligations.** The Operator agrees to perform all obligations of the Cemetery Superintendent as described in Title 4 of the Buckley Municipal Code. Receipts of all lot sales shall be provided to the City Finance Director within [redacted] days of sale. No lots, tracts, or grave space shall be occupied for burial purposes until the same has been paid for in full. The Operator further agrees to perform all obligations and duties as described in the Facility Care Standards, Exhibit A, attached hereto and incorporated by reference as if set out in full, The Operator shall have the exclusive right to operate the premises for the term of the Agreement, subject to the reasonable direction of the City Administrator and subject to the provisions of Title 4 of the Buckley Municipal Code.

1.4 **Compliance with Restrictions and Laws:** The Operator shall, at its sole expense, (a) comply with all applicable laws, orders, ordinances, and regulations of federal, state, county, and municipal authorities having jurisdiction over the Cemetery Premises, (b) comply with any directive, order or citation made pursuant to law by any public officer requiring abatement of any nuisance or which imposes upon the City or the Operator any duty or obligation arising from the Operator's occupancy or use of the Cemetery Premises, or required by reason of a breach of any of the Operator's obligations hereunder or by or through other fault of the Operator, (c) comply with all insurance requirements applicable to the Cemetery Premises, and (d) indemnify and hold the City harmless from any loss, cost,

claim or expense which the City incurs or suffers by reason of the Operator's failure to comply with its obligations under clauses (a), (b), (c) or (d) above. If the Operator receives notice of any such directive, order citation or of any violation of any law, order, ordinance, regulation or any insurance requirements, the Operator shall promptly notify the City in writing of such alleged violation and furnish the City with a copy of such notice.

2. **Term:** The term of this agreement shall be for five (5) years commencing the 1st day of _____, 2016 and ending the 31st day of _____, 2021. The Operator shall have the option to renew for additional five (5) year periods, provided all the terms and conditions of this agreement have been met, and further provided that there is mutual agreement for the exercise of the option by Operator and the City. Either Operator or the City may elect to not renew at their sole option without the necessity of any cause given. In the event the parties elect to exercise the option for an additional five (5) years they may, by mutual agreement, change the terms and conditions of the lease agreement, including the length of the renewal period.

Either party may elect at any time to terminate this agreement with ninety (90) days written notice with or without cause. Notwithstanding the foregoing, if the Operator refuses or fails to complete the obligations of this Agreement in a manner satisfactory to the City, then the City may, by written notice to the Operator, give notice of its intention to terminate this Agreement. After such notice, the Operator shall have thirty (30) days to cure, to the satisfaction of the City or its representative. If the Operator fails to cure to the satisfaction of the City, the City shall send the Operator a written termination letter which shall be immediately effective upon deposit in the United States mail to the Operator's address as stated below.

3. **Rent, Revenues and Fees:** By mutual agreement, there shall be no rental fee for the operation of the Cemetery Premises. However, the Operator, as consideration, shall be required to make contributions to the Cemetery Endowment Fund as described in this agreement and as additional consideration shall maintain the Cemetery Premises as set forth herein. It is the intent of the City that the maintenance of the Cemetery landscape and grounds continue at the current level of presentation. In order to ensure that this level is maintained and because the City does not want revenue be the sole contributing factor to a lower standard, the City agrees to guarantee the Operator will receive \$50,000 in annual gross Cemetery revenue above the 15% required to be held in the City's Cemetery Endowment Fund as specified in Section 5 below. .

3.1 The Cemetery Endowment Fund is a fund within the City's budget created to preserve and enhance the fixed assets within the cemetery. These funds shall be available for use to create mausoleums, niches, fences, walkways, roads, buildings, and other capital assets necessary to operation of the Cemetery. The City shall make funds available for improvements on a case by case basis at the request of the Operator.

3.2 Each year, the City and the Operator shall meet and outline a near term and long term plan for capital requirements. This Capital Improvement Plan must be approved by the City Council as part of the City's overall annual budget.

3.3 The Operator shall also remit 15% of all plot and mausoleum sales to be held in the City's Cemetery Endowment funds as described by the City's Municipal Code Title 4. The City and the Operator agree that code amendments regarding the percentage of plot and mausoleum sales dedicated to the Cemetery Endowment Fund shall be processed simultaneously with this Agreement. Pursuant to the City's Municipal Code the interest derived from the Cemetery Endowment Fund is available for capital improvements to the Cemetery and Lot Buy-back occurrences through the City's Cemetery Operations Fund.

3.4 The Operator further agrees to pay, as an independent contractor, all fees and expenses owing to any and all governmental units and other claimants for the operation of Operator's business. Operator agrees to indemnify the City, from any and all claims of any governmental unit for any expense for the operation of the business and incurred as a result of Operator's expenses related to employees. Such indemnification and hold harmless will also include any attorney fees and costs incurred by City in defending any such claim or asserting its right under the indemnity and hold harmless.

4. **Accounting:** Operator shall provide the City with a copy of the Cemetery's annual revenue and expenditure financial statements within ninety (90) days following the end of each calendar year. Reports shall include all Cemetery revenues and expenditures for the prior year to ascertain the financial stability of all Cemetery operations and record contributions to the Cemetery Endowment Fund. Operator warrants that all accounting provided is accurate and truly reflects the actual operation of the business under general accounting practices.

4.1 The City, its agents, officials, employees or state auditor's office may conduct a spot audit at any time to verify financial information of Cemetery operations. Operator and Operator's accountant shall fully cooperate in providing such information.

5. **Maintenance Subsidy.** As specified in Section 3 above, the City agrees to guarantee the Operator will receive of gross revenue \$50,000 annually above the 15% required to be held in the City's Cemetery Endowment Fund. The City and Operator will review annual revenue financial statements at the end of each calendar year and if gross revenue from the prior year was below \$50,000, excluding the 15% required to be held in the City's Cemetery Endowment Fund, then the City agrees to remit payment of the difference to the Operator to ensure that this \$50,000 minimum is met.

6. **Capital Improvements:** Capital improvements shall mean any improvements, replacements or modifications to the buildings, grounds, or other improvements to include purchase of new equipment which are of a capital nature and which do not constitute routine repair and maintenance operations including, but not limited to, those maintenance items specifically described in the body of this agreement, and which are made for the purpose of creating a long term beneficial impact on the quality and success of the Buckley City Cemetery.

6.1 The parties shall meet at least once annually as specified in Section 3.2 to identify capital improvements needed to benefit the quality and success of the Cemetery. However, the decision on the capital improvements to be undertaken is at the sole discretion of the City, and will be determined on an annual basis dependent on available funds.

7. **Late Payments:** Among other remedies, including cancellation of the agreement, the Operator will be required to pay a late penalty fee of \$10.00 per day for each day after, 90 days past-due. Repeated late payments may result in termination of this agreement.

8. **Fees for Services and Lot Sales:** The Operator shall be permitted to set rates for fees and charges for a variety of funeral services and products.

8.1 The City shall retain authority to set fees for all lots, blocks, tracts, or parcels of land in the platted portion of the Cemetery. Once per year, the Operator may request a meeting with the City Administrator to discuss any suggestions related to pricing of lots. The Operator further agrees that the manner of payment for all lot sales shall continue to be established by the City Council and Title 4 of the

Buckley Municipal Code. The Operator shall have the ability to adjust fees for services and merchandise other than Lot sales as necessary to operate the Cemetery in an efficient and effective manner. The Operator shall notify the City 90 days prior to any fee adjustments to allow for comments and shall consider any concerns expressed by the City Council. The Operator shall allow customers the ability to seek competitive pricing for goods sold.

8.2 Pre-need sales are sales for services and products prior to actual interment needs. Pre-need sales create a liability to future Operators and the City and therefore a portion of the sale shall be retained in escrow to offset the future liability.

All pre-need sales shall be distributed as follows:

50%	Retained in Escrow until interment
50%	Revenue to Operator

8.3 Operator shall annually provide the City with a list of completed prior year pre-need sales at the same time that the financial statements required under paragraph 4 are submitted.

8.4 The City allows that any lot sold can be returned or sold back also known as a "Lot Buy-back" to the City at the original cost of the lot, less 20%, by the original owner of record. This obligation will be reduced from the Cemetery Endowment fund at the time of any eligible occurrence.

9. **Repairs and Maintenance:** The premises shall be maintained by the Operator to include the landscaping, grounds and general presentation of the premises as described in the Facility Care Standards, Exhibit A.

9.1 The City agrees to repair roofs, exterior walls and foundations, if necessary, to maintain the premises in as good a condition as they are now in, reasonable use, wear and tear and damage by fire and other casualty excepted. All other repairs and improvements shall be the responsibility of Operator to maintain the premises.

10. **Utilities:** Operator agrees to pay all charges for electricity, heat, sewer, garbage, water, storm and all other utilities and services to the Cemetery Premises; and all license fees and other governmental charges.

11. **Liens and Insolvency:** Operator shall keep the Cemetery Premises free from any liens or claims of any kind arising out of any work performed for, materials furnished to, or obligations incurred by Operator and shall hold City harmless against the same. In the event Operator becomes insolvent, bankrupt, or if a receiver, assignee or other liquidating officer is appointed and not dismissed within thirty (30) days for the business of Operator, City may cancel this agreement at its sole option. In addition, City reserves the right, upon its review of the Cemetery's financial statements that, in City's opinion, there is a possibility of insolvency, being the possibility that the Operator cannot pay current accounts payable, and in such case, City may terminate this agreement, at its option.

12. **Subletting or Assignment:** Operator shall not sublet the whole or any part of the Cemetery Premises nor assign the agreement without written consent of City.

13. **Access:** City, its agents, employees or officers, shall have the right, at any time, to enter the premises for the purposes of inspection or making repairs, additions or alterations, including, but not limited to, inspections of Operator's equipment, Operator's inventory, and the Cemetery's financial statements.

14. **Possession:** City shall deliver the possession of the premises to Operator at the commencement of the term of this agreement. Operator shall return the premises in the same or better condition upon termination or end of agreement.

15. **Operations:** The Operator shall establish and maintain regular office hours for the Cemetery by utilizing the existing services and space at Weekes Funeral Home. Office hours shall not be less than Twenty (20) hours per week and have phone access, and customer services sufficient to successfully operate the Cemetery. Public access to the Cemetery shall be available to the public during all daylight hours.

16. **Security:** The Operator shall lock all exterior doors and windows to the storage shed and office on the Cemetery Premises at the end of each business day.

17. **Alterations:** After prior written consent of the City, Operator may make alterations, additions and improvements in said premises, at its sole cost and expense. In the performance of such work, Operator agrees to comply with all laws, ordinances, rules and regulations of any governmental authority, and to hold City harmless from damage, loss or expense. Upon termination of this agreement

and upon The City's consent, or City's approval, Operator shall remove such improvements and restore the premises to its original condition at option of City, not later than the termination date, at Operator's sole cost and expense. Any improvements not so removed, if the City elects that they remain, shall remain in and be surrendered with the premises as a part thereof. Trade fixtures may be removed at Operator's expense provided that Operator shall pay for any damage caused by such removal.

18. **Taxes:** Operator agrees to pay any and all taxes applicable to the operation of the premises.

19. **Default and Re-Entry:** If Operator shall fail to keep and perform any of the covenants and agreements contained herein including, but not limited to, failure to provide financial information, failure to maintain the premises in accordance with standards set forth herein, and such failure continues for thirty (30) days after written notice from City, City may terminate this agreement and re-enter the Cemetery Premises, or the City may, without terminating this agreement, re-enter said premises, and sublet the whole or any part thereof for the account of the Operator upon as favorable terms and conditions as the market will allow for the balance of the term of the agreement and Operator covenants and agrees to pay to the City any deficiency arising from the re-letting of the premises. Operator shall pay such deficiency each month as the amount thereof is ascertained by the City.

20. **Equipment:** The City agrees to initially Operator shall provide for the Operator with all equipment currently used by the City to operate the Cemetery Premises as specified in Exhibit B. The City shall retain ownership of the equipment listed in Exhibit B; however, the Operator shall be responsible for normal maintenance of the equipment listed in Exhibit B on an ongoing basis. The Operator may elect and the City may agree to utilize the City's mechanic to perform this maintenance at the Operator's cost. The parties mutually agree that if a piece of equipment becomes either too costly to repair or is damaged beyond repair and the cost of replacement exceeds \$ [REDACTED] then the parties shall jointly meet as specified in Sections 3.2 and 6.1 above to determine a replacement schedule and means. If the equipment repairs are necessary as a result of continued failure to perform normal maintenance as required herein or negligence of the Operator, the Operator shall be responsible for the replacement. Certain equipment owned by the City may be made available to the Operator for use where the use does not impact other planned use by the City at the full discretion of the City.

21. **Costs and Attorney Fees:** If by reason of any default on the part of the Operator it becomes necessary for the City to employ an attorney or in case City shall bring suit to recover any rent due hereunder, or for breach of any provision of this agreement or to recover possession of the

premises, or if Operator shall bring any action for any relief against City, declaratory or otherwise, arising out of this agreement and in such event, the prevailing party shall be awarded its reasonable attorney fees, costs and expenses, including, but not limited to, accounting expenses.

22. **No Waiver:** Any waiver by either party of any breach thereof by the other shall not be considered a waiver of any future similar breach. This agreement contains all the agreements between the parties; there shall be no modification of the agreement contained herein except by written instrument.

23. **Surrender of Premises:** Operator agrees, upon termination of this agreement, to peacefully quit and surrender the Cemetery Premises and leave the premises in a neat, clean and maintained condition, and to deliver all keys to the premises to the City.

24. **Hold Over:** If Operator, with the implied or expressed consent of City, shall hold over after the expiration of the term of this agreement, Operator shall remain bound by all the covenants and agreements herein, except that the Agreement term shall be from month to month.

25. **Heirs, Successors and Assigns:** This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Operator, only upon the consent of City, as specified above.

26. **Notices:** Any notice required to be given by either party to the other, shall be deposited in the United States mail, postage paid, addressed to

City:

City Administrator
David Schmidt
PO Box 1960
933 Main Street
Buckley, WA 98321

Operator:

Weeks' Funeral Homes, Inc.
Russell Weeks, President
451 Cemetery Rd. Buckley, WA 98321

27. **Jurisdiction:** This agreement shall be interpreted under the laws of the State of Washington and jurisdiction shall lie in Pierce County Superior Court.

28. **Insurance:** Operator shall, at its expense, procure and maintain for the entire Agreement Term insurance against claims for injuries to persons and damage to property which may arise from or in connection with Operator's occupation and use of the Cemetery Premises.

28.1 Minimum Scope of Insurance. Operator shall obtain insurance of the types described below:

A. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under such policy using ISO Additional Insured Additional Insured – Designated Person or Organization, or substitute endorsement providing equivalent coverage. The Commercial General Liability Insurance shall be written with no exclusion or policy sub-limit for participant liability.

B. Property Insurance shall be written on an all risk basis and shall insure against the perils of fire and extended coverage and physical loss or damage including earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal.

28.2 Minimum Amounts of Insurance. Operator shall maintain the following insurance limits:

A. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

B. Property insurance shall be written covering the full value of Operator's property and improvements with no coinsurance provisions.

28.3 Other Insurance Provisions. The insurance policies shall contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

A. Operator's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be excess of Operator's coverage and shall not contribute with it.

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

28.5 Verification of Coverage. Prior to commencement of the Agreement Term, Operator shall furnish the City with copies of the policies of insurance or certificates thereof, including without limitation any amendatory endorsements.

28.6 Waiver of Subrogation. The City and Operator hereby mutually release each other from all claims, losses, and liabilities arising from or caused by any hazard covered by property insurance or in connection with the Designated Premises. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

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

28.8 Notice of Cancellation. The Operator shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

28.9 Operator shall not permit any lien to be filed against the Premises by reason of any work, labor, services, or materials performed for or supplied to Operator. If any such lien is filed against the Premises or the building in which the Premises are located, Operator shall cause the same to be discharged of record within thirty days after receipt of actual notice of same.

29. Indemnification:

29.1 Generally. Operator shall protect, defend, indemnify and hold the City, its officers, officials and employees harmless from and against any and all claims, losses, suits or damages arising out of (i) Operator's breach of any of the provisions of this Agreement, (ii) Operator's negligent use or occupation

of the Cemetery Premises, (iii) the negligent conduct of Operator's business, or (iv) any activity, work or thing done, permitted, or suffered by Operator in or about the Cemetery Premises. The foregoing obligations shall not extend to claims, losses, suits or damages arising out of or resulting from the sole negligence of the City.

29.2 Waiver of Worker's Compensation Immunity. The Operator's indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the Operator hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws. The Operator recognizes that this waiver was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation.

29.3 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 the Operator and the City, its officers, officials, employees, and volunteers, the Operator's liability hereunder shall be only to the extent of the Operator's negligence.

29.4 Exemption of City from Liability. The City shall not be liable for injury to Operator's business or loss of income there from or for damage which may be sustained by the person, goods, wares, merchandise or property of Operator, its authorized representatives, or any other person in or about the Cemetery Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Cemetery Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the same, whether the said damage or injury resulting from conditions arising upon the Cemetery Premises unless such injury or damage is caused by the gross negligence or intentional acts of the City or its authorized representatives.

29.5 Survivability. The provisions of this section shall survive the expiration or termination of this Agreement with respect to damages arising from acts, omissions or events occurring during the Agreement Term.

30. **Public Records Disclosure:** Operator expressly acknowledges that the City is an "agency" as defined by Chapter 42.56 RCW, and is fully subject to the provisions governing the disclosure of

public records codified at Chapter 42.56 RCW. To the extent required or otherwise authorized by said statutes or other applicable law:

30.1 Any public records submitted to or generated by the City in connection with this Agreement are potentially subject public to inspection and copying upon request. Operator expressly waives any claim or cause of action against the City arising out of such disclosure.

30.2. Operator shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by Operator and related to this Agreement. Upon written demand by the City, the Operator shall furnish the City with full and complete copies of any such records within five business days. Operator's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees, and/or any other expenses as a result of such breach, Operator shall fully indemnify and hold harmless the City.

30.3 For purposes of this section, the term "public records" shall have the same meaning as defined by Chapter 42.56 RCW, as said chapters have been construed by Washington courts.

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

31. **No Employment Relationship:** Nothing herein shall be construed as establishing an employment relationship between the City and any employee, agent or contractor of Operator, or between Operator and any employee, agent or contractor of the City.

32. **Regulatory Authority Preserved.** Nothing herein shall be construed as a waiver, abridgement or limitation of the City's regulatory authority, which the City hereby reserves in full. Without limitation of the forgoing, Operator shall be responsible for obtaining any and all applicable permits, licenses and other regulatory approvals, including specifically setting permits, necessary to conduct its operations upon the Cemetery Premises and/or to construct, repair or otherwise alter any improvements.

OPERATOR:

CITY OF BUCKLEY:

Russell Weeks, President
Weeks' Funeral Homes Inc.

Pat Johnson, Mayor

ATTEST/AUTHENTICATED:

Joanne Starr, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

DRAFT

LEGAL DESCRIPTION OF CEMETERY PREMISES

Pierce County Tax Parcel #0620344001

Section 34 Township 20 Range 06 Quarter 43 : BEG 622.88 FT E OF SW COR OF SE TH N 420 FT TH E TO W BDRY OF N P R/W TH SWLY ALG SD R/W TO S BDRY LI SD SEC TH W 420 FT TO BEG EXC ST HWY TOWN OF BUCKLEY CEMETERY EX PER DEPT OF REVENUE (DCWJES8-28-84)

Pierce County Tax Parcel #0619031017

Section 03 Township 19 Range 06 Quarter 12 : TR OF LAND BE ALL THAT POR GOVT LOT 2 LY NWLY OF N P CO NWLY R/W LI & SELY OF SELY R/W LI STATE HWY AS SURVEYED OVER & ACROSS SD SUBDIV EXC CITY OF BUCKLEY AMENDED BSP #92-1 SUBJ TO EASE TO PSPL (CEMETERY) (DCWJES8-9-83)

And includes the 350 SF Cemetery Office located at 600 Cemetery Rd and the 883.5 SF front ½ of the storage garage attached to the Cemetery Office.

STATE OF WASHINGTON)

)ss.

COUNTY OF PIERCE)

On this day personally appeared before me Pat Johnson, Mayor of the City of Buckley, to me known to be the individual describe in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this ____ day of _____, 2016.

NOTARY PUBLIC
in and for the State of Washington
Residing at: _____
My Commission Expires: _____

STATE OF WASHINGTON)

)ss.

COUNTY OF PIERCE)

On this day personally appeared before me _____,
_____ of Weeks Funeral Homes, Inc., to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this ____ day of _____, 2015.

NOTARY PUBLIC
in and for the State of Washington
Residing at: _____
My Commission Expires: _____

Exhibit A

Buckley City Cemetery Facility Care Standards

SCOPE OF SERVICES: The Operator shall maintain all cemetery facility grounds and buildings in an orderly fashion. Maintenance shall include but not be limited to, mowing, weeding, trimming, pruning, aerating, thatching, renovation and fertilization of lawns; planting, fertilization, and maintenance of landscaped areas including bushes, trees, flowers and shrubs; resetting and/or straightening markers and raising sunken graves. All maintenance aspects of the cemetery including buildings, improvements and landscape areas shall receive maintenance per the following guidelines to assure the appearance, and function without degradation over time.

A. Lawn Mowing- All lawn areas shall be mowed at least once per week during the growing season. For purposes of this agreement, the growing season is defined as March 15 - October 15. All trees, which require mowing around their base, should have a minimum twelve inches (12") of non-turf area around them to prevent damage from mowing operations. The Operator will inspect the grounds for litter and debris prior to each mowing and dispose of it.

Mowing equipment is to be kept sufficiently sharp and properly adjusted through servicing to provide a cleanly cut grass blade. Grass blade bruising, tearing and shredding is to be prevented. Mowing patterns will be varied to reduce the possibility of rutting and compaction of grade.

B. Shrub Bed Maintenance - Landscaped areas will be policed for weeds, litter and debris. Particular attention should be paid to entryways, focal points and high traffic areas. Planter beds will be groomed at least annually. Fertilizing of all trees (3" caliper and less) and all shrubs will be completed as needed. All fertilizers must be uniformly applied at the drip-line of the plant. Groundcover will be fertilized as needed. All fertilizers should be slow-release and balanced.

C. Lawn Edging - All walkways, tree circles, building structures, parking strips and flower or planting beds shall be edged as needed to maintain a neat, clean appearance during the growing season.

D. Line Trimming Markers- All Memorial markers shall be edged two times per year prior to Memorial Day and Labor Day. The trimmings must be blown off the markers immediately after trimming.

E. Herbicide - All turf areas should be treated for effective control of broadleaf weeds at least annually. All flower and planting beds should receive an effective herbicide application at least once per year.

F. License - All laws pertaining to pesticide applications must be adhered to by the Operator. Pest monitoring: inspection for insect and disease infestations will occur at least annually.

G. Mulching - All flower and planting beds shall be mulched once during the year.

H. Pruning - All trees and shrubs planted in the cemetery should be pruned every 2-3 years to enhance natural growth. The Operator will remove dead, damaged, and diseased portions of the tree. Cuts will be flush and clean, leaving no stumps or tearing of bark. Major pruning will be done following the flowering or during the tree's dormant season. Emergency or minor pruning will be performed as needed.

The Operator will provide attention and repair to trees and shrubs as appropriate to the season or in response to incidental damage. All ornamental plant materials will be judiciously pruned in accordance with standards of good practice and in accordance with the intended function of the plant in its present location. All debris will be removed from the property.

Leaves will be removed from lawns, planter beds, and walkways to maintain a clean appearance throughout the year. During periods of heavy leaf fall, major leaf removal will be performed on an ongoing basis. During heavy leaf fall the Operator may contact the City's Public Works Department for assistance and City will assist in the removal of leaves from roadways by running their street sweeper through the cemetery

I. Clean-up - The Operator shall, during the progress of the work, remove at his own expense the resultant clippings, dirt, debris, etc., and shall properly dispose of all such material, including leaves and waste paper. All walks and roadways shall be swept or air blown after mowing and all litter and glass shall be picked up prior to mowing. Upon completion of the work the Operator shall remove from the

premises all equipment and unused materials provided for the work, and leave the premises in a satisfactory condition.

J. Equipment - The Operator shall provide all labor and equipment necessary for the accomplishment of all work required under this contract with the exception of the equipment mentioned in paragraph 20 of this Agreement.

K. Materials - the Operator will supply fertilizers and weed killers and other materials required under this contract.

L. Rodent Control - The Operator is expected to keep properties, under the scope of the contract, free of rodents.

M. Irrigation Equipment and Operation – The cemetery currently has no installed irrigation system; however, moveable aluminum farm irrigation pipe is available for use. After periods of use the Operator will ensure that the pipe is disconnected and stored at the end of the irrigation season. Repairs and/or replacement of any damaged or malfunctioning components beyond the Operators control are the responsibility of the City. Any damage caused by the Operator will be repaired at the Operators expense.

N. Inspections - Regular inspections of site(s) shall be made and any problems, if found, will be brought to the attention of the City.

Exhibit B

**Buckley City Cemetery
Inventory of Cemetery Maintenance Equipment- April, 2016**

DRAFT

City of Buckley

2016 Cemetery Garage Inventory (4/14/2016)

Year	Make	Description	Model	Item	Quantity	Mile/Hours	Vin	Notes
2006	Kabota	Equipment	ZD21	Riding Lawn Mower	1	2,364 Hours	62418	
2001	John Deere	Equipment	LX279	Yard Tractor	1	UKN	M06279B020793	
1964	Ford	Vehicle	F600	Dump Truck	1	50,000 Miles	F61CR820466	
1982	Case	Equipment	580D	Backhoe	1	5,209 Hours		
	Stihl	Equipment		Gas Powered Backpack Blower	1			
		Small Tool		Portable Diesel Cans (5gal)	2			
		Small Tool		Portable Gasoline Cans (5gal)	2			
	Grip Rite	Small Tool		Portable air compressor	1			
		Small Tool		Air compressor accessories	Multiple			
		Small Tool		2.5 Ton Floor Jack	1			
		Small Tool		Battery Charger	1			
		Small Tool		Bench Vice	1			
		Small Tool		Hand pump grease gun	1			
		Small Tool		Wheel Barrow	1			
2003	Stihl	Equipment	FS85R	Weed Eater	1			
2003	Stihl	Equipment	FS85R	Weed Eater	1			
2007	Stihl	Equipment	FS110R	Weed Eater	1			
		Small Tool		Garden Hose	3			
2008	Redmax	Equipment		Headstone Edger w/blades	1			
		Small Tool		Hand Truck (Dolley)	1			
		Small Tool		Hand Prunners	2			
		Small Tool		Grass Rakes	2			
		Small Tool		Push Broom	1			
		Small Tool		Rock Rakes	3			
		Small Tool		Spade Shovel	4			
		Small Tool		Square Shovel	1			
		Small Tool		Sod Shovel	4			
		Small Tool		Water Valve Key	1			
		Small Tool		Post Hole Diggers	1			
		Small Tool		Gardening Hand Tools	Multiple			
		Small Tool		Hand Tamper	1			
		Small Tool		Sledge Hammer	1			
		Small Tool		Dig Bar	1			
		Small Tool		Pitch Forks	4			
		Small Tool		Mop	2			
		Small Tool		Car Wash Mop	2			
		Small Tool		Hand Suction Pump	1			
		Equipment		4 Piece Folding Arm Chair	1			
		Equipment		Urn Table	1			
		Equipment		Irrigation Trailer	1			
		Equipment		Landscape Trailer	1			
		Equipment		Chain & Cable Liner Lifters	2			
		Equipment		Vault Lid Chains	1			
		Equipment		Aluminum Irrigation Pipe	Multiple			

		Equipment		Sprinkler Heads	Multiple			
		Office Equipment		Dining Table and Chair Set	1			
		Office Equipment		3 Shelf Book Shelf	1			
		Office Equipment		2 Shelf Book Shelf	1			
		Office Equipment		4 Drawer File Cabinet	1			
		Office Equipment		Metal Shelf	1			
		Office Equipment		Office Desk	2			
		Office Equipment		Office Chair	1			
		Office Equipment		Employee Locker	4			
		Office Equipment		Computer	1			
		Office Equipment		Fax Machine	1			
		Office Equipment		City Phone	1			
		Office Equipment		Electric Fire place	1			
		Burial Inventory		Flower Vases (New)	Multiple			
		Burial Inventory		Flower Vases (Old)	1			
		Burial Inventory		Vase Form Boxes	2			
		Burial Inventory		Full Concrete Liners w/lids	1			
		Burial Inventory		Urn Liners w/Lids	5			
		Small Tool		4ftx4ftx8ft Sheets of Plywood	Multiple			
		Equipment		Plywood Rack	1			
		Decoration		Holiday Flags	Multiple			



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Consultant Scope - Update of the Critical Areas Regulations to Comply with GMA – Addendum #1 Cost Impact: \$3,600 Fund Source: Fund 308 (Cap Plan) Timeline: Immediate	Agenda Date: April 26, 2016		AB16-060
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson	X	X
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: AHBL Addendum Scope and Fee Proposal			
<p>SUMMARY STATEMENT: On August 25, 2016 the City Council approved the scope of work to have AHBL assist the Planning Department in reviewing and updating the City’s Critical Area’s Regulations (CAO) to comply with the State’s Growth Management Act (GMA) requirements. AHBL has since completed a draft of the updates that incorporates DOE’s comments that significantly impacts wetlands and buffers within the City.</p> <p>In order to challenge DOE’s position and form a basis as to why the City has adopted the current thresholds within our existing CAO, and our intent to maintain the current designations, setbacks, etc. staff will need the assistance of AHBL to prepare a memo identifying the new available science and guidelines used to update the City’s CAO.</p> <p>AHBL has provided an addendum to the approved scope of work that provides this support for a cost of \$3,600. Staff is requesting and recommending that the City Council approved this addendum.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: MOTION to Approve Addendum #1 to the Consultant Scope to Update the City’s Critical Area’s Regulations for a cost of \$3,600.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

AHBL Scope of Work
City of Buckley Critical Areas Ordinance Update - Additional Services
AHBL No. 2150418.30
April 8, 2016

Scope of Work – Best Available Science Memorandum

AHBL will assist the City of Buckley in the preparation of a memorandum to Department of Commerce detailing the application of Best Available Science (BAS) to the City's update to its Critical Areas Ordinance (CAO). To date AHBL has prepared a gap analysis of the City's existing CAO and reviewed it against the City's critical areas regulations in its Shoreline Master Program (SMP), updated in 2012, as well as guidance provided by the Washington State Department of Ecology. An assumption was made in this previous scope of work that the BAS for the SMP CAO would serve as the basis for the BAS conducted in support of the 2016 CAO update. This scope for additional services is to prepare a memo identifying the new available science and guidelines used to update the City's CAO.

Specific tasks include:

1. Preparation of a memo to the Department of Commerce identifying new available science and guidelines used to update the City's CAO. The purpose of this memo will be to identify where new BAS has been found to supersede information in the 2012 SMP CAO. The memo should not be construed to represent all BAS utilized to inform the City's 2016 CAO update.
2. Provide a working draft for City staff to review. Revise based on staff comments. Provide a final draft for transmitting to the Department of Commerce.
3. Review the Department of Commerce response. If needed, modify the CAO to comply with Commerce requirements.

Assumptions:

1. The City's SMP CAO incorporates the best available science at the time of adoption (2012).
2. The City's SMP CAO protects the functions and values of critical areas within the shoreline jurisdiction by achieving no net loss of shoreline ecological functions.
3. The City's SMP inventory and characterization form the basis for applying best available science to the local conditions of Buckley.
4. The City's 2016 CAO update will incorporate only new science or guidelines available since the adoption of the SMP CAO, rather than a review of all best available science.
5. Comments received from Commerce may include some minor modification to the CAO to fully comply. This assumes approximately 4 hours for additional modifications. Should more modifications be required, see the Additional CAO Modifications Task below.

Time and Expense Estimate:

It is estimated that this task will require approximately 24 hours of staff time plus an additional 4 hours for management time.

T&E NTE estimate: \$3,200

Scope of Work – Additional CAO Modifications

Additional CAO Modifications may be required depending upon the Department of Commerce’s response to the BAS Memorandum, or the City’s interest in augmenting their CAO with additional provisions that would allow for more innovative mitigation practices to reduce wetland buffer widths while meeting critical area protection guidelines. Such measures may include the use of low impact development technologies, best management practices, and other similar methods that serve to enhance or protect wetlands while also allowing for buffer reductions.

1. Review other agency Critical Area Ordinances specific to wetlands, wetland buffers, and mitigation practices to determine how the City of Buckley’s CAO may be modified to provide greater options and flexibility. Provide examples to City staff for review and comment.
2. Based on staff comment, provide a working draft of the CAO modifications for City staff to review. Revise based on staff comments. Provide a final draft for transmitting to the Department of Commerce.

Assumptions:

1. Proposed modifications will be based on available resources. We do not intend to conduct new BAS to support the modifications.

Time and Expense Estimate:

2. It is estimated that this task will require approximately 28 hours of staff time plus an additional 4 hours for management time.

T&E NTE estimate: \$3,600



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: CWA Culvert Replacement Project - Contaminated Soil Haul & Disposal Cost Impact: \$16,497 Fund Source: Fund 408 (Storm Cap) Timeline: Immediate	Agenda Date: April 26, 2016		AB16-061
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		X
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
Municipal Court – Jessica Cash			
Attachments: CWA Email with Attachments			
<p>SUMMARY STATEMENT: In February, 2015 the City was notified by CWA that a City owned storm pipe was in a deteriorated condition and runoff was leaking and sheet flowing into the Flume Replacement Project area causing major disruption of construction activities and potential undermining of the flume. In response the City made an official emergency declaration and agreed to cost share with CWA to replace this pipe before further damage occurred. The City’s storm pipe was located in the outer portion of a restricted area that was part of a PSE remediated site and it was believed that due to the distance that there would be no contaminated soils discovered. However, if testing revealed that contaminants were present then the City would pay the cost of disposal.</p> <p>On April 12, 2016 the City was notified by CWA that the stockpiled soils had been tested for hazardous substances and results confirmed that Arsenic levels exceeded MTCA limits. In order to dispose of the material two options were considered with the first being disposal of the 200 yards of stockpiled material at a cost of \$16,497. The second option considered was to mix the stockpiled material with clean material already at Wolshlegal Basin so that removal to a disposal site would not be necessary. The estimated cost for this option was \$15,105.</p> <p>Staff and the Transportation & Utilities Committee reviewed the alternatives on April 19, 2016 and are recommending that the City Council authorize option #1 which includes disposal of the contaminated material at a cost of \$16,497.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: Trans/Utilities 4/19/16			
RECOMMENDED ACTION: MOTION to Approve CWA Culvert Replacement Project - Contaminated Soil Haul & Disposal for a Cost of \$16,497.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

From: [Michael Gagliardo](#)
To: [Dave Schmidt](#)
Cc: [Chuck Clarke](#); [Joe Mickelson](#); [Joel Gordon](#)
Subject: RE: Culvert Invoice
Date: Tuesday, April 12, 2016 10:33:19 AM
Attachments: [image002.png](#)
[image003.png](#)
[Soil Test Result.pdf](#)
[Contaminated Soil Disposal 3-2-2016.pdf](#)
[On site Mixing Proposal.pdf](#)

Dave

At long last (some things slip when it is very busy) Cascade has tested the soil excavated from the Culvert Replacement Project site, per the Work Plan.

At the time Cascade provided the City with the invoice for the Culvert Replacement Project, we agreed that if no special disposal was required, Cascade would keep the material at Wolshlegal Basin with other sediments removed from the Flowline and if special disposal of this material was required, Cascade would contact you.

Cascade arranged to have the stockpiled material tested for hazardous substances. Unfortunately, results came back with an exceedance of MTCA limits. Arsenic in soil sample SP-1 was reported at 25 ppm and the Department of Ecology Arsenic Cleanup limit is 20ppm. The excavation contractor that Cascade used on this and a number of other projects, Johansen Excavating, submitted a proposal to Cascade for disposal of the 200 yards of stockpiled material at a cost of \$16,497 (the test results and Johansen's proposal are attached).

In order to make sure there was not a more cost effective option for handling this material, Cascade also asked Johansen to provide a proposal for mixing the stockpiled material with clean material already at Wolshlegal Basin so that removal to a disposal site would not be necessary. The estimated cost for this option is \$15,105 (proposal attached).

Given that the two options are so close in cost, Cascade's preference is to remove the material from Wolshlegal Basin.

Please contact me to discuss how to proceed with removal of the

stockpiled material.

MG



Michael A. Gagliardo

Director of Planning

t: 425.453.1503

f: 425.453.0953

c: 206.790.9713

cascadewater.org



From: Dave Schmidt [mailto:dschmidt@cityofbuckley.com]

Sent: Monday, June 08, 2015 9:20 AM

To: Michael Gagliardo <mgagliardo@cascadewater.org>

Subject: RE: Culvert Invoice

Thanks Michael!

David Schmidt

City Administrator

Buckley, WA 98321

(360) 761-7802

"It's not what you look at that matters, it's what you see."

From: Michael Gagliardo [mailto:mgagliardo@cascadewater.org]

Sent: Friday, June 05, 2015 3:25 PM

To: Dave Schmidt

Cc: Chris Paulucci

Subject: Culvert Invoice

Attached.

If you have any questions please contact me.

MG



Michael A. Gagliardo

Director of Planning

t: 425.453.1503

f: 425.453.0953

c: 206.790.9713

cascadewater.org





14648 NE 95th Street, Redmond, WA 98052 • (425) 883-3881

February 22, 2016

Megan E. Poysnick
Earth Solutions NW
1805 136th Place NE, Suite #201
Bellevue, WA 98005

Re: Analytical Data for Project ES-4371
Laboratory Reference No. 1602-077

Dear Megan:

Enclosed are the analytical results and associated quality control data for samples submitted on February 12, 2016.

The standard policy of OnSite Environmental, Inc. is to store your samples for 30 days from the date of receipt. If you require longer storage, please contact the laboratory.

We appreciate the opportunity to be of service to you on this project. If you have any questions concerning the data, or need additional information, please feel free to call me.

Sincerely,

David Baumeister
Project Manager

Enclosures

Date of Report: February 22, 2016
Samples Submitted: February 12, 2016
Laboratory Reference: 1602-077
Project: ES-4371

Case Narrative

Samples were collected on February 12, 2016 and received by the laboratory on February 12, 2016. They were maintained at the laboratory at a temperature of 2°C to 6°C.

Please note that any and all soil sample results are reported on a dry-weight basis, unless otherwise noted below.

General QA/QC issues associated with the analytical data enclosed in this laboratory report will be indicated with a reference to a comment or explanation on the Data Qualifier page. More complex and involved QA/QC issues will be discussed in detail below.

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

NWTPH-Dx

Matrix: Soil
 Units: mg/Kg (ppm)

Analyte	Result	PQL	Method	Date Prepared	Date Analyzed	Flags
Client ID:	SP-1					
Laboratory ID:	02-077-01					
Diesel Range Organics	ND	29	NWTPH-Dx	2-16-16	2-17-16	
Lube Oil Range Organics	ND	58	NWTPH-Dx	2-16-16	2-17-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
<i>o-Terphenyl</i>	122	50-150				
Client ID:	SP-2					
Laboratory ID:	02-077-02					
Diesel Range Organics	ND	30	NWTPH-Dx	2-16-16	2-17-16	
Lube Oil Range Organics	ND	59	NWTPH-Dx	2-16-16	2-17-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
<i>o-Terphenyl</i>	97	50-150				

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**NWTPH-Dx
 QUALITY CONTROL**

Matrix: Soil
 Units: mg/Kg (ppm)

Analyte	Result	PQL	Method	Date Prepared	Date Analyzed	Flags
METHOD BLANK						
Laboratory ID:	MB0216S1					
Diesel Range Organics	ND	25	NWTPH-Dx	2-16-16	2-17-16	
Lube Oil Range Organics	ND	50	NWTPH-Dx	2-16-16	2-17-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
<i>o-Terphenyl</i>	117	50-150				

Analyte	Result	Spike Level	Source Result	Percent Recovery	Recovery Limits	RPD	RPD Limit	Flags
DUPLICATE								
Laboratory ID:	02-077-01							
	ORIG	DUP						
Diesel Range	ND	ND	NA	NA	NA	NA	NA	NA
Lube Oil Range	ND	ND	NA	NA	NA	NA	NA	NA
<i>Surrogate:</i>								
<i>o-Terphenyl</i>				122	122	50-150		

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

cPAHs + CRESOLS EPA 8270D/SIM

Matrix: Soil
 Units: mg/Kg

Analyte	Result	PQL	Method	Date Prepared	Date Analyzed	Flags
Client ID:	SP-1					
Laboratory ID:	02-077-01					
2-Methylphenol (o-Cresol)	ND	0.078	EPA 8270D	2-16-16	2-16-16	
(3+4)-Methylphenol (m,p-Cresol)	ND	0.078	EPA 8270D	2-16-16	2-16-16	
Benzo[a]anthracene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Chrysene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[b]fluoranthene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo(j,k)fluoranthene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[a]pyrene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Indeno[1,2,3-cd]pyrene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Dibenz[a,h]anthracene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[g,h,i]perylene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
<i>2-Fluorophenol</i>	<i>82</i>	<i>24 - 117</i>				
<i>Phenol-d6</i>	<i>85</i>	<i>30 - 120</i>				
<i>Nitrobenzene-d5</i>	<i>69</i>	<i>27 - 112</i>				
<i>2-Fluorobiphenyl</i>	<i>78</i>	<i>35 - 113</i>				
<i>2,4,6-Tribromophenol</i>	<i>62</i>	<i>21 - 120</i>				
<i>Terphenyl-d14</i>	<i>55</i>	<i>39 - 121</i>				

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

cPAHs + CRESOLS EPA 8270D/SIM

Matrix: Soil
 Units: mg/Kg

Analyte	Result	PQL	Method	Date Prepared	Date Analyzed	Flags
Client ID:	SP-2					
Laboratory ID:	02-077-02					
2-Methylphenol (o-Cresol)	ND	0.079	EPA 8270D	2-16-16	2-16-16	
(3+4)-Methylphenol (m,p-Cresol)	ND	0.079	EPA 8270D	2-16-16	2-16-16	
Benzo[a]anthracene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Chrysene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[b]fluoranthene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo(j,k)fluoranthene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[a]pyrene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Indeno[1,2,3-cd]pyrene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Dibenz[a,h]anthracene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[g,h,i]perylene	ND	0.016	EPA 8270D/SIM	2-16-16	2-16-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
<i>2-Fluorophenol</i>	<i>82</i>	<i>24 - 117</i>				
<i>Phenol-d6</i>	<i>84</i>	<i>30 - 120</i>				
<i>Nitrobenzene-d5</i>	<i>68</i>	<i>27 - 112</i>				
<i>2-Fluorobiphenyl</i>	<i>77</i>	<i>35 - 113</i>				
<i>2,4,6-Tribromophenol</i>	<i>59</i>	<i>21 - 120</i>				
<i>Terphenyl-d14</i>	<i>56</i>	<i>39 - 121</i>				

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**cPAHs + CRESOLS EPA 8270D/SIM
 METHOD BLANK QUALITY CONTROL**

Matrix: Soil
 Units: mg/Kg

Analyte	Result	PQL	Method	Date Prepared	Date Analyzed	Flags
Laboratory ID:	MB0216S1					
2-Methylphenol (o-Cresol)	ND	0.033	EPA 8270D	2-16-16	2-16-16	
(3+4)-Methylphenol (m,p-Cresol)	ND	0.033	EPA 8270D	2-16-16	2-16-16	
Benzo[a]anthracene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Chrysene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[b]fluoranthene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo(j,k)fluoranthene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[a]pyrene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Indeno[1,2,3-cd]pyrene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Dibenz[a,h]anthracene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
Benzo[g,h,i]perylene	ND	0.0067	EPA 8270D/SIM	2-16-16	2-16-16	
<i>Surrogate:</i>	<i>Percent Recovery</i>	<i>Control Limits</i>				
2-Fluorophenol	90	24 - 117				
Phenol-d6	94	30 - 120				
Nitrobenzene-d5	75	27 - 112				
2-Fluorobiphenyl	87	35 - 113				
2,4,6-Tribromophenol	65	21 - 120				
Terphenyl-d14	67	39 - 121				

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**cPAHs + CRESOLS EPA 8270D/SIM
 SB/SBD QUALITY CONTROL**

Matrix: Soil
 Units: mg/Kg

Analyte	Result		Spike Level		Percent Recovery		Recovery	RPD	RPD	Flags
					Recovery	Limits	Limit			
SPIKE BLANKS										
Laboratory ID:	SB0216S1									
	SB	SBD	SB	SBD	SB	SBD				
Phenol	1.00	1.04	1.33	1.33	75	78	41 - 110	4	36	
2-Chlorophenol	0.945	0.959	1.33	1.33	71	72	42 - 112	1	39	
1,4-Dichlorobenzene	0.470	0.471	0.667	0.667	70	71	37 - 104	0	39	
n-Nitroso-di-n-propylamine	0.445	0.461	0.667	0.667	67	69	39 - 102	4	34	
1,2,4-Trichlorobenzene	0.477	0.494	0.667	0.667	72	74	34 - 107	4	37	
4-Chloro-3-methylphenol	0.977	1.02	1.33	1.33	73	77	54 - 104	4	28	
Acenaphthene	0.561	0.558	0.667	0.667	84	84	52 - 103	1	30	
4-Nitrophenol	1.05	1.07	1.33	1.33	79	80	51 - 125	2	25	
2,4-Dinitrotoluene	0.470	0.497	0.667	0.667	70	75	53 - 118	6	29	
Pentachlorophenol	0.657	0.729	1.33	1.33	49	55	25 - 141	10	28	
Pyrene	0.473	0.482	0.667	0.667	71	72	57 - 120	2	22	
<i>Surrogate:</i>										
2-Fluorophenol					83	83	24 - 117			
Phenol-d6					83	85	30 - 120			
Nitrobenzene-d5					68	69	27 - 112			
2-Fluorobiphenyl					81	79	35 - 113			
2,4,6-Tribromophenol					63	63	21 - 120			
Terphenyl-d14					60	60	39 - 121			

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**TOTAL METALS
 EPA 6010C/7471B**

Matrix: Soil
 Units: mg/kg (ppm)

Analyte	Result	PQL	EPA Method	Date Prepared	Date Analyzed	Flags
Lab ID:	02-077-01					
Client ID:	SP-1					
Arsenic	25	12	6010C	2-16-16	2-16-16	
Barium	40	2.9	6010C	2-16-16	2-16-16	
Cadmium	ND	0.58	6010C	2-16-16	2-16-16	
Chromium	7.7	0.58	6010C	2-16-16	2-16-16	
Lead	ND	5.8	6010C	2-16-16	2-16-16	
Mercury	ND	0.29	7471B	2-16-16	2-16-16	
Selenium	ND	12	6010C	2-16-16	2-16-16	
Silver	ND	1.2	6010C	2-16-16	2-16-16	

Lab ID:	02-077-02					
Client ID:	SP-2					
Arsenic	ND	12	6010C	2-16-16	2-16-16	
Barium	35	2.9	6010C	2-16-16	2-16-16	
Cadmium	ND	0.59	6010C	2-16-16	2-16-16	
Chromium	9.4	0.59	6010C	2-16-16	2-16-16	
Lead	ND	5.9	6010C	2-16-16	2-16-16	
Mercury	ND	0.29	7471B	2-16-16	2-16-16	
Selenium	ND	12	6010C	2-16-16	2-16-16	
Silver	ND	1.2	6010C	2-16-16	2-16-16	

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**TOTAL METALS
 EPA 6010C/7471B
 METHOD BLANK QUALITY CONTROL**

Date Extracted: 2-16-16
 Date Analyzed: 2-16-16
 Matrix: Soil
 Units: mg/kg (ppm)
 Lab ID: MB0216SM1&MB0216S1

Analyte	Method	Result	PQL
Arsenic	6010C	ND	10
Barium	6010C	ND	2.5
Cadmium	6010C	ND	0.50
Chromium	6010C	ND	0.50
Lead	6010C	ND	5.0
Mercury	7471B	ND	0.25
Selenium	6010C	ND	10
Silver	6010C	ND	1.0

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**TOTAL METALS
 EPA 6010C/7471B
 DUPLICATE QUALITY CONTROL**

Date Extracted: 2-16-16
 Date Analyzed: 2-16-16
 Matrix: Soil
 Units: mg/kg (ppm)
 Lab ID: 02-050-07

Analyte	Sample Result	Duplicate Result	RPD	PQL	Flags
Arsenic	ND	ND	NA	10	
Barium	62.4	62.6	0	2.5	
Cadmium	ND	ND	NA	0.50	
Chromium	34.2	37.6	9	0.50	
Lead	5.80	5.90	2	5.0	
Mercury	ND	ND	NA	0.25	
Selenium	ND	ND	NA	10	
Silver	ND	ND	NA	1.0	

Date of Report: February 22, 2016
 Samples Submitted: February 12, 2016
 Laboratory Reference: 1602-077
 Project: ES-4371

**TOTAL METALS
 EPA 6010C/7471B
 MS/MSD QUALITY CONTROL**

Date Extracted: 2-16-16

Date Analyzed: 2-16-16

Matrix: Soil

Units: mg/kg (ppm)

Lab ID: 02-050-07

Analyte	Spike Level	MS	Percent Recovery	MSD	Percent Recovery	RPD	Flags
Arsenic	100	94.1	94	99.2	99	5	
Barium	100	159	96	169	106	6	
Cadmium	50.0	48.1	96	50.3	101	5	
Chromium	100	132	98	138	104	4	
Lead	250	245	96	255	100	4	
Mercury	0.500	0.500	100	0.490	98	2	
Selenium	100	91.6	92	97.2	97	6	
Silver	25.0	20.0	80	20.8	83	4	

Date of Report: February 22, 2016
Samples Submitted: February 12, 2016
Laboratory Reference: 1602-077
Project: ES-4371

% MOISTURE

Date Analyzed: 2-16-16

Client ID	Lab ID	% Moisture
SP-1	02-077-01	14
SP-2	02-077-02	15



Data Qualifiers and Abbreviations

- A - Due to a high sample concentration, the amount spiked is insufficient for meaningful MS/MSD recovery data.
- B - The analyte indicated was also found in the blank sample.
- C - The duplicate RPD is outside control limits due to high result variability when analyte concentrations are within five times the quantitation limit.
- E - The value reported exceeds the quantitation range and is an estimate.
- F - Surrogate recovery data is not available due to the high concentration of coeluting target compounds.
- H - The analyte indicated is a common laboratory solvent and may have been introduced during sample preparation, and be impacting the sample result.
- I - Compound recovery is outside of the control limits.
- J - The value reported was below the practical quantitation limit. The value is an estimate.
- K - Sample duplicate RPD is outside control limits due to sample inhomogeneity. The sample was re-extracted and re-analyzed with similar results.
- L - The RPD is outside of the control limits.
- M - Hydrocarbons in the gasoline range are impacting the diesel range result.
- M1 - Hydrocarbons in the gasoline range (toluene-naphthalene) are present in the sample.
- N - Hydrocarbons in the lube oil range are impacting the diesel range result.
- N1 - Hydrocarbons in diesel range are impacting lube oil range results.
- O - Hydrocarbons indicative of heavier fuels are present in the sample and are impacting the gasoline result.
- P - The RPD of the detected concentrations between the two columns is greater than 40.
- Q - Surrogate recovery is outside of the control limits.
- S - Surrogate recovery data is not available due to the necessary dilution of the sample.
- T - The sample chromatogram is not similar to a typical _____.
- U - The analyte was analyzed for, but was not detected above the reported sample quantitation limit.
- U1 - The practical quantitation limit is elevated due to interferences present in the sample.
- V - Matrix Spike/Matrix Spike Duplicate recoveries are outside control limits due to matrix effects.
- W - Matrix Spike/Matrix Spike Duplicate RPD are outside control limits due to matrix effects.
- X - Sample extract treated with a mercury cleanup procedure.
- X1 - Sample extract treated with a Sulfuric acid/Silica gel cleanup procedure.
- Y - The calibration verification for this analyte exceeded the 20% drift specified in method 8260C, and therefore the reported result should be considered an estimate. The overall performance of the calibration verification standard met the acceptance criteria of the method.
- Z -
- ND - Not Detected at PQL
- PQL - Practical Quantitation Limit
- RPD - Relative Percent Difference

Contaminated Soil Haul & Disposal @ Wolschlagel Basin



Johansen Excavating, Inc.

PO Box 674
 Buckley, WA 98321
 Contact: Jacob Cimmer
 Phone: 360.829.6493
 Fax: 360.829.5473

Quote To: Veolia Water

Job Name: Contaminated Soil Haul & Dispose

Phone:
 Fax:

Date of Plans:

Revision Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
* 1	Mobilization	1.00	LS	1,162.63	1,162.63
* 2	Export Contaminated soil and plastic	200.00	CY	58.42	11,684.00
* 3	Additional soil testing required for this cheap du	1.00	LS	2,443.10	2,443.10
PRE-TAX GRAND TOTAL					\$15,289.73
TAX					1,207.89
GRAND TOTAL					16,497.62

NOTES:

Clarifications:

1. Price includes load, haul and disposal of cantimated soils/plastics in stockpile at Wolschlagel Basin.

Thank You For Choosing Johansen Excavating, Inc.

Contaminated Soil Mixing and Spreading @ Wolslegal Basin



Johansen Excavating, Inc.

PO Box 674
 Buckley, WA 98321
Contact: Jacob Cimmer
Phone: 360.829.6493
Fax: 360.829.5473

Quote To: Veolia Water
 Cascade Water
Phone:
Fax:

Job Name: Contaminated Soil Mixing and Spreading
Date of Plans:
Revision Date:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
* 1	Mobilization	1.00	LS	1,627.98	1,627.98
* 2	Remove and dispose of existing plastic coverings	1.00	LS	2,684.29	2,684.29
* 3	Move soils from sand pile and mix into stockpile	100.00	CY	59.88	5,988.00
* 4	Retest soil to confirm below cleanup levels	1.00	EA	2,088.54	2,088.54
* 5	Spread soil to desired grades	1.00	LS	1,610.84	1,610.84
PRE-TAX GRAND TOTAL					\$13,999.65
TAX					1,105.97
GRAND TOTAL					15,105.62

NOTES:

Clarifications:

1. Price includes labor and materials to remove and dispose of plastic covering.
2. Price includes labor and equipment to load, haul sand from sand pile to contaminated soil stockpile and mix. Also includes 1 more retest of soil.

Thank You For Choosing Johansen Excavating, Inc.

* - Biditem is a taxable item



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Declaring City Council Seat Vacancy	Agenda Date: April 26, 2016		AB16-062
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson		X
	City Administrator – Dave Schmidt	X	X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
Attachments: RCW, City Policy & Advertisement			
<p>SUMMARY STATEMENT: Due to Council Member Kyllenon’s resignation the City Council needs to declare her seat as vacant per RCW 42.12 and the City’s adopted Policy on Filling Declared Vacant Council Positions.</p> <p>Per the adopted policy staff has prepared a draft advertisement for the vacant position for Council to review. In preparing the ad, staff used standard language from the adopted policy, previous advertisement and State law requirements.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: None			
RECOMMENDED ACTION: Motion to Declare Council Position #7 as Vacant and Direct City Staff to begin the Councilmember Appointment Process Per the Adopted Policy.			
RECORD OF COUNCIL ACTION			
<i>Meeting Date</i>	<i>Action</i>	<i>Vote</i>	

RCW 42.12.070

Filling nonpartisan vacancies.

A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

- (1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.
- (2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.
- (3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.
- (4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.
- (5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.
- (6) As provided in *RCW [29.15.190](#) and [29.21.410](#), each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected that occurs twenty-eight or more days after the occurrence of the vacancy. If needed, special filing periods shall be authorized as provided in *RCW [29.15.170](#) and [29.15.180](#) for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, a primary shall not be held and the person receiving the greatest number of votes shall be elected.

The person elected shall take office immediately and serve the remainder of the unexpired term.

If an election for the position that became vacant would otherwise have been held at this general election date, only one election to fill the position shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in *RCW [29.01.135](#) and shall service both the remainder of the unexpired term and the succeeding term.

CITY OF BUCKLEY, WASHINGTON

RESOLUTION NO. 14-07

A RESOLUTION OF THE CITY OF BUCKLEY, PIERCE COUNTY, WASHINGTON ESTABLISHING COUNCIL POLICIES AND PROCEDURES FOR FILLING A COUNCIL POSITION THAT HAS BEEN DECLARED VACANT.

WHEREAS, on March 24, 2009 the City Council adopted Resolution 09-06 that established policies and procedures for filling a City Council position that had been declared vacant.

WHEREAS, the City Council establish these policies and procedures subject to statute under RCW 35A.12.050 and 42.12.070; and

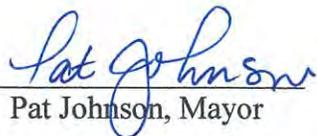
WHEREAS, these statutes provide only general rules for the appointment of someone to fill a vacant position; and

WHEREAS, the City Council has filled a number of vacant seats utilizing the process outlined in Resolution 09-06 since adoption and have identified needed changes to the procedures to make the process more efficient; and

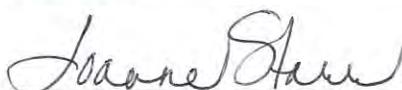
WHEREAS, the City Council has expressed a desire to modify the policies and procedures to reflect these changes,

NOW THEREFORE BE IT RESOLVED the City Council of the City of Buckley hereby adopts the Policy entitled "City Policy on Filling Declared Vacant Council Positions" as amended and attached hereto as Exhibit A.

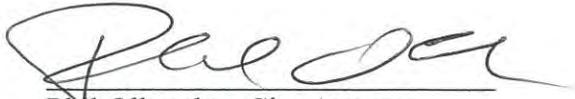
Introduced, passed and approved this 10th day of June, 2014.


Pat Johnson, Mayor

ATTEST:


Joanne Starr, City Clerk

APPROVED AS TO FORM:



Phil Olbrechts, City Attorney

Posted: June 12, 2014

Exhibit A

City Policy on Filling Declared Vacant Council Positions

1.0 Purpose

The purpose of this policy is to provide guidance to the City Council when a Buckley Councilmember position becomes vacant before the expiration of the official's elected term of office. Pursuant to state law, a vacancy shall be filled only to serve the remainder of the unexpired term until the next regular municipal election.

2.0 References

RCW 42.30.110(h) - Executive Session Allowed to consider qualifications of a Candidate for Appointment to Elective Office.

RCW 42.30.060 - Prohibition on Secret Ballots.

RCW 42.12 - Vacant Position

RCW 35A. 12.030 - Eligibility to Hold Elective Office

RCW 35A. 12.050 - Vacancies

3.0 Appointment Process

A Council position shall be officially declared vacant upon the occurrence of any of the causes of vacancy set forth in RCW 35A.12.050, 35A.12.060 or 42.12.010, including resignation, recall, forfeiture, written intent to resign, or death of a Councilmember. The Councilmember who is vacating his or her position cannot participate in the appointment process. If a Councilmember does not submit a written resignation due to the vacancy, the Council shall consult with legal counsel to determine whether to declare the seat vacant or to first acquire a court order validating the vacancy.

City Council shall direct staff to begin the Councilmember appointment process and establish an interview and appointment schedule so that the position is filled at the earliest opportunity.

City staff shall prepare and submit a display advertisement to the *Enumclaw Courier Herald* and City posting sites, which announces the vacancy consistent with the requirements necessary to hold public office as set forth in RCW 35A.12.030. This display advertisement shall be published once each week for two consecutive weeks. This display advertisement shall contain other information, including but not limited to time to be served in the vacant position, election information, salary information, brief summary of Councilmember powers and duties, the deadline date and time for submitting

applications, interview and appointment schedules (if known), and such other information that the City Council deems appropriate.

City staff shall prepare an application form which requests appropriate information for City Council consideration of the applicants. Applications will be available at City of Buckley offices and such other locations that the City Council deems appropriate. Copies of the display advertisement will be provided to current members of City of Buckley commissions, committees, task forces and other City-sponsored citizen groups.

Applications received by the deadline date and time will be copied and circulated by the City staff to the Mayor and City Council. Packets may also contain additional information received such as endorsements, letters of reference and other pertinent materials.

The City staff shall notify applicants of the location, date and time of City Council interviews.

Prior to the date and time of the interview meeting, the Mayor shall accept one interview question from each Councilmember. The Council may also specify, by majority vote or consensus in a regular or special meeting, which applicants qualify for an interview. The decision as to which applicants to interview will be based on the information contained in the application forms.

The Mayor shall invite all applicants to interview if the Council fails to provide contrary direction six or more calendar days prior to the interview meeting date.

4.0 Interview Meeting

The interview meeting for consideration of applicants/candidates shall take place either at a regular meeting or at a special meeting of the City Council scheduled at least 30 days from the closing date of application submittal.

Each interview of an applicant/candidate shall be no more than 30 minutes in length as follows:

- The applicant shall present his or her credentials to the City Council (10 minutes).
- The City Council shall ask the predetermined set of questions, which must be responded to by the applicant. Each applicant will be asked and will answer the same set of questions and will have two (2) minutes to answer each question (14 minutes)
- An informal question and answer period in which Councilmembers may ask and receive answers to miscellaneous questions (10 minutes).

The applicant's order of appearance will be determined by a random lot drawing performed by the City Clerk.

The Council may reduce the 30-minute interview time if the number of applicants exceeds six candidates. Vacancies in the City Council shall be filled by a majority vote of

the remaining members of the City Council, but such appointee shall hold office only until the next regular general election, at which time a person shall be elected to serve for the remainder of the unexpired term.

5.0 Voting

Upon completion of the interviews, Councilmembers may convene into Executive Session to discuss the qualifications of the applicants. Qualifications of the applicants shall only be discussed in Executive Session; however, all interviews, nominations and votes taken by the Council shall be in open public session.

Final action appointing a candidate to elective office shall be taken in the open public session.

Voting Process:

- Voting shall proceed for all candidates in the same order as their Council interview.
- If there is only one candidate then each Council member shall have one vote which they can cast. If there are more than two candidates then each Council member shall have a total of one less vote than the total number of candidates being considered for each round of voting.
- During the voting round Council members may cast one of his/her votes per candidate of their choice until they have expired all of their votes. Voting shall be via affirmative vote only. (WHO votes for “X”, who prefers “Y” - not yeas and nays for one and then the other).
- If there are more than two candidates then the candidate that receives the lowest number of votes in the 1st round shall be eliminated and not be allowed to continue to the next round of voting. Candidates receiving the highest number of votes will advance to the next round of voting where the process is repeated until only two “finalists” remain.
- Once the voting has narrowed the candidate pool to two finalists, Council members shall have one vote each to cast for the finalist of their choice. If the vote results in a tie the Mayor shall be allowed to vote to break the tie as authorized by RCW 35A.12.100.
- The candidate receiving a majority of votes (from a quorum of the Council), including that of the Mayor in case of a tie, shall be declared the “winner” and the Mayor shall declare the nominee appointed.

Nothing in this policy shall prevent the City Council from reconvening into Executive Session to further discuss the applicant/candidate qualifications.

The new Councilmember shall be sworn into office by the Mayor or City Clerk at the earliest opportunity, or no later than the next regularly scheduled City Council Meeting.



CITY COUNCIL AGENDA BILL

City of Buckley
PO Box 1960
Buckley, WA 98321

ITEM INFORMATION			
SUBJECT: Lease Agreement Renewal: WIC Use of Buckley Hall – Amendment #3 Cost Impact: N/A Fund Source: N/A Timeline: N/A	Agenda Date: April 26, 2016		AB16-063
	Department/Committee/Individual	Created	Reviewed
	Mayor Pat Johnson	X	X
	City Administrator – Dave Schmidt		X
	City Attorney – Phil Olbrechts		X
	City Engineer – Dominic Miller		
	City Clerk – Joanne Starr		
	Finance Dept – Sheila Bazzar		
	Building Official – Mike Deadmond		
	Fire Dept – Chief Predmore		
	Parks & Rec Dept – Ellen Boyd		
	Planning Dept – Kathy Thompson		
	Police Dept – Chief Arsanto		
	Municipal Court – Jessica Cash		
Attachments: Amended Lease Agreement			
<p>SUMMARY STATEMENT: Bi-Annual renewal of the Agreement between the City and WIC for lease of the Buckley Hall. Terms and conditions remain the same with only minor changes to termination clause.</p>			
COMMITTEE REVIEW AND RECOMMENDATION: N/A			
RECOMMENDED ACTION: Motion to Approve Amendment #3 of the Lease Agreement Between the City and WIC for the use of Buckley Hall			
RECORD OF COUNCIL ACTION			
Meeting Date	Action	Vote	

THIRD AMENDMENT TO AGREEMENT

This Third Amendment to Agreement (“Third Amendment”) is made and entered into effective April 30, 2016 (“Effective Date”) between City of Buckley a non-charter optional municipal code city organized under the laws of the State of Washington (“Lessor”) and MultiCare Health System, a Washington not-for-profit corporation (“Lessee”).

RECITALS

WHEREAS, Lessor and Lessee entered into an Agreement between the City of Buckley and MultiCare Health System for use of Buckley Hall dated February 24, 2010 (“Agreement”) for space commonly referred to as Buckley Hall located at 127 N. River Road, Buckley, Washington (“Premises”);

WHEREAS, Lessor and Lessee entered into a First Amendment to Lease Agreement dated May 21, 2012 (“Amendment”) that extended the term of the Agreement and amended other terms;

WHEREAS, Lessor and Lessee entered into a Second Amendment to Agreement dated April 28, 2014 (“Second Amendment”) that extended the term of the Agreement and amended other terms;

WHEREAS, Lessor and Lessee now desire to further amend the Agreement to extend the term and amend certain other terms;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree that as of the Effective Date of this Third Amendment:

1. The following shall be added to Section (3) of the Agreement :

The term of the Agreement shall be extended for a period of one (1) year, commencing on May 1, 2016 and expiring on April 30, 2017 (“Third Extended Term”), subject to both parties right to terminate the Agreement early by providing the other party ninety (90) days prior written notice and to the automatic termination right provided to Lessee if the State of Washington should discontinue financial aid to the WIC program In the event this Agreement is terminated, Landlord and Tenant shall not enter into another lease or agreement together for the Premises or a period of one (1) year.

As of the Effective Date, Lessee shall occupy the Buckley Hall portion of the Premises on the first Wednesday of each month for a full day and on the second Wednesday of each month from approximately 8:30 a.m. to 12:30 p.m., except that Lessee shall occupy its storage area at all times during the term of this agreement The particular Wednesdays that Lessee occupies Buckley Hall for holding a WIC clinic to be mutually agreed upon by the parties within ten (10) days prior to use.

2. The paragraph in Section 26 Notices shall be deleted and replaced with the following:

All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier, (ii) three (3) days after being sent by registered or certified mail to Landlord or Tenant, as the case may be, at the Notice Addresses set forth below (iii) via e-mail with an original sent by first class mail if the recipient has designated one or more e-mail addresses in this Lease or (iv) upon confirmed transmission by facsimile to such persons at the facsimile numbers

set forth below or such other addresses/facsimile numbers as may from time to time be designated by such parties in writing.

Lessor:

City of Buckley
Attn: Mayor
127 N. River Road
Buckley, WA 98321

Lessee:

MultiCare Health System
Attn: CBRE/ Property Management
1102 Broadway, Suite 510
Tacoma, WA 98405

With Copies to:

MultiCare Health System
Attn: General Counsel
315 Martin Luther King Jr. Way
MS: 222J-1-LEG
PO Box 5299
Tacoma, WA 98415-0299
Legal.Services@multicare.org
Contractsupport@multicare.org

3. **Counterparts.** This Third Amendment may be executed in several counterparts, as long as each party to this Third Amendment executes at least one such counterpart. Each of such counterparts shall be an original but all of the counterparts, when taken together, shall constitute one and the same instrument and shall become effective when each party hereto has executed at least one such counterpart. The parties hereto agree that an electronic or facsimile signature shall constitute an original signature hereunder.
4. Every other term of the Agreement, the First Amendment and the Second Amendment are affirmed and remain in full force and effect.

(signatures begin on the following page)

IN WITNESS WHEREOF, the parties have executed this Third Amendment to the Agreement as of the effective date.

Lessor:

City of Buckley

By: Pat Johnson

Its: Mayor

Lessor Acknowledgement:

STATE OF WASHINGTON)

) ss.

COUNTY OF PIERCE)

On this _____ day of _____, 2016, personally appeared before me, **Pat Johnson** known to me as a **Mayor of the City of Buckley** who executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

GIVEN under my hand and official seal hereto affixed the day and year in the certificate above written.

Signature_____

Print Name_____

NOTARY PUBLIC in and for the State of
Washington residing in _____.

My commission expires _____

D. CONSENT AGENDA

City Council Minutes
April 12, 2016

Mayor Johnson called the regularly scheduled meeting to order at 7:00 PM.

Upon roll call the following members were present: Sundstrom, Rose, Leggett, Tremblay, Kyllonen and Burkett. Council member Boyle Barrett arrived at 7:46 PM. Also in attendance were City Administrator Schmidt, Police Chief Arsanto and City Clerk Starr.

Mayor Johnson administered the Oath of Office to new Police Officer, Collin Burnham.

Mayor Johnson asked if there were any additions, deletions or changes to the agenda. City Administrator Schmidt said he would like to add an agenda item #9 which is a Scope of Work for AHBL Land Use Planning and Landscape Architecture Services. **Council member Tremblay moved to accept the Agenda as amended. Council member Rose seconded the motion. Motion carried.**

CITIZEN PARTICIPATION

There was no citizen participation.

STAFF REPORTS

City Administrator Schmidt stated that there is a flurry of activity going on in town. The Stream Crossing Project is still ongoing. Regarding the North Parking Lot Project, they've moved on site and they are currently installing a new sewer line and making side sewer connections for downtown businesses. Also, the Skate Park Project is making good progress, and it looks like they may pour next week, and the Realignment Project is on the tonight's agenda.

City Clerk Starr reminded Council members who have not already done so to go to the Attorney General's website and complete the Open Government Training and provide her with the Certificate of Completion. This training is required to be completed 90 days from the date of Oath of Office, and today is the 90th day.

MAIN AGENDA

Public Hearing: Assumption of Rights, Powers, Functions & Obligations of TBD:
Mayor Johnson recessed the City Council meeting and opened the Public Hearing at 7:10 PM.

There were no speakers.

Mayor Johnson closed the Public Hearing and reconvened the City Council meeting at 7:11 PM.

ORD No. 10-16: Assuming Rights, Powers, Functions & Obligations of TBD:
Council member Tremblay moved to approve Ordinance No. 10-16 Authorizing City Assumption of the Rights, Powers, Functions & Obligations of the TBD. Council member Burkett seconded the motion. Motion carried 6/0.

ORD No. 11 -16: Astound Broadband, LLC Franchise Agreement:
Council member Kyllonen moved to approve Ordinance No. 11-16 establishing a new Franchise Agreement between Astound Broadband, LLC, and the City of Buckley and establishing an effective date. Council member Tremblay seconded the motion. Motion carried 5/1.

Agreement – TSA Between Buckley & Carbonado for WWTP Lab Services:
Council member Rose moved to approve the Technical Services Agreement between Buckley & Carbonado for WWTP Lab Services. Council member Burkett seconded the motion. Motion carried.

Bid Award – Phase II of the SR410 Realignment Project:
Council member Sundstrom moved to approve Bid Award of Phase II of the SR410/SR165/RyanRd/112th St.E Realignment Project to Johansen Excavating for a Total of \$1,815,421.05 subject to WSDOT and TIB approval. Council member Tremblay seconded the motion. Motion carried.

Temporary Waiver of Trailer Regulations:
Council member Rose moved to authorize a temporary waiver from the prohibition identified in BMC 11.48.030(1) for the period of 10 PM Friday, April 15 to noon Saturday, April 23 subject to the conditions that the RV cannot block the public right-of-way and the individual must obtain approval from the Police Chief before parking the RV. Council member Kyllonen seconded the motion. Motion carried.

Zoo and Trek Authority Board:
Council member Tremblay moved to nominate Justin Evans of the City of Bonney Lake for Position Two of the Zoo and Trek Authority Board. Council member Burkett seconded the motion. Motion carried.

Lease Agreement Termination – Del’s Farm & Feed:
Council member Rose moved to authorize the Mayor and City Administrator to negotiate with Tractor Supply for early termination of the Lease Agreement for the City building at 117 N. River Ave. without penalty. Council member Leggett seconded the motion. Motion carried.

Scope of Work – Land Use Planning and Landscape Architecture Services- AHBL:
Council member Sundstrom moved to approve the Consultant Proposal for Land Use Planning and Landscape Architecture Services with AHBL for the RCO grants, in the estimated amount of \$16,940. Council member Leggett seconded the motion. Motion carried.

CONSENT AGENDA

Council Member Tremblay moved to approve the Consent Agenda as presented. Council member Rose seconded to motion. Motion carried.

Approve Minutes of March 22, 2016 City Council Meeting.
Approve Minutes of April 5, 2016 City Council Study Session

Claim check numbers 54325 through 54434, in the amount of \$260,492.74, for the period of March 23, 2016 through April 12, 2016; Payroll check numbers 35448 through 35490 in the amount of \$123,920.11 and EFTs in the amount of \$217,849.90 for a total payroll of \$341,770.01 for the month of March 2016; and Treasurer check numbers 11861 through 11867 in the amount of \$1,566.20 and EFTs in the amount of \$18,245.60 and voided checks in the amount of (\$316.01) for a total amount of \$19,495.79 for the month of March 2016 are hereby approved and ordered paid this 12th day of April, 2016.

COMMITTEE REPORTS

Mayor's Report: Mayor Johnson stated that she attended the Carbon River Forum meeting this afternoon in Wilkeson. They discussed the continued work on purchase and sale of land to extend the National Park, and what has been happening in the Park. Also, there is a meeting in Enumclaw this Friday regarding the foot bridge across the White River. It has been determined that the cost of a new bridge and the cost of getting the bridge from Puyallup are basically the same; however, bridge engineers estimate the life of a steel truss bridge to be 50 years and the life of a new concrete bridge to be 70 years. Also, the steel bridge will need to be painted every 20 years at a cost of about \$1 Million, and that needs to be considered. The Foothills Rails to Trails Coalition has offered \$50K towards our part of the match for an RCO grant as long as the money stays in Pierce County and Buckley. Mayor Johnson stated that she will be attending Congressman Reichert's Mayors Meeting in Eastern Washington; it will be held the Monday prior to our next Council meeting.

Administration, Finance & Public Safety: Council member Rose stated they didn't have a meeting due to lack of a quorum. Their next meeting will be next Tuesday.

Transportation & Utilities: Council member Tremblay stated that their next meeting will be April 19th. Also, he recently attended a presentation by Forterra on urban growth

and he strongly encourages everyone to attend the next time; it is important that we be there.

Community Services: Council member Rose stated they will meet at 4 PM this Thursday.

Council Member Comments & Good of the Order:

Council member Sundstrom expressed his opinions regarding the City's recent change in banking service providers.

Council member Kyllonen read her formal resignation to the Council. She resigned effective immediately.

Council member Rose moved to adjourn. Council member Kyllonen seconded the motion. Motion carried.

With nothing further the meeting was adjourned at 8:00 PM.

Mayor

City Administrator

E. COMMITTEE REPORTS



Proclamation Relay For Life of Buckley

American Cancer Society Relay For Life® Proclamation for Buckley.

WHEREAS, Relay For Life is the signature activity of the American Cancer Society and celebrates cancer survivors and caregivers, remembers loved ones lost to the disease, and empowers individuals and communities to fight back against cancer; and

WHEREAS, money raised during Relay For Life of Buckley supports the American Cancer Society's mission of saving lives and creating a world with less cancer— by helping people stay well, by helping people get well, by finding cures for cancer and by fighting back; and

WHEREAS, Relay For Life since 1946 has helped fund more than \$4 billion in cancer research through money raised in communities across the United States;

NOW, THEREFORE, BE IT RESOLVED, that I, Pat Johnson, Mayor of the City of Buckley, do hereby proclaim May 13, 2016-May 14, 2016 as,

"RELAY FOR LIFE DAYS"

In Buckley and encourage citizens to help finish the fight against cancer by participating in the Relay For Life event at Glacier Middle School on May 13, 2016-May 14, 2016.

Pat Johnson, Mayor of Buckley

Date



PAINT THE TOWN PURPLE PROCLAMATION RELAY FOR LIFE OF BUCKLEY

American Cancer Society Paint the Town Purple Proclamation for Buckley.
WHEREAS, Paint the Town Purple is an activity of the American Cancer Society that promotes cancer awareness, gives individuals and communities an opportunity to fight back against the cancer, we will be decorating the trees, light poles and encouraging businesses to go purple in support, and

WHEREAS, money raised during Paint the Town Purple of Buckley supports the American Cancer Society's mission of saving lives and creating a world with less cancer and more birthdays – by helping people stay well, by helping people get well, by finding cures for cancer and by fighting back; and

WHEREAS, the American Cancer Society since 1946 has funded more than \$4 billion in cancer research through money raised in communities across the United States;

NOW, THEREFORE, BE IT RESOLVED, that I, Pat Johnson, Mayor of the City of Buckley, do hereby proclaim April 15, 2016 – May 16, 2016 as,

"PAINT THE TOWN PURPLE DAYS"

In Buckley and encourage citizens to help finish the fight against cancer by participating in the PAINT THE TOWN PURPLE activities May 01, 2016 – May 16, 2016.

Pat Johnson, Mayor of Buckley

Date