



MARYSVILLE

WASHINGTON

**CITY COUNCIL REGULAR MEETING
MONDAY, FEBRUARY 12, 2024 – 7:00 PM
501 DELTA AVENUE
MARYSVILLE, WA 98270**

AGENDA

To listen to the meeting without providing public comment:

Join Zoom Meeting

<https://us06web.zoom.us/j/86246307568>

Or

Dial toll-free US: 888 475 4499

Meeting ID: 862 4630 7568

Call to Order

Invocation

Pledge of Allegiance

Roll Call

Approval of the Agenda

Presentations

- A. Swearing-in of Police Officer Ellie Mosalsky
[Oath Police Officer Ellie Mosalsky.docx](#)
- B. Proclamation Declaring Feb. 14, 2024, as Claire Michal and Gianna Frank Day in Marysville
[PROCLAMATION Claire Michal Gianna Frank Day 2024.pdf](#)

Public Comment

Approval of Minutes *(Written Comment Only Accepted from Audience)*

- 1. January 22, 2024 City Council Meeting Minutes
[CC 01222024.docx](#)

Consent

2. January 24, 2024 Claims in the Amount of \$607,050.16 Paid by EFT Transactions and Check Numbers 167632 through 167725 with Check Numbers 163290 and 167500 Voided
[012424.rtf](#)
3. January 25, 2024 Payroll in the Amount of \$1,884,125.41 Paid by EFT Transaction and Check Numbers 35144 through 35156
4. January 31, 2024 Claims in the Amount of \$2,244,164.94 Paid by EFT Transactions and Check Numbers 167726 through 167841 with Check Number 167653 Voided
[013124.rtf](#)
5. Project Acceptance - 2023 Pavement Preservation Project
Recommended Motion: I move to authorize the Mayor to accept the 2023 Pavement Preservation project, starting the 60-day lien filing period for project closeout.
[Notice of Physical Completion.pdf](#)
[TBD Map 2023.pdf](#)
6. Transportation Improvement Board (TIB) Grant Agreement for 156th St. NE Corridor Improvement Project, Smokey Pt. Blvd. to Hayho Creek.
Recommended Motion: I move to authorize the Mayor to sign and execute the Fuel Tax Grant Agreement and Project Funding Status Form for TIB grant funding of the 156th St. NE Corridor Improvement Project.
[Grant Agreement - Marysville - 156th Street NE.pdf](#)
[Funding Status Form - Marysville - 156th Street NE_rev013024.pdf](#)
7. Professional Services Agreement with Consor North America, Inc. for Construction Management Services for the State Ave NHS Project.
Recommended Motion: I move to authorize the Mayor to sign and execute the Professional Services Agreement with Consor North America, Inc. to provide Construction Management Services for the State Avenue NHS Project in the amount of \$214,275.98.
[R2107_WSDOT PSA_Consor.pdf](#)
8. Professional Services Agreement with Consor North America, Inc. for Construction Management Services for the 116th Street NHS Project
Recommended Motion: I move to authorize the Mayor to sign and execute the Professional Services Agreement with Consor North America, Inc. to provide Construction Management Services for the 116th Street NHS Project in the amount of \$172,624.72.
[R2108_WSDOT PSA_Consor.pdf](#)
9. Marysville Jail Medical Services Contract
Recommended Motion: I move to authorize the Mayor to sign and execute the Jail Medical Services contract.
[Proposed Contract.pdf](#)
10. City of Marysville Utility Easement for CP Logistics Marysville, LLC.
Recommended Motion: I move to authorize the Mayor to sign and execute the City of Marysville Utility Easement between CP Logistics Marysville, LLC and the City of

Marysville.

[COM Utility Easement CP Logistics.pdf](#)

11. Water Quality Stormwater Capacity Grant Agreement with the Department of Ecology
Recommended Motion: I move to authorize the Mayor to sign and execute Department of Ecology Grant Agreement WQSWCAP-2325-MaryPW-0005.
[Department of Ecology Agreement No. WQSWCAP-2325-MaryPW-0005.pdf](#)
12. Agreement with Veolia Water Technologies and Solutions for the Stillaguamish Treatment Plant Membrane Replacement & LRV Upgrade Project
Recommended Motion: I move to authorize the Mayor to sign and execute the agreement for the Stillaguamish Treatment Plant Membrane Replacement and LRV Upgrade project with Veolia Water Technologies and Solutions.
[Marysville WA 052050 REV-3 240 x ZW500Ds 350ft² Jan 25 2024.pdf](#)
[Sole Source Justification - Fully Executed.pdf](#)
[Veolia Sole Source - Marysville.pdf](#)
13. February 7, 2024 Claims in the Amount of \$1,184,469.89 Paid by EFT Transactions and Check Numbers 167842 through 168023
[020724.rtf](#)

Review Bids

14. Contract Award - MCC Perimeter Gate and Access Control Project *
Recommended Motion: I move to authorize the Mayor to sign and execute the MCC Perimeter Gate and Access Control contract with Automatic Door & Gate Co. in the amount of \$235,210.00.
[PW5 - Perimeter Gates Contract.pdf](#)
15. Contract Award - Lake Goodwin Standpipe Replacement Project
Recommended Motion: I move to authorize the Mayor to award and execute the contract with Reece Construction Company for the Lake Goodwin Standpipe Replacement Project in the amount of \$238,832.00 and approve a \$23,883.00 management reserve for a total allocation of \$262,715.00.
[W2104_Public Works Contract_Reece.pdf](#)
[W2104_Bid Tab.pdf](#)
16. Contract Award - State Ave NHS Project
Recommended Motion: I move to authorize the Mayor to award and execute the State NHS Project contract to Reece Construction Company in the amount of \$1,311,806.00 and approve a management reserve of \$131,180.00 for a total allocation of \$1,442,986.00.
[R2107_Certified Bid Tab.pdf](#)
[R2107_Contract Document.pdf](#)
17. Contract Award - SR 531/172nd St NE Shoulder Improvements
Recommended Motion: I move to authorize the Mayor to award and execute the contract for the SR 531/172nd St NE Shoulder Improvements project to Reece Construction Company in the amount of \$180,800.00 and to approve a management

reserve of \$18,080.00 for a total allocation of \$198,880.00.

[Vicinity Map.pdf](#)

[Certified Bid Tabulation.pdf](#)

[SR 531-172nd St NE Shoulder Improvements.pdf](#)

18. Contract Award – 116th St NHS Project
Recommended Motion: I move to authorize the Mayor to award and execute the 116th St NHS contract with Reece Construction Company in the amount of \$764,467.00, and approve a management reserve of \$114,670.05 for a total allocation of \$879,137.05.
[116th NHS - Bid Tab.pdf](#)
[116th NHS Executed by Contractor.pdf](#)

Public Hearings

New Business

19. An **Ordinance** of the City Council of the City of Marysville, Washington, authorizing the Mayor to accept certain donations.
Recommended Motion: I move to adopt Ordinance No. _____.
[Ordinance - Donations.pdf](#)
20. An **Ordinance** of the City Council of the City of Marysville, Washington, designating the Mayor to act in the event of an emergency in regard to competitive bidding requirements.
Recommended Motion: I move to adopt Ordinance No. _____.
[Ordinance - Waiving Competitive Bidding due to Emergency.pdf](#)
21. An **Ordinance** of the City of Marysville amending the 2023-2024 Biennial Budget.
Recommended Motion: I move to adopt Ordinance No. _____.
[02_05_24_BA_Ordinance.docx](#)
[Feb 2024 Budget Amendment Memo.docx](#)
22. Energy Efficiency and Conservation Block Grant (EECBG) Program Equipment Rebate Voucher *
Recommended Motion: I move to authorize the Mayor to sign and execute the Equipment Rebate Terms and Conditions to receive a voucher in the amount of \$124,740.
[Equipment Rebate Terms and Conditions.pdf](#)
23. Revised Public Defense Conflict Counsel PSA - Chris Griffen *
Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Chris Griffen.
[Conflict Counsel PSA_CGriffen_REVFinal_2024.pdf](#)
24. Revised Public Defense Council PSA - Jamie Kim *
Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Jamie Kim.
[Conflict_Counsel_PSA_JKim_REVFinal_2024.pdf](#)

25. Revised Public Defense Counsel PSA - Meredith Hutchison *
Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Meredith Hutchison.
[Conflict_Counsel_PSA_MHutchison_REVFinal_2024.pdf](#)
26. Revised Public Defense Conflict Counsel PSA - Lucas McWethy *
Recommended Motion: I move to authorize the Mayor to sign the professional services agreement for indigent defense services with Lucas McWethy.
[Conflict_Counsel_PSA_LMcWethy_Final_2024.pdf](#)
27. City of Marysville Non-Exclusive Ingress/Egress and Utility Easement with MAINVUE WA, LLC.
Recommended Motion: I move to authorize the Mayor to sign and execute the City of Marysville Non-Exclusive Ingress/Egress and Utility Easement with MAINVUE WA, LLC.
[Easement Map Mainvue Easement.pdf](#)
28. Everett Gospel Mission Agreement - MESH
Recommended Motion: I move to authorize the Mayor to sign and execute the amended Everett Gospel Mission Agreement for MESH housing in Marysville.
[Everett Gospel Mission Agreement - MESH 1-11-24 \(1\).pdf](#)

Legal

Mayor's Business

29. Appointment of Marysville Representatives for SNO911 Caucus
Reappoint myself, Mayor Nehring, and Assistant Chief Lawless.
[Caucus Letter to Member Agencies-April 2024.pdf](#)
30. Marysville Civil Service Commission Reappointment: Brad Thompson
Mayor Nehring recommends the reappointment of Brad Thompson to the Civil Service Commission, serving until March 10, 2030.
[Brad Thompson - Civil Service Commission.doc](#)

Staff Business

Call on Councilmembers and Committee Reports

Adjournment/Recess

Executive Session

- A. *Litigation*
- B. *Personnel*
- C. *Real Estate*

Reconvene

Adjournment

Special Accommodations: The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's office at (360) 363-8000 or 1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two business days prior to the meeting date if any special accommodations are needed for this meeting.

*** These items have been added or revised from the materials previously distributed in the packets for the February 5, 2024 Work Session.**



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Confidential Administrative Assistant Margaret Vanderwalker, Police

ITEM TYPE: Appointment

AGENDA SECTION: **Presentations**

SUBJECT: Swearing-in of Police Officer Ellie Mosalsky

SUGGESTED ACTION:

SUMMARY: This is the Oath of Office for Police Officer Ellie Mosalsky. This is for swearing her into service with the Marysville Police Department.

ATTACHMENTS:
[Oath Police Officer Ellie Mosalsky.docx](#)



MARYSVILLE POLICE DEPARTMENT
ERIK SCAIRPON, CHIEF OF POLICE



Police Officer
OATH OF OFFICE

MARYSVILLE POLICE DEPARTMENT

I, Ellie Mosal sky, do sol emnl y swear that I wil l support the Constitution of the United States of America; the Laws of the State of Washington; and the ordinances of the City of Marysvill e; and that I will faithfully, honestly, and impartial ly perform the duties of Police Officer for the City of Marysvil l e, according to the best of my abil ity, so hel p me God.

Signed this 12th day of February, 2024

Ellie Mosal sky
Police Officer

Erik Scairpon
Chief of Police

Jon Nehring
Mayor

Tina Brock
City Clerk



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Communications Officer Connie Mennie, Executive

ITEM TYPE: Proclamation

AGENDA SECTION: **Presentations**

SUBJECT: Proclamation Declaring Feb. 14, 2024, as Claire Michal and Gianna Frank Day in Marysville

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:
[PROCLAMATION Claire Michal Gianna Frank Day 2024.pdf](#)



PROCLAMATION

DECLARING FEB. 14, 2024, AS CLAIRE MICHAL AND GIANNA FRANK DAY IN MARYSVILLE

WHEREAS, the United States Senate Youth Program is a 62-year partnership between the U.S. Senate and the Hearst Foundation during which student delegates meet with their U.S. senators, a Supreme Court Justice, and leaders of cabinet agencies; and

WHEREAS, the mission of the Senate Youth Program is to instill students with "a profound knowledge of the American political process and a lifelong commitment to public service;" and Washington delegates are chosen through a competitive process administered on behalf of the state Office of the Superintendent of Public Instruction; and

WHEREAS, two delegates from each state are selected from top student leaders who compete in a rigorous selection process that includes multiple interviews, providing testimony on a bill, and writing an essay on a public affairs topic they are given that day. Students also provide a letter of recommendation and submit their academic record; and

WHEREAS, for the first time in the national program's 62-year history, two students from the same school district represented their state in back-to-back years, namely Claire Michal of Marysville Getchell High School in 2023 and Gianna Frank of Marysville Pilchuck High School in 2024; and

WHEREAS, Claire is an MGHS senior this year, serving as ASB Vice President, National Honor Society Vice President, captain of Girls Varsity Basketball, President of the Future Voters Club and a delegate to the Girls State program; and

WHEREAS, Gianna is an MPHS senior this year, serving as President of the ASB, Black Student Union, the school band and the National Honor Society, and also excels as a track athlete; and

NOW, THEREFORE I, JON NEHRING, MAYOR, on behalf of the City Council and our community, do hereby proclaim Feb. 14, 2024, as

CLAIRE MICHAL AND GIANNA FRANK DAY

in the City of Marysville. The Marysville community is immensely proud of these outstanding young women who represent the Marysville School District and our city with honor and distinction.

Under my hand and seal this twelfth day of February, 2024.

THE CITY OF MARYSVILLE

Jon Nehring, Mayor



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Chari Taber, City Clerk

ITEM TYPE: Minutes

AGENDA SECTION: **Approval of Minutes**

SUBJECT: January 22, 2024 City Council Meeting Minutes

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:
[CC 01222024.docx](#)

City Council



501 Delta Ave
Marysville, WA 98270

**Regular Meeting
January 22, 2024**

Call to Order

Mayor Nehring called the meeting to order at 7:00 p.m.

Invocation

Dan Hazen gave the invocation.

Pledge of Allegiance

Roll Call

Present:

Mayor: Jon Nehring

Council: Councilmember Peter Condyles, Councilmember Mark James, Councilmember Tom King, Councilmember Michael Stevens, Councilmember Kelly Richards, Councilmember Steve Muller, Council President Kamille Norton

Staff: CAO Gloria Hirashima, City Attorney Jon Walker, Parks Director Tara Mizell, Police Chief Erik Scairpon, Finance Director Jennifer Ferrer-Santa Ines, Public Works Director Jeff Laycock, Community Development Director Haylie Miller, Communications Specialist Bridgette Larsen, IT Director Stephen Doherty, Human Resources Director Megan Hodgson, Economic Development Director Thomas Boydell, Fire Chief Vander Pol, Information Systems Administrator Chris Brown, Community Information Officer Connie Mennie (via Zoom), IT Services Supervisor Jeremiah Nyman (via Zoom)

Approval of the Agenda

Motion to approve the agenda moved by Councilmember Richards seconded by Council President Norton.

AYES: ALL

Presentations

A. Oath of Office for Councilmembers

Councilmembers Steve Muller and Kelly Richards received the Oath of Office.

B. Swearing-in of Police Corporal Joe Belleme

Oath Police Corporal Joe Belleme.docx

Chief Scairpon introduced Corporal Joe Belleme. He was sworn in by Mayor Nehring.

C. Swearing-in of Police Corporal David McKenna

Oath Police Corporal David McKenna.docx

Chief Scairpon introduced Corporal David McKenna. He was sworn in by Mayor Nehring.

D. Swearing-in of Police Corporal Nick Brevig

Oath Police Corporal Nick Brevig.docx

Chief Scairpon introduced Corporal Nick Brevig. He was sworn in by Mayor Nehring.

E. Swearing-in of Police Corporal Keegan Stuver

Oath Police Corporal Keegan Stuver.docx

Chief Scairpon introduced Corporal Keegan Stuver. He was sworn in by Mayor Nehring.

F. Swearing-in of Police Officer Aly Mustain

Oath Police Officer Aly Mustain.docx

Chief Scairpon introduced Police Officer Aly Mustain. She was sworn in by Mayor Nehring.

G. Mayor's Volunteer of the Month

Ben Campbell was recognized as the January 2024 Volunteer of the Month for his volunteer work on the Litter League, Happy Parks Happy Hearts, Marysville Community Food Bank, Christmas Toy Store for those in need.

Introduction of Golf Professional

Golf Pro Brandon Dell introduced himself. Mayor and the Council welcomed him.

Public Comment

Approval of Minutes

1. [November 27, 2023 City Council Meeting Minutes](#)

[CC 11272023.docx](#)

Motion to approve the November 27, 2023 City Council Meeting Minutes moved by Councilmember Stevens seconded by Councilmember King.

AYES: ALL

2. [December 4, 2023 City Council Work Session Minutes](#)

[WS 12042023.docx](#)

Motion to approve the December 4, 2023 City Council Work Session Minutes moved by Council President Norton seconded by Councilmember James.

AYES: ALL

3. [December 11, 2023 City Council Meeting Minutes](#)

[CC 12112023.docx](#)

Motion to approve the December 11, 2023 City Council Meeting Minutes moved by Councilmember King seconded by Councilmember Condyles.

AYES: ALL

4. [January 2, 2024 City Council Work Session Minutes](#)

[WS 01022024.docx](#)

Motion to approve the January 2, 2024 City Council Work Session Minutes moved by Councilmember Condyles seconded by Councilmember James.

VOTE: Motion carried 5 - 0

AYES: Councilmember Condyles, Councilmember James, Councilmember King, Councilmember Stevens, Council President Norton

ABSTAIN: Councilmember Richards, Councilmember Muller

Consent

5. December 31, 2023 (A) Claims in the Amount of \$523,077.53 Paid by EFT Transactions and Check Numbers 167250 through 167305 with Check Number 166705 Voided

[123123A.rtf](#)

6. December 31, 2023 (B) Claims in the Amount of \$8,039,941.08 Paid by EFT Transactions and Check Numbers 167345 through 167437

[123123B.xls](#)

7. January 3, 2024 Claims in the Amount of \$28,883.98 Paid by EFT Transactions and Check Numbers 167306 through 167314

[010324.rtf](#)

8. January 10, 2024 Payroll in the Amount of \$1,889,761.01 Paid by EFT Transactions and Check Numbers 35134 through 35141
9. January 10, 2024 Claims in the Amount of \$459,815.86 Paid by EFT Transactions and Check Numbers 167315 through 167344

[011024.rtf](#)

10. January 17, 2024 Claims in the Amount of \$366,583.24 Paid by EFT Transactions and Check Numbers 167438 through 167505

[011724.rtf](#)

Motion to approve Consent Agenda items 5, 6, 7, 8, 9, and 10 moved by Councilmember Muller seconded by Council President Norton.

AYES: ALL

Review Bids

Public Hearings

New Business

11. [Simple Possession Advocacy and Representation \(SPAR\) Program Funding Agreement](#)

[updated_City of Marysville SPAR Agreement GRT24062.pdf](#)

CAO Hirashima reviewed this item. She recognized Kari Chennault who submitted for this.

Motion to authorize the Mayor to sign and execute the SPAR Program Funding Agreement in the amount of \$175,000 moved by Councilmember James seconded by Councilmember Richards.

AYES: ALL

12. Software Subscription Agreement Extension – Aktivov LLC

[Aktivov - Annual Software Subscription 2024.pdf](#)

[Aakavs \(Aktivov\) Original Agreement.pdf](#)

[Aktivov Original Software Subscription Agreement.pdf](#)

[Supplemental Documentation \(2\).pdf](#)

Director Laycock reviewed this item.

Motion to authorize the Mayor to execute the attached Extension of Agreement for the Aktivov Software Subscription that addresses annual subscription fee adjustments moved by Councilmember Stevens seconded by Councilmember King.

AYES: ALL

13. An Emergency Resolution for Opera House Water Damage

[Emergency Declaration.pdf](#)

[Emergency Resolution - Opera House Sprinkler Water Damage.docx](#)

Director Laycock reviewed this Resolution related to the fire sprinkler flooding at the Opera House.

Motion to adopt Resolution No. 2550 moved by Council President Norton seconded by Councilmember Condyles.

AYES: ALL

14. Interlocal Agreement for Equipment and Repair Services with Snohomish County

[Interlocal SnoCo Fleet Services.pdf](#)

Director Laycock reviewed the ILA with Snohomish County to utilized fleet services. He pointed out a needed change to item 9 which should reflect that the City is self insured.

Motion to authorize the Mayor to sign and execute the Interlocal Agreement for Equipment and Repair Services with Snohomish County with the change reflecting the insurance provision as recommended by the City Attorney moved by Council President Norton seconded by Councilmember Muller.

AYES: ALL

15. Memorandum of Understanding between the Teamsters Local 763 and the City of Marysville.

[2024 Teamsters Pension MOU.pdf](#)

Director Hodgson reviewed this item.

Motion to authorize the Mayor to sign and execute the Memorandum of Understanding with Teamsters Local 763 moved by Councilmember Stevens seconded by Councilmember Muller.

AYES: ALL

16. [Teamsters Local 763 Settlement Agreement Extension](#)

[PD_Records - Settlement Agreement Extension 4.30.24.pdf](#)

Director Hodgson reviewed this item.

Motion to authorize the Mayor to sign and execute the Teamsters Settlement Agreement Extension moved by Councilmember Muller seconded by Councilmember Stevens.

AYES: ALL

17. [Supplemental Agreement No. 4 with Perteet for Riverwalk Environmental Services](#)

[Supp No. 4 - Perteet - Maryville Riverwalk.pdf](#)

Economic Development Director Boydell reviewed this item for Riverwalk Environmental Services.

Motion to authorize the Mayor to sign and execute the supplemental agreement with Perteet moved by Councilmember King seconded by Councilmember James.

AYES: ALL

18. [Microsoft Enterprise Agreement Year-2 Subscription Payment](#)

[SHI Quote 24165484.pdf](#)

[REQ SHI 01 11-24 2023 - M365 Renewal.pdf](#)

[Adobe Physical Signature.pdf](#)

Information Services Director Stephen Doherty reviewed the renewal agreement for the Microsoft Enterprise software subscription.

Motion to authorize the Mayor to sign and execute all necessary documentation in regard to 2024 licensing for the city's Microsoft Enterprise Agreement in the amount of \$186,711.82 moved by Council President Norton seconded by Councilmember Muller.

AYES: ALL

Legal

Mayor's Business

Mayor Nehring had the following comments:

- Thanks to staff and contractors for their quick response to the Opera House flooding.
- He and others will be heading down to Olympia tomorrow morning for 11 legislative meetings.
- He will be delivering the State of the City on Friday and next Wednesday.

Staff Business

None

Call on Councilmembers and Committee Reports

Council Committee recommendations was distributed to Council.

Councilmember Condyles:

- Congratulations to Councilmembers Richards and Muller on being sworn in tonight. Also, congratulations to the officers and Ben.
- Thanks to LINC northwest and all the other volunteers for operating the cold weather shelter during the extended cold snap.

Councilmember James:

- Congratulations to all the new corporals, the new police officer and the volunteer of the month. Welcome to new golf pro Brandon.
- He attended the Governor's Smart Community award. It was nice to see that.
- He was able to take a tour of the Gravitix facility.
- Snohomish County Cities held their elections. Mayor Nehring and two councilmembers were elected to serve in different capacities.
- He and some others attended a mock trial at 10th Street Middle School.
- Thanks to all those involved in getting the Opera House cleaned and ready.

Councilmember King:

- Congratulations to the new corporals, police officer, golf pro, Councilmembers Richards and Muller, and the volunteer of the month.
- The judging and crowning of Strawberry Festival royalty will take place in February at the Opera House.
- At the last Fire Board it was reported that the new ladder truck should be here in March.

- The Public Works Committee met and discussed new weekly yard waste service, a new residential garbage truck, and Clean Sweep. They also got updates on several projects and the survey that went out to the public.

Councilmember Stevens:

- Congratulations to fellow councilmembers and police officers that were sworn in.
- He noted that the pump track has been very active even in the bad weather.
- Staff is having a bowling tournament this week. He, Councilmembers Norton, and Councilmember Condyles will be making up a team.

Councilmember Richards:

- Congratulations to Mayor Nehring, Council President Norton, and Councilmember Condyles for being elected to Snohomish County Cities offices.
- Congratulations to officers that got promoted and the new officer.
- He reported on a Parks meeting last Wednesday where someone came to discuss bringing a discus golf course to the City. they also talked about some park upgrades.
- His trip to New Orleans to see the Sugar Bowl was a lot of fun.

Councilmember Muller:

- It was good to see promotions and also the lateral hires. He is glad to see they are getting fully staffed.
- Fire Board met and discussed moving forward with replacement of Fire Station 63 and a new diversion program to assess and redirect non-emergency calls.

Council President Norton:

- Congratulations to new corporals and the new police officer. Staffing is looking great.
- Finance Committee met and discussed revenues, expenses, and sales tax numbers.
- The Public Safety Committee met and discussed north end crime and a potential regional approach with tactical response.
- Congratulations to Mayor Nehring and Councilmember Condyles.
- She is looking forward to Olympia.

Council Committee Recommendations

It was noted that the alternate to Snohomish County Tomorrow would also serve as the alternate for Affordable Housing.

Motion to approve the Council Committee recommendations as presented by Council President Norton with the change as discussed moved by Councilmember James seconded by Councilmember Muller.

AYES: ALL

Election of Council President

Council President Norton nominated Councilmember Stevens as Council President for 2024. Councilmember James seconded the nomination. There were no other nominations.

Motion to approve Councilmember Stevens as Council President moved by Councilmember Richards seconded by Councilmember Condyles.

AYES: ALL

Mayor Nehring thanked Council President Norton for her eight years of service as Council President. He looks forward to working with Councilmember Stevens.

Councilmember Stevens also thanked Councilmember Norton for her service. He is looking forward to serving.

Adjournment

Motion to adjourn the meeting at 8:02 p.m. moved by Councilmember Muller seconded by Councilmember Richards.

YES: ALL

Adjournment

The meeting was adjourned at 8:02 p.m.

Approved by Council on this _____ day of _____, 2024.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Accounting Technician Shauna Crane, Finance

ITEM TYPE: Claims

AGENDA SECTION: **Consent**

SUBJECT: January 24, 2024 Claims in the Amount of \$607,050.16 Paid by EFT Transactions and Check Numbers 167632 through 167725 with Check Numbers 163290 and 167500 Voided

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:
[012424.rtf](#)

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/24/2024 TO 1/24/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167632	BENEFIT COORDINATORS	JAN 24 PREMIUMS	MEDICAL CLAIMS	185,716.41
167633	REVENUE, DEPT OF	EXCISE TAX DEC 2023	COMMUNITY	0.97
	REVENUE, DEPT OF		CITY CLERK	1.44
	REVENUE, DEPT OF		POLICE ADMINISTRATION	34.40
	REVENUE, DEPT OF		RECREATION SERVICES	38.53
	REVENUE, DEPT OF		GOLF ADMINISTRATION	266.14
	REVENUE, DEPT OF		WATER/SEWER OPERATION	268.89
	REVENUE, DEPT OF		GENERAL FUND	1,577.75
	REVENUE, DEPT OF		GOLF COURSE	5,324.69
	REVENUE, DEPT OF		STORM DRAINAGE	9,154.11
	REVENUE, DEPT OF		SOLID WASTE OPERATIONS	38,084.46
	REVENUE, DEPT OF		UTIL ADMIN	97,091.80
167634	911 SUPPLY INC.	UNIFORM - KINSEY	POLICE PATROL	27.14
	911 SUPPLY INC.		POLICE PATROL	44.33
	911 SUPPLY INC.	UNIFORM - WALTERS	POLICE PATROL	141.18
	911 SUPPLY INC.	MEDAL OF VALOR	POLICE ADMINISTRATION	232.86
	911 SUPPLY INC.	UNIFORM - LAWRENSON	POLICE PATROL	362.68
	911 SUPPLY INC.	MEDALS	POLICE ADMINISTRATION	390.94
	911 SUPPLY INC.	UNIFORM - SMITH	K9 PROGRAM	560.43
167635	ALEXANDER PRINTING	WINDOW ENVELOPES	MUNICIPAL COURTS	140.80
	ALEXANDER PRINTING	BUSINESS CARDS - BLAKE, WARD	POLICE INVESTIGATION	174.03
	ALEXANDER PRINTING	PRINTING SERVICE	POLICE PATROL	266.37
167636	ARAMARK UNIFORM	LINEN SERVICE	OPERA HOUSE	207.50
167637	ASSN OF WA CITIES	AWC MEMBER DUES - 2024	NON-DEPARTMENTAL	57,276.00
167638	BADGE FRAME, INC.	WALL OF HONOR	GENERAL FUND	-329.41
	BADGE FRAME, INC.		POLICE ADMINISTRATION	3,833.72
167639	BAXTER, ROBYN	UTILITY REFUND	GARBAGE	32.03
167640	BILLING DOCUMENT SPE	BILL PRINTING SERVICE	UTILITY BILLING	1,877.43
	BILLING DOCUMENT SPE		UTILITY BILLING	2,320.57
167641	BIO CLEAN, INC	BIO CLEAN UP	DETENTION & CORRECTION	464.95
167642	BLEACHERS GRILL	FOOD FOR SENIOR LUNCH	COMMUNITY EVENTS	437.60
167643	BLUE FLAME HEATING	REFUND - MECHANICAL PERMIT	NON-BUS LICENSES AND	95.90
167644	BOB BARKER COMPANY	JAIL SUPPLIES	DETENTION & CORRECTION	104.70
	BOB BARKER COMPANY		DETENTION & CORRECTION	268.14
167645	BRENNAN HEATING	REFUND - MECHANICAL PERMIT	NON-BUS LICENSES AND	95.90
167646	BURTIS, MICHAEL	INMATE MEDICATION REIMBURSEMENT	DETENTION & CORRECTION	41.94
167647	CAGE, ETHEL ER	UTILITY REFUND	WATER/SEWER OPERATION	180.06
167648	CENTURY COMMUNITIES	CREDIT CARD CONVENIENCE FEE REFUND	COMMUNITY DEVELOPMENT	54.25
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	59.10
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	59.10
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	59.10
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	59.10
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	63.28
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	63.28
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	63.28
	CENTURY COMMUNITIES		COMMUNITY DEVELOPMENT	63.28
167649	CENTURY COMMUNITIES	UTILITY REFUND	GARBAGE	29.36
167650	CENTURY COMMUNITIES	UTILITY REFUND	WATER/SEWER OPERATION	32.86
167651	CITY OF WENATCHEE	UNIFORM - MUSTAIN	POLICE PATROL	1,147.84
167652	CML SECURITY, LLC	RENEWAL - SECURITY MEASURES	DETENTION & CORRECTION	760.50
167653	COMMONSTREET	PROFESSIONAL SERVICE	GMA - STREET	45,309.57
167654	CREATIVE ELECTRIC	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	112.00
167655	CRYSTAL SPRINGS	WATER SERVICE	RECREATION SERVICES	81.73
167656	DENNING, NITA	REFUND - BUSINESS LICENSE	GENL FUND BUS LIC &	65.00
167657	DICKS TOWING	TOWING 2024-197	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-2310	POLICE PATROL	77.22

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/24/2024 TO 1/24/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167658	E&E LUMBER	CAUTION TAPE, STRAPS	PARK & RECREATION FAC	32.33
	E&E LUMBER	HEATER	PARK & RECREATION FAC	34.30
	E&E LUMBER	DOUGLAS FIR PREMIUM	PARK & RECREATION FAC	48.26
	E&E LUMBER	REBAR	GMA-PARKS	83.80
	E&E LUMBER	DRILL IMPACT KIT, SOCKETS	TRANSPORTATION	224.03
	E&E LUMBER	SIDEWALK REPAIR TOOLS	SIDEWALK MAINTENANCE	247.34
	E&E LUMBER	SIDEWALK REPAIR POUR	SIDEWALK MAINTENANCE	252.41
	E&E LUMBER	SCREWS, TREATED WOOD	GMA-PARKS	2,979.25
167659	EVERETT STAMP WORKS	IN-PERSON STAMP	MUNICIPAL COURTS	67.40
167660	EVIDENT, INC.	EVIDENCE SUPPLIES	GENERAL FUND	-8.96
	EVIDENT, INC.		POLICE PATROL	104.30
167661	FITNESS FOR GOOD	REFUND - BUSINESS LICENSE	GENL FUND BUS LIC &	65.00
167662	FOOT WORKS	INSTRUCTOR PAYMENT	RECREATION SERVICES	360.00
167663	FORBES, MARIE & FRAN	UTILITY REFUND	WATER/SEWER OPERATION	121.12
167664	FOREMOST PROMOTIONS	JUNIOR POLICE OFFICER STICKER BADGES	YOUTH SERVICES	962.72
167665	FOX, KIRA	REFUND - SEW TOGETHER	PARKS-RECREATION	60.00
167666	GOETZ, DENA	REFUND - KINDERMUSIK	PARKS-RECREATION	42.00
167667	HARTS SERVICES ELEC	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	168.00
167668	HESTER, HENRY N	UTILITY REFUND	WATER/SEWER OPERATION	573.99
167669	HILDEBRAND, SAMANTHA	REFUND - FATHER-DAUGHTER DANCE	PARKS-RECREATION	35.00
167670	HOME COMFORT ALLIANCE	REFUND - CREDIT CARD FEE	COMMUNITY DEVELOPMENT	11.71
167671	HOME DEPOT USA	CUSTODIAL SUPPLIES	CUSTODIAL SERVICES	250.64
	HOME DEPOT USA		CUSTODIAL SERVICES	425.13
	HOME DEPOT USA		CUSTODIAL SERVICES	673.42
167672	INTL ASSOC CHIEFS	ASSOCIATE SWORN OFFICERS DUE - FRANZEN	POLICE ADMINISTRATION	75.00
	INTL ASSOC CHIEFS	ACTIVE DUES - VERMEULEN	POLICE ADMINISTRATION	190.00
	INTL ASSOC CHIEFS	ASSOCIATE GENERAL DUES - HAZEN	POLICE ADMINISTRATION	190.00
	INTL ASSOC CHIEFS	IACP MEMBERSHIP DUES - LAWLESS	POLICE ADMINISTRATION	190.00
	INTL ASSOC CHIEFS	LIFE ACTIVE MEMBER DUES - LAMOUREUX	POLICE ADMINISTRATION	190.00
167673	JULZ ANIMAL HOUZ	K-9 SUPPLIES	K9 PROGRAM	18.75
167674	LASTING IMPRESSIONS	T-SHIRTS FOR BASKETBALL	RECREATION SERVICES	4,852.96
167675	LEIRA	MEMBERSHIP DUES - COSBY	OFFICE OPERATIONS	50.00
	LEIRA	MEMBERSHIP RENEWAL - BAUGHN	OFFICE OPERATIONS	50.00
167676	LEXISNEXIS RISK	INVESTIGATIVE TOOLS	POLICE INVESTIGATION	196.28
167677	MARYSVILLE ROTARY	ROTARY DUES - SCAIRPON	POLICE ADMINISTRATION	400.00
167678	MARYSVILLE SCHOOL	FACILITY RENTAL - GROVE	RECREATION SERVICES	42.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - KELLOGG MARSH	RECREATION SERVICES	42.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - MARSHALL	RECREATION SERVICES	42.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - ALLEN CREEK	RECREATION SERVICES	49.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - PINWOOD	RECREATION SERVICES	70.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - SUNNYSIDE ELEMENTARY	RECREATION SERVICES	87.50
	MARYSVILLE SCHOOL	FACILITY RENTAL - CEDARCREST	RECREATION SERVICES	117.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - MMS	RECREATION SERVICES	130.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - TOTEM MS	RECREATION SERVICES	156.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - ALLEN CREEK	RECREATION SERVICES	342.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - GROVE	RECREATION SERVICES	342.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - QUIL CEDA TULALIP	RECREATION SERVICES	342.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - MMS	RECREATION SERVICES	450.00
	MARYSVILLE SCHOOL	FACILITY RENTAL - TOTEM MS	RECREATION SERVICES	476.00
167679	MARYSVILLE, CITY OF	9623 55 AVE NE	PARK & RECREATION FAC	77.03
	MARYSVILLE, CITY OF	4822 61 ST NE A & B	AFFORDABLE HOUSING	198.76
	MARYSVILLE, CITY OF	1010 BEACH AVE	PARK & RECREATION FAC	420.31
167680	MPA	MPA MEMBERSHIP - HORNUNG	PROBATION	40.00
167681	NELSON, AMANDA M	UTILITY REFUND	WATER/SEWER OPERATION	273.50

**CITY OF MARYSVILLE
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<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167682	NOTEWORTHY PRODUCT.	DUELING PIANOS	OPERA HOUSE	3,150.00
167683	NW ASSESSMENT SERVICE	WELLNESS VISITS	POLICE ADMINISTRATION	1,925.00
167684	PACIFIC PLUMBING	BACKFLOW PREVENTION	SOURCE OF SUPPLY	501.91
167685	PACIFIC TOPSOILS	LEAVES DUMP	PARK & RECREATION FAC	37.05
167686	PALAMERICAN SECURITY	SECURITY SERVICE/CREDIT	MUNICIPAL COURTS	-56.99
	PALAMERICAN SECURITY		PROBATION	-19.00
	PALAMERICAN SECURITY		PROBATION	1,265.50
	PALAMERICAN SECURITY		MUNICIPAL COURTS	3,796.50
167687	PEACE OF MIND	COUNCIL WORK SESSION	CITY CLERK	59.20
	PEACE OF MIND	CITY COUNCIL MEETING	CITY CLERK	604.80
167688	PINKLEY, PATRICIA	UTILITY REFUND	WATER/SEWER OPERATION	13.00
167689	PIPEDREAM PROPERTY I	UTILITY REFUND	WATER/SEWER OPERATION	141.76
167690	POHL, EARL	UTILITY REFUND	WATER/SEWER OPERATION	245.14
167691	POSTAL SERVICE	POSTAGE - PD MACHINE	OFFICE OPERATIONS	2,500.00
167692	PRIVATE NATL MORTGAGE	PARTIAL RECOVEYANCE FEE	GMA - STREET	100.00
167693	PUBLIC SAFETY PSYCHO	PRE-EMPLOYMENT	POLICE ADMINISTRATION	450.00
167694	PUD	ACCT #202461026	MAINT OF GENL PLANT	25.20
	PUD	ACCT #220681340	STORM DRAINAGE	25.20
	PUD	ACCT #205195373	PARK & RECREATION FAC	27.56
	PUD	ACCT #223919549	STREET LIGHTING	37.52
	PUD	ACCT #200501617	TRANSPORTATION	38.38
	PUD	ACCT #202794657	TRANSPORTATION	45.92
	PUD	ACCT #203199732	TRANSPORTATION	54.47
	PUD	ACCT #223945742	TRAFFIC CONTROL DEVICES	57.45
	PUD	ACCT #223514563	TRANSPORTATION	62.79
	PUD	ACCT #203430897	STREET LIGHTING	66.03
	PUD	ACCT #223735101	STREET LIGHTING	67.85
	PUD	ACCT #202524690	PUMPING PLANT	71.35
	PUD	ACCT #202303301	SEWER LIFT STATION	72.56
	PUD	ACCT #202288585	TRANSPORTATION	73.89
	PUD	ACCT #202175956	TRAFFIC CONTROL DEVICES	78.42
	PUD	ACCT #223764663	SEWER LIFT STATION	79.42
	PUD	ACCT #202426482	PUBLIC SAFETY BLDG	89.18
	PUD	ACCT #223154923	STREET LIGHTING	108.08
	PUD	ACCT # 222772634	TRANSPORTATION	108.23
	PUD	ACCT #202011813	PUMPING PLANT	126.97
	PUD	ACCT #205237738	TRAFFIC CONTROL DEVICES	127.95
	PUD	ACCT #205239270	TRAFFIC CONTROL DEVICES	147.61
	PUD	ACCT #222025900	PUMPING PLANT	201.66
	PUD	ACCT #205419765	PUBLIC SAFETY BLDG	228.04
	PUD	1094 CEDAR AVE	FIRE ADMIN	258.83
	PUD	ACCT #204821227	TRAFFIC CONTROL DEVICES	354.20
	PUD	ACCT #220824148	WASTE WATER TREATMENT	438.73
	PUD	ACCT #201617479	CITY HALL	701.11
	PUD	ACCT #200021871	COURT FACILITIES	1,003.51
	PUD	ACCT #200824548	MAINT OF GENL PLANT	1,089.10
	PUD	ACCT #201639689	MAINT OF GENL PLANT	1,580.91
	PUD	ACCT #221320088	SUNNYSIDE FILTRATION	3,550.53
	PUD	ACCT #202075008	WASTE WATER TREATMENT	13,808.71
167695	PUGET SOUND ENERGY	ACCT #220015485380	OPERA HOUSE	204.27
167696	REDWOOD TOXICOLOGY	TESTING EQUIPMENT	PROBATION	143.52
167697	RH2 ENGINEERING INC	PROFESSIONAL SERVICE	SEWER LIFT STATION	277.01
167698	RICHMOND AMERICAN HO	CREDIT CARD CONVENIENCE FEE REFUND	COMMUNITY DEVELOPMENT	14.05
	RICHMOND AMERICAN HO		COMMUNITY DEVELOPMENT	559.54
	RICHMOND AMERICAN HO		COMMUNITY DEVELOPMENT	655.24

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/24/2024 TO 1/24/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167699	ROGERS DRIVE LIMITED	UTILITY REFUND	WATER/SEWER OPERATION	209.63
167700	SCCFOA	SCCFOA MEMBERSHIP	CITY CLERK	30.00
	SCCFOA		CITY CLERK	30.00
	SCCFOA		FINANCE-GENL	30.00
	SCCFOA		FINANCE-GENL	30.00
	SCCFOA		FINANCE-GENL	30.00
	SCCFOA		UTILITY BILLING	30.00
167701	SCORE	INMATE HOUSING - DEC 2023	DETENTION & CORRECTION	14,263.66
167702	SEATOWN ELECTRIC	REFUND - PLUMBING PERMIT	NON-BUS LICENSES AND	45.00
167703	SETTINGINGTON, KRIS	UTILITY REFUND	WATER/SEWER OPERATION	49.66
167704	SKAGIT HOSPITAL	INMATE EMERGENCY MEDICAL CARE	DETENTION & CORRECTION	8,792.00
167705	SNO CO PUBLIC WORKS	FRANCHISE AGREEMENT FEE	UTIL ADMIN	33.33
	SNO CO PUBLIC WORKS		UTIL ADMIN	33.33
	SNO CO PUBLIC WORKS		STORM DRAINAGE	33.34
167706	SNO CO TREASURER	INMATE HOUSING	DETENTION & CORRECTION	50,943.35
167707	SONITROL	SECURITY MONITORING	COURT FACILITIES	74.88
	SONITROL		COURT FACILITIES	74.88
	SONITROL		UTIL ADMIN	153.79
	SONITROL		UTIL ADMIN	153.79
	SONITROL		SUNNYSIDE FILTRATION	250.95
	SONITROL		SUNNYSIDE FILTRATION	250.95
	SONITROL		PUBLIC SAFETY BLDG	262.74
	SONITROL		PUBLIC SAFETY BLDG	262.74
	SONITROL		OPERA HOUSE	290.85
	SONITROL		OPERA HOUSE	290.85
	SONITROL		PARK & RECREATION FAC	301.39
	SONITROL		PARK & RECREATION FAC	301.39
	SONITROL		COURT FACILITIES	316.00
	SONITROL		COURT FACILITIES	316.00
	SONITROL		MAINT OF GENL PLANT	330.88
	SONITROL		MAINT OF GENL PLANT	330.88
	SONITROL		CITY HALL	380.01
	SONITROL		CITY HALL	380.01
	SONITROL		WASTE WATER TREATMENT	607.33
	SONITROL		WASTE WATER TREATMENT	607.33
167708	SOUND PUBLISHING	LEGAL ADVERTISING	COMMUNITY	590.92
167709	SOUND SAFETY	UNIFORM - WOOD	GENERAL	76.50
	SOUND SAFETY	UNIFORM - REMIE	GENERAL	183.61
	SOUND SAFETY	UNIFORM - FRISINGER	GENERAL	189.02
	SOUND SAFETY	UNIFORM - CALLAHAN	GENERAL	196.71
	SOUND SAFETY	UNIFORM - REMIE	GENERAL	377.04
	SOUND SAFETY	UNIFORM - BROOKS	UTIL ADMIN	564.60
167710	SOVEREIGN ELECTRIC	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	224.00
167711	SPECTRA BROADBAND		COMMUNITY DEVELOPMENT	112.00
167712	STAPLES	PLATES	MUNICIPAL COURTS	72.77
	STAPLES	OFFICE SUPPLIES	MUNICIPAL COURTS	350.54
167713	SWARB, KAYELEEE	UTILITY REFUND	GARBAGE	296.58
167714	TAYLOR MORRISON NORT	UTILITY REFUND	WATER/SEWER OPERATION	29.36
167715	TEAMSTERS PENSION	AUDIT FINDING	NON-DEPARTMENTAL	630.86
167716	THOMAS, ROCKY	UTILITY REFUND	WATER/SEWER OPERATION	203.59
167717	TITUS, VANCE & KAREN		WATER/SEWER OPERATION	444.04
167718	TOPSOILS NORTHWEST	TOPSOIL	GMA-PARKS	7,786.96
167719	VANDERHOEK, LINDA	UTILITY REFUND	WATER/SEWER OPERATION	25.00
167720	VIVINT INC	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	112.00

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 1/24/2024 TO 1/24/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167721	WATAI	DUES - MCSHANE	POLICE INVESTIGATION	60.00
167722	WETZEL, CHERYL	UTILITY REFUND	WATER/SEWER OPERATION	77.49
167723	WHISTLE WORKWEAR	UNIFORM - SMITH	UTIL ADMIN	178.01
	WHISTLE WORKWEAR		UTIL ADMIN	227.48
	WHISTLE WORKWEAR	UNIFORM - DIETZ	UTIL ADMIN	395.59
	WHISTLE WORKWEAR	UNIFORM - ERICKSON	UTIL ADMIN	395.60
167724	WILLIAMS, JEANNIE LE	UTILITY REFUND	WATER/SEWER OPERATION	262.94
167725	ZIPLY FIBER	ACCT #3606588575	STORM DRAINAGE	14.41
	ZIPLY FIBER	ACCT #3606589493	POLICE INVESTIGATION	45.09
	ZIPLY FIBER		RECREATION SERVICES	45.09
	ZIPLY FIBER	ACCT #4253357893	SUNNYSIDE FILTRATION	121.11
	ZIPLY FIBER		SUNNYSIDE FILTRATION	131.21
WARRANT TOTAL:				<u>609,215.16</u>

JIM MARTIN	VOID	INITIATOR ERROR	167500	\$2,100.00
ART BY NINA	VOID	INITIATOR ERROR	163290	\$65.00

REASON FOR VOIDS:

INITIATOR ERROR

CHECK LOST/DAMAGED

UNCLAIMED PROPERTY

WARRANT TOTAL:

\$607,050.16



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Senior Accounting Technician Shannon Early, Finance

ITEM TYPE: Payroll

AGENDA SECTION: **Consent**

SUBJECT: January 25, 2024 Payroll in the Amount of \$1,884,125.41 Paid by EFT Transaction and Check Numbers 35144 through 35156

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Accounting Technician Shauna Crane, Finance

ITEM TYPE: Claims

AGENDA SECTION: **Consent**

SUBJECT: January 31, 2024 Claims in the Amount of \$2,244,164.94 Paid by EFT Transactions and Check Numbers 167726 through 167841 with Check Number 167653 Voided

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:
[013124.rtf](#)

**CITY OF MARYSVILLE
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<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167726	COMMONSTREET	PHASE 1 - 88TH IMPROVEMENTS	GMA - STREET	45,309.57
167727	BENEFIT COORDINATORS	FEBRUARY 2024 PREMIUMS	MEDICAL CLAIMS	186,066.86
167728	LICENSING, DEPT OF	DRIVING ABSTRACT - SANDERS	PERSONNEL ADMINISTRATION	15.00
167729	LICENSING, DEPT OF	DRIVING ABSTRACT - PINARD	PERSONNEL ADMINISTRATION	15.00
167730	PREMERA BLUE CROSS	CLAIMS PAID 1/14 TO 1/20/24	MEDICAL CLAIMS	33,243.19
167731	PREMERA BLUE CROSS	CLAIMS PAID 1/1 TO 1/6/24	MEDICAL CLAIMS	60,414.10
	PREMERA BLUE CROSS	CLAIMS PAID 1/7 TO 1/13/24	MEDICAL CLAIMS	93,774.23
167732	911 SUPPLY INC.	UNIFORM - GOOLSBY	POLICE INVESTIGATION	336.26
	911 SUPPLY INC.	UNIFORM - WIGGINS	POLICE PATROL	447.20
	911 SUPPLY INC.	UNIFORM - ANDERSON	DETENTION & CORRECTION	531.42
	911 SUPPLY INC.	UNIFORM - MARAMED	DETENTION & CORRECTION	560.10
	911 SUPPLY INC.	UNIFORM - ALLEN	POLICE PATROL	814.83
	911 SUPPLY INC.	UNIFORM - MUSTAIN	POLICE PATROL	904.80
	911 SUPPLY INC.	UNIFORM - BELLEME	POLICE PATROL	984.18
167733	ADVANCED TRAFFIC	SIGNED RELAMPS 2023	TRANSPORTATION	590.76
	ADVANCED TRAFFIC	PUSH BUTTON SYSTEM REPLACEMENT	TRANSPORTATION	4,064.58
	ADVANCED TRAFFIC	ADA PUSH BUTTON SYSTEM	TRANSPORTATION	7,390.97
167734	AKTIVOV LLC	ANNUAL MAINTENANCE/SUPPORT 2024	PARK & RECREATION FAC	5,134.68
	AKTIVOV LLC		GENERAL	15,404.07
	AKTIVOV LLC		UTIL ADMIN	30,808.14
167735	ALEXANDER PRINTING	PRINTING SERVICE	POLICE INVESTIGATION	90.69
167736	ALL BATTERY SALES & ALL BATTERY SALES &	WINDSHIELD WASHER FLUID	SOLID WASTE OPERATIONS	59.08
			ER&R	177.23
167737	ALLIANT INSURANCE	INSURANCE BOND RENEWAL - NIELD	RISK MANAGEMENT	75.00
	ALLIANT INSURANCE	INSURANCE BOND RENEWAL - SCAIRPON	RISK MANAGEMENT	75.00
	ALLIANT INSURANCE	INSURANCE RENEWAL	RISK MANAGEMENT	805,573.00
167738	ALS LABORATORY	LAB ANALYSIS	WATER QUAL TREATMENT	950.00
167739	APPLIED CONCEPTS INC	REPAIR KITS, ANTENNA CABLE	POLICE PATROL	1,404.70
167740	APPLIED INDUSTRIAL T	PUSH BOX PARTS 2024	ROADWAY MAINTENANCE	236.94
167741	APS, INC.	POSTAGE MACHINE RENTAL	EXECUTIVE ADMIN	23.71
	APS, INC.		FINANCE-GENL	23.71
	APS, INC.		PERSONNEL ADMINISTRATION	23.71
	APS, INC.		UTILITY BILLING	23.71
	APS, INC.		LEGAL - PROSECUTION	23.71
	APS, INC.		CITY CLERK	23.72
	APS, INC.		POLICE INVESTIGATION	39.11
	APS, INC.		POLICE PATROL	39.11
	APS, INC.		OFFICE OPERATIONS	39.11
	APS, INC.		DETENTION & CORRECTION	39.11
	APS, INC.		POLICE ADMINISTRATION	39.11
	APS, INC.		COMMUNITY	48.21
	APS, INC.		ENGR-GENL	48.21
	APS, INC.		UTIL ADMIN	48.21
167742	ARAMARK UNIFORM	CUSTODIAL SUPPLIES	CIVIC CENTER	14.24
	ARAMARK UNIFORM		CIVIC CENTER	14.24
	ARAMARK UNIFORM		CIVIC CENTER	14.24
	ARAMARK UNIFORM	UNIFORM CLEANING	EQUIPMENT RENTAL	42.18
	ARAMARK UNIFORM		EQUIPMENT RENTAL	42.18
	ARAMARK UNIFORM		EQUIPMENT RENTAL	42.18
	ARAMARK UNIFORM		EQUIPMENT RENTAL	59.71
	ARAMARK UNIFORM		EQUIPMENT RENTAL	59.71
	ARAMARK UNIFORM		EQUIPMENT RENTAL	59.71
	ARAMARK UNIFORM	CUSTODIAL SUPPLIES	CUSTODIAL SERVICES	135.23
	ARAMARK UNIFORM		CUSTODIAL SERVICES	135.23
	ARAMARK UNIFORM		CUSTODIAL SERVICES	135.29

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	ARAMARK UNIFORM	LINEN SERVICE	OPERA HOUSE	388.79
167743	ARC ARCHITECTS, INC.	PROFESSIONAL SERVICE	PW ADMIN CAP PROJECT	7,503.00
167744	ARG INDUSTRIAL	HOSE	WASTE WATER TREATMENT	19.19
167745	AT&T MOBILITY LLC	WIRELESS	CITY CLERK	67.61
	AT&T MOBILITY LLC		FACILITY MAINTENANCE	67.61
	AT&T MOBILITY LLC		WASTE WATER TREATMENT	67.61
	AT&T MOBILITY LLC		ENGR-GENL	135.22
	AT&T MOBILITY LLC		COMMUNITY	202.83
	AT&T MOBILITY LLC		PERSONNEL ADMINISTRATION	202.83
	AT&T MOBILITY LLC		UTIL ADMIN	202.83
	AT&T MOBILITY LLC		MUNICIPAL COURTS	270.44
	AT&T MOBILITY LLC		GIS SERVICES IS	270.44
	AT&T MOBILITY LLC		FINANCE-GENL	270.44
	AT&T MOBILITY LLC		LEGAL-GENL	338.05
	AT&T MOBILITY LLC		OFFICE OPERATIONS	338.05
	AT&T MOBILITY LLC		EXECUTIVE ADMIN	743.71
	AT&T MOBILITY LLC		POLICE INVESTIGATION	878.93
	AT&T MOBILITY LLC		DETENTION & CORRECTION	946.54
	AT&T MOBILITY LLC		POLICE ADMINISTRATION	946.54
	AT&T MOBILITY LLC		COMMUNITY SERVICES UNIT	1,216.98
	AT&T MOBILITY LLC		COMPUTER SERVICES	1,415.04
	AT&T MOBILITY LLC		POLICE PATROL	4,265.73
167746	BICKFORD FORD	BRAKE ROTORS	ER&R	278.27
167747	BOB BARKER COMPANY	SUPPLIES	DETENTION & CORRECTION	414.58
167748	BOTESCH, NASH & HALL	PROFESSIONAL SERVICE	CAPITAL EXPENDITURES	9,709.50
167749	BRYANT, RON	ERWOW ANNUAL CONFERENCE	UTIL ADMIN	144.55
167750	CANON FINANCIAL	GIS PLOTTER SERVICE	GIS SERVICES IS	267.80
167751	CASCADE COLUMBIA	POLY ALUMINUM CHLORIDE	WASTE WATER TREATMENT	16,603.90
167752	CENTRAL WELDING SUPPLY	STEEL SNAP HOOKS	PARK & RECREATION FAC	826.08
167753	CHARM-TEX, INC.	JAIL SUPPLIES	GENERAL FUND	-38.01
	CHARM-TEX, INC.		DETENTION & CORRECTION	442.41
167754	CITIES & TOWNS	SCCT ANNUAL DUES	NON-DEPARTMENTAL	200.00
167755	COALFIRE SYSTEMS INC	TESTING	COMPUTER SERVICES	9,150.00
167756	COASTAL FARM & HOME	UNIFORM - JESSEN	UTIL ADMIN	48.09
	COASTAL FARM & HOME	UNIFORM - CLOSE	GENERAL	65.60
	COASTAL FARM & HOME	UNIFORM - TALBOT	UTIL ADMIN	98.45
	COASTAL FARM & HOME	UNIFORM - PRIMM	UTIL ADMIN	157.50
	COASTAL FARM & HOME	UNIFORM - PEASLEE	UTIL ADMIN	238.89
	COASTAL FARM & HOME	UNIFORM - JESSEN	STORM DRAINAGE	251.61
	COASTAL FARM & HOME		UTIL ADMIN	341.25
	COASTAL FARM & HOME	UNIFORM - AKAU	PARK & RECREATION FAC	388.32
	COASTAL FARM & HOME	UNIFORM - MALLAHAN	UTIL ADMIN	412.12
	COASTAL FARM & HOME	UNIFORM - MCCLEVE	PARK & RECREATION FAC	459.43
167757	CODE PUBLISHING	MUNICIPAL CODE WEB UPDATE	CITY CLERK	418.46
	CODE PUBLISHING		CITY CLERK	3,982.71
167758	COMCAST	ACCT #8498310020341322	COMPUTER SERVICES	467.89
167759	COOP SUPPLY	HEATER	PARK & RECREATION FAC	54.69
	COOP SUPPLY	UNIFORM - NEWMAN	STORM DRAINAGE	175.03
	COOP SUPPLY	UNIFORM - WARD	STORM DRAINAGE	175.03
167760	CORE & MAIN LP	H20 RATED PE LIDS	WATER SERVICES	1,570.77
167761	CRYSTAL SPRINGS	WATER	COMMUNITY SERVICES UNIT	50.00
	CRYSTAL SPRINGS		POLICE ADMINISTRATION	67.60
	CRYSTAL SPRINGS		POLICE PATROL	100.00
	CRYSTAL SPRINGS		POLICE INVESTIGATION	100.00

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167761	CRYSTAL SPRINGS	WATER	DETENTION & CORRECTION	100.00
	CRYSTAL SPRINGS		OFFICE OPERATIONS	100.00
167762	DELL	SERVER WARRANTY - FQLFH63	IS REPLACEMENT ACCOUNTS	564.35
167763	DICKS TOWING	TOWING 24-09080083	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-1156	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-1187	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-1227	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-1350	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-2650	POLICE PATROL	77.54
	DICKS TOWING	TOWING P194	POLICE PATROL	77.54
167764	DIETZ, THOMAS	BAT CERTIFICATION COURSE, TRAVEL	UTIL ADMIN	430.55
167765	DIFFERENTIAL NETWORK	MILESTONE RENEWAL	COMPUTER SERVICES	5,485.32
167766	E&E LUMBER	SLIT INSULATION, PUSH VALVE	WASTE WATER TREATMENT	51.31
	E&E LUMBER	SHELF BRACKET, FIBERGLASS SCREEN	ROADSIDE VEGETATION	52.84
	E&E LUMBER	CONDENSATION BLANKET, TAPE	WATER RESERVOIRS	389.39
	E&E LUMBER	TELESCOPE POLE SAW	ROADSIDE VEGETATION	656.39
167767	EAGLE FENCE	CEDAR FENCE	ROADSIDE VEGETATION	547.00
167768	ECONOMIC ALLIANCE	ANNUAL DUES - EASC	NON-DEPARTMENTAL	16,500.00
167769	ELECTRONIC BUSINESS	GIS PLOTTER SUPPLIES	GIS SERVICES IS	38.29
167770	EVERETT TIRE & AUTO	TIRES	ER&R	1,765.98
167771	EVERETT, CITY OF	ANIMALS TO SHELTER	COMMUNITY SERVICES UNIT	3,250.00
167772	FRANCOTYP-POSTALIA	POSTAGE METER - PD	POLICE PATROL	160.82
167773	GOVCONNECTION INC	MODEM POWER SUPPLY REPLACEMENT	IS REPLACEMENT ACCOUNTS	82.35
167774	GRAINGER	LABEL MAKER, STEPLADDER	PARK & RECREATION FAC	54.57
	GRAINGER	VALVE REBUILD KITS	SEWER LIFT STATION	292.23
	GRAINGER	GLOVES, HAND WARMERS	ER&R	615.86
	GRAINGER	INSULATED GLOVES, WINDSHIELD WASHER	ER&R	937.47
	GRAINGER	PROPANE CYLINDER, BUTANE CANISTER	ER&R	996.79
	GRAINGER	GLOVES	ER&R	1,141.59
167775	GRANITE CONST	ASPHALT	WATER DIST MAINS	138.77
167776	GREENSHIELDS INDS	RIGGING ASSEMBLY, LONG SHACKLE	STORM DRAINAGE	522.65
167777	GRIFFEN, CHRIS	PUBLIC DEFENSE/CONFLICT COUNSEL	PUBLIC DEFENSE	1,040.00
167778	HARBOR FREIGHT TOOLS	HAND TOOLS FOR SIDEWALKS	SIDEWALK MAINTENANCE	24.04
167779	HD FOWLER COMPANY	CREDIT FOR INV #16441146	HYDRANTS	-211.32
	HD FOWLER COMPANY	VALVE ASSEMBLY	WATER DIST MAINS	896.44
	HD FOWLER COMPANY	METERS	WATER SERVICE INSTALL	1,001.41
	HD FOWLER COMPANY	METER BOX, LIDS, ELBOWS, TUBING	WATER SERVICES	8,917.95
167780	HERRERA ENVIRO	PROFESSIONAL SERVICE	GMA-PARKS	5,260.12
167781	HEWLETT PACKARD	PRINTER TONER/MAINTENANCE	PARK & RECREATION FAC	1.09
	HEWLETT PACKARD		FINANCE-GENL	2.36
	HEWLETT PACKARD		FINANCE-GENL	10.68
	HEWLETT PACKARD		ENGR-GENL	21.57
	HEWLETT PACKARD		WATER QUAL TREATMENT	42.18
	HEWLETT PACKARD		COMPUTER SERVICES	43.46
	HEWLETT PACKARD		FINANCE-GENL	68.79
167782	HUTCHISON LAW, LLC	PUBLIC DEFENSE/CONFLICT COUNSEL	PUBLIC DEFENSE	450.00
	HUTCHISON LAW, LLC		PUBLIC DEFENSE	450.00
167783	J. THAYER COMPANY	ERASABLE MARKERS, FEES	WATER DIST MAINS	32.06
	J. THAYER COMPANY	OFFICE SUPPLIES	WATER QUAL TREATMENT	163.87
167784	JAMIE JEFFERSON LMP	QUARTERLY CHAIR MASSAGES	POLICE ADMINISTRATION	300.00
167785	JULZ ANIMAL HOUZ	K-9 SUPPLIES	K9 PROGRAM	66.77
167786	KENDALL CHEVROLET	SUSPENSION LINK	ER&R	249.06
	KENDALL CHEVROLET	SUSPENSION LINKS, BRAKE PADS	ER&R	1,030.56
167787	KIM, JAMIE S.	PUBLIC DEFENSE/CONFLICT COUNSEL	PUBLIC DEFENSE	217.50
	KIM, JAMIE S.		PUBLIC DEFENSE	217.31

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	KIM, JAMIE S.		PUBLIC DEFENSE	217.50
	KIM, JAMIE S.		PUBLIC DEFENSE	217.50
167788	LANGLEY, JOHN	UTILITY BILLING REFUND	GARBAGE	174.24
167789	LASTING IMPRESSIONS	BASKETBALL T-SHIRT	RECREATION SERVICES	68.63
167790	LAYNE PLUMBING	REFUND - PLUMBING PERMIT	NON-BUS LICENSES AND	134.40
167791	LOWES HIW INC	SUPPLIES	WATER QUAL TREATMENT	-7.91
	LOWES HIW INC	SUPPLIES, SMALL TOOLS	WATER DIST MAINS	164.40
	LOWES HIW INC	SUPPLIES	WATER QUAL TREATMENT	164.59
	LOWES HIW INC	TOPSOIL	WATER SERVICES	279.37
	LOWES HIW INC	SUPPLIES	WATER DIST MAINS	308.42
167792	LX CONSTRUCTION	HYDRANT METER REFUND	WATER-UTILITIES/ENVIRONMNT	-157.00
	LX CONSTRUCTION		WATER/SEWER OPERATION	1,150.00
167793	MALYA, NEEMA	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	224.00
167794	MARYSVILLE AWARDS	PLAQUES	POLICE ADMINISTRATION	163.33
167795	MARYSVILLE, CITY OF	4123 71 ST NE	SUNNYSIDE FILTRATION PLANT	137.52
	MARYSVILLE, CITY OF	4202 59 DR NE	PARK & RECREATION FAC	191.19
	MARYSVILLE, CITY OF	6802 84 ST NE	GOLF ADMINISTRATION	224.13
	MARYSVILLE, CITY OF	4020 71 AVE NE	SUNNYSIDE FILTRATION PLANT	293.42
167796	MCMASTER-CARR	T-STRAINER, PROPANE TORCH	WASTE WATER TREATMENT	203.53
	MCMASTER-CARR	CPVC PIPE FITTINGS	WASTE WATER TREATMENT	296.78
167797	MOUNTAIN MIST	WATER COOLER/BOTTLED	WASTE WATER TREATMENT	3.19
	MOUNTAIN MIST		SOLID WASTE OPERATIONS	3.19
	MOUNTAIN MIST		SEWER MAIN COLLECTION	3.19
	MOUNTAIN MIST		SOLID WASTE OPERATIONS	12.76
	MOUNTAIN MIST		SEWER MAIN COLLECTION	12.76
	MOUNTAIN MIST		WASTE WATER TREATMENT	12.77
167798	NAPA AUTO PARTS	SNOWPLOW MOUNTED LIGHTS	ER&R	62.62
	NAPA AUTO PARTS	SNOWPLOW EDGE MARKERS	ER&R	222.39
	NAPA AUTO PARTS	LAMPS, OIL/AIR/FUEL FILTERS	ER&R	2,073.62
167799	NATURAL RESOURCES	AQUATIC PRIVATE MARINA	STORM DRAINAGE	8.99
167800	NORTHSTAR CHEMICAL	SODIUM HYPOCHLORITE	WASTE WATER TREATMENT	2,375.57
167801	OVERLAKE HOSPITAL	PRE-EMPLOYMENT - WALTERS	POLICE ADMINISTRATION	2,757.30
167802	PACIFIC POWER BATTER	CONNECTORS	SEWER LIFT STATION	3.02
	PACIFIC POWER BATTER	CORE CHARGE	WASTE WATER TREATMENT	25.34
	PACIFIC POWER BATTER	BATTERIES	WASTE WATER TREATMENT	1,002.80
167803	PACIFIC TOPSOILS	DUMP CLEAN GREENS AND FEE	PARK & RECREATION FAC	24.70
	PACIFIC TOPSOILS	DUMP OF CLEAN GREENS AND FEE	PARK & RECREATION FAC	37.05
	PACIFIC TOPSOILS	BRUSH/SHOP HAUL OFF	ROADSIDE VEGETATION	74.10
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	123.50
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	172.90
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	181.60
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	181.60
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	181.60
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	197.60
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	197.60
	PACIFIC TOPSOILS		ROADSIDE VEGETATION	197.60
167804	PATTI FREDLEY	UTILITY BILLING REFUND	GARBAGE	9.92
167805	PERTEET ENGINEERING	PROFESSIONAL SERVICE	CAPITAL EXPENDITURES	16,223.50
	PERTEET ENGINEERING		CAPITAL EXPENDITURES	18,970.00
	PERTEET ENGINEERING		CAPITAL EXPENDITURES	25,953.50
167806	PGC INTERBAY LLC	REIMBURSEMENT FOR GOLF	MAINTENANCE	-259.11
	PGC INTERBAY LLC		MAINTENANCE	47.20
	PGC INTERBAY LLC		MAINTENANCE	70.52
	PGC INTERBAY LLC		MAINTENANCE	120.00

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167806	PGC INTERBAY LLC	REIMBURSEMENT FOR GOLF	MAINTENANCE	161.69
	PGC INTERBAY LLC		PRO-SHOP	206.27
	PGC INTERBAY LLC		MAINTENANCE	285.69
	PGC INTERBAY LLC		MAINTENANCE	623.00
	PGC INTERBAY LLC		MAINTENANCE	773.68
	PGC INTERBAY LLC		PRO-SHOP	1,180.00
	PGC INTERBAY LLC		PRO-SHOP	1,835.73
	PGC INTERBAY LLC		MAINTENANCE	2,449.15
	PGC INTERBAY LLC		GOLF COURSE	5,071.43
	PGC INTERBAY LLC		MAINTENANCE	7,617.89
	PGC INTERBAY LLC	REIMBURSEMENT TO GOLF	PRO-SHOP	9,152.31
	PGC INTERBAY LLC		MAINTENANCE	16,654.45
167807	POLICE & SHERIFFS PR	ID CARDS	GENERAL FUND	-4.52
	POLICE & SHERIFFS PR		POLICE PATROL	52.57
167808	POSTAL SERVICE	POSTAGE - PERMIT #80 STANDARD MAIL	RECREATION SERVICES	6,477.90
167809	PRIMM, ROBERT	CEU'S, TRAVEL PERDIEM	UTIL ADMIN	222.00
167810	PROFORCE LAW ENFORC	GUN PARTS	POLICE TRAINING-FIREARMS	5,348.17
167811	PUD	ACCT #223806431	SEWER LIFT STATION	9.14
	PUD	ACCT #205136245	SEWER LIFT STATION	17.49
	PUD	ACCT #202461034	UTIL ADMIN	24.75
	PUD	ACCT #204933311	PUMPING PLANT	26.77
	PUD	ACCT #202012589	PARK & RECREATION FAC	28.75
	PUD	ACCT #201065281	PARK & RECREATION FAC	31.52
	PUD	ACCT #202476438	SEWER LIFT STATION	32.65
	PUD	ACCT #201668043	PARK & RECREATION FAC	36.07
	PUD	ACCT #202178158	SEWER LIFT STATION	38.63
	PUD	ACCT #201610185	TRANSPORTATION	40.65
	PUD	ACCT #221192545	PUBLIC SAFETY BLDG	40.70
	PUD	ACCT #201672136	SEWER LIFT STATION	40.90
	PUD	ACCT #201046380	PARK & RECREATION FAC	44.86
	PUD	ACCT #202140489	TRANSPORTATION	56.39
	PUD	ACCT #200571842	TRANSPORTATION	58.57
	PUD	ACCT #203005160	STREET LIGHTING	61.31
	PUD	ACCT #202694337	TRANSPORTATION	73.87
	PUD	ACCT #200827277	TRANSPORTATION	75.75
	PUD	ACCT #202368544	TRANSPORTATION	76.46
	PUD	ACCT #220792733	STREET LIGHTING	87.84
	PUD	ACCT #202557450	STREET LIGHTING	88.85
	PUD	ACCT #202143111	TRANSPORTATION	94.51
	PUD	ACCT #200084036	TRANSPORTATION	107.24
	PUD	ACCT #222871949	PARK & RECREATION FAC	116.21
	PUD	ACCT #203231006	TRANSPORTATION	118.33
	PUD	ACCT #201670890	TRANSPORTATION	129.19
	PUD	ACCT #220761803	OPERA HOUSE	164.59
	PUD	ACCT #203223458	PARK & RECREATION FAC	185.19
	PUD	ACCT #223521238	SURFACE WATER CAPITAL	198.83
	PUD	ACCT #202463543	SEWER LIFT STATION	199.36
	PUD	ACCT #220838882	TRAFFIC CONTROL DEVICES	206.69
	PUD	ACCT #202368551	PARK & RECREATION FAC	216.23
	PUD	ACCT #200070449	TRANSPORTATION	255.13
	PUD	ACCT #223013277	AFFORDABLE HOUSING	259.44
	PUD	ACCT #202000329	PARK & RECREATION FAC	298.44
	PUD	ACCT #202309720	TRAFFIC CONTROL DEVICES	310.97
	PUD	ACCT #201247699	STREET LIGHTING	389.49
	PUD	ACCT #201021607	PARK & RECREATION FAC	401.33

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	PUD	ACCT #201021698	PARK & RECREATION FAC	452.86
	PUD	ACCT #220761175	OPERA HOUSE	490.92
	PUD	ACCT #200625382	SEWER LIFT STATION	497.36
	PUD	ACCT #202499489	PARK & RECREATION FAC	707.38
	PUD	ACCT #200223857	PARK & RECREATION FAC	951.43
	PUD	DISCONNECT EFMR'S	CAPITAL EXPENDITURES	970.81
	PUD	ACCT #202689287	WASTE WATER TREATMENT	1,032.73
	PUD	ACCT #223505728	PUBLIC SAFETY BLDG	1,204.48
	PUD	ACCT #200586485	SEWER LIFT STATION	1,402.58
	PUD	ACCT #223003021	CAPITAL EXPENDITURES	12,831.01
167812	PUGET SOUND CLEAN	2024 DUES ASSESSMENT	NON-DEPARTMENTAL	54,393.00
167813	REECE TRUCKING	MATERIAL DISPOSAL	WATER FILTRATION PLANT	43.40
	REECE TRUCKING		WATER FILTRATION PLANT	428.00
167814	RIGHT SYSTEMS, INC.	NUTANIX SUPPORT	IS REPLACEMENT ACCOUNTS	3,388.46
167815	SAN DIEGO POLICE EQU	AMMO	POLICE TRAINING-FIREARMS	6,940.29
167816	SAVIBANK	RETAINAGE TO BANK	CITY FACILITIES	13,943.38
167817	SCICLUNA, ANTHONY &	UTILITY BILLING REFUND	WATER/SEWER OPERATION	233.68
167818	SHI INTERNATIONAL	LICENSING TRUE-UP - M365	COMPUTER SERVICES	385.37
	SHI INTERNATIONAL		COMPUTER SERVICES	1,279.06
	SHI INTERNATIONAL		COMPUTER SERVICES	7,954.78
	SHI INTERNATIONAL		COMPUTER SERVICES	61,161.12
	SHI INTERNATIONAL		COMPUTER SERVICES	115,931.49
167819	SKAGIT HOSPITAL	INMATE MEDICAL CARE	DETENTION & CORRECTION	639.00
167820	SMITH, GREG & LEANNE	UTILITY BILLING REFUND	WATER/SEWER OPERATION	231.38
167821	SNO CO AUDITOR	VOTER REGISTRATION	FINANCIAL & RECORDS	96,921.09
167822	SNO CO SHERIFF & POL	SCSCPA DUES - SCAIRPON	POLICE ADMINISTRATION	75.00
167823	SNO CO TREASURER	INMATE MEDICAL CARE	DETENTION & CORRECTION	11,604.62
167824	SOUND PUBLISHING	CITY ORDINANCE 3301	CITY CLERK	27.64
167825	SOUND SAFETY	RUBBER BOOTS	STORM DRAINAGE	162.85
	SOUND SAFETY		STORM DRAINAGE	168.31
	SOUND SAFETY	UNIFORM - TINSLEY	SOLID WASTE OPERATIONS	390.59
167826	SPRAGUE PEST SOLUTION	RODENT EXTERIOR SERVICE	SOLID WASTE OPERATIONS	76.58
	SPRAGUE PEST SOLUTION		MAINT OF GENL PLANT	76.58
	SPRAGUE PEST SOLUTION	EXTERIOR RODENT SERVICE	MAINT OF GENL PLANT	153.16
167827	SPRINGBROOK NURSERY	BACKFILL - SIDE WALK REPAIR	SIDEWALK MAINTENANCE	20.77
	SPRINGBROOK NURSERY	GRAVEL	GMA-PARKS	65.28
167828	STONEWAY ELECTRIC	CIRCUIT BREAKER	SOURCE OF SUPPLY	70.11
167829	SUBURBAN PROPANE	PROPANE	PARK & RECREATION FAC	1,679.35
167830	SUPERIOR RESTROOMS	SERVICE ON UNIT #16512	WATER DIST MAINS	71.11
	SUPERIOR RESTROOMS	RESTROOM RENTALS	PARK & RECREATION FAC	295.00
	SUPERIOR RESTROOMS	RESTROOM RENTAL #340HC	PARK & RECREATION FAC	343.46
167831	TESSCO INC	ANTENNA/CABLES	ER&R	78.24
	TESSCO INC		ER&R	467.50
167832	TRANPO GROUP	PROFESSIONAL SERVICE	GMA - STREET	15,155.00
167833	TRANSPORTATION, DEPT	PROJECT COST - DEC 2023	GMA - STREET	1,903.96
167834	TRICO COMPANIES, LLC	EVIDENCE BUILDING/RETAINAGE	CITY FACILITIES	-13,943.38
	TRICO COMPANIES, LLC		CAPITAL EXPENDITURES	305,081.17
167835	TXLEY INC	JAIL SUPPLIES	DETENTION & CORRECTION	1,936.27
167836	USA BLUEBOOK	LEAD FREE ADAPTERS	WATER DIST MAINS	299.99
	USA BLUEBOOK	SUPPLIES	SUNNYSIDE FILTRATION PLANT	601.99
	USA BLUEBOOK	COLORIMETERS, TURBID METER KIT	WATER QUAL TREATMENT	11,773.58
167837	WASHINGTON ENERGY SV	REFUND - ELECTRICAL PERMIT	COMMUNITY DEVELOPMENT	78.40
	WASHINGTON ENERGY SV		COMMUNITY DEVELOPMENT	112.00
167838	WATCH SYSTEMS	RSO MAILING	POLICE INVESTIGATION	989.42

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167839	WHISTLE WORKWEAR	UNIFORM - HUDON	GENERAL	163.19
	WHISTLE WORKWEAR	UNIFORM - THOMAS	UTIL ADMIN	168.11
	WHISTLE WORKWEAR	UNIFORM - LUNDGREN	UTIL ADMIN	168.14
	WHISTLE WORKWEAR	UNIFORM - JOHNSTON	SOLID WASTE OPERATIONS	174.05
	WHISTLE WORKWEAR	UNIFORM - HUDON	GENERAL	197.79
	WHISTLE WORKWEAR	UNIFORM - SANDRE-GOMEZ	GENERAL	197.79
	WHISTLE WORKWEAR	UNIFORM - THOMAS	UTIL ADMIN	202.75
	WHISTLE WORKWEAR	UNIFORM - LUNGREN	UTIL ADMIN	204.71
	WHISTLE WORKWEAR	UNIFORM - MARTINSON	UTIL ADMIN	217.59
	WHISTLE WORKWEAR	UNIFORM - JOHNSTON	SOLID WASTE OPERATIONS	219.79
	WHISTLE WORKWEAR	UNIFORM - MARTINSON	UTIL ADMIN	227.46
	WHISTLE WORKWEAR	UNIFORM - CALLAHAN	GENERAL	227.48
	WHISTLE WORKWEAR	UNIFORM - FRISINGER	GENERAL	232.41
	WHISTLE WORKWEAR	UNIFORM - DIAMOND	GENERAL	250.00
	WHISTLE WORKWEAR	UNIFORM - HUDON	GENERAL	250.00
	WHISTLE WORKWEAR	UNIFORM - SANDRE-GOMEZ	GENERAL	250.00
	WHISTLE WORKWEAR	UNIFORM - MEYER	SOLID WASTE OPERATIONS	291.21
	WHISTLE WORKWEAR	UNIFORM - FERRARO	SOLID WASTE OPERATIONS	356.03
167840	ZIPLY FIBER	ACCT #3606583635	UTIL ADMIN	37.72
	ZIPLY FIBER		COMMUNITY	37.72
	ZIPLY FIBER	ACCT #3606512517	STREET LIGHTING	61.62
	ZIPLY FIBER	ACCT #3606577495	STREET LIGHTING	77.87
	ZIPLY FIBER	ACCT #3606596212	MAINT OF GENL PLANT	82.49
	ZIPLY FIBER	ACCT# 3606515087	PARK & RECREATION FAC	98.71
	ZIPLY FIBER	ACCT #3606519123	WATER FILTRATION PLANT	124.28
167841	ZIPLY FIBER	POTS LINES	POLICE ADMINISTRATION	47.10
	ZIPLY FIBER		POLICE PATROL	47.10
	ZIPLY FIBER		COMMUNICATION CENTER	47.10
	ZIPLY FIBER		UTILITY BILLING	47.10
	ZIPLY FIBER		GENERAL	47.10
	ZIPLY FIBER		GOLF ADMINISTRATION	47.10
	ZIPLY FIBER		COMMUNITY	94.20
	ZIPLY FIBER		DETENTION & CORRECTION	94.20
	ZIPLY FIBER		OFFICE OPERATIONS	94.20
	ZIPLY FIBER		GOLF ADMINISTRATION	94.20
	ZIPLY FIBER		CITY HALL	141.30
	ZIPLY FIBER		RECREATION SERVICES	188.40
	ZIPLY FIBER		WASTE WATER TREATMENT	235.50
	ZIPLY FIBER		UTIL ADMIN	235.50

WARRANT TOTAL: 2,289,474.51

COMMONSTREET CONSULTING, LLC INITIATOR ERROR VOID 167653 \$45,309.57

REASON FOR VOIDS:

INITIATOR ERROR

CHECK LOST/DAMAGED

UNCLAIMED PROPERTY

WARRANT TOTAL: \$2,244,164.94



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Project Acceptance

AGENDA SECTION: **Consent**

SUBJECT: Project Acceptance - 2023 Pavement Preservation Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to accept the 2023 Pavement Preservation project, starting the 60-day lien filing period for project closeout.

SUMMARY: The 2023 Pavement Preservation project included pavement repair, planing bituminous pavement, 2-inch asphalt pavement resurfacing, sidewalk ramp replacement to meet ADA standards, utility adjustments, channelization, restoration and other miscellaneous work as seen on the attached map. This project was funded by the Transportation Benefit District. The City Council awarded the 2023 Pavement Preservation to Reece Construction Company on May 8, 2023 for the bid amount of \$4,153,293.47 including a management reserve of \$415,329.35 for a total allocation of \$4,568,622.82. The project was completed in the amount of \$3,834,336.31, or \$318,957.16 (7.7%) below the bid amount. Work performed under this contract was inspected by City staff and found to be physically complete in accordance with the approved plans and specifications.

ATTACHMENTS:
[Notice of Physical Completion.pdf](#)
[TBD Map 2023.pdf](#)



MARYSVILLE
PUBLIC WORKS
Engineering

December 27th, 2023

Andy Reece
President
Reece Construction Company
PO Box 1531
Marysville WA 98270

**Subject: 2023 Pavement Preservation – TB105
Notice of Physical Completion of Project**

Dear Andy Reece:

In accordance with Section 1-05.11(2) of the Special Provisions, this project was considered physically complete as of December 26th, 2023.

This notification does not constitute completion, or final acceptance by the City per Section 1-05.11(2) of the Contract's General Special Provisions.

Recommendation for Final Acceptance will be sent to the City Council for approval at the first available council meeting. This date of final acceptance shall start the forty-five (45) day lien period for the release of your retainage bond upon receipt of the following.

1. Certificate of Release from the Department of Revenue
2. Certificate of Release from the Employment Security Department
3. Certificate of Release from the Department of L&I
4. Affidavits of Wages Paid (including all subcontractors)

It has been a pleasure working with you on this project. I hope that you will consider bidding on future projects with the City.

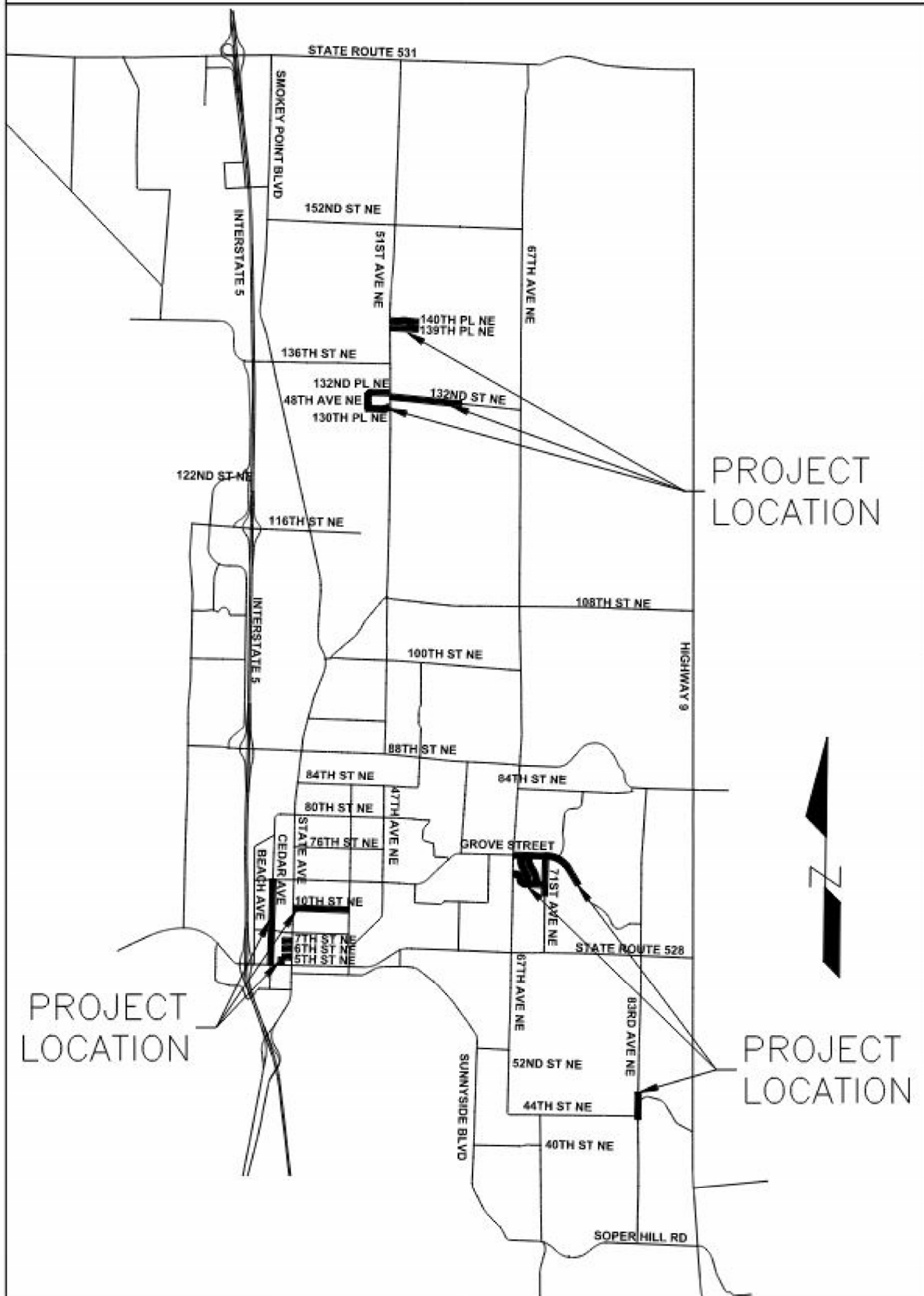
Sincerely,

Valorie Cross, EIT

(360) 363-8100

Civic Center
501 Delta Ave
Marysville, WA 98270

VICINITY MAP



Project Name	Street	From	End
2023 Pavement Preservation Project	83rd Ave	44th Ave	Sunnyside School Rd
	71st Ave	72nd St NE	Grove St
	73rd St	67th Ave NE	71st Ave
	69th St	73rd St NE	Grove St
	68th St	End	Grove St
	Grove St	67th Ave	73rd St NE
	Delta Ave	4th St NE	5th St NE
	5th St NE	Delta Ave	State Ave
	6th St NE	Delta Ave	State Ave
	7th St NE	Delta Ave	State Ave
	10th St NE	State Ave	47th Ave
	Cedar Ave	4th St NE	Grove St
	132nd St NE	51st Ave	City Limits
	130th Pl	51st Ave	48th Dr
	132nd Pl	48th Dr NE	51st Ave
	48th Dr	130th Pl	132nd Pl
	49 th Ave	130 th Pl	End
	50 th Ave	130 th Pl	End
	139th Pl	51st Ave	54th Dr
	140th Pl	51st Ave	54th Dr



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Transportation Improvement Board (TIB) Grant Agreement for 156th St. NE Corridor Improvement Project, Smokey Pt. Blvd. to Hayho Creek.

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the Fuel Tax Grant Agreement and Project Funding Status Form for TIB grant funding of the 156th St. NE Corridor Improvement Project.

SUMMARY: The City was recently awarded \$1.44 Million in Transportation Improvement Board (TIB) funds for construction of the 156th Street NE Corridor Improvement Project, which will widen 156th Street NE from 3 lanes to 5 lanes to the east of Smokey Point Boulevard to Hayho Creek, thereby completing bottleneck in the corridor. In conjunction with road improvements, the project will also include a shared use pathway on the north side of 156th Street NE, replacing the existing sidewalk.

In order to receive approval from the TIB and to be reimbursed for expenses, the City must sign and return the attached Fuel Tax Grant Distribution Agreement and Project Funding Status Form. Based upon an estimated construction cost of \$1.8 Million, the City’s match toward construction is estimated to be \$360,000.

ATTACHMENTS:

Grant Agreement - Marysville - 156th Street NE.pdf

Funding Status Form - Marysville - 156th Street NE_rev013024.pdf



City of Marysville
8-1-143(012)-1
156th Street NE
Smokey Pt Blvd to Hayho Creek

STATE OF WASHINGTON
TRANSPORTATION IMPROVEMENT BOARD
AND
City of Marysville
AGREEMENT

THIS GRANT AGREEMENT (hereinafter "Agreement") for the 156th Street NE, Smokey Pt Blvd to Hayho Creek (hereinafter "Project") is entered into by the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD (hereinafter "TIB") and City of Marysville, a political subdivision of the State of Washington (hereinafter "RECIPIENT").

1.0 PURPOSE

For the project specified above, TIB shall pay 80.0000 percent of approved eligible project costs up to the amount of \$1,440,000, pursuant to terms contained in the RECIPIENT'S Grant Application, supporting documentation, chapter 47.26 RCW, title 479 WAC, and the terms and conditions listed below.

2.0 SCOPE AND BUDGET

The Project Scope and Budget are initially described in RECIPIENT'S Grant Application and incorporated by reference into this Agreement. Scope and Budget will be further developed and refined, but not substantially altered during the Design, Bid Authorization and Construction Phases. Any material alterations to the original Project Scope or Budget as initially described in the Grant Application must be authorized by TIB in advance by written amendment.

3.0 PROJECT DOCUMENTATION

TIB requires RECIPIENT to make reasonable progress and submit timely Project documentation as applicable throughout the Project. Upon RECIPIENT'S submission of each Project document to TIB, the terms contained in the document will be incorporated by reference into the Agreement. Required documents include, but are not limited to the following:

- a) Project Funding Status Form
- b) Bid Authorization Form with plans and engineers estimate
- c) Award Updated Cost Estimate
- d) Bid Tabulations
- e) Contract Completion Updated Cost Estimate with final summary of quantities
- f) Project Accounting History

4.0 BILLING AND PAYMENT

The local agency shall submit progress billings as project costs are incurred to enable TIB to maintain accurate budgeting and fund management. Payment requests may be submitted as



often as the RECIPIENT deems necessary, but shall be submitted at least quarterly if billable amounts are greater than \$50,000. If progress billings are not submitted, large payments may be delayed or scheduled in a payment plan.

5.0 TERM OF AGREEMENT

This Agreement shall be effective upon execution by TIB and shall continue through closeout of the grant or until terminated as provided herein, but shall not exceed 10 years unless amended by the Parties.

6.0 AMENDMENTS

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

7.0 ASSIGNMENT

The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

8.0 GOVERNANCE & VENUE

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

9.0 DEFAULT AND TERMINATION

9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) In response to the notice, RECIPIENT shall provide a written response within 10 business days of receipt of TIB's notice of non-compliance, which should include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details.
- c) TIB will provide 30 days for RECIPIENT to make reasonable progress toward compliance pursuant to its plan to correct or implement its amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold further payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:



- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project payments until the requested corrections have been made or the Agreement has been terminated.

9.3 TERMINATION

- a) In the event of default by the RECIPIENT as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which shall be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such action as may be directed by TIB.
- b) In the event of default and/or termination by either PARTY, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in the AGREEMENT are not exclusive and are in addition to any other rights and remedies provided by law.

9.4 TERMINATION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for performance rendered or costs incurred prior to the effective date of termination.

10.0 USE OF TIB GRANT FUNDS

TIB grant funds come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than highway or roadway system improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9. If Right of Way is purchased using TIB funds, and some or all of the Right of Way is subsequently sold, proceeds from the sale must be deposited into the RECIPIENT's motor vehicle fund and used for a motor vehicle purpose.

11.0 INCREASE OR DECREASE IN TIB GRANT FUNDS

At Bid Award and Contract Completion, RECIPIENT may request an increase in the maximum payable TIB funds for the specific project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. All increase requests must be made pursuant to WAC 479-05-202 and/or WAC 479-01-060. If an increase is denied, the recipient shall be liable for all costs incurred in excess of the maximum amount payable by TIB. In the event that final costs related to the specific project are less than the initial grant award, TIB funds will be decreased and/or refunded to TIB in a manner that maintains the intended ratio between TIB funds and total project costs, as described in Section 1.0 of this Agreement.



12.0 INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

13.0 INDEMNIFICATION AND HOLD HARMLESS

The PARTIES agree to the following:

Each of the PARTIES, shall protect, defend, indemnify, and save harmless the other PARTY, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, that PARTY's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from the concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a PARTY's own negligence. Each of the PARTIES agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW. In any action to enforce the provisions of the Section, the prevailing PARTY shall be entitled to recover its reasonable attorney's fees and costs incurred from the other PARTY. The obligations of this Section shall survive termination of this Agreement.

14.0 DISPUTE RESOLUTION

- a) The PARTIES shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this AGREEMENT. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this AGREEMENT.
- b) Informal Resolution. The PARTIES shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the PARTIES are unable to resolve the dispute, the PARTIES shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The PARTIES shall share equally in the cost of the mediator.
- d) Each PARTY agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The PARTIES agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.



15.0 ENTIRE AGREEMENT

This Agreement, together with the RECIPIENT'S Grant Application, the provisions of chapter 47.26 Revised Code of Washington, the provisions of title 479 Washington Administrative Code, and TIB Policies, constitutes the entire agreement between the PARTIES and supersedes all previous written or oral agreements between the PARTIES.

16.0 RECORDS MAINTENANCE

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

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

Approved as to Form
 Attorney General

By:

Signature on file

 Guy Bowman
 Assistant Attorney General

Lead Agency

Transportation Improvement Board

 Chief Executive Officer Date

Jon Nehring
 Print Name

 Executive Director Date

 Print Name



Project Funding Status Form

Agency Name **MARYSVILLE**
Project Name: **156th Street NE**
Smokey Pt Blvd to Hayho Creek

TIB Project Number: **8-1-143(012)-1**

Verify the information below and revise if necessary.

Email to: Your TIB Engineer

PROJECT SCHEDULE

Target Dates		
Construction Approval	Contract Bid Award	Contract Completion
March 3, 2025	April 14, 2025	December 30, 2025

PROJECT FUNDING PARTNERS

List additional funding partners and amount.

Funding Partners	Amount	Revised Funding
MARYSVILLE	360,000	
WSDOT	0	
Federal Funds	0	
TOTAL LOCAL FUNDS	360,000	

Signatures are required from two different agency officials. Return the originally signed form to your TIB Engineer.

Mayor or Public Works Director

Signature

Jon Nehring

Printed or Typed Name

Date

Mayor

Title

Financial Officer

Signature

Printed or Typed Name

Date

Title



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Professional Services Agreement with Consor North America, Inc. for Construction Management Services for the State Ave NHS Project.

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the Professional Services Agreement with Consor North America, Inc. to provide Construction Management Services for the State Avenue NHS Project in the amount of \$214,275.98.

SUMMARY:

The City has been awarded \$2,690,500 from the WSDOT National Highway System (NHS) Asset Management Program for the State Avenue Corridor Pavement Preservation NHS Project between 1st Street and Grove Street. The awarded funds include costs of construction, construction management and material testing.

The project includes a full width 2-inch grind and overlay, pavement repair where necessary, curb ramp replacement to meet ADA requirements, replacement of signal equipment triggered by ramp upgrades, signal detection, and pavement marking to current standards for the segment of State Avenue between 1st Street and Grove Street.

Conzor was selected for this contract through a complete selection process which included review of submitted qualifications in response to the Request for Qualifications (RFQ) that was advertised in July 2023 by the City to provide construction management services for the project. Three statements of qualifications (SOQs) were received during the advertisement period. The City reviewed the provided SOQs and interviewed the consultant teams. The selection committee for this contract was made up of three project engineers within the Public Works department. The selection team interviewed the consultant teams in September 2023 and provided a recommendation for selection to the City Engineer and Public Works Director. Recommendation for selection was based on combined aggregated score by the City's selection committee. Consor was selected for this contract as the firm with the highest average total score based on the criteria and scoring criteria stated the RFQ.

Under this agreement, Consor will provide construction management, inspection, oversight, and material testing in accordance with the approved Project Manual and construction documents that were prepared for this project by the City's design consultant (Transpo Group) and approved by WSDOT. It is in staff's opinion that the negotiated scope and fee of \$214,275.98 demonstrates the required level of construction management services for this federally funded project. The full amount of this agreement is reimbursable through the NHS grant.

ATTACHMENTS:

[R2107_WSDOT PSA_Consor.pdf](#)

Local Agency Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number:

Does this Require DES filing? Yes No

Firm/Organization Legal Name (do not use dba's):			
Address		Federal Aid Number	
UBI Number		Federal TIN or SSN Number	
Execution Date		Completion Date	
1099 Form Required <input type="checkbox"/> Yes <input type="checkbox"/> No		Federal Participation <input type="checkbox"/> Yes <input type="checkbox"/> No	
Project Title			
Description of Work			
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No DBE Participation	Total Amount Authorized:
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No MBE Participation	Management Reserve Fund:
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No WBE Participation	Maximum Amount Payable:
<input type="checkbox"/> Yes	%	<input type="checkbox"/> No SBE Participation	

Index of Exhibits

- Exhibit A Scope of Work
- Exhibit B DBE Participation/SBE Plan
- Exhibit C Preparation and Delivery of Electronic Engineering and Other Data
- Exhibit D Prime Consultant Cost Computations
- Exhibit E Sub-consultant Cost Computations
- Exhibit F Title VI Assurances
- Exhibit G Certification Documents
- Exhibit H ~~Liability Insurance Increase~~
- Exhibit I Alleged Consultant Design Error Procedures
- Exhibit J Consultant Claim Procedures

Agreement Number:

THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

Agreement Number:

Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26 shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’s “DBE Program Participation Plan” and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory UDBE, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall submit a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, is required to enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation. Non minority, woman owned DBEs does not count towards UDBE goal attainment.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C – Preparation and Delivery of Electronic Engineering and other Data.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

If to CONSULTANT:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and, until approved by DES.

Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

Agreement Number:

V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
 2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.
A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.
Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.
The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.
 3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT' Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. Management Reserve Fund (MRF): The AGENCY may desire to establish a MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
 6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

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D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

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Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964
(42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973
(23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973
(29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975
(42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987
(Public Law 100-259)
- American with Disabilities Act of 1990
(42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J." In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

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XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their 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 CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT 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 and/or the AGENCY, their 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 and/or the AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and employees by the CONSULTANT, their agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

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

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.

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Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name:
Agency:
Address:
City: State: Zip:
Email:
Phone:
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

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The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the AGENCY

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

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XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

Agreement Number:

tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

Signature

Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

Agreement Number:

Exhibit A
Scope of Work

Project No.

Agreement Number:

SCOPE OF WORK

R2107: STATE AVENUE CORRIDOR PAVEMENT PRESERVATION NHS PROJECT CITY OF MARYSVILLE

Project Background

The City of Marysville is initiating a project which includes a full width 2-inch grind and overlay, pavement repairs where necessary, curb ramp replacement to meet Americans with Disabilities Act (ADA) requirements, replacement of signal equipment triggered by ramp upgrades, signal detection, and pavement markings to current standards. The project design is complete and the construction contractor bids are expected to be opened in early 2024. The City is contracting with Consor North America, Inc. (Consultant) to provide construction management and inspection services for the construction phase of the project.

Project Summary

Consultant will perform project management, contract administration, construction management, construction inspection, and testing and special inspection for the State Avenue Corridor Pavement Preservation NHS Project.

Project Assumptions

Construction is anticipated to commence in February 2024 for project kick-off and critical submittal phase. Once traffic signal system components submittals are approved, a work suspension is anticipated until traffic signal system components are fabricated. For budgeting purposes, a project suspension period of 60 calendar days (approximately 9 weeks) and an active construction duration of 45 working days (approximately 9 weeks) has been assumed.

Scope of Services

Consultant is proposing to perform the following services in relation to the City's State Avenue Corridor Pavement Preservation Project:

Task 1 - Project Management and Contract Administration

Objective

Provide overall leadership and team strategic guidance aligned with City staff objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

Subtask 1.1 Project Coordination

- Perform general administration and project management throughout the construction phase to ensure successful completion of all tasks and elements of the Project within the established scope, schedule, and budget.
- Proactively track progress of project work completed against schedule & budget.
- Inform the City of any anticipated challenges during the construction phase as they may arise and develop solutions together.

Subtask 1.2 Invoices/Status Reporting

- Prepare monthly invoices, including expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation.
- Monthly status reports to accompany each invoice and include comparisons of monthly expenditures and cumulative charges to budget by Task.

Subtask 1.2 Assumptions

- Assume four (4) monthly invoices and status reports

Subtask 1.2 Deliverables

- Consultant will deliver to the City a monthly invoice and status report covering:
 - Work on the project performed during the previous month
 - Issues encountered, and actions taken for their resolution
 - Potential impacts to submittal dates, budget shortfalls, or optional services
 - Construction schedule updates
 - Issues requiring project team action

Subtask 1.3 Project Safety Plan and DBE/SBE participation plan

Prepare a project specific safety plan for Consultant employees, to be used in conjunction with safety plans provided by the construction contractor.

Subtask 1.3 Deliverables

- Copy of project specific safety plan
- DBE/SBE participation plan

Task 2 – Construction Contract Administration and Closeout

Objective

Oversee construction phase activities as first point of contact for construction contractor. Coordinate with City staff and design team. Lead all project meetings and monitor project budget and schedule, quantities and quality of materials, and verify conformance with contract documents.

Subtask 2.1 Pre-Construction Meeting

Attend and lead the Pre-Construction Meeting with up to three (3) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

Subtask 2.1 Assumptions

- Three (3) consultant staff to attend Pre-Construction Meeting.

Subtask 2.1 Deliverables

- Meeting agenda and meeting minutes

Subtask 2.2 Project and Weekly Construction Meetings

Attend and lead project, weekly construction, and utility coordination meetings with up to one (1) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

Subtask 2.2 Assumptions

- One (1) consultant staff to attend (Construction Manager). Construction Inspector attendance is covered in Task 3 and not included in this subtask. Assume two (2) project meetings during the suspension period, nine (9) weekly meetings during active construction.

Subtask 2.2 Deliverables

- Meeting agenda and meeting minutes

Subtask 2.3 Contract Administration

Provide construction management and administration services to monitor that the project is completed according to the Contract Documents. Perform the following tasks.

1. Coordinate and communicate with City and construction contractor on a regular basis to discuss project issues and status.
2. Issue change orders, including independent cost justifications, and maintain a change order log.
3. Issue field work directives and non-conformance reports.
4. Assess contractor-submitted baseline schedule, schedule updates, and 3-week look ahead schedules for feasibility and conformance with the Contract.
5. Monitor overall project construction budget.
6. Maintain material quantity and quality documentation, including maintenance of the Record of Materials (ROM).

Subtask 2.3 Assumptions

- Assume Four (4) change orders taking ten (10) hours per change orders to coordinate with City, EOR and contractor and draft change orders.
- WSDOT will develop the ROM. If WSDOT is unable to provide the ROM prior to construction, the Consultant can prepare for an additional fee (to be reserved for supplement, if needed).

Subtask 2.3 Deliverables

- Change order documents for City review and approval.
- Field work directives and non-conformance reports
- Quality and quantity documentation
- Updated ROM

Subtask 2.4 Monthly Progress Estimates

Track quantities of materials installed monthly on pay note documents and draft progress estimates. Review estimates with the construction contractor prior to finalizing and submitting to the City for payment.

Subtask 2.4 Assumptions

- Five (5) monthly estimates are assumed. It is anticipated that three (1) monthly estimate will be required during the suspension period for material on hand (MOH) requests and

that four (4) monthly estimates will be required during active construction and project closeout.

Subtask 2.4 Deliverables

- Quantity tracking spreadsheet
- Monthly progress estimates with recommendation to pay

Subtask 2.5 Shop Drawings, Submittals and RFIs

Prepare and maintain submittal log for approximately 20 submittals and/or shop drawings. Receive, log, distribute, and track submittal reviews and responses for project submittals. Prepare a submittal and documentation matrix for reference by contractor, EOR and construction management team. Prepare and maintain RFI log for 5 RFIs. Receive, log, distribute, and track RFIs and respond to construction contractor.

Subtask 2.5 Assumptions

- Ten (10) shop drawings and submittals are assumed, with an average of two (2) hours per submittal. Assume five (5) additional re-submittals.
- Five (5) RFIs are assumed, with an average of two (2) hours per RFI.

Subtask 2.5 Deliverables

- Updated Submittal Log
- Reviewed submittals and shop drawings returned to construction contractor
- Updated RFI Log
- Reviewed RFI responses to construction contractor

Subtask 2.6 Labor Compliance

Lead all labor compliance monitoring including the following tasks.

1. Track and file statements of intent to pay prevailing wages (Intent) and affidavit of paid wages (Affidavit).
2. Review and approve Request to Sublets (RTS).
3. Collect and review certified payroll and work with contractor and subcontractors to resolve deficiencies.
4. Coordinate wage rate interviews with construction inspector and contractors.
5. Oversee contractor DBE compliance and reporting, including subcontract review, utilization reports.

Subtask 2.6 Assumptions

- Ten (10) Request to Sublets are assumed, with an average of one and half (1.5) hours per request.

Subtask 2.6 Deliverables

- Requests to Sublet filed
- Intents and Affidavits filed
- Certified payroll filed
- Wage rate interviews filed
- DBE reporting filed

Subtask 2.7 Project Closeout

Consultant will lead the close-out phase to document completion of the project and adherence to WSDOT LAG requirements. Consultant will provide complete project files to the City and perform the following duties to assist with project close-out.

Substantial Completion/Punch List: Upon substantial completion of work, Construction Inspector will provide punch list of any outstanding items and coordinate completion with contractor.

As-Built Drawings: Construction Inspector will confirm that the contractor is maintaining a set of “Record Drawings”

Project Closeout: Transfer project documentation to the City for permanent storage. Provide a thumb drive or other electronic transfer method with all electronic documents and pictures. Provide hard copies of documentation upon request.

Subtask 2.7 Deliverables

- Punch list
- Project Closeout Documents (Project documentation files including Electronic documents (in native format (docx, xlsx, dwg, etc.) as well as finalized/signed deliverables in a record format (such as pdf) and pictures on a thumb drive). Hard copies if requested.

Task 3 – Construction Inspection

Objective

Provide full time construction inspection to observe construction, monitor the work by the construction contractor, and document that the work is in general compliance with the requirements of the Contract Documents. The Construction Inspector is to act as the City’s on-site representative, is responsible for routine interfacing with the construction contractor and stakeholders, and is to observe the construction contractor’s operations and work.

Subtask 3.1 Construction Inspection

The Construction Inspector's activities, in general, will include the following tasks.

1. Attend pre-construction conference, project, and weekly progress meetings.
2. Establish pre-construction site conditions using photo and video log of sites.
3. Observe/inspect the contractor's activities, operations, and work and document the contractor's work is in general compliance with the requirements of the contract documents. Observations will be completed on the standard WSDOT daily report form unless specified differently by the City.
4. Monitor the contractor's progress with respect to planned/scheduled work.
5. Document contractors and DBE subcontractors working onsite and conduct wage rate interviews for all DBE contractors, contractor and sub-contractors.
6. Document the contractor's construction activities (preparation of daily reports, photographs, etc.).
7. Create field note records of bid item work performed.
8. Verify and document that traffic control is per accepted traffic control plans when on-site.
9. Keep Construction Manager and City informed of project progress, issues, and developments.
10. Review minor change requests by the contractor.
11. Coordinate, observe, and document material testing and special inspection
12. Utility coordination with stakeholders
13. Track force account labor and equipment/materials; issue force account sheets for additional payment when required.
14. Maintain field construction records and as-built set.
15. Maintain photo log

Subtask 3.1 Assumptions

- Inspection hours estimated at 50 hours per week
- For 45 working days (9 weeks) and includes attendance at all project meetings.
- Two (2) site visits at 5 hours estimate per visit will be required for MOH requests during the suspension period.

Subtask 3.1 Deliverables

- Daily progress reports, photos, force account documentation
- DBE on site review
- Contractor and sub-contractors wage rate interviews
- Daily on-site contractor and sub-contractors list

Task 4 – Testing and Special Inspection Services During Construction

Objective

Work under this task includes material testing and special inspection services in accordance with LAG testing requirements and NHS Highway System requirements.

Subtask 4.1 Material Testing and Special Inspections

Consultant will assist the City in developing a quality assurance program. Consultant will provide material testing and special inspection as outlined and at the frequency indicated in the LAG Manual.

Subtask 4.1 Assumptions

- Testing level of effort based on assumptions included in Materials Testing Consulting, Inc’s quote (attached)

Subtask 4.1 Deliverables

- Material test and special inspection test reports

Proposed Material Testing and Special Inspection Firm

- Materials Testing Consulting, Inc. – Material Testing and Special Inspection

Proposed Project Fee Estimate

Consultant proposes to perform this work on a time and expenses basis with a total not to exceed amount of \$ 214,275.97. The proposed fee estimate is provided as “Attachment A.” Fee estimates are based upon Consultant’s approved indirect overhead rates.

Proposed Project Schedule

Construction is anticipated to commence in February 2024 for project kick-off and critical submittal phase. Once traffic signal system components submittals are approved, a work suspension is anticipated until traffic signal system components are fabricated. For budgeting purposes, a project suspension period of 60 calendar days (approximately 9 weeks) and an active construction duration of 45 working days (approximately 9 weeks) has been assumed.

Exhibit B
DBE Participation

Agreement Number:

November 30, 2023

Mr. Jeff Laycock, PE
Public Works Director
City of Marysville
80 Columbia Avenue
Marysville, Washington 98270-5130

**City of Marysville
State Avenue Pavement Preservation
NHPP-2691(012)
DBE Goal**

Dear Mr. Laycock:


The WSDOT Disadvantaged Business Enterprise (DBE) and Training program, approved by FHWA, requires the evaluation of each local agency project to determine the feasibility of including goals (See chapter 26 of the Local Agency Guidelines (LAG) manual).

This office applied the criteria and established a **Sixteen percent mandatory** DBE goal for consultants on this project. This evaluation of the mandatory DBE goal will remain in effect for one year from the date of this letter. If the advertisement is scheduled for a date more than one year after the date of this letter or the cost estimate changes more than twenty percent, reevaluation of the DBE goal is required.

Please note that failure to receive concurrence to award from Local Programs in accordance with the LAG manual may result in loss of federal participation.

If you have any questions about the goal set, you can contact Nina Jones at 360.947.6788, or by email at jonesni@wsdot.wa.gov.

Sincerely,


Digitally signed by
Michele L Britton
Date: 2023.11.30
09:44:28 -08'00'

Michele L. Britton, PE
Asst. State Local Programs Engineer
Local Programs

MLB:jd:ml

cc: Mehrdad Moini, Northwest Region Local Programs Engineer, MS NB82-121

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

B. Roadway Design Files

C. Computer Aided Drafting Files

Agreement Number:

D. Specify the Agency's Right to Review Product with the Consultant

E. Specify the Electronic Deliverables to Be Provided to the Agency

F. Specify What Agency Furnished Services and Information Is to Be Provided

Agreement Number:

II. Any Other Electronic Files to Be Provided

III. Methods to Electronically Exchange Data

A. Agency Software Suite

B. Electronic Messaging System

C. File Transfers Format

Exhibit D
Prime Consultant Cost Computations

Agreement Number:

**Consultant Fee Determination - Summary Sheet
Negotiated Fee**

Client City of Marysville
Project Name Project R2107: State Ave Corridor Pavement Preservation NHS Project
Task Description:
Consultant Fee Determination
Consultant: Consor North America, Inc

Code	Classification	Man Hours		Rate	Dollars
LABOR		Hours			
	M Hagerty	4	x	\$99.96	= 399.84
	M Warren	235	x	\$72.00	= 16,920.00
	R Hawkins	486	x	\$49.50	= 24,057.00
	Heidi Ramos	180	x	\$43.26	= 7,786.80
	E Warren	104	x	\$41.25	= 4,290.00
	A Gillis	6	x	\$36.06	= 216.36
		0	x	\$0.00	= 0.00
	Total Hours	1,015			
	Total DSC				= 53,670.00
 Overhead (OH Cost -- including Salary Additives)					
	OH Rate x DSC of	<u>191.91%</u>	x	<u>\$ 53,670.00</u>	= 102,998.10
 Negotiated Fee (NF):					
	NF Rate x DSC of	<u>26.95%</u>	x	<u>\$ 53,670.00</u>	= 14,464.07
 Reimbursables					
Itemized	Quantity	Units		Rate	In Scope
Mileage	4,560	each	@	\$0.655	= 2,986.80
Reimbursables Total					<u>2,986.80</u>
Conсор Subtotal					<u>174,118.97</u>
Subconsultant					
MTC					<u>40,157.00</u>
Grand Total					<u><u>214,275.97</u></u>

Prepared By: Mark Warren

Date: November 9, 2023

Project R2107: State Ave Corridor Pavement Preservation NHS Project
 City of Marysville
 PROPOSED FEE ESTIMATE

	LABOR CLASSIFICATION (HOURS)						Hours	Labor	Overhead	Profit	Subconsultants		Multiplier % Markup	Subconsultant Total with Markup	Expenses	Total
	Principal Engineer I	Construction Manager V	Inspector IV	Technician IV	Technician I	Administrative III					HWA					
	\$99.96	\$72.00	\$49.50	\$43.26	\$41.25	\$36.06										
Average Billing Rate Estimated per Classification/Staff	\$99.96	\$72.00	\$49.50	\$43.26	\$41.25	\$36.06										
Staff Name	HagertyMic	WarrenMar	HawkinsRic	RamosHei	WarrenElk	GillisAsh		191.91%	26.95%							
Task 1 - Project Management and Contract Administration																
Task 1.1 - Project Coordination	3						3	\$ 299.88	\$ 575.50	\$ 80.82		1.0	\$ -	\$ -	\$ -	\$ 956
Task 1.2 - Invoices/Status Reporting		4				6	10	\$ 504.36	\$ 967.92	\$ 135.93		1.0	\$ -	\$ -	\$ -	\$ 1,608
Task 1.3 - Project Safety Plan	1	2					3	\$ 243.96	\$ 468.18	\$ 65.75		1.0	\$ -	\$ -	\$ -	\$ 778
Task 1 Subtotal	4	6	0	0	0	6	16	\$ 1,048.20	\$ 2,011.60	\$ 282.49	\$ -		\$ -	\$ -	\$ -	\$ 3,342
Task 2 - Construction Contract Administration and Closeout																
Task 2.1 - Pre-Construction Meeting		16	6				22	\$ 1,449.00	\$ 2,780.78	\$ 390.51		1.0	\$ -	\$ 105	\$ -	\$ 4,725
Task 2.2 - Project and Weekly Construction Meetings		55					55	\$ 3,960.00	\$ 7,599.64	\$ 1,067.22		1.0	\$ -	\$ 524	\$ -	\$ 13,151
Task 2.3 - Contract Administration		58		90			148	\$ 8,069.40	\$ 15,485.99	\$ 2,174.70		1.0	\$ -	\$ -	\$ -	\$ 25,730
Task 2.4 - Monthly Progress Estimates		25		36			61	\$ 3,357.36	\$ 6,443.11	\$ 904.81		1.0	\$ -	\$ -	\$ -	\$ 10,705
Task 2.5 - Shop Drawings, Submittals and RFIs		50		14			64	\$ 4,205.64	\$ 8,071.04	\$ 1,133.42		1.0	\$ -	\$ -	\$ -	\$ 13,410
Task 2.6 - Labor Compliance		5				64	69	\$ 3,000.00	\$ 5,757.30	\$ 808.50		1.0	\$ -	\$ -	\$ -	\$ 9,566
Task 2.7 - Project Closeout		20	20	40	40		120	\$ 5,810.40	\$ 11,150.74	\$ 1,565.90		1.0	\$ -	\$ -	\$ -	\$ 18,527
Task 2 Subtotal	0	229	26	180	104	0	539	\$ 29,851.80	\$ 57,288.59	\$ 8,045.06	\$ -		\$ -	\$ 629	\$ 95,814	
Task 3 - Construction Inspection																
Task 3.1 - Construction Inspection			460				460	\$ 22,770.00	\$ 43,697.91	\$ 6,136.52		1.0	\$ -	\$ 2,358	\$ -	\$ 74,962
Task 3 Subtotal	0	0	460	0	0	0	460	\$ 22,770.00	\$ 43,697.91	\$ 6,136.52	\$ -		\$ -	\$ 2,358	\$ 74,962	
Task 4 - Testing and Special Inspection Services During Construction																
Task 4.1 - Material Testing and Special Inspections							0	\$ -	\$ -	\$ -	\$ 40,157	1.0	\$ 40,157	\$ -	\$ -	\$ 40,157
Task 4 Subtotal	0	0	0	0	0	0	0	\$ -	\$ -	\$ -	\$ 40,157		\$ 40,157	\$ -	\$ -	\$ 40,157
TOTAL - ALL TASKS	4	235	486	180	104	6	1015	\$ 53,670.00	\$ 102,998.10	\$ 14,464.07	\$ 40,157		\$ 40,157	\$ 2,987	\$ 214,276	

Actuals Not To Exceed Table (ANTE)

City of Marysville Agreement: Consor North America, Inc. 10900 NE 8th Street, #1440 Bellevue, WA 98004				
Job Classifications	Direct Labor Hourly Billing Rate NTE	Overhead NTE	Fixed Fee NTE	All Inclusive Hourly Billing Rate NTE
		191.91%	26.95%	
Principal Engineer VI	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer V	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer IV	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer III	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer II (Reza ONLY)	\$121.59	\$233.34	\$32.77	\$387.70
Principal Engineer II	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer I	\$106.25	\$203.90	\$28.63	\$338.79
Professional Engineer IX	\$69.55	\$133.47	\$18.74	\$221.77
Professional Engineer VIII	\$86.54	\$166.08	\$23.32	\$275.94
Professional Engineer VII	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer VI	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer V	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer IV	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer III	\$68.20	\$130.88	\$18.38	\$217.46
Engineering Designer IX	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer VIII	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer VII	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer IV	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer III	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer II	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer I	\$36.00	\$69.09	\$9.70	\$114.79
Construction Manager VI	\$72.00	\$138.18	\$19.40	\$229.58
Construction Manager V	\$72.00	\$138.18	\$19.40	\$229.58
Construction Manager III	\$72.00	\$138.18	\$19.40	\$229.58
Inspector VI	\$72.00	\$138.18	\$19.40	\$229.58
Inspector V	\$72.00	\$138.18	\$19.40	\$229.58
Inspector IV	\$49.50	\$95.00	\$13.34	\$157.84
Inspector III	\$49.50	\$95.00	\$13.34	\$157.84
Inspector II	\$49.50	\$95.00	\$13.34	\$157.84
Inspector I	\$49.50	\$95.00	\$13.34	\$157.84
Technician IV	\$43.26	\$83.02	\$11.66	\$137.94
Technician III	\$41.25	\$79.16	\$11.12	\$131.53
Technician II	\$43.26	\$83.02	\$11.66	\$137.94
Technician I	\$41.25	\$79.16	\$11.12	\$131.53
Administrative III	\$50.00	\$95.96	\$13.48	\$159.43
Administrative II	\$42.00	\$80.60	\$11.32	\$133.92
Administrative I	\$42.00	\$80.60	\$11.32	\$133.92
Project Coordinator IV	\$50.00	\$95.96	\$13.48	\$159.43

Project Coordinator III	\$50.00	\$95.96	\$13.48	\$159.43
Project Coordinator II	\$42.00	\$80.60	\$11.32	\$133.92
Project Coordinator I	\$42.00	\$80.60	\$11.32	\$133.92

Appendix AA Consultant Fee Calculation Worksheet

AA.1 Consultant Fee Calculation Worksheet

This technique will ensure consideration of the relative value of the appropriate factor in the establishment of a fee objective in the conduct of negotiating and provide a basis of documentation of the fee objective.

In negotiating a fee as an element of price, a reasonable fee shall be negotiated or determined for each agreement by using the following procedure as a guide:

Weighted Guidelines			
Factor	Rate	Weight	Value
Degree of Risk	25	0.26	6.5
Relative Difficulty of Work	20	0.26	5.2
Size of Job	15	0.34	5.1
Period of Performance	15	0.18	2.7
Assistance by the State	15	0.35	5.25
Sub-consulting	10	0.22	2.2
Total			26.95

Based on the circumstances of each agreement and/or supplement, each of the above factors shall be weighted from .17 to .35 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column, when totaled, indicates the fair and reasonable fixed fee and/or profit percentage of direct (raw) labor costs for the agreement and/or supplement.

AA.2 Description of Calculation of Fee Factors

Degree of Risk: Where the design involves no risk, or the degree of risk is very small, the weighting should be .17; as the degree of risk increases, the weighting should be increased up to a maximum of .35. Agreements with options will have, generally, a higher weighted value than agreements without options for which quantities are provided. Other things to consider: nature of the design, responsibility for design, reasonableness of negotiated costs, amount and type of labor included in costs, amount of executive management/principal time required.

Relative Difficulty of Design: If the design is most difficult and complex, the weighting should be .35 and should be proportionally reduced to .17 on the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Some things to consider: the nature of the design; what is the time schedule; etc., and whether it is rehabilitation or new work.

Size of Job: All agreement (estimated) total costs less than \$100,000 shall be weighted at .35. The fixed fee percentage should be proportionately weighted for those projects between \$100,000 and \$5,000,000 from .34 to .21. Agreements from \$5,000,000 to \$10,000,000 may be proportionately weighted from .21 to .17, and work in excess of \$10,000,000 at .17.

Period of Performance: Agreements and/or supplements that are 24 months or longer are to be weighted at .35. Agreements and/or supplements of lesser duration are to be proportionately weighted to a minimum of .17 for work less than 2 months.

Assistance by the State: To be weighted from .35 in those situations where few items are provided by the state to .17 in those situations where the state provides many items. Things to consider: existing or provided design or plans, mapping, quantities, surveys, geotechnical information, etc.

Sub-Consulting: To be weighted in proportion to the amount of subconsulting. Where 40% (40 percent) or more of the design is to be done by subconsultants, the weighting is to be .35. The weighting is proportionally decreased to .17 where all the design is performed by the consultant's own forces.

Exhibit E ***Sub-consultant Cost Computations***

There isn't any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

Agreement Number:

Project Cost Estimate
 Inspection & Testing
 State Avenue Corridor Pavement Preservation NHS
 Marysville, WA
 Prepared For: Mike Hagerty, PE, Consor



HWA Ref: 2024-004
 Date: 29-Dec-23

Prepared By: BS/VO

PROPOSED WORK SCOPE:

This cost estimate is based on testing frequencies requested by the client

1. Sampling and acceptance/Proctor testing of CSTC for use in ADA Ramp construction.
2. Inspection and testing of compacted aggregates for ADA ramp construction.
3. Sampling of HMA aggregate and oil at the plant for ignition oven correction factor.
4. Inspection and testing of HMA placement and compaction (minimum: one test per 100 tons).
5. Sampling and testing HMA during paving for Rice density (15 samples), and for asphalt extraction and gradation (4 samples)
6. Sampling and testing HMA Aggregates (HMAA) for Sand Equivalent, Fracture Face, and Uncompacted Voids (4 samples) and for Grain Size Distribution (12 samples)
7. On-call geotechnical consultation support for potential pavement subgrade issues.
8. Written field reports will be prepared for all inspections and reviewed for QC.

Material Testing - ESTIMATED HWA LABOR:

Scope of Services	2024 PERSONNEL & BILLING RATES						
	GeoEng VIII \$90.00	GeoEng II \$50.00	Geol VI \$60.00	Geol II \$32.00	Contracts \$33.00	TOTAL HOURS	TOTAL AMOUNT
Aggregate Inspection and Testing, including:							
Sampling of CSTC at WSDOT intervals (assume 1 source)				4		4	\$128
Inspection and Testing of compacted aggregates for ADA construction (4 visits)				16		16	\$512
Asphalt Inspection and Testing, including:							
Inspection and Testing during HMA Overlay (15 visits)				150		150	\$4,800
HMA Oven Ignition Correction Sampling of Aggregate and Oil (1 mix x 1 initial source)				4		4	\$128
HMA and HMAA Sampling at Batch Plant (15 trips)				60		60	\$1,920
Geotechnical Observation/Project Management							
Preconstruction Meeting	1		1			2	\$150
On-call Geotechnical Consultation Support	8	4				12	\$920
QA Review, PM, Reporting, Submittal Reviews, and Report Distribution			12		2	14	\$786
DIRECT SALARY COST	9	4	13	234	2	262	\$9,344

LABORATORY TESTING SUMMARY:	Est. No. Tests	Unit Cost	Total Cost
Acceptance Testing for CSTC (GS, SE, Fracture) - assume 1 source	1	\$375	\$375
Proctor Tests on all Materials to be Compacted	1	\$285	\$285
HMA Aggregate Acceptance Testing (GS)	12	\$195	\$2,340
HMA Aggregate Acceptance Testing (SE, FF, Unc. Voids)	4	\$330	\$1,320
HMA Oven Correction Factor (1 mixes x 1 source x 3 burns)	3	\$160	\$480
HMA: Rice Density	15	\$160	\$2,400
HMA: Extraction/Gradation	4	\$225	\$900
TOTAL LABORATORY TESTING:			\$8,100

ESTIMATED DIRECT EXPENSES:	
Mileage to Job Site IRS Rate 0.655/mile, assume 19 trips	\$620
Mileage for Sampling Aggregates and HMA at Sources, at IRS Rate 0.655/mile, assume 16 trips	\$580
Nuclear Gauge Rental (Thin Lift or Soil): 19 days @ \$50/day	\$950
TOTAL DIRECT EXPENSES:	\$2,150

ESTIMATED PROJECT TOTALS AND SUMMARY:	
Direct Salary Cost (DSC)	\$9,344
OH @ 1.9007 * DSC	\$17,760
FF @ 30% * (DSC)	\$2,803
Total Labor Cost	\$29,907
Laboratory Testing	\$8,100
Direct Expenses	\$2,150
ESTIMATED TASK TOTAL:	\$40,157

Assumptions:

1. These estimates may require adjustment due to the Contractor's rate of construction, weather delays, source changes and/or other factors beyond our control.
2. The HWA PM reserves the right to shift hours between the various subtasks as required.
3. The HWA work scope does not include safety assessment nor work pertaining to any environmental issues.
4. HMA Aggregates will be sampled during the same visit that HMA is sampled for Rice/Extraction Gradation.
5. This cost estimate was prepared with the understanding that the Client will schedule inspection as needed.
6. All night work is charged at an 8 hour minimum segment. Night work cancelled within 12 hrs of scheduled time will be charged 4 hrs.
7. All weekend work is charged at a 4 hour minimum segment. Weekend work cancelled within 12 hrs of scheduled time will be charged 4 hrs.
8. Concrete and Concrete aggregates will not be tested.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G
Certification Documents

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of _____
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Agreement Number:

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of

whose address is

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the and the Federal Highway Administration, U.S. Department of Transportation in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-1(b) Certification of

I hereby certify that I am the:

Other

of the _____, and
or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the _____ and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Agreement Number:

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-4 Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm:

Signature

Title

Date of Execution***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number:

Exhibit H

Liability Insurance Increase

To Be Used Only If Insurance Requirements Are Increased

The professional liability limit of the CONSULTANT to the AGENCY identified in Section XII, Legal Relations and Insurance of this Agreement is amended to \$

The CONSULTANT shall provide Professional Liability insurance with minimum per occurrence limits in the amount of \$

Such insurance coverage shall be evidenced by one of the following methods:

- Certificate of Insurance.
- Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

Self-insurance through documentation of a separate fund established exclusively for the payment of professional liability claims, including claim amounts already reserved against the fund, safeguards established for payment from the fund, a copy of the latest annual financial statements, and disclosure of the investment portfolio for those funds.

Should the minimum Professional Liability insurance limit required by the AGENCY as specified above exceed \$1 million per occurrence or the value of the contract, whichever is greater, then justification shall be submitted to the Federal Highway Administration (FHWA) for approval to increase the minimum insurance limit.

If FHWA approval is obtained, the AGENCY may, at its own cost, reimburse the CONSULTANT for the additional professional liability insurance required.

Notes: Cost of added insurance requirements: \$

- Include all costs, fee increase, premiums.
- This cost shall not be billed against an FHWA funded project.
- For final contracts, include this exhibit.

Agreement Number:

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number:

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Agreement Number:

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement Number:

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.

Agreement Number:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Professional Services Agreement with Consor North America, Inc. for Construction Management Services for the 116th Street NHS Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the Professional Services Agreement with Consor North America, Inc. to provide Construction Management Services for the 116th Street NHS Project in the amount of \$172,624.72.

SUMMARY:

The City has been awarded \$1,581,400 from the WSDOT National Highway System (NHS) Asset Management Program for the 116th Street Pavement Preservation NHS Project between I-5 and State Avenue. The awarded funds include costs of construction, construction management and material testing.

The project includes a full width 2-inch grind and overlay, pavement repair where necessary, curb ramp replacement to meet ADA requirements, replacement of signal equipment triggered by ramp upgrades, signal detection, and pavement marking to current standards for the section of 116th Street between I-5 and State Avenue.

Conzor was selected for this contract through a complete selection process which included review of submitted qualifications in response to the Request for Qualifications (RFQ) that was advertised in July 2023 by the City to provide construction management services for the project. Three statements of qualifications (SOQs) were received during the advertisement period. The City reviewed the provided SOQs and interviewed the consultant teams. The selection committee for this contract was made up of three project engineers within the Public Works department. The selection team interviewed the consultant teams in September 2023 and provided a recommendation for selection to the City Engineer and the Public Works Director. Recommendation for selection was based on combined aggregated score by the City's selection committee in September 2023. Consor was selected for this contract as the firm with the highest average total score based on the criteria and scoring criteria stated the RFQ.

Under this agreement Consor will provide construction management, inspection, oversight, and material testing in accordance with the approved Project Manual and construction documents that were prepared for this project by the City's design consultant (Transpo Group) and approved by WSDOT. It is in staff's opinion that the negotiated scope and fee of \$172,624.72 demonstrates the required level of construction management services for this federally funded project. The full amount of this agreement is reimbursable through the NHS grant.

ATTACHMENTS:

[R2108_WSDOT PSA_Consor.pdf](#)

Local Agency Professional Services Cost Plus Fixed Fee Consultant Agreement

Agreement Number: R2108

Does this Require DES filing? Yes No

Firm/Organization Legal Name (do not use dba's): Conсор North America, Inc.	
Address 600 University Street, Suit #300, Seattle WA 98101	Federal Aid Number
UBI Number 601-124-424	Federal TIN or SSN Number
Execution Date 2/12/2024	Completion Date 12/31/2024
1099 Form Required <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Federal Participation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Project Title Construction Management Services for the 116th Street Pavement Preservation Project NHS	
Description of Work Under this agreement the Conсор North America, Inc. (Conсор) will provide the City of Marysville (City) with construction management services during construction of the 116th Street Pavement Preservation Project NHS. Construction involves full width grind and overlay, pavement repair where necessary, upgrading of curb ramps to meet ADA requirements and associated signal improvements, utility adjustment, signal detection equipment replacement, and pavement markings. Conсор will provide daily oversight and coordination on the project between the City and the selected Contractor during the active work phase. This will include material testing and management of project documentation for compliance with project goals in accordance with WSDOT requirements.	
<input type="checkbox"/> Yes % <input checked="" type="checkbox"/> No DBE Participation <input type="checkbox"/> Yes % <input checked="" type="checkbox"/> No MBE Participation <input type="checkbox"/> Yes % <input checked="" type="checkbox"/> No WBE Participation <input type="checkbox"/> Yes % <input checked="" type="checkbox"/> No SBE Participation	Total Amount Authorized: \$172,624.72 Management Reserve Fund: \$0 Maximum Amount Payable: \$172,624.72

Index of Exhibits

- Exhibit A Scope of Work
- Exhibit B ~~DBE Participation/SBE Plan~~
- Exhibit C Preparation and Delivery of Electronic Engineering and Other Data
- Exhibit D Prime Consultant Cost Computations
- Exhibit E Sub-consultant Cost Computations
- Exhibit F Title VI Assurances
- Exhibit G Certification Documents
- Exhibit H ~~Liability Insurance Increase~~
- Exhibit I Alleged Consultant Design Error Procedures
- Exhibit J Consultant Claim Procedures

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THIS AGREEMENT, made and entered into as shown in the “Execution Date” box on page one (1) of this AGREEMENT, between the City of Marysville hereinafter called the “AGENCY,” and the “Firm / Organization Name” referenced on page one (1) of this AGREEMENT, hereinafter called the “CONSULTANT.”

WHEREAS, the AGENCY desires to accomplish the work referenced in “Description of Work” on page one (1) of this AGREEMENT and hereafter called the “SERVICES;” and does not have sufficient staff to meet the required commitment and therefore deems it advisable and desirable to engage the assistance of a CONSULTANT to provide the necessary SERVICES; and

WHEREAS, the CONSULTANT represents that they comply with the Washington State Statutes relating to professional registration, if applicable, and has signified a willingness to furnish consulting services to the AGENCY.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. General Description of Work

The work under this AGREEMENT shall consist of the above-described SERVICES as herein defined, and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, and related equipment and, if applicable, sub-consultants and subcontractors necessary to conduct and complete the SERVICES as designated elsewhere in this AGREEMENT.

II. General Scope of Work

The Scope of Work and projected level of effort required for these SERVICES is described in Exhibit “A” attached hereto and by this reference made a part of this AGREEMENT. The General Scope of Work was developed utilizing performance based contracting methodologies.

III. General Requirements

All aspects of coordination of the work of this AGREEMENT with outside agencies, groups, or individuals shall receive advance approval by the AGENCY. Necessary contacts and meetings with agencies, groups, and/or individuals shall be coordinated through the AGENCY. The CONSULTANT shall attend coordination, progress, and presentation meetings with the AGENCY and/or such State, Federal, Community, City, or County officials, groups or individuals as may be requested by the AGENCY. The AGENCY will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum required hours or days’ notice shall be agreed to between the AGENCY and the CONSULTANT and shown in Exhibit “A.”

The CONSULTANT shall prepare a monthly progress report, in a form approved by the AGENCY, which will outline in written and graphical form the various phases and the order of performance of the SERVICES in sufficient detail so that the progress of the SERVICES can easily be evaluated.

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations, and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

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Participation for Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE), if required, per 49 CFR Part 26 shall be shown on the heading of this AGREEMENT. If DBE firms are utilized at the commencement of this AGREEMENT, the amounts authorized to each firm and their certification number will be shown on Exhibit “B” attached hereto and by this reference made part of this AGREEMENT. If the Prime CONSULTANT is a DBE certified firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the AGENCY’s “DBE Program Participation Plan” and perform a minimum of 30% of the total amount of this AGREEMENT. It is recommended, but not required, that non-DBE Prime CONSULTANTS perform a minimum of 30% of the total amount of this AGREEMENT.

In the absents of a mandatory UDBE, a voluntary SBE goal amount of ten percent of the Consultant Agreement is established. The Consultant shall submit a SBE Participation Plan prior to commencing work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

The CONSULTANT, on a monthly basis, is required to enter the amounts paid to all firms (including Prime) involved with this AGREEMENT into the wsdot.diversitycompliance.com program. Payment information shall identify any DBE Participation. Non minority, woman owned DBEs does not count towards UDBE goal attainment.

All Reports, PS&E materials, and other data furnished to the CONSULTANT by the AGENCY shall be returned. All electronic files, prepared by the CONSULTANT, must meet the requirements as outlined in Exhibit “C – Preparation and Delivery of Electronic Engineering and other Data.”

All designs, drawings, specifications, documents, and other work products, including all electronic files, prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for these SERVICES, and are the property of the AGENCY. Reuse by the AGENCY or by others, acting through or on behalf of the AGENCY of any such instruments of service, not occurring as a part of this SERVICE, shall be without liability or legal exposure to the CONSULTANT.

Any and all notices or requests required under this AGREEMENT shall be made in writing and sent to the other party by (i) certified mail, return receipt requested, or (ii) by email or facsimile, to the address set forth below:

If to AGENCY:

Name: Sam Adlington
Agency: City of Marysville
Address: 501 Delta Ave
City: Marysville State: Wa Zip: 98270
Email: sadlington@marysvillewa.gov
Phone: 360-363-8273
Facsimile:

If to CONSULTANT:

Name: Mike Hagerty
Agency: Consor North America, Inc.
Address: 600 University Street, Suite #300
City: Seattle State: Wa Zip: 98101
Email: mike.hagerty@consoreng.com
Phone: 925-200-9898
Facsimile:

IV. Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the AGENCY. This AGREEMENT may require filing with the Department of Enterprise Services (DES) pursuant to RCW 39.26.140. If such approval is required by DES, this AGREEMENT shall not bind the AGENCY until approved by DES. If the AGREEMENT must be approved by DES, work cannot begin, nor payment made until ten (10) or more working days following the date of filing, and, until approved by DES.

Any subsequent SUPPLEMENTAL AGREEMENT may also be subject to filing and/or approval from DES. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT titled “Completion Date.”

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the AGENCY in the event of a delay attributable to the AGENCY, or because of unavoidable delays caused by an act of GOD, governmental actions, or other conditions beyond the control of the CONSULTANT. A prior supplemental AGREEMENT issued by the AGENCY is required to extend the established completion time.

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V. Payment Provisions

The CONSULTANT shall be paid by the AGENCY for completed SERVICES rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for SERVICES performed or SERVICES rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete SERVICES, specified in Section II, "Scope of Work". The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31 (www.ecfr.gov). The estimate in support of the Cost Plus Fixed Fee amount is attached hereto as Exhibits "D" and "E" and by this reference made part of this AGREEMENT.

- A. Actual Costs: Payment for all consulting services for this PROJECT shall be on the basis of the CONSULTANT'S actual cost plus a fixed fee. The actual cost shall include direct salary cost, indirect cost rate, and direct non-salary costs.
1. Direct (RAW) Labor Costs: The Direct (RAW) Labor Cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the AGENCY.
 2. Indirect Cost Rate (ICR) Costs: ICR Costs are those costs, other than direct costs, which are included as such on the books of the CONSULTANT in the normal everyday keeping of its books. Progress payments shall be made at the ICR rates shown in attached Exhibits "D" and "E" of this AGREEMENT. Total ICR payment shall be based on Actual Costs. The AGENCY agrees to reimburse the CONSULTANT the actual ICR costs verified by audit, up to the Maximum Total Amount Payable, authorized under this AGREEMENT, when accumulated with all other Actual Costs.
A summary of the CONSULTANT'S cost estimate and the ICR percentage is shown in Exhibits "D" and "E", attached hereto and by this reference made part of this AGREEMENT. The CONSULTANT (prime and all A&E sub-consultants) will submit to the AGENCY within six (6) months after the end of each firm's fiscal year, an ICR schedule in the format required by the AGENCY (cost category, dollar expenditures, etc.) for the purpose of adjusting the ICR rate for billings received and paid during the fiscal year represented by the ICR schedule. It shall also be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's ICR cost to reflect the actual rate. The ICR schedule will be sent to Email: ConsultantRates@wsdot.wa.gov.
Failure to supply this information by either the prime CONSULTANT or any of their A&E sub-consultants shall cause the AGENCY to withhold payment of the billed ICR costs until such time as the required information is received and an overhead rate for billing purposes is approved.
The AGENCY's Project Manager and/or the Federal Government may perform an audit of the CONSULTANT'S books and records at any time during regular business hours to determine the actual ICR rate, if they so desire.
 3. Direct Non-Salary Costs: Direct Non-Salary Costs will be reimbursed at the Actual Cost to the CONSULTANT. (excluding Meals, which are reimbursed at the per diem rates identified in this section) These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies, computer charges and fees of sub-consultants. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the AGENCY. The CONSULTANT shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the WSDOT' Accounting Manual M 13-82, Chapter 10 – Travel Rules and Procedures, and revisions thereto. Air, train, and rental car costs shall be reimbursed in accordance with 48 Code of Federal Regulations (CFR) Part 31.205-46 "Travel Costs." The billing for Direct Non-Salary Costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the AGENCY upon request. All above charges must be necessary for the services provided under this AGREEMENT.

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4. Fixed Fee: The Fixed Fee, which represents the CONSULTANT'S profit, is shown in attached Exhibits "D" and "E" of this AGREEMENT. This fee is based on the Scope of Work defined in this AGREEMENT and the estimated person-hours required to perform the stated Scope of Work. In the event the CONSULTANT enters into a supplemental AGREEMENT for additional work, the supplemental AGREEMENT may include provisions for the added costs and an appropriate additional fee. The Fixed Fee will be prorated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the Monthly Progress Reports accompanying the billings. Any portion of the Fixed Fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
 5. Management Reserve Fund (MRF): The AGENCY may desire to establish a MRF to provide the Agreement Administrator with the flexibility to authorize additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$100,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the MRF is shown in the heading of this AGREEMENT. This fund may not be replenished. Any changes requiring additional costs in excess of the MRF shall be made in accordance with Section XIII, "Extra Work."
 6. Maximum Total Amount Payable: The Maximum Total Amount Payable by the AGENCY to the CONSULTANT under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, and the MRF. The Maximum Total Amount Payable does not include payment for Extra Work as stipulated in Section XIII, "Extra Work." No minimum amount payable is guaranteed under this AGREEMENT.
- B. Monthly Progress Payments: The CONSULTANT may submit billings to the AGENCY for reimbursement of Actual Costs plus the ICR and calculated fee on a monthly basis during the progress of the work. Such billings shall be in a format approved by the AGENCY and accompanied by the monthly progress reports required under Section III, "General Requirements" of this AGREEMENT. The billings will be supported by an itemized listing for each item including Direct (RAW) Labor, Direct Non-Salary, and allowable ICR Costs to which will be added the prorated Fixed Fee. To provide a means of verifying the billed Direct (RAW) Labor costs for CONSULTANT employees, the AGENCY may conduct employee interviews. These interviews may consist of recording the names, titles, Direct (RAW) Labor rates, and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final Payment of any balance due the CONSULTANT of the gross amount earned will be made promptly upon its verification by the AGENCY after the completion of the work under this AGREEMENT, contingent, if applicable, upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such Final Payment by the CONSULTANT shall constitute a release of all claims for payment, which the CONSULTANT may have against the AGENCY unless such claims are specifically reserved in writing and transmitted to the AGENCY by the CONSULTANT prior to its acceptance. Said Final Payment shall not, however, be a bar to any claims that the AGENCY may have against the CONSULTANT or to any remedies the AGENCY may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit; all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the AGENCY within thirty (30) calendar days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the AGENCY of overpayment. The CONSULTANT has twenty (20) working days after receipt of the final POST AUDIT to begin the appeal process to the AGENCY for audit findings.

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D. Inspection of Cost Records: The CONSULTANT and their sub-consultants shall keep available for inspection by representatives of the AGENCY and the United States, for a period of six (6) years after receipt of final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this AGREEMENT is initiated before the expiration of the six (6) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

An interim or post audit may be performed on this AGREEMENT. The audit, if any, will be performed by the State Auditor, WSDOT's Internal Audit Office and /or at the request of the AGENCY's Project Manager.

VI. Sub-Contracting

The AGENCY permits subcontracts for those items of SERVICES as shown in Exhibit "A" attached hereto and by this reference made part of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any SERVICE under this AGREEMENT without prior written permission of the AGENCY. No permission for subcontracting shall create, between the AGENCY and sub-consultant, any contract or any other relationship.

Compensation for this sub-consultant SERVICES shall be based on the cost factors shown on Exhibit "E" attached hereto and by this reference made part of this AGREEMENT.

The SERVICES of the sub-consultant shall not exceed its maximum amount payable identified in each sub-consultant cost estimate unless a prior written approval has been issued by the AGENCY.

All reimbursable direct labor, indirect cost rate, direct non-salary costs and fixed fee costs for the sub-consultant shall be negotiated and substantiated in accordance with section V "Payment Provisions" herein and shall be memorialized in a final written acknowledgement between the parties.

All subcontracts shall contain all applicable provisions of this AGREEMENT, and the CONSULTANT shall require each sub-consultant or subcontractor, of any tier, to abide by the terms and conditions of this AGREEMENT. With respect to sub-consultant payment, the CONSULTANT shall comply with all applicable sections of the STATE's Prompt Payment laws as set forth in RCW 39.04.250 and RCW 39.76.011.

The CONSULTANT, sub-recipient, or sub-consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

VII. Employment and Organizational Conflict of Interest

The CONSULTANT warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the AGENCY shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from this AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the AGENCY, and any and all claims that may arise under any Workmen's

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Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full- or part-time basis, or other basis, during the period of this AGREEMENT, any professional or technical personnel who are, or have been, at any time during the period of this AGREEMENT, in the employ of the United States Department of Transportation or the AGENCY, except regularly retired employees, without written consent of the public employer of such person if he/she will be working on this AGREEMENT for the CONSULTANT.

VIII. Nondiscrimination

During the performance of this AGREEMENT, the CONSULTANT, for itself, its assignees, sub-consultants, subcontractors and successors in interest, agrees to comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Chapter 21 Subchapter V § 2000d through 2000d-4a)
- Federal-aid Highway Act of 1973 (23 U.S.C. Chapter 3 § 324)
- Rehabilitation Act of 1973 (29 U.S.C. Chapter 16 Subchapter V § 794)
- Age Discrimination Act of 1975 (42 U.S.C. Chapter 76 § 6101 *et. seq.*)
- Civil Rights Restoration Act of 1987 (Public Law 100-259)
- American with Disabilities Act of 1990 (42 U.S.C. Chapter 126 § 12101 *et. seq.*)
- 23 CFR Part 200
- 49 CFR Part 21
- 49 CFR Part 26
- RCW 49.60.180

In relation to Title VI of the Civil Rights Act of 1964, the CONSULTANT is bound by the provisions of Exhibit "F" attached hereto and by this reference made part of this AGREEMENT, and shall include the attached Exhibit "F" in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

IX. Termination of Agreement

The right is reserved by the AGENCY to terminate this AGREEMENT at any time with or without cause upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the AGENCY, other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged and any appropriate fixed fee percentage at the time of termination of this AGREEMENT, plus any direct non-salary costs incurred up to the time of termination of this AGREEMENT.

No payment shall be made for any SERVICES completed after ten (10) days following receipt by the CONSULTANT of the notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth in paragraph two (2) of this section, then no final payment shall be due and the CONSULTANT shall immediately reimburse the AGENCY for any excess paid.

If the services of the CONSULTANT are terminated by the AGENCY for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In the event of a termination for default, the amount to be paid to the CONSULTANT shall be determined by the AGENCY with consideration given to the actual costs incurred by the CONSULTANT in performing SERVICES to the date of termination, the amount of SERVICES originally required which was satisfactorily completed to

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date of termination, whether that SERVICE is in a form or a type which is usable to the AGENCY at the time of termination, the cost to the AGENCY of employing another firm to complete the SERVICES required and the time which may be required to do so, and other factors which affect the value to the AGENCY of the SERVICES performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount, which would have been made using the formula set forth in paragraph two (2) of this section.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or its employee's fault or negligence, the termination shall be deemed to be a termination for the convenience of the AGENCY. In such an event, the CONSULTANT would be reimbursed for actual costs and appropriate fixed fee percentage in accordance with the termination for other than default clauses listed previously.

The CONSULTANT shall, within 15 days, notify the AGENCY in writing, in the event of the death of any member, partner, or officer of the CONSULTANT or the death or change of any of the CONSULTANT's supervisory and/or other key personnel assigned to the project or disaffiliation of any principally involved CONSULTANT employee. The CONSULTANT shall also notify the AGENCY, in writing, in the event of the sale or transfer of 50% or more of the beneficial ownership of the CONSULTANT within 15 days of such sale or transfer occurring. The CONSULTANT shall continue to be obligated to complete the SERVICES under the terms of this AGREEMENT unless the AGENCY chooses to terminate this AGREEMENT for convenience or chooses to renegotiate any term(s) of this AGREEMENT. If termination for convenience occurs, final payment will be made to the CONSULTANT as set forth in the second and third paragraphs of this section.

Payment for any part of the SERVICES by the AGENCY shall not constitute a waiver by the AGENCY of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform SERVICES required of it by the AGENCY. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

X. Changes of Work

The CONSULTANT shall make such changes and revisions in the completed work of this AGREEMENT as necessary to correct errors appearing therein, without additional compensation thereof. Should the AGENCY find it desirable for its own purposes to have previously satisfactorily completed SERVICES or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the AGENCY. This work shall be considered as Extra Work and will be paid for as herein provided under section XIII "Extra Work."

XI. Disputes

Any disputed issue not resolved pursuant to the terms of this AGREEMENT shall be submitted in writing within 10 days to the Director of Public Works or AGENCY Engineer, whose decision in the matter shall be final and binding on the parties of this AGREEMENT; provided however, that if an action is brought challenging the Director of Public Works or AGENCY Engineer's decision, that decision shall be subject to judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in Exhibit "J." In the event that either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under this AGREEMENT, this action shall be initiated in the Superior Court of the State of Washington, situated in the county in which the AGENCY is located. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in the county in which the AGENCY is located.

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XII. Legal Relations

The CONSULTANT, any sub-consultants, and the AGENCY shall comply with all Federal, State, and local laws, rules, codes, regulations and all AGENCY policies and directives, applicable to the work to be performed under this AGREEMENT. This AGREEMENT shall be interpreted and construed in accordance with the laws of the State of Washington.

The CONSULTANT shall defend, indemnify, and hold the State of Washington (STATE) and the AGENCY and their officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the negligence of, or the breach of any obligation under this AGREEMENT by, the CONSULTANT or the CONSULTANT's agents, employees, sub consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable; provided that nothing herein shall require a CONSULTANT to defend or indemnify the STATE and the AGENCY and their officers and employees against and hold harmless the STATE and the AGENCY and their officers and employees from claims, demands or suits based solely upon the negligence of, or breach of any obligation under this AGREEMENT by the STATE and the AGENCY, their agents, officers, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the STATE and/or the AGENCY may be legally liable; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT is legally liable, and (b) the STATE and/or AGENCY, their agents, officers, employees, sub-consultants, subcontractors and or vendors, of any tier, or any other persons for whom the STATE and/or AGENCY may be legally liable, the defense and indemnity obligation shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable. This provision shall be included in any AGREEMENT between CONSULTANT and any sub-consultant, subcontractor and vendor, of any tier.

The CONSULTANT shall also defend, indemnify, and hold the STATE and the AGENCY and their 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 CONSULTANT or the CONSULTANT's agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT 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 and/or the AGENCY, their 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 and/or the AGENCY's, their agents', officers' and employees' failure to comply with specific written instructions regarding use provided to STATE and/or the AGENCY, their agents, officers and employees by the CONSULTANT, their agents, employees, sub-consultants, subcontractors or vendors, of any tier, or any other persons for whom the CONSULTANT may be legally liable.

The CONSULTANT's relation to the AGENCY shall be at all times as an independent contractor.

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

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees or its agents against the STATE and/or the AGENCY and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the Parties.

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Unless otherwise specified in this AGREEMENT, the AGENCY shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of a new sole source, or an acceptable supplemental AGREEMENT, the CONSULTANT shall provide On-Call assistance to the AGENCY during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability insurance written under ISO Form CG 00 01 12 04 or its equivalent with minimum limits of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate for each policy period.
- C. Business auto liability insurance written under ISO Form CG 00 01 10 01 or equivalent providing coverage for any "Auto" (Symbol 1) used in an amount not less than a one million dollar (\$1,000,000.00) combined single limit for each occurrence.

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance, the STATE and AGENCY, their officers, employees, and agents will be named on all policies of CONSULTANT and any sub-consultant and/or subcontractor as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The CONSULTANT's and the sub-consultant's and/or subcontractor's insurer shall waive any and all rights of subrogation against the AIs. The CONSULTANT shall furnish the AGENCY with verification of insurance and endorsements required by this AGREEMENT. The AGENCY reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Name: Sam Adlington
Agency: City of Marysville
Address: 501 Delta Ave
City: Marysville State: Wa Zip: 98270
Email: sadlington@marysvillewa.gov
Phone: 360-363-8273
Facsimile:

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the AGENCY.

The CONSULTANT's professional liability to the AGENCY, including that which may arise in reference to section IX "Termination of Agreement" of this AGREEMENT, shall be limited to the accumulative amount of the authorized AGREEMENT amount or one million dollars (\$1,000,000.00), whichever is greater, unless the limit of liability is increased by the AGENCY pursuant to Exhibit H. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

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The parties enter into this AGREEMENT for the sole benefit of the parties, and to the exclusion of any third party, and no third party beneficiary is intended or created by the execution of this AGREEMENT.

The AGENCY will pay no progress payments under section V “Payment Provisions” until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the AGENCY may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

XIII. Extra Work

- A. The AGENCY may at any time, by written order, make changes within the general scope of this AGREEMENT in the SERVICES to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the SERVICES under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of this AGREEMENT, the AGENCY shall make an equitable adjustment in the: (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify this AGREEMENT accordingly.
- C. The CONSULTANT must submit any “request for equitable adjustment,” hereafter referred to as “CLAIM,” under this clause within thirty (30) days from the date of receipt of the written order. However, if the AGENCY decides that the facts justify it, the AGENCY may receive and act upon a CLAIM submitted before final payment of this AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the section XI “Disputes” clause. However, nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A.) and (B.) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

XIV. Endorsement of Plans

If applicable, the CONSULTANT shall place their endorsement on all plans, estimates, or any other engineering data furnished by them.

XV. Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the SERVICES in progress.

XVI. Certification of the Consultant and the AGENCY

Attached hereto as Exhibit “G-1(a and b)” are the Certifications of the CONSULTANT and the AGENCY, Exhibit “G-2” Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions, Exhibit “G-3” Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying and Exhibit “G-4” Certificate of Current Cost or Pricing Data. Exhibit “G-3” is required only in AGREEMENT’s over one hundred thousand dollars (\$100,000.00) and Exhibit “G-4” is required only in AGREEMENT’s over five hundred thousand dollars (\$500,000.00.) These Exhibits must be executed by the CONSULTANT, and submitted with the master AGREEMENT, and returned to the AGENCY at the address listed in section III “General Requirements” prior to its performance of any SERVICES under this AGREEMENT.

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XVII. Complete Agreement

This document and referenced attachments contain all covenants, stipulations, and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a supplement to this AGREEMENT.

XVIII. Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and AGREEMENT's contained in the proposal, and the supporting material submitted by the CONSULTANT, and does hereby accept this AGREEMENT and agrees to all of the terms and conditions thereof.

XIX. Protection of Confidential Information

The CONSULTANT acknowledges that some of the material and information that may come into its possession or knowledge in connection with this AGREEMENT or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.56 RCW or other local, state or federal statutes ("State's Confidential Information"). The "State's Confidential Information" includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records (or any other information identifiable to an individual), STATE and AGENCY source code or object code, STATE and AGENCY security data, non-public Specifications, STATE and AGENCY non-publicly available data, proprietary software, STATE and AGENCY security data, or information which may jeopardize any part of the project that relates to any of these types of information. The CONSULTANT agrees to hold the State's Confidential Information in strictest confidence and not to make use of the State's Confidential Information for any purpose other than the performance of this AGREEMENT, to release it only to authorized employees, sub-consultants or subcontractors requiring such information for the purposes of carrying out this AGREEMENT, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the AGENCY's express written consent or as provided by law. The CONSULTANT agrees to release such information or material only to employees, sub-consultants or subcontractors who have signed a nondisclosure AGREEMENT, the terms of which have been previously approved by the AGENCY. The CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to the State's Confidential Information.

Immediately upon expiration or termination of this AGREEMENT, the CONSULTANT shall, at the AGENCY's option: (i) certify to the AGENCY that the CONSULTANT has destroyed all of the State's Confidential Information; or (ii) returned all of the State's Confidential Information to the AGENCY; or (iii) take whatever other steps the AGENCY requires of the CONSULTANT to protect the State's Confidential Information.

As required under Executive Order 00-03, the CONSULTANT shall maintain a log documenting the following: the State's Confidential Information received in the performance of this AGREEMENT; the purpose(s) for which the State's Confidential Information was received; who received, maintained and used the State's Confidential Information; and the final disposition of the State's Confidential Information. The CONSULTANT's records shall be subject to inspection, review, or audit upon reasonable notice from the AGENCY.

The AGENCY reserves the right to monitor, audit, or investigate the use of the State's Confidential Information collected, used, or acquired by the CONSULTANT through this AGREEMENT. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

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Violation of this section by the CONSULTANT or its sub-consultants or subcontractors may result in termination of this AGREEMENT and demand for return of all State's Confidential Information, monetary damages, or penalties.

It is understood and acknowledged that the CONSULTANT may provide the AGENCY with information which is proprietary and/or confidential during the term of this AGREEMENT. The parties agree to maintain the confidentiality of such information during the term of this AGREEMENT and afterwards. All materials containing such proprietary and/or confidential information shall be clearly identified and marked as "Confidential" and shall be returned to the disclosing party at the conclusion of the SERVICES under this AGREEMENT.

The CONSULTANT shall provide the AGENCY with a list of all information and materials it considers confidential and/or proprietary in nature: (a) at the commencement of the term of this AGREEMENT; or (b) as soon as such confidential or proprietary material is developed. "Proprietary and/or confidential information" is not meant to include any information which, at the time of its disclosure: (i) is already known to the other party; (ii) is rightfully disclosed to one of the parties by a third party that is not acting as an agent or representative for the other party; (iii) is independently developed by or for the other party; (iv) is publicly known; or (v) is generally utilized by unaffiliated third parties engaged in the same business or businesses as the CONSULTANT.

The parties also acknowledge that the AGENCY is subject to Washington State and federal public disclosure laws. As such, the AGENCY shall maintain the confidentiality of all such information marked proprietary and/or confidential or otherwise exempt, unless such disclosure is required under applicable state or federal law. If a public disclosure request is made to view materials identified as "Proprietary and/or confidential information" or otherwise exempt information, the AGENCY will notify the CONSULTANT of the request and of the date that such records will be released to the requester unless the CONSULTANT obtains a court order from a court of competent jurisdiction enjoining that disclosure. If the CONSULTANT fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified.

The CONSULTANT agrees to notify the sub-consultant of any AGENCY communication regarding disclosure that may include a sub-consultant's proprietary and/or confidential information. The CONSULTANT notification to the sub-consultant will include the date that such records will be released by the AGENCY to the requester and state that unless the sub-consultant obtains a court order from a court of competent jurisdiction enjoining that disclosure the AGENCY will release the requested information. If the CONSULTANT and/or sub-consultant fail to obtain a court order or other judicial relief enjoining the AGENCY by the release date, the CONSULTANT shall waive and release and shall hold harmless and indemnify the AGENCY from all claims of actual or alleged damages, liabilities, or costs associated with the AGENCY's said disclosure of sub-consultants' information.

XX. Records Maintenance

During the progress of the Work and SERVICES provided hereunder and for a period of not less than six (6) years from the date of final payment to the CONSULTANT, the CONSULTANT shall keep, retain and maintain all "documents" pertaining to the SERVICES provided pursuant to this AGREEMENT. Copies of all "documents" pertaining to the SERVICES provided hereunder shall be made available for review at the CONSULTANT's place of business during normal working hours. If any litigation, claim or audit is commenced, the CONSULTANT shall cooperate with AGENCY and assist in the production of all such documents. "Documents" shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past the six (6) year retention period.

For purposes of this AGREEMENT, "documents" means every writing or record of every type and description, including electronically stored information ("ESI"), that is in the possession, control, or custody of the CONSULTANT, including, without limitation, any and all correspondences, contracts, AGREEMENT 's, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings,

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tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of the CONSULTANT, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, "ESI" means any and all computer data or electronic recorded media of any kind, including "Native Files", that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the CONSULTANT may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that CONSULTANT uses in the performance of its Work or SERVICES hereunder, including any personal devices used by the CONSULTANT or any sub-consultant at home.

"Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

The CONSULTANT shall include this section XX "Records Maintenance" in every subcontract it enters into in relation to this AGREEMENT and bind the sub-consultant to its terms, unless expressly agreed to otherwise in writing by the AGENCY prior to the execution of such subcontract.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year shown in the "Execution Date" box on page one (1) of this AGREEMENT.

Signature

Date

Signature

Date

Any modification, change, or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

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***Exhibit A
Scope of Work***

Project No. R2108

Consor's scope of work attached.

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SCOPE OF WORK

R2108: 116 TH ST. PAVEMENT PRESERVATION NHS PROJECT CITY OF MARYSVILLE

Project Background

The City of Marysville is initiating a project which includes a full width 2-inch grind and overlay, pavement repairs where necessary, curb ramp replacement to meet Americans with Disabilities Act (ADA) requirements, and pavement markings to current standards. The project design is complete and the construction contractor bids are expected to be opened in early 2024. The City is contracting with Consor North America, Inc. (Consultant) to provide construction management and inspection services for the construction phase of the project.

Project Summary

Consultant will perform project management, contract administration, construction management, construction inspection, and testing and special inspection for the 116th St Pavement Preservation NHS Project.

Project Assumptions

Construction is anticipated to commence in March 2024 for project kick-off and critical submittal phase. For budgeting purposes, an active construction duration of 40 working days (approximately 8 weeks) has been assumed.

Scope of Services

Consultant is proposing to perform the following services in relation to the City's 116th St Pavement Preservation NHS Project:

Task 1 - Project Management and Contract Administration

Objective

Provide overall leadership and team strategic guidance aligned with City staff objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

Subtask 1.1 Project Coordination

- Perform general administration and project management throughout the construction phase to ensure successful completion of all tasks and elements of the Project within the established scope, schedule, and budget.
- Proactively track progress of project work completed against schedule & budget.
- Inform the City of any anticipated challenges during the construction phase as they may arise and develop solutions together.

Subtask 1.2 Invoices/Status Reporting

- Prepare monthly invoices, including expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation.
- Monthly status reports to accompany each invoice and include comparisons of monthly expenditures and cumulative charges to budget by Task.

Subtask 1.2 Assumptions

- Assume three (3) monthly invoices and status reports

Subtask 1.2 Deliverables

- Consultant will deliver to the City a monthly invoice and status report covering:
 - Work on the project performed during the previous month
 - Issues encountered, and actions taken for their resolution
 - Potential impacts to submittal dates, budget shortfalls, or optional services
 - Construction schedule updates
 - Issues requiring project team action

Subtask 1.3 Project Safety Plan

Prepare a project specific safety plan for Consultant employees, to be used in conjunction with safety plans provided by the construction contractor.

Subtask 1.3 Deliverables

- Copy of project specific safety plan

Task 2 – Construction Contract Administration and Closeout

Objective

Oversee construction phase activities as first point of contact for construction contractor. Coordinate with City staff and design team. Lead all project meetings and monitor project budget and schedule, quantities and quality of materials, and verify conformance with contract documents.

Subtask 2.1 Pre-Construction Meeting

Attend and lead the Pre-Construction Meeting with up to three (3) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

Subtask 2.1 Assumptions

- Three (3) consultant staff to attend Pre-Construction Meeting.

Subtask 2.1 Deliverables

- Meeting agenda and meeting minutes

Subtask 2.2 Project and Weekly Construction Meetings

Attend and lead project, weekly construction, and utility coordination meetings with up to one (1) consultant team members in attendance. Prepare meeting agenda, run meeting, and issue meeting summary.

Subtask 2.2 Assumptions

- One (1) consultant staff to attend (Construction Manager). Construction Inspector attendance is covered in Task 3 and not included in this subtask. Assume eight (8) weekly meetings during active construction.

Subtask 2.2 Deliverables

- Meeting agenda and meeting minutes

Subtask 2.3 Contract Administration

Provide construction management and administration services to monitor that the project is completed according to the Contract Documents. Perform the following tasks.

1. Coordinate and communicate with City and construction contractor on a regular basis to discuss project issues and status.

2. Issue change orders, including independent cost justifications, and maintain a change order log.
3. Issue field work directives and non-conformance reports.
4. Assess contractor-submitted baseline schedule, schedule updates, and 3-week look ahead schedules for feasibility and conformance with the Contract.
5. Monitor overall project construction budget.
6. Maintain material quantity and quality documentation, including maintenance of the Record of Materials (ROM).

Subtask 2.3 Assumptions

- Assume Four (4) change orders taking ten (10) hours per change orders to coordinate with City, EOR and contractor and draft change orders.
- WSDOT will develop the ROM. If WSDOT is unable to provide the ROM prior to construction, the Consultant can prepare for an additional fee (to be reserved for supplement, if needed).

Subtask 2.3 Deliverables

- Change order documents for City review and approval.
- Field work directives and non-conformance reports
- Quality and quantity documentation
- Updated ROM

Subtask 2.4 Monthly Progress Estimates

Track quantities of materials installed monthly on pay note documents and draft progress estimates. Review estimates with the construction contractor prior to finalizing and submitting to the City for payment.

Subtask 2.4 Assumptions

- Three (3) monthly estimates are assumed. It is anticipated that three (3) monthly estimates will be required during active construction and project closeout.

Subtask 2.4 Deliverables

- Quantity tracking spreadsheet
- Monthly progress estimates with recommendation to pay

Subtask 2.5 Shop Drawings, Submittals and RFIs

Prepare and maintain submittal log for approximately 20 submittals and/or shop drawings. Receive, log, distribute, and track submittal reviews and responses for project submittals. Prepare a submittal and documentation matrix for reference by contractor, EOR and construction management team. Prepare and maintain RFI log for 5 RFIs. Receive, log, distribute, and track RFIs and respond to construction contractor.

Subtask 2.5 Assumptions

- Ten (10) shop drawings and submittals are assumed, with an average of two (2) hours per submittal. Assume five (5) additional re-submittals.
- Five (5) RFIs are assumed, with an average of two (2) hours per RFI.

Subtask 2.5 Deliverables

- Updated Submittal Log
- Reviewed submittals and shop drawings returned to construction contractor
- Updated RFI Log
- Reviewed RFI responses to construction contractor

Subtask 2.6 Labor Compliance

Lead all labor compliance monitoring including the following tasks.

1. Track and file statements of intent to pay prevailing wages (Intent) and affidavit of paid wages (Affidavit).
2. Review and approve Request to Sublets (RTS).
3. Collect and review certified payroll and work with contractor and subcontractors to resolve deficiencies.
4. Coordinate wage rate interviews with construction inspector and contractors.
5. Oversee contractor DBE compliance and reporting, including subcontract review, utilization reports.

Subtask 2.6 Assumptions

- Ten (10) Request to Sublets are assumed, with an average of one and half (1.5) hours per request.

Subtask 2.6 Deliverables

- Requests to Sublet filed

- Intents and Affidavits filed
- Certified payroll filed
- Wage rate interviews filed
- DBE reporting filed

Subtask 2.7 Project Closeout

Consultant will lead the close-out phase to document completion of the project and adherence to WSDOT LAG requirements. Consultant will provide complete project files to the City and perform the following duties to assist with project close-out.

Substantial Completion/Punch List: Upon substantial completion of work, Construction Inspector will provide punch list of any outstanding items and coordinate completion with contractor.

As-Built Drawings: Construction Inspector will confirm that the contractor is maintaining a set of “Record Drawings”

Project Closeout: Transfer project documentation to the City for permanent storage. Provide a thumb drive or other electronic transfer method with all electronic documents and pictures. Provide hard copies of documentation upon request.

Subtask 2.7 Deliverables

- Punch list
- Project Closeout Documents (Project documentation files including Electronic documents and pictures on a thumb drive). Hard copies if requested.

Task 3 – Construction Inspection

Objective

Provide full time construction inspection to observe construction, monitor the work by the construction contractor, and document that the work is in general compliance with the requirements of the Contract Documents. The Construction Inspector is to act as the City’s on-site representative, is responsible for routine interfacing with the construction contractor and stakeholders, and is to observe the construction contractor’s operations and work.

Subtask 3.1 Construction Inspection

The Construction Inspector’s activities, in general, will include the following tasks.

1. Attend pre-construction conference, project, and weekly progress meetings.
2. Establish pre-construction site conditions using photo and video log of sites.

3. Observe/inspect the contractor's activities, operations, and work and document the contractor's work is in general compliance with the requirements of the contract documents. Observations will be completed on the standard WSDOT daily report form unless specified differently by the City.
4. Monitor the contractor's progress with respect to planned/scheduled work.
5. Document contractors and DBE subcontractors working onsite and conduct wage rate interviews for all DBE contractors, contractor and sub-contractors.
6. Document the contractor's construction activities (preparation of daily reports, photographs, etc.).
7. Create field note records of bid item work performed.
8. Verify and document that traffic control is per accepted traffic control plans when on-site.
9. Keep Construction Manager and City informed of project progress, issues, and developments.
10. Review minor change requests by the contractor.
11. Coordinate, observe, and document material testing and special inspection
12. Utility coordination with stakeholders
13. Track force account labor and equipment/materials; issue force account sheets for additional payment when required.
14. Maintain field construction records and as-built set.
15. Maintain photo log

Subtask 3.1 Assumptions

- Inspection hours estimated at 50 hours per week
- For 40 working days (8 weeks) and includes attendance at all project meetings.

Subtask 3.1 Deliverables

- Daily progress reports, photos, force account documentation
- DBE on site review
- Contractor and sub-contractors wage rate interviews
- Daily on-site contractor and sub-contractors list

Task 4 – Testing and Special Inspection Services During Construction

Objective

Work under this task includes material testing and special inspection services in accordance with LAG testing requirements and NHS Highway System requirements.

Subtask 4.1 Material Testing and Special Inspections

Consultant will assist the City in developing a quality assurance program. Consultant will provide material testing and special inspection as outlined and at the frequency indicated in the LAG Manual.

Subtask 4.1 Assumptions

- Testing level of effort based on assumptions included in Materials Testing Consulting, Inc’s quote (attached)

Subtask 4.1 Deliverables

- Material test and special inspection test reports

Proposed Material Testing and Special Inspection Firm

- Materials Testing Consulting, Inc. – Material Testing and Special Inspection

Proposed Project Fee Estimate

Consultant proposes to perform this work on a time and expenses basis with a total not to exceed amount of \$ 172,624.72. The proposed fee estimate is provided as “Attachment A.” Fee estimates are based upon Consultant’s approved indirect overhead rates.

Proposed Project Schedule

Construction is anticipated to commence in February 2024 for project kick-off and critical submittal phase. For budgeting purposes, an active construction duration of 40 working days (approximately 8 weeks) has been assumed.

Preparation and Delivery of Electronic Engineering and Other Data

In this Exhibit the agency, as applicable, is to provide a description of the format and standards the consultant is to use in preparing electronic files for transmission to the agency. The format and standards to be provided may include, but are not limited to, the following:

I. Surveying, Roadway Design & Plans Preparation Section

A. Survey Data

Not applicable for this contract

B. Roadway Design Files

Not applicable for this contract

C. Computer Aided Drafting Files

Not applicable for this contract

D. Specify the Agency's Right to Review Product with the Consultant

Not applicable for this contract

E. Specify the Electronic Deliverables to Be Provided to the Agency

Not applicable for this contract

F. Specify What Agency Furnished Services and Information Is to Be Provided

Not applicable for this contract

II. Any Other Electronic Files to Be Provided

Not applicable for this contract

III. Methods to Electronically Exchange Data

Not applicable for this contract

A. Agency Software Suite

Not applicable for this contract

B. Electronic Messaging System

Not applicable for this contract

C. File Transfers Format

Not applicable for this contract

Exhibit D ***Prime Consultant Cost Computations***

See attached:

D1 - Fee Estimate

D2 - Approved ANTE

D3 - Consultant Fee Calculation Worksheet

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**Consultant Fee Determination - Summary Sheet
Negotiated Fee**

Client City of Marysville
Project Name Project R2108: 116th Street Pavement Preservation NHS Project
Task Description:
Consultant Fee Determination
Consultant: Consor North America, Inc

Code	Classification	Man Hours		Rate	Dollars
LABOR		Hours			
	M Hagerty	4	x	\$99.96	= 399.84
	M Warren	210	x	\$72.00	= 15,120.00
	R Hawkins	426	x	\$49.50	= 21,087.00
	Heidi Ramos	158	x	\$43.26	= 6,835.08
	E Warren	98	x	\$41.25	= 4,042.50
	A Gillis	5	x	\$36.06	= 180.30
		0	x	\$0.00	= 0.00
	Total Hours	901			
	Total DSC				= 47,664.72
Overhead (OH Cost -- including Salary Additives)					
	OH Rate x DSC of	<u>191.91%</u>	x	<u>\$ 47,664.72</u>	= 91,473.36
Negotiated Fee (NF):					
	NF Rate x DSC of	<u>26.95%</u>	x	<u>\$ 47,664.72</u>	= 12,845.64
Reimbursables					
Itemized	Quantity	Units		Rate	In Scope
Mileage	4,000	each	@	\$0.655	= 2,620.00
Reimbursables Total					<u>2,620.00</u>
Consor Subtotal					<u>154,603.72</u>
Subconsultant					
MTC					<u>18,021.00</u>
Grand Total					<u><u>172,624.72</u></u>

Prepared By: Mark Warren

Date: November 9, 2023

Project R2108: 116th Street Pavement Preservation NHS Project
 City of Manassasville
 PROPOSED FEE ESTIMATE

	LABOR CLASSIFICATION (HOURS)											Subcontractor Total with Markup	Expenses	Total			
	Principal Engineer I	Construction Manager V	Inspector IV	Technician IV	Technician I	Administrative III	Hours	Labor	Overhead	Profit	Subcontractors MTC				Multipplier % Markup		
Average Billing Rate Estimated per Classification/Staff	\$99.96	\$72.00	\$49.50	\$43.26	\$41.25	\$36.06											
Staff Name	Hagerby/Mc	Warren/Mar	Hawkins/Sic	Ramos/Elk	Warren/Elk	Gillis/Sic											
Task 1.1 - Project Management and Contract Administration	3																
Task 1.1.1 - Project Coordination																	
Task 1.2 - Invoices/Status Reporting	1																
Task 1.3 - Project Safety Plan	2																
Task 1 Subtotal	4	5	0	0	0	5	14	\$46,24	\$1,894.22	\$29,37	\$	\$	\$	\$	\$	\$	\$
Task 2 - Construction Contract Administration and Closeout																	
Task 2.1 - Pre-Construction Meeting		16	6				22	\$1,449.00	\$2,780.78	\$390.51	\$	1.0	\$	\$	\$	\$	\$
Task 2.2 - Project and Weekly Construction Meetings		40					40	\$2,880.00	\$5,527.01	\$776.16	\$	1.0	\$	\$	\$	\$	\$
Task 2.3 - Contract Administration		56		80			136	\$7,492.80	\$14,379.63	\$2,019.31	\$	1.0	\$	\$	\$	\$	\$
Task 2.4 - Monthly Progress Estimates		38		24			62	\$2,337.28	\$4,479.04	\$679.08	\$	1.0	\$	\$	\$	\$	\$
Task 2.5 - Shop Drawings, Submittals and RFIs		5		14			19	\$705.00	\$1,339.26	\$192.81	\$	1.0	\$	\$	\$	\$	\$
Task 2.6 - Construction Closeout		20	20	40	40		120	\$7,200.00	\$13,824.00	\$1,968.00	\$	1.0	\$	\$	\$	\$	\$
Task 2.7 - Project Closeout	0	205	26	158	98	0	487	\$26,924.58	\$51,670.96	\$7,256.17	\$	1.0	\$	\$	\$	\$	\$
Task 3 - Construction Inspection																	
Task 3.1 - Construction Inspection			400				400	\$19,800.00	\$37,998.18	\$5,336.10	\$	1.0	\$	\$	\$	\$	\$
Task 3 Subtotal	0	0	400	0	0	0	400	\$19,800.00	\$37,998.18	\$5,336.10	\$	1.0	\$	\$	\$	\$	\$
Task 4 - Testing and Special Inspection Services During Construction																	
Task 4.1 - Materials Testing and Special Inspections																	
Task 4 Subtotal	0	0	0	0	0	0	0	\$	\$	\$	\$	18,021	\$	\$	\$	\$	\$
TOTAL - ALL TASKS	4	210	426	158	98	5	901	\$47,664.72	\$94,473.36	\$22,845.64	\$	18,021	\$	\$	\$	\$	\$

Actuals Not To Exceed Table (ANTE)

City of Marysville Agreement: Consor North America, Inc. 10900 NE 8th Street, #1440 Bellevue, WA 98004				
Job Classifications	Direct Labor Hourly Billing Rate NTE	Overhead NTE	Fixed Fee NTE	All Inclusive Hourly Billing Rate NTE
		191.91%	26.95%	
Principal Engineer VI	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer V	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer IV	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer III	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer II (Reza ONLY)	\$121.59	\$233.34	\$32.77	\$387.70
Principal Engineer II	\$106.25	\$203.90	\$28.63	\$338.79
Principal Engineer I	\$106.25	\$203.90	\$28.63	\$338.79
Professional Engineer IX	\$69.55	\$133.47	\$18.74	\$221.77
Professional Engineer VIII	\$86.54	\$166.08	\$23.32	\$275.94
Professional Engineer VII	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer VI	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer V	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer IV	\$68.20	\$130.88	\$18.38	\$217.46
Professional Engineer III	\$68.20	\$130.88	\$18.38	\$217.46
Engineering Designer IX	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer VIII	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer VII	\$67.37	\$129.29	\$18.16	\$214.82
Engineering Designer IV	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer III	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer II	\$46.00	\$88.28	\$12.40	\$146.68
Engineering Designer I	\$36.00	\$69.09	\$9.70	\$114.79
Construction Manager VI	\$72.00	\$138.18	\$19.40	\$229.58
Construction Manager V	\$72.00	\$138.18	\$19.40	\$229.58
Construction Manager III	\$72.00	\$138.18	\$19.40	\$229.58
Inspector VI	\$72.00	\$138.18	\$19.40	\$229.58
Inspector V	\$72.00	\$138.18	\$19.40	\$229.58
Inspector IV	\$49.50	\$95.00	\$13.34	\$157.84
Inspector III	\$49.50	\$95.00	\$13.34	\$157.84
Inspector II	\$49.50	\$95.00	\$13.34	\$157.84
Inspector I	\$49.50	\$95.00	\$13.34	\$157.84
Technician IV	\$43.26	\$83.02	\$11.66	\$137.94
Technician III	\$41.25	\$79.16	\$11.12	\$131.53
Technician II	\$43.26	\$83.02	\$11.66	\$137.94
Technician I	\$41.25	\$79.16	\$11.12	\$131.53
Administrative III	\$50.00	\$95.96	\$13.48	\$159.43
Administrative II	\$42.00	\$80.60	\$11.32	\$133.92
Administrative I	\$42.00	\$80.60	\$11.32	\$133.92
Project Coordinator IV	\$50.00	\$95.96	\$13.48	\$159.43

Project Coordinator III	\$50.00	\$95.96	\$13.48	\$159.43
Project Coordinator II	\$42.00	\$80.60	\$11.32	\$133.92
Project Coordinator I	\$42.00	\$80.60	\$11.32	\$133.92

Appendix AA Consultant Fee Calculation Worksheet

AA.1 Consultant Fee Calculation Worksheet

This technique will ensure consideration of the relative value of the appropriate factor in the establishment of a fee objective in the conduct of negotiating and provide a basis of documentation of the fee objective.

In negotiating a fee as an element of price, a reasonable fee shall be negotiated or determined for each agreement by using the following procedure as a guide:

Weighted Guidelines			
Factor	Rate	Weight	Value
Degree of Risk	25	0.26	6.5
Relative Difficulty of Work	20	0.26	5.2
Size of Job	15	0.34	5.1
Period of Performance	15	0.18	2.7
Assistance by the State	15	0.35	5.25
Sub-consulting	10	0.22	2.2
Total			26.95

Based on the circumstances of each agreement and/or supplement, each of the above factors shall be weighted from .17 to .35 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column, when totaled, indicates the fair and reasonable fixed fee and/or profit percentage of direct (raw) labor costs for the agreement and/or supplement.

AA.2 Description of Calculation of Fee Factors

Degree of Risk: Where the design involves no risk, or the degree of risk is very small, the weighting should be .17; as the degree of risk increases, the weighting should be increased up to a maximum of .35. Agreements with options will have, generally, a higher weighted value than agreements without options for which quantities are provided. Other things to consider: nature of the design, responsibility for design, reasonableness of negotiated costs, amount and type of labor included in costs, amount of executive management/principal time required.

Relative Difficulty of Design: If the design is most difficult and complex, the weighting should be .35 and should be proportionally reduced to .17 on the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Some things to consider: the nature of the design; what is the time schedule; etc., and whether it is rehabilitation or new work.

Size of Job: All agreement (estimated) total costs less than \$100,000 shall be weighted at .35. The fixed fee percentage should be proportionately weighted for those projects between \$100,000 and \$5,000,000 from .34 to .21. Agreements from \$5,000,000 to \$10,000,000 may be proportionately weighted from .21 to .17, and work in excess of \$10,000,000 at .17.

Period of Performance: Agreements and/or supplements that are 24 months or longer are to be weighted at .35. Agreements and/or supplements of lesser duration are to be proportionately weighted to a minimum of .17 for work less than 2 months.

Assistance by the State: To be weighted from .35 in those situations where few items are provided by the state to .17 in those situations where the state provides many items. Things to consider: existing or provided design or plans, mapping, quantities, surveys, geotechnical information, etc.

Sub-Consulting: To be weighted in proportion to the amount of subconsulting. Where 40% (40 percent) or more of the design is to be done by subconsultants, the weighting is to be .35. The weighting is proportionally decreased to .17 where all the design is performed by the consultant's own forces.

Exhibit E ***Sub-consultant Cost Computations***

There isn't any sub-consultant participation at this time. The CONSULTANT shall not sub-contract for the performance of any work under this AGREEMENT without prior written permission of the AGENCY. Refer to section VI "Sub-Contracting" of this AGREEMENT.

See Attached

Agreement Number: R2108



Date: **December 5, 2023**
 Client Name: **Consor** Contact: **Mark Warren, PE**
 Address: **400 E Mill Plain Blvd., Ste 400, Vancouver, WA 98660** Phone: **Mobile: +1.360.628.6896**
 Email: **Mark Warren <Mark.Warren@consoreng.com>** Geotech of Record: **NA**
 Architect: **NA** Based on Plans Dated: **Email**
 Project Name: **Marysville 116th Street Pavement Preservation Projects**

Materials Testing & Consulting, Inc. (MTC) thanks you for the opportunity, and respectfully submits the following proposal to provide materials testing and special inspection services during construction of the above-referenced project. Combined with our past experience with projects of similar size and scope, we estimate the total cost of our services for this project to be:

Special & Construction Inspection- Night work- \$10 hourly add if continuous 40 hour week- 1.5 times rate otherwise					
Bill Code	Item / Description	Unit	Quantity	Rate	Total
IPDS	Site Subgrade & Rock Course Compaction	Hour	16	\$ 90.00	\$ 1,440.00
IPDA	Asphalt Paving	Hour	100	\$ 90.00	\$ 9,000.00
SAMPU	Sample Pickup if Required (Allowance)	Hour	12	\$ 90.00	\$ 1,080.00
Subtotal - Special & Construction Inspection:					\$ 11,520.00
Laboratory Testing					
Bill Code	Item / Description	Unit	Quantity	Rate	Total
PROC	Moisture Density Relationship/Proctor with Sieve	Each	1	\$ 358.00	\$ 358.00
COMB	Sieve Analysis with #200 Wash/Combined Gradation	Each	9	\$ 171.00	\$ 1,539.00
SE	Sand Equivalent	Each	3	\$ 132.00	\$ 396.00
FRAC	Fracture Percentage	Each	3	\$ 92.00	\$ 276.00
UVC	Uncompacted Void Content	Each	3	\$ 198.00	\$ 594.00
EXT	Asphalt Extraction with Gradation	Each	3	\$ 376.00	\$ 1,128.00
RICE	Rice Density	Each	10	\$ 125.00	\$ 1,250.00
Other	Oven Calibration	Each	1	\$ 200.00	\$ 200.00
Subtotal - Laboratory Testing:					\$ 5,741.00
Project Management & Consulting Services					
Bill Code	Item / Description	Unit	Quantity	Rate	Total
PM - STR	Project Management	Hour	8	\$ 95.00	\$ 760.00
Subtotal - Project Management & Consulting Services:					\$ 760.00
Budget Estimate for Services - Total:					\$ 18,021.00



Date: **December 5, 2023**
Client Name: **Consor**
Address: **400 E Mill Plain Blvd., Ste 400, Vancouver, WA 98660**
Email: **Mark Warren <Mark.Warren@consoreng.com>**
Architect: **NA**
Project Name: **Marysville 116th Street Pavement Preservation Projects**

Contact: **Mark Warren, PE**
Phone: **Mobile: +1.360.628.6896**
Geotech of Record: **NA**
Based on Plans Dated: **Email**

- Soils inspection and testing services are proposed to measure compliance with project documents, including drawings, specifications and the recommendation of the soils report. In the event that a test or tests fail to meet the soils report's recommendations or if project conditions differ from approved project documents, it shall be referred to the Geotechnical Engineer of Record for resolution.
- Prices are subject to change if this agreement is not executed within 90 days from the date of the bid.
- All services will be provided on a time and materials basis. The total is an estimate and the actual construction cost will be based on the project schedule and sequencing. The estimate is not a guaranteed price. A four hour minimum charge applies to all work performed, billing is also based on a portal to portal basis. A premium rate of 1.5 times the regular rate will be charge for overtime and 2 times the regular charge for Sundays and holidays.
- MTC will utilize the laboratory based closest to the project site. MTC offers additional services upon request which will be billed at our regular fee schedule. Acceptance of this proposal will constitute agreement to MTC standard general terms and conditions.
- Invoices are due and payable upon receipt. Any invoice not paid within thirty (30) days of the date rendered may be assessed a finance charge of one-and-one-half (1½%) percent per month, for each month beyond thirty (30) days past due. Invoices not paid within sixty (60) days of the date rendered may result in MTC stopping work until such invoices are paid in full. Invoices not paid within ninety (90) days of the date rendered may be referred to an independent company for collection. Client will be responsible for all expenses incurred by MTC for the collection of any unpaid invoice(s), including collection fees, actual attorneys' fees, and costs for legal counsel as stated in RCW 19.16.250.21. Furthermore, Client acknowledges that MTC may elect to withhold a Final Letter of Compliance for the project, and/or place a lien on any real property until all outstanding invoices and/or fees have been paid in full.
- As a mutual protection to clients, the public and ourselves, all reports are submitted as the confidential property of clients, and authorization for publication of statements, conclusions or extracts from or regarding our reports is reserved pending our written approval.
- In closing, our experienced inspection staff will ensure the highest level of quality is brought to your project. We believe that our local staff and vast experience on projects of similar size and scope make MTC the clear team member of choice for this project. We look forward to working with you.

Respectfully Submitted,

Client Authorized Signature

Printed Name & Title

Date

Deane Ramsdell

Deane Ramsdeell

360-508-6336

dhr@mtc-inc.net

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, *(Title of Modal Operating Administration)*, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21. *[Include Modal Operating Administration specific program requirements.]*
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin. *[Include Modal Operating Administration specific program requirements.]*
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *(Title of Modal Operating Administration)* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *(Title of Modal Operating Administration)*, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *(Title of Modal Operating Administration)* may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the *(Title of Modal Operating Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Exhibit F - Title VI Assurances Appendix A & E

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Exhibit G
Certification Documents

- Exhibit G-1(a) Certification of Consultant
- Exhibit G-1(b) Certification of _____
- Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions
- Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying
- Exhibit G-4 Certificate of Current Cost or Pricing Data

Exhibit G-1(a) Certification of Consultant

I hereby certify that I am the and duly authorized representative of the firm of
Conсор North America, Inc.

whose address is

600 University Street, Suite #300, Seattle, WA 98101

and that neither the above firm nor I have:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this AGREEMENT;
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this AGREEMENT; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out this AGREEMENT; except as hereby expressly stated (if any);

I acknowledge that this certificate is to be furnished to the City of Marysville
and the Federal Highway Administration, U.S. Department of Transportation in connection with this
AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and
Federal laws, both criminal and civil.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number: R2108

Exhibit G-1(b) Certification of

I hereby certify that I am the:



Other

of the _____, and
or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this AGREEMENT to:

- a) Employ or retain, or agree to employ to retain, any firm or person; or
- b) Pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the _____ and the Federal Highway Administration, U.S. Department of Transportation, in connection with this AGREEMENT involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

Signature

Date

Agreement Number: R2108

Exhibit G-2 Certification Regarding Debarment, Suspension and Other Responsibility Matters - Primary Covered Transactions

- I. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - B. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - D. Have not within a three (3) year period preceding this application / proposal had one or more public transactions (Federal, State and local) terminated for cause or default.
- II. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Conсор North America, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number: R2108

Exhibit G-3 Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative AGREEMENT, and the extension, continuation, renewal, amendment, or modification of Federal contract, grant, loan or cooperative AGREEMENT.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative AGREEMENT, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00, and not more than \$100,000.00, for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier sub-contracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.

Conсор North America, Inc.

Consultant (Firm Name)

Signature (Authorized Official of Consultant)

Date

Agreement Number:

Exhibit G-4 Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of 116th Street Pavement Preservation NHS * are accurate, complete, and current as of 12/20/2023 **.

This certification includes the cost or pricing data supporting any advance AGREEMENT's and forward pricing rate AGREEMENT's between the offer or and the Government that are part of the proposal.

Firm: Consor North America

Signature

Title

Date of Execution***:

*Identify the proposal, quotation, request for pricing adjustment, or other submission involved, giving the appropriate identifying number (e.g. project title.)

**Insert the day, month, and year, when price negotiations were concluded and price AGREEMENT was reached.

***Insert the day, month, and year, of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

Agreement Number: R2108

Exhibit I

Alleged Consultant Design Error Procedures

The purpose of this exhibit is to establish a procedure to determine if a consultant's alleged design error is of a nature that exceeds the accepted standard of care. In addition, it will establish a uniform method for the resolution and/or cost recovery procedures in those instances where the agency believes it has suffered some material damage due to the alleged error by the consultant.

Step 1 Potential Consultant Design Error(s) is Identified by Agency's Project Manager

At the first indication of potential consultant design error(s), the first step in the process is for the Agency's project manager to notify the Director of Public Works or Agency Engineer regarding the potential design error(s). For federally funded projects, the Region Local Programs Engineer should be informed and involved in these procedures. (Note: The Director of Public Works or Agency Engineer may appoint an agency staff person other than the project manager, who has not been as directly involved in the project, to be responsible for the remaining steps in these procedures.)

Step 2 Project Manager Documents the Alleged Consultant Design Error(s)

After discussion of the alleged design error(s) and the magnitude of the alleged error(s), and with the Director of Public Works or Agency Engineer's concurrence, the project manager obtains more detailed documentation than is normally required on the project. Examples include: all decisions and descriptions of work; photographs, records of labor, materials and equipment.

Step 3 Contact the Consultant Regarding the Alleged Design Error(s)

If it is determined that there is a need to proceed further, the next step in the process is for the project manager to contact the consultant regarding the alleged design error(s) and the magnitude of the alleged error(s). The project manager and other appropriate agency staff should represent the agency and the consultant should be represented by their project manager and any personnel (including sub-consultants) deemed appropriate for the alleged design error(s) issue.

Step 4 Attempt to Resolve Alleged Design Error with Consultant

After the meeting(s) with the consultant have been completed regarding the consultant's alleged design error(s), there are three possible scenarios:

- It is determined via mutual agreement that there is not a consultant design error(s). If this is the case, then the process will not proceed beyond this point.
- It is determined via mutual agreement that a consultant design error(s) occurred. If this is the case, then the Director of Public Works or Agency Engineer, or their representatives, negotiate a settlement with the consultant. The settlement would be paid to the agency or the amount would be reduced from the consultant's agreement with the agency for the services on the project in which the design error took place. The agency is to provide LP, through the Region Local Programs Engineer, a summary of the settlement for review and to make adjustments, if any, as to how the settlement affects federal reimbursements. No further action is required.
- There is not a mutual agreement regarding the alleged consultant design error(s). The consultant may request that the alleged design error(s) issue be forwarded to the Director of Public Works or Agency Engineer for review. If the Director of Public Works or Agency Engineer, after review with their legal counsel, is not able to reach mutual agreement with the consultant, proceed to Step 5.

Agreement Number: R2108

Step 5 Forward Documents to Local Programs

For federally funded projects all available information, including costs, should be forwarded through the Region Local Programs Engineer to LP for their review and consultation with the FHWA. LP will meet with representatives of the agency and the consultant to review the alleged design error(s), and attempt to find a resolution to the issue. If necessary, LP will request assistance from the Attorney General's Office for legal interpretation. LP will also identify how the alleged error(s) affects eligibility of project costs for federal reimbursement.

- If mutual agreement is reached, the agency and consultant adjust the scope of work and costs to reflect the agreed upon resolution. LP, in consultation with FHWA, will identify the amount of federal participation in the agreed upon resolution of the issue.
- If mutual agreement is not reached, the agency and consultant may seek settlement by arbitration or by litigation.

Exhibit J

Consultant Claim Procedures

The purpose of this exhibit is to describe a procedure regarding claim(s) on a consultant agreement. The following procedures should only be utilized on consultant claims greater than \$1,000. If the consultant's claim(s) are a total of \$1,000 or less, it would not be cost effective to proceed through the outlined steps. It is suggested that the Director of Public Works or Agency Engineer negotiate a fair and reasonable price for the consultant's claim(s) that total \$1,000 or less.

This exhibit will outline the procedures to be followed by the consultant and the agency to consider a potential claim by the consultant.

Step 1 Consultant Files a Claim with the Agency Project Manager

If the consultant determines that they were requested to perform additional services that were outside of the agreement's scope of work, they may be entitled to a claim. The first step that must be completed is the request for consideration of the claim to the Agency's project manager.

The consultant's claim must outline the following:

- Summation of hours by classification for each firm that is included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Timeframe of the additional work that was outside of the project scope;
- Summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work; and
- Explanation as to why the consultant believes the additional work was outside of the agreement scope of work.

Step 2 Review by Agency Personnel Regarding the Consultant's Claim for Additional Compensation

After the consultant has completed step 1, the next step in the process is to forward the request to the Agency's project manager. The project manager will review the consultant's claim and will meet with the Director of Public Works or Agency Engineer to determine if the Agency agrees with the claim. If the FHWA is participating in the project's funding, forward a copy of the consultant's claim and the Agency's recommendation for federal participation in the claim to the WSDOT Local Programs through the Region Local Programs Engineer. If the claim is not eligible for federal participation, payment will need to be from agency funds.

If the Agency project manager, Director of Public Works or Agency Engineer, WSDOT Local Programs (if applicable), and FHWA (if applicable) agree with the consultant's claim, send a request memo, including backup documentation to the consultant to either supplement the agreement, or create a new agreement for the claim. After the request has been approved, the Agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit. No further action is needed regarding the claim procedures.

If the Agency does not agree with the consultant's claim, proceed to step 3 of the procedures.

Agreement Number: R2108

Step 3 Preparation of Support Documentation Regarding Consultant's Claim(s)

If the Agency does not agree with the consultant's claim, the project manager shall prepare a summary for the Director of Public Works or Agency Engineer that included the following:

- Copy of information supplied by the consultant regarding the claim;
- Agency's summation of hours by classification for each firm that should be included in the claim;
- Any correspondence that directed the consultant to perform the additional work;
- Agency's summary of direct labor dollars, overhead costs, profit and reimbursable costs associated with the additional work;
- Explanation regarding those areas in which the Agency does/does not agree with the consultant's claim(s);
- Explanation to describe what has been instituted to preclude future consultant claim(s); and
- Recommendations to resolve the claim.

Step 4 Director of Public Works or Agency Engineer Reviews Consultant Claim and Agency Documentation

The Director of Public Works or Agency Engineer shall review and administratively approve or disapprove the claim, or portions thereof, which may include getting Agency Council or Commission approval (as appropriate to agency dispute resolution procedures). If the project involves federal participation, obtain concurrence from WSDOT Local Programs and FHWA regarding final settlement of the claim. If the claim is not eligible for federal participation, payment will need to be from agency funds.

Step 5 Informing Consultant of Decision Regarding the Claim

The Director of Public Works or Agency Engineer shall notify (in writing) the consultant of their final decision regarding the consultant's claim(s). Include the final dollar amount of the accepted claim(s) and rationale utilized for the decision.

Step 6 Preparation of Supplement or New Agreement for the Consultant's Claim(s)

The agency shall write the supplement and/or new agreement and pay the consultant the amount of the claim. Inform the consultant that the final payment for the agreement is subject to audit.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Commander James Tolbert, Police

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Marysville Jail Medical Services Contract

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the Jail Medical Services contract.

SUMMARY: Marysville Jail 3-year medical services contract. Medical services will be provided by Rae Boyd APRN, BC, PLLC. Raye Boyd has provided medical services for the City of Marysville Jail for over 15 years. This contract establishes defined services for a contracted monthly charge. This contracted monthly charge will assist in controlling medical cost expenditures and outside medical facility costs.

ATTACHMENTS:
[Proposed Contract.pdf](#)

INDEPENDENT CONTRACTOR AGREEMENT

I. The Parties. This Agreement is made between a business entity known as The City of Marysville with a mailing address of 601 Delta Ave, Marysville, Washington, 98270 ("Client")

AND

A business entity known as Rae Boyd APRN, BC, PLLC with a mailing address of 24115 145th Ave SE, Snohomish, Washington, 98296-6985 ("Contractor").

II. Services. The Contractor agrees to perform the following:

Medical Services shall be available to provide medical care to Client's inmates at the Client's facility from early morning before 9am and evening with the flexibility that the Contractor may leave at the end of the day provided any necessary medical needs have been addressed.

Contractor, when available prior to booking, will conduct a general health screen to ensure person is medically cleared to be booked.

Morning and evening medications will be administered by medical staff during agreed times.

Contractor can be called upon to perform phlebotomy for blood alcohol levels. The materials will be provided by an officer and if the Contractor is not available then phlebotomy will be performed by another facility such as an Emergency Department.

Hereinafter known as the "Services".

III. Payment. The Client agrees to pay for the Services performed by the Contractor.

The Contractor agrees to be paid as follows:

Provided that the Client has no more than fifty (50) inmates, the Client shall pay Contractor \$43,000 per month. If the inmate population is more than fifty (50) inmates on average per day in any three (3) consecutive months of any year, the parties agree to a tiered payment the following months until end of the three (3) year contract. The tiered payment will be an additional \$200.00 per inmate evaluated when inmate population of fifty one (51) to sixty (60), \$300.00 per inmate evaluated when inmate population of sixty one (61) to seventy (70), an additional \$400.00 per inmate evaluated when inmate population of seventy one (71) to eighty (80), and an additional \$500.00 per inmate evaluated when inmate population of eighty one (81) to ninety six (96).

If the Contractor is called outside agreed time to the Client's facility to provide care to an inmate, the Client shall pay \$300 per incident/inmate; and if the Contractor is called by phone outside agreed time to consult on care for an inmate, the Client shall pay \$50 per incident.

If the Contractor is called in to perform Phlebotomy for a blood alcohol level, the Contractor will be paid \$450.00 per incident.

The monthly fee and the additional fees set forth in the Section III shall be increased on each anniversary date of this Agreement by 5 percent (5%).

Client shall pay the monthly fee on or before the 25th of the month in which services are provided. Contractor shall invoice Client for additional services, as set forth above, which shall be paid by the 25th of the following month.

IV. Due Date. The Services provided by the Contractor shall begin on January 1, 2024 and end on December 31, 2027.

V. Expenses. The Contractor shall be responsible for all expenses related to providing the Services under this Agreement. This includes, but is not limited to, personal supplies, personal equipment, operating business costs, business costs, employment costs, taxes, Social Security contributions/ payments, disability insurance, unemployment taxes, and any other cost that may or may not be in connection with the Services provided Contractor. The Client will be responsible for medications, medical supplies, medical equipment, and fees incurred by the inmate through other outside medical services necessary for the inmate's continuation of care.

VI. Independent Contractor Status. The Contractor, under the code of the Internal Revenue Service (IRS), is an independent contractor and neither the Contractor's employees or contract personnel are, or shall be deemed, the Client's employees.

In its capacity as an independent contractor, Contractor agrees and represents:

Contractor has the right to perform Services for others during the term of this Agreement;

Contractor has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed. Contractor shall select the routes taken, starting and ending times, days of work, and order in which the work is performed;
Contractor has the right to hire assistants as subcontractors or to use employees to provide the services required under this Agreement.

Neither Contractor, nor the Contractor's employees or personnel, shall be required to wear any uniforms provided by the Client;

The Services required by this Agreement shall be performed by the Contractor, Contractor's employees or personnel, and the Client will not hire, supervise, or pay assistants to help the Contractor;

Neither Contractor nor Contractor's employees or personnel shall receive any training from the Client in the professional skills necessary to perform the services required by this Agreement;
and

Neither the Contractor nor Contractor's employees or personnel shall be required by the Client to devote full-time to the performance of the Services required by this Agreement.

VII. Business Licenses, Permits, and Certificates. The Contractor represents and warrants that all employees and personnel associated shall comply with federal, state, and local laws

requiring any required licenses, permits, and certificates necessary to perform the Services under this Agreement.

VIII. Federal and State Taxes. Under this Agreement, the Client shall not be responsible for: Withholding FICA, Medicare, Social Security, or any other federal or state withholding taxes from the Contractor's payments to employees or personnel or make payments on behalf of the Contractor; Making federal or state unemployment compensation contributions on the Contractor's behalf; and The payment of all taxes incurred related to or while performing the Services under this Agreement, including all applicable income taxes and, if the Contractor is not a corporation, all applicable self-employment taxes. Upon demand, the Contractor shall provide the Client with proof that such payments have been made.

IX. Benefits of Contractor's Employees. The Contractor understands and agrees that they are solely responsible and liable for all benefits that are provided to their employees including, but not limited to, retirement plans, health insurance, vacation time-off, sick pay, personal leave, or any other benefit provided.

X. Unemployment Compensation. The Contractor shall be solely responsible for the unemployment compensation payments on behalf of their employees and personnel. The Contractor shall not be entitled to unemployment compensation in connection with the Services performed under this Agreement.

XI. Workers' Compensation. The Contractor shall be responsible for providing all workers' compensation insurance on behalf of their employees. If the Contractor hires employees to perform any work under this Agreement, the Contractor agrees to grant workers' compensation coverage to the extent required by law. Upon request by the Client, the Contractor must provide certificates proving workers' compensation insurance at any time during the performance of the Service.

XII. Liability Insurance. The Contractor agrees to bear all responsibility for the actions related to themselves and their employees or personnel under this Agreement. In addition, the Contractor agrees to obtain comprehensive professional liability insurance/malpractice coverage. There shall be a minimum amount of combined single limit of \$2,000,000.00.

XIII. Indemnification. The Contractor shall indemnify and hold the Client harmless from any loss or liability from performing the Services under this Agreement.

XIV. Termination of Agreement. This Agreement shall terminate on December 31, 2027. In addition, the Client or Contractor may terminate this Agreement, including any obligations stated hereunder, with reasonable cause by providing written notice of:

A material breach of the other party; or

Any act exposing the other party to liability to others for personal injury or property damage.

XV. Exclusive Agreement. This entire Agreement is between the Client and Contractor.

XVII. Resolving Disputes. If a dispute arises under this Agreement, any party may take the matter to a Washington state court.

XXVIII. Confidentiality. The Contractor will comply with state and federal laws regarding the confidentiality of patient health information.

XIX. No Partnership. This Agreement does not create a partnership relationship between the Client and the Contractor. Unless otherwise directed, the Contractor shall have no authority to enter into contracts on Client's behalf or represent the Client in any manner.

XX. Assignment and Delegation. The Contractor may assign rights and may delegate duties under this Agreement to other individuals or entities acting as a subcontractor ("Subcontractor"). The Contractor recognizes that they shall be liable for all work performed by the Subcontractor and shall hold the Client harmless of any liability in connection with their performed work.

The Contractor shall be responsible for any confidential or proprietary information that is shared with the Subcontractor in accordance with Sections XVIII this Agreement. If any such information is shared by the Subcontractor to third (3rd) parties, the Contractor shall be made liable.

XXI. Additional Terms and Conditions. Negotiated cost will be confidential. The contractor will provide services until end of contract date. Contract can be terminated immediately if both parties agreeable.

XXII. Governing Law. This Agreement shall be governed under the laws in the State of Washington.

XXIII. Severability. This Agreement shall remain in effect in the event a section or provision is unenforceable or invalid. All remaining sections and provisions shall be deemed legally binding unless a court rules that any such provision or section is invalid or unenforceable, thus, limiting the effect of another provision or section. In such case, the affected provision or section shall be enforced as so limited.

XXIV. Breach Waiver. Any waiver by the Client of a breach of any section of this Agreement by the Contractor shall not operate or be construed as a waiver of any subsequent breach by the Contractor.

XXV. Entire Agreement. This Agreement, along with any attachments or addend urns, represents the entire agreement between the parties. Therefore, this Agreement supersedes any prior agreements, promises, conditions, or understandings between the Client and Contractor.

Client's Signature _____ Date _____

Print Name _____

Contractor's Signature  Date 12/21/23
Print Name Rae Boyd



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Coordinator Laurie Barbosa, Community Development

ITEM TYPE: Real Estate

AGENDA SECTION: **Consent**

SUBJECT: City of Marysville Utility Easement for CP Logistics Marysville, LLC.

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the City of Marysville Utility Easement between CP Logistics Marysville, LLC and the City of Marysville.

SUMMARY: This is a set of utility easements between CP Logistics Marysville, LLC and the City of Marysville for Northpointe Industrial Park.

ATTACHMENTS:
[COM Utility Easement CP Logistics.pdf](#)

After recording return to:

City of Marysville
1049 State Avenue
Marysville, WA 98270

City of Marysville Utility Easement

THIS INDENTURE made this _____ day of November, 2023 between (owner) CP Logistics Marysville, LLC, hereinafter referred to as "Grantor;" and the CITY OF MARYSVILLE, a municipal corporation of the State of Washington, hereinafter referred to as "Grantee," and (bank) _____, hereinafter referred to as "Mortgagee," WITNESSETH:

WHEREAS, Grantor is the owner of certain lands and premises situated in the County of Snohomish, State of Washington described as follows:

Abbreviated legal description See EXHIBIT A attached hereto
PTN'S OF AMENDED NORTHPOINTE INDUSTRIAL PARK PH. 1, BINDING SITE PLAN No. PA 08-030, SNOHOMISH COUNTY REC. No. 200911245003. Add'l on p. _____
(i.e., lot, block, plat or quarter, section, township, range)
Assessor's Tax Parcel ID#: 310533-003-031-00

and,

WHEREAS, Grantee is desirous of acquiring certain rights and privileges across, over, under, through, in and upon said lands and premises;

NOW, THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and grants to the Grantee, its successors and assigns and its contractors, agents, permittees and licensees, the perpetual right, privilege and authority to construct, alter, improve, repair, operate and maintain storm drainage lines, and/or sanitary sewer lines, and/or water lines, pipes and appurtenances across, over, under, through, in and upon the following described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

See **EXHIBIT B** attached hereto

Together with the right of ingress to and egress from said lands across adjacent lands of the Grantor, for the purpose of constructing, reconstructing, repairing, renewing, altering, changing, patrolling and operating said lines, and the right at any time to remove said lines and appurtenances from said lands.

The Grantor reserves the right to use the surface of the above-described easement in the manner now existing, but shall not erect any buildings, structures, patios, or other construction of any nature on said easement. This conveyance is conditioned upon the Grantee's obligation to replace any fences, lawn, shrubbery or land contours that are disturbed in connection with the exercise of the Grantee's rights hereunder, in as good condition

as the same were immediately before the property was entered by the Grantee.

The rights, title, privileges and authority hereby granted shall continue to be in force until such time as the Grantee, its successors or assigns, shall permanently remove said lines and appurtenances from said lands, or shall otherwise permanently abandon said lines, at which time all such rights, title, privileges and authority hereby granted shall terminate.

The Grantor also covenants to and with the Grantee that Grantor is lawfully seized and possessed of the land aforesaid; has a good and lawful right and power to sell and convey same; that same is free and clear of encumbrances, except as above indicated; and that Grantor will forever warrant and defend the title to said easement and the quiet possession thereof against the lawful claims and demands of all persons whomsoever. This conveyance shall be a covenant running with the land, and shall be binding on the Grantor and its heirs, successors and assigns forever.

Any mortgage on said land held by the Mortgagee is hereby subordinated to the rights herein granted to the Grantee, but in all other respects the said mortgage shall remain unimpaired.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

GRANTOR:

Name or Co: CP Logistics Marysville, LLC

Sign: *Lauren Keens*

Print: Lauren Keens

Title: Authorized Signer

MORTGAGE HOLDER:

Bank: _____

Sign: _____

Print: _____

Title: _____

Mortgage Notary:

STATE OF WASHINGTON)

)ss.

COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged it as the (title) _____ of (bank) _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20____

(Notary Signature)

(Print Name)

NOTARY PUBLIC in and for the State of Washington

Residing at (city): _____

My commission expires: _____

Individual Notary:

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 20____

(Notary Signature)

(Print Name)

NOTARY PUBLIC in and for the State of Washington

Residing at (city): _____

My commission expires: _____

Representative or Company Notary:

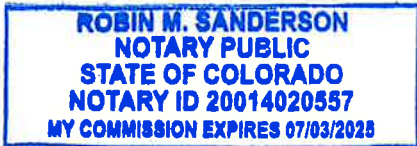
STATE OF ~~WASHINGTON~~ ^{Colorado})
)ss.
COUNTY OF ~~SNOHOMISH~~ ^{DENVER})

I certify that I know or have satisfactory evidence that Lauren Keens is/are the persons who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the instrument and acknowledged him/her as the (title) Authorized Signer of (company) CP Logistics Marysville, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 5th day of December, 2023

Robin M. Sanderson
(Notary Signature)

Robin M. Sanderson
(Print Name)



NOTARY PUBLIC in and for the State of ~~Washington~~ ^{Colorado}

Residing at (city): DENVER

My commission expires: July 3, 2025

Note: Do not write or stamp in 1" margins.

EXHIBIT 'A'
LEGAL DESCRIPTION OF WATER LINE EASEMENTS

Being a 15.00-foot-wide strip of land situated within Tract 998 of Northpointe Industrial Park Phase 1 Binding Site Plan No. PA 08-030, recorded September 30, 2009 under Recording No. 200909305003, and amended by First Amendment to Northpointe Industrial Park Phase 1 Binding Site Plan No. PA 08-030, recorded November 24, 2009 under Recording No. 200911245003, records of Snohomish County, Washington, the centerline of which is described as follows:

Commencing at the northeast corner of said Tract 998, from which the southeast corner of said tract bears S03°28'00"W a distance of 1296.80 feet, said northeast corner being the beginning of a non-tangent curve to the left from which the radius point bears S13°39'55"W a distance of 429.01 feet; Thence Westerly along said curve, being also along the northerly boundary of said tract, through a central angle of 10°15'18", an arc distance of 76.78 feet to a point, said point being the POINT OF BEGINNING;

Thence along said strip centerline the following thirteen courses:

1. S03°21'11"W, 276.22 feet to Point 'A;'
2. S03°21'11"W along said line a distance of 287.87 feet to Point 'B;'
3. S03°21'11"W along said line a distance of 297.85 feet to Point 'C;'
4. S03°21'11"W along said line a distance of 124.99 feet;
5. N86°38'49"W, 211.51 feet to Point 'D;'
6. N86°38'49"W along said line a distance of 186.96 feet to Point 'E;'
7. N86°38'49"W along said line a distance of 165.43 feet;
8. N41°38'49"W, 65.20 feet;
9. N03°21'11"E, 47.80 feet to Point 'F;'
10. N03°21'11"E along said line a distance of 295.26 feet to Point 'G;'
11. N03°21'11"E along said line a distance of 276.10 feet to Point 'H;'
12. N03°21'11"E along said line a distance of 277.50 feet 'I;'
13. N03°21'11"E along said line a distance of 29.59 feet to the northerly boundary of said tract and the TERMINUS of this centerline description.

The sidelines of the above-described strip are to be lengthened or shortened as necessary to intercept said northerly tract boundary.

TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:

BEGINNING at said Point 'A;'

Thence S86°38'49"E, 27.17 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:

BEGINNING at said Point 'B;'

Thence S86°38'49"E, 27.50 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:

BEGINNING at said Point 'C;'

Thence S86°38'49"E, 16.45 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:

BEGINNING at said Point 'D;'

Thence S03°21'11"W, 16.00 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:

BEGINNING at said Point 'E;'

21681 – NORTHSOUND

21681L.003 – MWD

September 18, 2023

PG. 1 OF 3

Thence S03°21'11"W, 16.00 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:
BEGINNING at said Point 'F';
Thence N86°38'49"W, 27.17 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:
BEGINNING at said Point 'G';
Thence N86°38'49"W, 28.50 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:
BEGINNING at said Point 'H';
Thence N86°38'49"W, 28.91 feet to the terminus of this centerline description.

AND TOGETHER WITH a 15.00-foot-wide strip of land the centerline of which is described as follows:
BEGINNING at said Point 'I';
Thence N86°38'49"W, 15.00 feet to the terminus of this centerline description.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at the southwest corner of said tract;
Thence N04°25'31"E along said tract boundary a distance of 68.21 feet to Point 'J' and the BEGINNING of this easement parcel description;
Thence N04°25'31"E along said tract boundary a distance of 15.00 feet;
Thence S85°34'29"E, 4.00 feet;
Thence S04°25'31"W, 15.00 feet;
Thence N85°34'29"W, 4.00 feet to the POINT OF BEGINNING.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at said Point 'J';
Thence N04°25'31"E along said tract boundary a distance of 300.00 feet to Point 'K' and the BEGINNING of this easement parcel description;
Thence N04°25'31"E along said tract boundary a distance of 15.00 feet;
Thence S85°34'29"E, 4.00 feet;
Thence S04°25'31"W, 15.00 feet;
Thence N85°34'29"W, 4.00 feet to the POINT OF BEGINNING.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at said Point 'K';
Thence N04°25'31"E along said tract boundary a distance of 299.00 feet to Point 'L' and the BEGINNING of this easement parcel description;
Thence N04°25'31"E along said tract boundary a distance of 15.00 feet;
Thence S85°34'29"E, 4.00 feet;
Thence S04°25'31"W, 15.00 feet;
Thence N85°34'29"W, 4.00 feet to the POINT OF BEGINNING.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at said Point 'L';
Thence N04°25'31"E along said tract boundary a distance of 17.24 feet to a curve to the left having a radius of 479.12 feet and a central angle of 09°13'55";
Thence Northerly along said curve, and along said tract boundary, an arc distance of 77.20 feet to a reverse curve to the right having a radius of 429.11 feet and a central angle of 09°13'53";
Thence Northerly along said curve, and along said tract boundary, an arc distance of 69.14 feet;
Thence N04°25'31"E, 118.22 feet to Point 'M' and the BEGINNING of this easement parcel description;

Thence N04°25'31"E along said tract boundary a distance of 15.00 feet;
Thence S85°34'29"E, 4.00 feet;
Thence S04°25'31"W, 15.00 feet;
Thence N85°34'29"W, 4.00 feet to the POINT OF BEGINNING.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at said Point 'M';
Thence N04°25'31"E along said tract boundary a distance of 299.00 feet to Point 'N' and the BEGINNING of this easement parcel description;
Thence N04°25'31"E along said tract boundary a distance of 15.00 feet;
Thence S85°34'29"E, 4.00 feet;
Thence S04°25'31"W, 15.00 feet;
Thence N85°34'29"W, 4.00 feet to the POINT OF BEGINNING.

AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at the northeast corner of said tract, from which the southeast corner of said tract bears S03°28'00"W a distance of 1296.80 feet, said northeast corner being the beginning of a non-tangent curve to the left from which the radius point bears S13°39'55"W a distance of 429.01 feet;
Thence Westerly along said curve, and along said tract boundary, through a central angle of 11°44'02", an arc distance of 87.86 feet;
Thence N88°01'43"W along said tract boundary a distance of 43.57 feet to Point 'O' and the BEGINNING of this easement parcel description;
Thence N88°01'43"W along said tract boundary a distance of 15.00 feet;
Thence S01°58'17"W, 5.00 feet;
Thence S88°01'43"E, 15.00 feet;
Thence N01°58'17"E, 5.00 feet to the POINT OF BEGINNING.

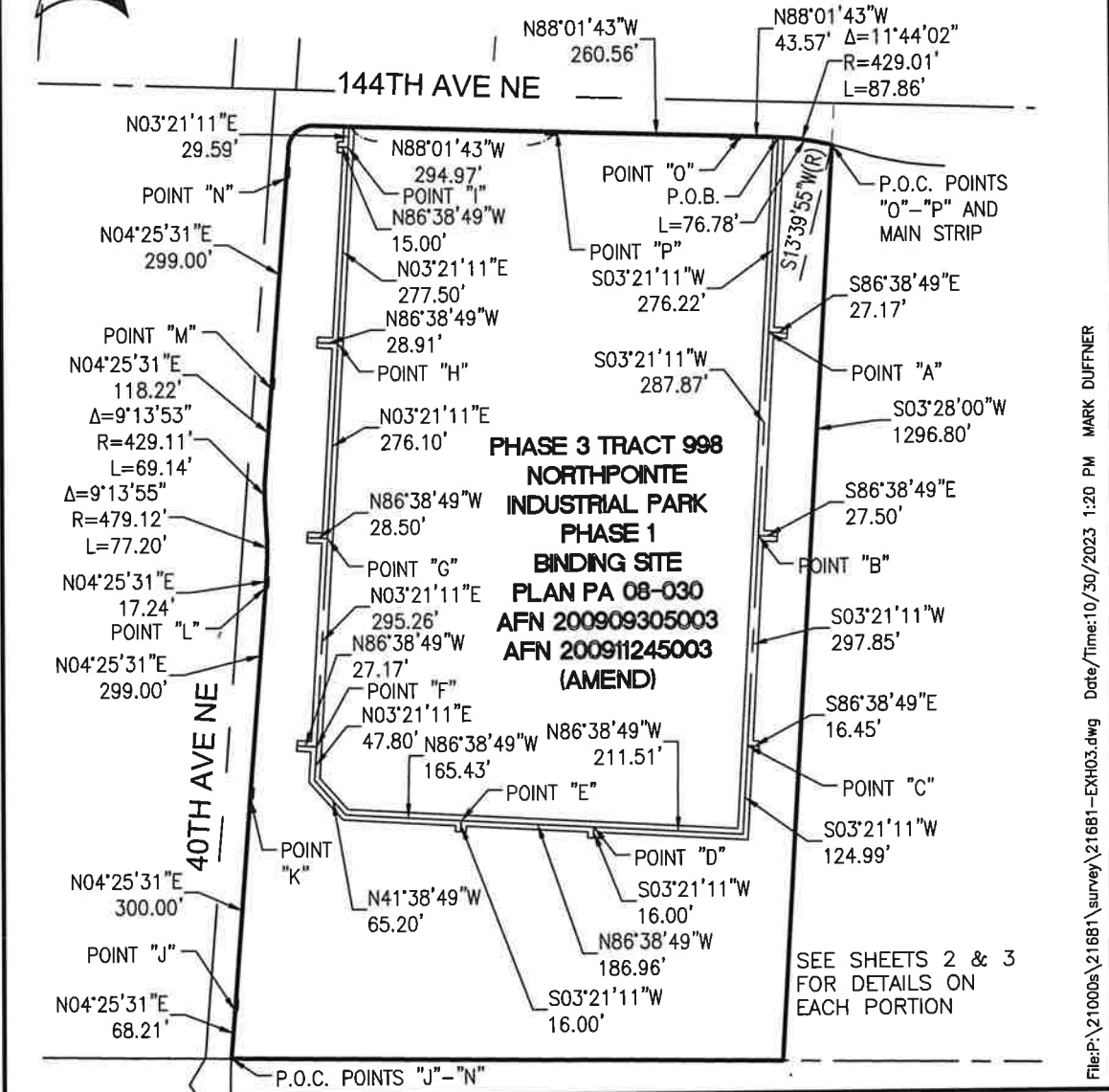
AND TOGETHER WITH the following described portion of said Tract 998:
Commencing at said Point 'O';
Thence N88°01'43"W along said tract boundary a distance of 260.56 feet to Point 'P' and the BEGINNING of this easement parcel description;
Thence N88°01'43"W along said tract boundary a distance of 15.00 feet;
Thence S01°58'17"W, 5.00 feet;
Thence S88°01'43"E, 15.00 feet;
Thence N01°58'17"E, 5.00 feet to the POINT OF BEGINNING.



EXHIBIT "B"



GRAPHIC SCALE




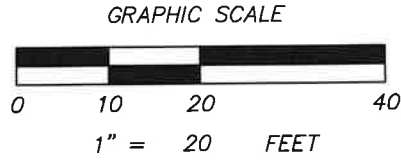
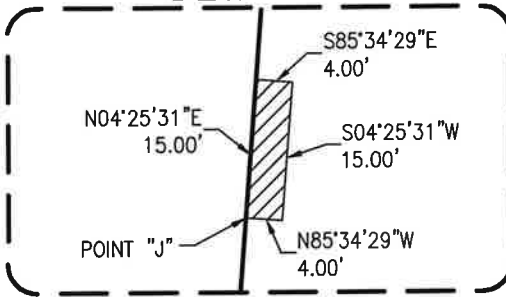
<p>SCALE: HORIZONTAL 1"=250'</p>	<p>For: CP LOGISTICS MARYSVILLE, LLC</p>	<p>JOB NUMBER 21681</p>
 <p>BARGHAUSEN CONSULTING ENGINEERS, INC. 18215 72ND AVENUE SOUTH KENT, WA 98032 425.251.6222 BARGHAUSEN.COM</p>	<p>Title: WATERLINE EASEMENTS</p>	<p>SHEET 1 of 3</p>
<p>DESIGNED _____ DRAWN <u>BDG</u> CHECKED <u>MWD</u> APPROVED <u>MWD</u> DATE <u>10/30/23</u></p>		

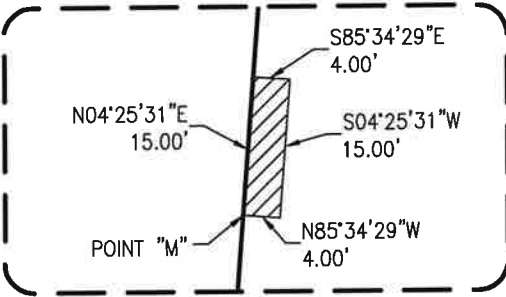
EXHIBIT "B"



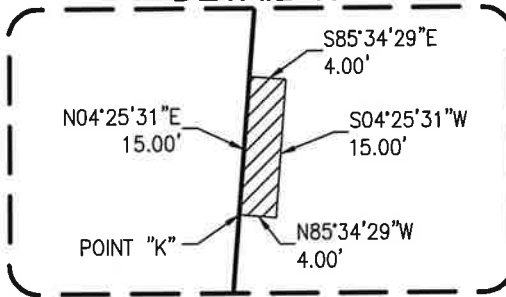
DETAIL "J"



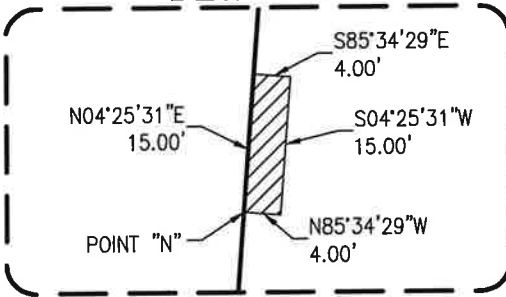
DETAIL "M"



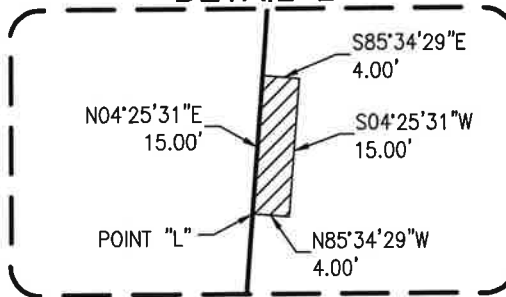
DETAIL "K"



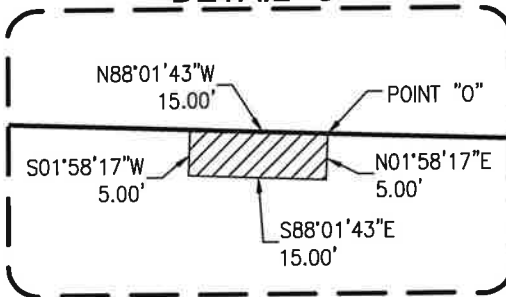
DETAIL "N"



DETAIL "L"



DETAIL "O"



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SCALE:
HORIZONTAL 1"=20'



**BARGHAUSEN
CONSULTING ENGINEERS, INC.**
18215 72ND AVENUE SOUTH
KENT, WA 98032
425.251.6222 BARGHAUSEN.COM

For:
**CP LOGISTICS
MARYSVILLE, LLC**

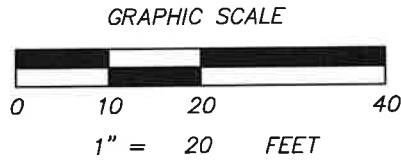
Title:
**WATERLINE
EASEMENTS**

JOB NUMBER
21681

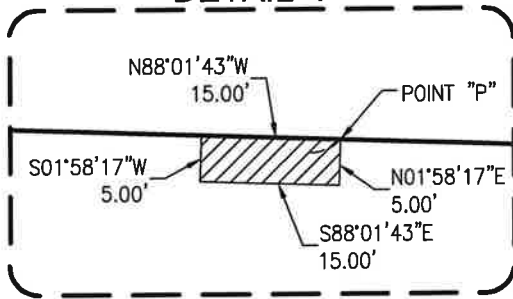
SHEET
2 of 3

DESIGNED _____ DRAWN BDG CHECKED MWD APPROVED MWD DATE 10/30/23


EXHIBIT "B"



DETAIL "P"



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<p>SCALE: HORIZONTAL 1"=20'</p>	<p>For: CP LOGISTICS MARYSVILLE, LLC</p>	<p>JOB NUMBER 21681</p>
 <p>BARGHAUSEN CONSULTING ENGINEERS, INC. 18215 72ND AVENUE SOUTH KENT, WA 98032 425.251.6222 BARGHAUSEN.COM</p>	<p>Title: WATERLINE EASEMENTS</p>	<p>SHEET 3 of 3</p>
<p>DESIGNED _____ DRAWN <u>BDG</u> CHECKED <u>MWD</u> APPROVED <u>MWD</u> DATE <u>10/30/23</u></p>		



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Storm and Wastewater Utility Manager Matthew Eyer, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Water Quality Stormwater Capacity Grant Agreement with the Department of Ecology

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute Department of Ecology Grant Agreement WQSWCAP-2325-MaryPW-0005.

SUMMARY: The City of Marysville has been offered \$130,000 in grant funding from the Department of Ecology to assist in the implementation and management of the City’s NPDES Phase II Stormwater Permit. This grant does not require a match and may be used for the reimbursement of any expenses, material costs or staff time expended as part of the NPDES Stormwater Management Program. If executed, any eligible expenses between July 1st, 2023 and March 31st, 2025 can be submitted for reimbursement.

ATTACHMENTS:
[Department of Ecology Agreement No. WQSWCAP-2325-MaryPW-0005.pdf](#)



Agreement No. WQSWCAP-2325-MaryPW-00005

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF MARYSVILLE

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Marysville, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2023-2025 Biennial Stormwater Capacity Grants
Total Cost:	\$130,000.00
Total Eligible Cost:	\$130,000.00
Ecology Share:	\$130,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2023
The Expiration Date of this Agreement is no later than:	03/31/2025
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

Agreement No: WQSWCAP-2325-MaryPW-00005
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Marysville

RECIPIENT INFORMATION

Organization Name: City of Marysville

Federal Tax ID: 91-6001459
UEI Number: KENDBGSMVPQ7

Mailing Address: 80 Columbia Ave.
Marysville, WA 98270

Physical Address: 80 Columbia Ave.
Marysville, Washington 98270

Contacts

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

<p>Project Manager</p>	<p>Matthew Eyer Storm/Sewer Supervisor</p> <p>80 Columbia Ave Marysville, Washington 98270 Email: meyer@marysvillewa.gov Phone: (360) 363-8112</p>
<p>Billing Contact</p>	<p>Andrew Hougan Financial Analyst</p> <p>80 Columbia Ave. Marysville, Washington 98270 Email: ahougan@marysvillewa.gov Phone: (360) 363-8100</p>
<p>Authorized Signatory</p>	<p>Jeff Laycock Public Works Director</p> <p>80 Columbia Ave Marysville, Washington 98270 Email: jlaycock@marysvillewa.gov Phone: (360) 363-8274</p>

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

ECOLOGY INFORMATION

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

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

Contacts

<p>Project Manager</p>	<p>Kyle Graunke</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890</p>
<p>Financial Manager</p>	<p>Kyle Graunke</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890</p>

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
 Department of Ecology

City of Marysville

By: _____

By: _____

Vincent McGowan, P.E. Date
 Water Quality
 Program Manager

Jeff Laycock Date
 Public Works Director

Template Approved to Form by
 Attorney General's Office

Agreement No: WQSWCAP-2325-MaryPW-00005
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Marysville

Jon Nehring

Mayor

Date

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

SCOPE OF WORK

Task Number: 1 **Task Cost: \$0.00**

Task Title: Project Administration/Management

Task Description:

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

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

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

Task Goal Statement:

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

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and Recipient Closeout Report.
- * Properly maintained project documentation.

Project Administration/Management

Deliverables

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

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

SCOPE OF WORK

Task Number: 2 **Task Cost:** \$130,000.00

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will use funds to attain compliance where applicable. The following is a list of elements projects may include:

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (Total Maximum Daily Load (TMDL)). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that ECOLOGY approves prior to awarding funding for monitoring. Monitoring must directly meet a Phase I or II permit requirement.
- 9) Structural stormwater controls program activities (Phase I permit requirement).
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a pick-up truck). Equipment purchases over \$5,000.00 must be pre-approved by ECOLOGY.

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

Documentation of all tasks completed is required. Documentation may include field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance.

Ineligible expenses include capital construction projects, incentives or give-a-ways, grant application preparation, Technology Assessment Protocol - Ecology (TAPE) review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Matthew w Eyer

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

BUDGET

Funding Distribution EG240282

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2023-25 Stormwater Capacity Grant Funding Type: Grant
 Funding Effective Date: 07/01/2023 Funding Expiration Date: 03/31/2025

Funding Source:

Title: Model Toxics Control Stormwater Account (MTCSA)
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: MTCSA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

2023-25 Stormwater Capacity Grant	Task Total
Permit Implementation	\$ 130,000.00

Total: \$ 130,000.00

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2023-25 Stormwater Capacity Grant	0.00 %	\$ 0.00	\$ 130,000.00	\$ 130,000.00
Total		\$ 0.00	\$ 130,000.00	\$ 130,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

transaction complies with certification of suspension and debarment requirements.

7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

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

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

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

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

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

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in

Agreement No: WQSWCAP-2325-MaryPW-00005
Project Title: 2023-2025 Biennial Stormwater Capacity Grants
Recipient Name: City of Marysville

the [System for Award Management \(SAM\) <https://sam.gov/SAM/>](https://sam.gov/SAM/) exclusion list.

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

Agreement No: WQSWCAP-2325-MaryPW-00005
 Project Title: 2023-2025 Biennial Stormwater Capacity Grants
 Recipient Name: City of Marysville

- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
- Make the IDP readily available to anyone working at the project site.
- Discuss the IDP with staff, volunteers, and contractors working at the project site.
- Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
 - Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
 - Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

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

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

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

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

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

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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

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

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

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

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

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Water Operations Supervisor Kim Bryant, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Consent**

SUBJECT: Agreement with Veolia Water Technologies and Solutions for the Stillaguamish Treatment Plant Membrane Replacement & LRV Upgrade Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the agreement for the Stillaguamish Treatment Plant Membrane Replacement and LRV Upgrade project with Veolia Water Technologies and Solutions.

SUMMARY:

The Stillaguamish Treatment Plant provides water to the north portion of Marysville's water system by treating water from the Stillaguamish River through a proprietary membrane technology manufactured by Zenon.

The current membranes are beyond the end of their service life, and failure of the membranes would greatly reduce the City's ability to produce water and increase City dependence on purchased water. Utilizing a different treatment system other than Zenon membrane would require a plant redesign. As a proprietary technology, the Zenon filtration system requires all parts and services be procured through Veolia Water Technologies and Solutions. Attached is the sole source justification document that has been reviewed and approved by legal.

In addition to the membrane replacement, additional upgrades will need to occur concurrently. The attached proposal and corresponding agreement, from Veolia, includes the membrane replacement components, log reduction value (LRV) upgrade as required by the Department of Health, Programming software, HMI upgrades, and associated electrical drawings needed. The total amount of the agreement is \$961,505.66, which includes the subtotal of \$878,890.00 plus \$82,615.66 in WSST. Staff also request a 5% management reserve, or \$48,075.28, for a total allocation of \$1,009,580.94.

ATTACHMENTS:

[Marysville WA 052050 REV-3 240 x ZW500Ds 350ft² Jan 25 2024.pdf](#)
[Sole Source Justification - Fully Executed.pdf](#)
[Veolia Sole Source - Marysville.pdf](#)



Membrane Replacement & LRV Upgrade Proposal

To:	City of Marysville referred to here as Marysville or Buyer	Date:	January 25, 2024	
		No. of Pages:	35 including cover	
Attention:	Billy Gilbert	Email:	bjgilbert@marysvillwa.gov	
Plant Address:	17906 43 rd Ave. NE, Arlington, WA, 98223, USA	Telephone No.:	360 363 8143	
From:	Jason Diamond Regional Lifecycle Manager Western USA	Email:	jason.diamond@veolia.com	
		Cell No.:	905 399 7055	
CC:	Joe Kernkamp (APSCO)			
Subject:	<ul style="list-style-type: none"> • Membrane replacement upgrade (ZW500C to ZW500Ds); • LRV upgrade. 	Proposal No.:	052050-3	
		Original Project No.:	500151	
Plant Data:	Please provide corrections if inaccurate Marysville Water Treatment Plant, municipal drinking water treatment. ZW500C plant, 2 trains, 6 x 26/26M cassettes per train with 250ft ² membrane modules. 2 open cassette slots per train. Substantial completion date: December 28, 2006.			



Proposal Provisos

This proposal has been issued based on the information provided by the customer and on information currently available to Veolia Water Technologies & Solutions at the time of proposal issuance. Any changes or discrepancies in site conditions, including but not limited to changes in system influent water characteristics, changes in environmental health and safety (EH&S) conditions, changes in the reissued state/provincial disposal system permit, changes in buyer financial standing, buyer requirements, or any other relevant change or discrepancy in the factual basis upon which this proposal was created may lead to changes in the offering, including but not limited to changes in pricing, guarantees, quoted specifications, or terms and conditions.

Confidential and Proprietary Information

The enclosed materials are considered proprietary property of Veolia Water Technologies & Solutions (Veolia). No assignments, either implied or expressed, of intellectual property rights, data, know how, trade secrets or licenses of use thereof are given. All information is provided exclusively to the addressee and agents of the addressee for the purposes of evaluation and is not to be reproduced or divulged to other parties, nor used for manufacture or other means, ~~without the express written consent of Veolia~~ **except in conformance with Section 13, Confidentiality, of the Standard Terms and Conditions.** The acceptance of this document will be construed as an acceptance of the foregoing.

Trademarks

The following are trademarks of Veolia Water Technologies & Solutions and may be registered in one or more countries:

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1 Introduction

Veolia Water Technologies & Solutions is pleased to present this proposal at the request of City of Marysville to provide drinking water membrane modules to replace and upgrade the full plant at the Marysville Water Treatment Plant (WTP).

Veolia no longer manufactures ZW500C membrane modules and are offering the latest ZW500Ds 350ft² membrane modules in 20M cassettes as the replacement option for this proposal.

The technical and economic advantages of the ZW500Ds modules include:

- Higher surface area density;
- Each module is individually removable to simplify access for efficient membrane maintenance;
- Increased reliability through the simplified, robust design of the ZW500D;
- Veolia investments in R&D will continue to improve upon the ZW500 technology.

With the membrane replacement upgrade, Veolia will also provide materials, engineering/controls and on-site support to upgrade the system membrane integrity test of the plant to current LT2 requirements.

Veolia is a proven leader in delivering tangible value to our clients over the life of the plant. Our measure of success is how well we deliver solutions that help our clients meet their critical business objectives.

Through long-acquired technical experience, Veolia has clearly distinguished itself from other membrane manufacturers. A mature service culture and deep technical expertise are ready to serve and support Marysville through this next membrane lifecycle upgrade.

Veolia would like to note that under the current exceptional circumstances across global supply chains and logistics networks, Veolia may not be in a position to guarantee and comply with the planned schedule for product / project delivery or performance. Veolia reserves the right to modify the schedule / contract accordingly. Veolia will promptly inform you of any changes which may impact the contract or the project.



2 Veolia Scope & Price

Veolia's scope includes the material and services outlined in the table below. The sections that follow provide additional detail regarding each scope item.

Item Description	Part #	Quantity	Price
ZW500Ds 20/20M cassette with 350ft ² membranes, section 3.1	3144414	10	736,710
ZW500Ds 14/20M cassette with 350ft ² membranes, section 3.1	3161309	2	
2-year full replacement membrane warranty, section o		incl.	
Cassette installation equipment, section 3.2		lot	
Tools, spares and consumables, section 3.3		lot	
LRV upgrade: materials, off-site support, section 4		incl.	46,800
Off-site support for membrane installation, controls, drawing updates/documentation, project management, section 6.1		incl.	23,140
International shipment, fees and duties, section 5		incl.	48,450
Freight, DDP Marysville WTP, section 5	3095534	incl.	
Material, off-site labor, delivery		Sub-total	855,100
On-site support for membrane installation, 1 FSR, 5 x 10-hr days on-site plus travel & living, section 6.2	135491	1 visit	12,870
On-site support for LRV upgrade, 1 FSR, 4 x 8-hr days on-site plus travel & living, section 6.2		1 visit	10,920
On-site support		Sub-total	23,790
All figures are in USD and exclude any applicable taxes, which will be applied at the time of invoicing. Please make purchase order to ZENON Environmental Corporation.		Total Price	878,890



Proposal Notes:

- **Price Review.** Notwithstanding the terms set forth herein or of any agreement or acceptance of Seller's quotation, Seller reserves the right at any time and from time to time by notice in writing to the Buyer to (a) determine periodic price reviews based on Goods' raw material increase arising from currency devaluations (b) increase Prices (or impose temporary price adjustments) based on increases in the cost of base components for the Goods or Services provided, where the increase is due to increased global demand, limited supply, temporary product shortages, allocation of supply, or such other similar inflationary pressures; and (c) impose a surcharge equal to any increase in the cost of the Goods or Services as a result of a modification of exchange rates, duties, taxes or other levies imposed by public authorities.
- Veolia's proposed price for ZeeWeed membranes is subject to adjustment between the period from the expiry of the proposal validity up to shipment of membranes according to upward changes in the following indices:
 - 40%: PPI Industry Index for Hungary: [Link to Hungary Industry PPI](#)
 - 60%: PPI Chemical Industry for European Union: [Link to EU Chemical PPI](#)

In the event that either index becomes unavailable, a suitable equivalent replacement index will be agreed between the parties. The buyer has the right to request that the supplier supports any price increase with market pricing data, within the bounds of commercial confidentiality.

- **Shipment/Collection Delays:** *The membrane sale will be subject to price adjustment if not collected within 1 month of Readiness for Shipment. After the one month of Readiness for Shipment if Purchaser does not send his agreement to receive or collect the membranes (depending on Incoterms), Seller is entitled to reallocate the membranes to another customer.*



Invoicing Schedule	Approximate % of Sub-Total	Invoice Value, Excluding Tax
An invoice will be issued upon acceptance by Veolia of customer purchase order. Approximate percent calculation based on the material, off-site labor, delivery sub-total of the purchase order. Shipment of membranes is contingent on receipt of this initial milestone payment.	30%	256,530
An invoice for the balance of the material, off-site labor, delivery sub-total will be issued when membrane module shipping documents are supplied to the carrier.	70%	598,570
A final invoice for the on-site support sub-total will be issued upon completion of installation of the membranes and LRV update.	100%	23,790
	Total (USD)	878,890

3 Material Description

The following materials are provided within Veolia’s scope of supply.

3.1 Membrane Modules & Cassettes

- 10 x ZeeWeed 500Ds 20/20M cassette frames, fully populated with 350ft² drinking water membrane modules;
- 2 x ZeeWeed 500Ds 14/20M cassette frames, populated with 350ft² drinking water membrane modules;

See Attachment A for additional details.

3.2 Cassette Installation Equipment

Veolia will supply the following items required for installation of the ZW500Ds cassettes:

- 12 x hanger arm sets + hardware for mounting cassettes in the membrane tanks;
- 1 x cassette lifting bracket;
- 12 x cassette spool component sets for aeration and permeate. Cassette spools will require assembly on-site to ensure proper fit with the new cassettes.

3.3 Tools, Spares and Consumables

- 1 x ZW500D module removal tool;
- 3 x blank module headers for 350ft² modules;
- 1 x ZW500D fiber repair kit;

- 50 x spare #118 EPDM ZW500D permeate spigot o-rings;
- 5 x spare ZW500D element end cap keys;
- 1 x o-ring lubricant (food grade);
- 2 x anti-seize lubricant (food grade).

4 LRV Upgrade

Veolia will provide the following materials and services to upgrade the LRV at the Marysville WTP:

- 1 x pressure regulator valve 3/8";
- 1 x pressure safety valve 1/2";
- PROAX MIT air assembly;
- 2 x 1" solenoid valve;
- 2 x solenoid valve plug;
- 1 x 1" check valve;
- 1 x 1/2" hand valve;
- 1 x 1/2" pressure gauge;
- Off-site programming, drafting, documentation, process and project management support for the LRV changes (approximately 220 hours);
- On-site FSR support for the LRV implementation, see section 6.2.

5 Delivery

- **Freight**

- **DDP** - Delivery will be by standard ocean/ground on the basis of DDP Marysville WTP, 17906 43rd Ave. NE, Arlington, WA, USA or other named place of destination; Incoterms 2020. DDP = delivery duty paid. Partial shipments will be acceptable unless otherwise specified. Where delivery cannot be accepted at this destination, Marysville shall specify an alternate, equivalent destination without delay.

Due to varying origins and availability, non-membrane items included in this proposal may be shipped separately from the membranes. Should separate shipments be required, where possible, Veolia will strive to provide these items on or before the delivery of the membranes.

- **Title & Risk** - Title and risk of loss or damage to membrane modules, cassette frames, ancillary equipment and crating shall pass to Marysville upon delivery at the named place of destination.

- **International Shipment, Fees, and Duties**

- **Origin** - Delivery of ZeeWeed membranes and cassettes originates from the Veolia Water Technologies & Solutions, ZENON Membrane Products (ZEM), Bláthy Ottó u



4, Oroszlány, 2840 Hungary facility. Costs to transport membranes into North America are included in Veolia’s quoted price.

- **Export Documents** - All ZeeWeed membrane module shipments into the USA require clearance documentation from the EPA. Veolia will prepare and provide the required EPA documentation to the Carrier.
- **MPF** - Merchandise processing fee is a fee assessed for formal custom entries based on 0.35% of the invoice value, with a minimum of USD \$25 per formal entry and a maximum of USD \$485. On the basis of DDP terms, this fee will be paid by Veolia within the quoted price.
- **Duty** - Any new duty imposed after the date of this proposal is the responsibility of Marysville.
- **Taxes** - All applicable local, state, or federal taxes are the responsibility of Marysville.
- **Temperature** - UF membranes cannot be allowed to freeze or overheat and may require temperature-controlled freight and handling according to the season and the planned routing. If required, the price of temperature control will be included within the firm quote on freight by Veolia.
- **Packaging** – Membranes will be factory-installed in operational cassettes.
- **Unloading** - may require one of or a combination of a loading dock, extended forks and an experienced forklift driver at delivery destination. Please consult with Veolia at the time of purchase order (PO) preparation on this.

shipping crate information (estimated)

Qty	Description	Dimensions (in) (LxWxH)	Weight (lb.)
12	ZW500Ds 20M cassette crate	75 X 35 X 94	1,451

Notes:

- Only crates for membrane/cassette transport have been shown above to identify the largest and heaviest items that will need to be unloaded;
 - Smaller crates/skids will be used for hardware items (hanger arms, spool connection components, etc.).
- **Availability** - Delivery of membrane modules and cassettes is typically 10-20 weeks after receipt of order.

With current product lead times, delivery of membrane modules and cassettes is estimated at **60 - 64** weeks after receipt of order.

Definitive availability will be confirmed once a purchase order is received from Marysville and acknowledgement of a purchase order is issued by Veolia.

6 Veolia Support

6.1 Off-Site Support

Controls

Provide system controls programming adjustments as required for:

- The new membranes and cassettes;
- The LRV upgrade.

Veolia has assumed that there is sufficient I/O available for the LRV upgrade with the on-going PLC upgrade at the plant.

Documentation

The base level of documentation updates will include:

- Summary of programming/control changes required for the new membranes and cassettes and the LRV upgrade;
- Mark-ups of relevant electrical and P&ID drawings;
- **P&IDs** - Update the process (piping) & instrumentation drawings and reissue electronically;
- **Controls documents** – Update control narrative (CN), controls logic sequence chart (CLSC, also known as CSC) and the operation sequence chart (OSC).

These updates should be filed in the O&M manual as interim documentation.

Due to the very high cost of comprehensive updating of plant documentation with each system upgrade, Veolia recommends planning a complete documentation update every 1-4 years to coincide with a selected system upgrade.

Veolia will be pleased to develop a documentation update price quotation on request which may include some or all of the following scope according to its relevance:

- **O&M manual** - Provide a fully updated version of the operation & maintenance manual that indicates the changes made with this membrane replacement upgrade;
- **Electrical drawings** – Update the electrical drawings and reissue electronically.

Project Management

Provide planning and off-site assistance during the membrane replacement & LRV upgrade project.

6.2 On-Site Technical Services

The proposal includes a provision for technical services during the installation and commissioning process (membranes and LRV) to support Marysville's staff as outlined in section 2. Please see section 8.2 for recommendations on the number of plant staff necessary to perform the work.



Installation and commissioning of membranes will be executed one train at a time to minimize down-time and to return each train to beneficial use in a timely manner.

The following activities will be completed by a coordinated effort between plant staff and Veolia on-site support:

- Remove existing membranes/cassettes;
- Install the new membrane modules/cassettes;
- Upgrade the LRV;
- Upload required revisions to the PLC program with adjusted set-points;
- Perform bubble test where applicable to test membrane integrity and review trans membrane pressure (TMP) on the installed membranes and compare to expected values for new membranes; complete repairs/adjustments necessary to provide new membrane performance.

Operating Responsibility - Marysville retains control of the work site and retains final responsibility for the installation and commissioning process.

Veolia will perform the services specified in the scope section of this document, but Veolia will not operate the system. For the purposes of this agreement, the term “operate the system” shall mean to run or control the functioning of the equipment or to otherwise conduct or manage the affairs of any aspect of water or wastewater treatment or other functions at Marysville’s site, and shall include functions such as providing operators or laborers to adjust or control water treatment (“WT”) equipment, wastewater treatment (“WWT”) equipment or sludge management facilities (“SMF”), providing program oversight or directing on-site or contract operators/laborers to adjust or control WWT or SMF, providing personnel responsible for or providing oversight of water treatment residual quality, wastewater effluent quality, sludge quality, waste characterization, or waste disposal activities, or providing personnel with continual or daily operational responsibilities with respect to water or wastewater treatment, influent or effluent compliance monitoring, process monitoring, government reporting or notification, or permit compliance.

Waiting Time - Any overtime or waiting times required due to unforeseen site events outside the control of Veolia will be invoiced according to the prevailing Veolia service labor rates sheet, available on request.

Reporting - Before leaving site, Veolia will record observations and discuss with operators concerning the condition of the equipment, tasks accomplished during the visit, and key operating and maintenance issues requiring further attention. Veolia will provide a copy of a written report before leaving site and/or provide a service visit report to the plant operator within a reasonable timeframe of the Veolia service representative’s return to the office. In any case, Marysville will be asked to sign a work order that describes the hours on site and tasks accomplished.

Veolia Duties for On-Site Services

- Veolia will coordinate its work under this agreement in a reasonable manner with the operating staff of the facility.



- Veolia will maintain public liability and property damage insurance covering all operations undertaken by Veolia and its sub-contractors with a limit of \$5,000,000 inclusive for any one accident or occurrence. If for any reason additional insurance coverage (e.g. general construction/erection all risk, general liability) is required above and beyond Veolia's standard insurance terms for on-site commissioning supervision, Marysville must inform Veolia in writing 60 days prior to work commencement at site. Marysville will be billed for all additional insurance costs and processing fees.
- Veolia will maintain workers compensation and employers' liability coverage as per statutory requirements.

7 ZeeWeed Configuration

Configuration Data	Units	Existing Plant Configuration	Proposed Configuration After Replacement Upgrade
Number of trains, plant		2	2
Number of trains as configured		2	2
Type of ZeeWeed membrane		ZW500C	ZW500Ds
Module surface area	ft ²	250	350
Total number of cassette spaces per train		8	8
Maximum number of modules per cassette		26	20
Fully populated cassettes installed per train		6	5
Flex cassettes installed per train		0	1
Installed number of modules per flex cassette		0	14
Total module count, train		156	114
Total surface area in operation, train	ft ²	39,000	39,900
Total module count, plant		312	228
Total surface area in operation, plant	ft ²	78,000	79,800
% surface area change from existing, plant	%		2.3

8 Scope - Marysville

8.1 Installation Preparation

- Receive, off-load, handle and provide temperature-controlled storage of the equipment and materials required for Seller to perform the duties outlined in the Seller's scope of supply. Prior to off-loading, Buyer to confirm temperature indicators have not been tripped.
- Membranes must be stored in a sheltered area, protected from freezing, direct sunlight or extreme heat, and sealed as shipped until ready for use. Storage should be in a dark,



dry, level area at a temperature of 5-30°C (41-86°F). Membranes have a shelf life of 1 year before requiring re-preservation and should not be stored longer than necessary prior to installation. Marysville is responsible for risk of loss of Seller's parts while in storage at the customer's plant.

- Inspect, evaluate and make repairs as required for the membrane tanks, mounting brackets, hoses and all connections prior to Veolia arriving at site.
- Provide all access structures (such as scaffolding) and mechanical lifting equipment including cranes, forklifts and scissor lifts.
- Assure availability of a copy of the operating manual, all process and instrumentation drawings, and all electrical drawings on site and accessible for reference.
- Maintain adequate insurance coverage for the risks of fire, theft, vandalism, floods and personal injury to authorized or unauthorized visitors.
- Procure any required components for adjusting membrane blower air flow.

8.2 Installation

- Provide 1 or more plant personnel to work continuously for the full duration of the Veolia site visits during installation and commissioning of the modules. Veolia recommends that at least one of the personnel be experienced with the ZeeWeed system.
- Marysville will afford Seller's personnel free access and egress of the facility for all authorized work. Marysville will provide reasonable access to workshop facilities with standard workshop tools and equipment as is necessary to meet any repair and maintenance requirements of the system during installation. Marysville will provide Seller's personnel reasonable access to the facility amenities, including washrooms and break rooms.
- Provide adequate illumination and emergency lighting for all areas in which the Seller will be executing the scope of supply. Provide all site utilities such as raw water, instrument quality air, potable water and power required for operation of the proposed equipment included in this scope of supply. Assure that adequate quantities of membrane cleaning and neutralizing chemicals are on hand for wash procedures including sodium hypochlorite, sodium bisulphite, citric acid and sodium hydroxide. Supply telephone/modem access while Seller's staff members are on-site.
- Marysville will provide assistance to:
 - Remove existing cassettes/membranes from the system;
 - Place the new cassettes/membranes into the system, including hanger arm installation and making all spool connections.
- Marysville will:
 - Dispose of membrane module preservative as well as all retired membrane modules and cassette components;
 - Dispose of shipping and packaging materials unless specifically requested not to do so by Veolia;

- Make any blower modifications necessary to achieve the required membrane air scour flow.

9 Solution Design Notes

9.1 Permits

Regulatory Requirements

Marysville is responsible to review and report to the permit granting agency on the impact of any of the proposed changes on the regulatory permit. Veolia will provide the necessary manufacturer's technical support on regulatory issues. Provision is made in the price proposed for the cost to update the LRV / MIT for the plant.

Please speak with your regional lifecycle manager (RLM) if there are any regulatory requirements or concerns.

Utilization

Veolia understands that these modules are required as replacements for currently installed modules.

These modules are offered on the basis that the membrane modules will not be used to provide expanded flow beyond the current plant flow rating. Veolia makes no guarantees, implied or otherwise as to the performance of these modules in any other capacity than as replacement membranes.

Production Interruption

After the purchase order is acknowledged, Veolia's project manager for the installation will consult with Marysville to jointly develop the installation plan and work schedule with due regard for membrane delivery to the plant and plant preparation.

9.2 Maintenance Notes for Replacement Membranes

At the time of any full plant or full train membrane replacement, it is recommended to evaluate whether it is the right time to address any tank coating repairs which may be required.

Preferential Flow

Mixing a small proportion of new modules in trains with large amounts of older modules is not recommended as it creates a risk of over-fluxing of new modules, which can shorten their lives. Veolia recommends that Marysville plan membrane module replacement on a complete cassette and complete train basis wherever possible to achieve both optimal performance and best value from the new membrane modules. In this case, by replacing all membrane modules in the plant, this risk has been neutralized.



Membrane Slack

Veolia’s membranes are supplied and shipped with an initial factory fiber slack designed to optimize membrane air scouring during operation as well as accommodate a degree of shrinkage. Membranes shrink in length early in their lifecycle when exposed to higher temperature water. The pace of shrinkage slows with age. With the installation of new membranes, the requirements for slack adjustment start a new cycle.

Due to the wide variety of operating environments in which our products can be utilized, it is difficult to generally predict the rate of shrinkage. If membranes operate in a condition of insufficient slack for an extended period of time, irreversible damage to the fiber-urethane bond may occur. Please refer below to the recommended inspection frequencies based on your plant’s membrane tank operating temperature. Visual inspections should begin during the membrane installation and be repeated over time on the same cassette. Digital pictures will allow for comparative analysis of the fiber slack over time.

Maximum Operating Temperature	Recommended Slack Inspection Frequency
0-24 °C / 32-76 °F	every 2 years
25-30 °C / 77-86 °F	once per year
>30 °C / > 86 °F	twice per year

Membrane Repairs

All new modules are factory tested at our manufacturing facilities and are in good working order as they are packaged and crated for shipment. On occasion, a limited number of modules arriving at site may require repairs due to uncontrollable factors during shipping and receiving, in particular with multi-modal shipments. This membrane replacement proposal includes a provision for one fiber repair kit for drinking water modules and 3 blank header sets for use as membrane substitutes, allowing the cassette to be placed back in operation as modules are repaired.

9.3 Technical

Lifting Weight & Height

The lifting weight ranges for ZW500D cassettes differ from the current ZW500C cassettes and need to be considered to ensure that the site has adequate lifting capacity available to install and later remove the cassettes safely.

Cassette Type	Lifting Weight Range (lb.)	Cassette Height (in.)
ZW500C 26M	1,837 – 2,983	82.1
ZW500D 20Ms	2,051 – 3,119	84.6



Cassette lifting weight ratings have a range as weights may vary due to the number of modules in the cassette and the degree of solids accumulation in an upset condition.

Marysville is also responsible to undertake an on-site confirmation that crane lifting heights are adequate in all areas of the plant to accommodate this proposed change.

Blowers

For the purposes of this proposal, the range of blower capacity has been assumed to be adequate for this upgrade. It is estimated the required membrane air flow will be reduced by about 5%. Veolia will provide final air flow requirements following detailed design and any mechanical or electrical adjustments to the blowers will be by Marysville.

Pre-Screen

To ensure effective operation and to maximize membrane life, Veolia recommends that continued use of the existing 1mm strainer for pre-screening continue.

10 Health & Safety

Marysville

- Marysville will provide orientation to Seller's personnel to ensure site-specific safety protocols are known. Marysville will identify and inform Seller's personnel of any site-specific hazards present in the workplace that could impact the delivery of Seller's scope of supply and agrees to work with Seller to remove, monitor, and control the hazards to a practical level.
- Marysville will provide any site-specific or standard company operating procedures and practices for Seller's personnel to perform work on site, if required by Marysville's policies. Such programs may include, but are not limited to, general environmental health & safety (EHS), HAZOP, fire protection, drug testing, incident notice, site conduct, standard first aid, chemical receiving, electrical safety, etc. Marysville will provide a certificate of program completion for Seller's personnel. This program will be fully documented, training materials will be provided, and attendance list will be kept.
- If any type of lifting devices will be used on site, Marysville will provide proof of its maintenance, inspection and certification documentation upon request and will assist the Veolia service representative to complete a safety inspection checklist.
- Where confined space entry may be required, Marysville will provide early notice and will collaborate with Veolia in planning adequate staffing and in advising the local fire/rescue department as required.
- No time or cost provision has been made for preparations such as safety record clearances, drug testing, insurance confirmations or pre-job-training in excess of 1 hour. Prior to finalizing the Purchase Order and the work schedule, Marysville will advise Veolia of any pre-job or pre-mobilization requirements. Where these requirements exceed 1 hour, this time will be charged to Marysville at rates set out in the prevailing Veolia labor rate sheet.



- Where certain short duration activities require two people for safety and the Veolia Service representative is alone at site, Marysville will cooperate as required to assure that correct safety precautions are taken.
- Marysville is responsible for the following environmental provisions:
- Environmental use and discharge permits for all chemicals at Marysville's facility either listed in this document or proposed for use at a later date;
- Any special permits required for Seller's or Marysville's employees to perform work related to the water treatment system at the facility;
- All site testing, including soil, ground and surface water, air emissions, etc.;
- Disposal of all solid and liquid waste from the Seller's system including waste materials generated during construction, start up and operation.
- Marysville is responsible for provision of health and safety facilities to Seller's field service representatives to the same extent that they are provided to Marysville's own employees, including provision of:
- Eyewash and safety showers in the water treatment area;
- Chemical spill response;
- Security and fire protection systems per local codes.

Veolia

- All work on site will be performed in accordance with applicable law and will be performed reasonably, in a clean and safe manner. The Veolia service representative will abide by the more stringent of the applicable health, safety and environmental policies and procedures of either Marysville or Veolia.
- Veolia will provide all applicable safety training required by Veolia policies or by state or national health and safety regulations. The Veolia service representative will have undergone workplace hazardous material information system (WHMIS) training and will come equipped with necessary personal protective equipment (PPE).
- Emergencies - In emergencies affecting the safety of persons, work or property at the site and adjacent thereto, Veolia will act, without previous instructions from Marysville, as the situation warrants. Veolia will notify Marysville immediately thereafter.

11 ZeeWeed Membrane Module Standard Warranty

This schedule sets out the warranty with respect to ZeeWeed membrane modules (“membrane modules”). No other warranties, expressed or implied are made in connection with the sale of these products, including, without limitation, warranties as to fitness for any purpose or use or merchantability of these products. The warranty provided herein will be the exclusive and sole remedy of Buyer. This warranty is not transferable.

1. Definitions

The follow terms shall have the meaning set forth below when used in the warranty document:

- a. “Buyer” means the party purchasing the ZeeWeed Modules from the Seller
- b. “Seller” means a business component of, or legal entity within the Veolia Water Technologies & Solutions business which is selling the ZeeWeed membranes.

2. Warranty Product

This warranty applies to only the membrane modules supplied under the contract of sale. Membrane module means the hollow fiber ultrafiltration membranes and the potted plastic headers. This warranty does not cover air piping to the membrane module, permeate piping from the membrane module, piping connection fittings, connecting hardware and cassette frames with their associated components including but not limited to spacers, aerator tubes, aerator assemblies, screen, module dummies or module blanks.

3. Scope of Warranty

The Seller warrants that its membrane module(s) will be free of defects due to faulty materials or errors in manufacturing workmanship.

Regular membrane module inspection and normal fiber repair shall be the responsibility of Buyer.

All replacement membrane modules will be shipped on the basis of INCOTERMS 2020 FCA Veolia manufacturing facility.

All ancillary costs including but not limited to bagging, boxing, crating, freight, freight insurance, applicable taxes, import duties, certifications, brokerage, receiving, forklift services, storage at site, reattachment hardware, hose/clamp/camlock replacement, crane services, installation, fiber repair materials, glycerin flushing, commissioning and waste disposal are the responsibility of Buyer.

4. Warranty Start Date

Membrane warranty will start on the earlier of:

- a. The date that installation of the original membrane module(s) has been substantially completed, or
- b. Three (3) months from the date of delivery of the original membrane module(s) to Buyer.



5. Warranty Duration

Total Warranty Duration: a total of **24** months of full replacement warranty coverage.

6. Notification Of Claim

All claims filed under this warranty shall be made in writing by Buyer within 30 days of identifying a defect.

Buyer shall provide the following information:

- a. A description of the defect giving rise to the claim;
- b. Photographs showing the manufacturing defect;
- c. The serial number(s) of the membrane module(s) which is (are) the subject of the warranty claim; and
- d. Operating data and repair history for the life of membrane modules which are the subject of a warranty claim.

7. Verification of Claim

After receipt of written notification of a defect, the Seller will promptly undertake such investigations as, in the Seller's opinion, are necessary to verify whether a defect exists. The Seller reserves the right to require additional data as necessary to validate claims. Buyer may, in the course of these investigations, be requested to return membrane module(s) to the Seller for examination (see section 11). The Seller may also conduct reasonable tests and inspections at Buyer's plant or premises. If the results of the investigation do not validate the defect claimed, Buyer will reimburse the Seller for all reasonable expenses associated with said investigation, including expenses for all tests, inspections, and associated travel.

8. Satisfaction of Claims

The Seller will have the right to satisfy claims under this warranty in a flexible manner. Such flexibility may include the repair of existing membrane modules or changes in operating protocols or membrane module replacement or by upgrading failed membrane modules with newer membrane module(s) that may embody design and efficiency improvements. Buyer consents to the supply of replacement membrane modules which may be of a different design than original membrane modules.

9. Operating Information

To maintain the membrane module warranty, membrane system operation records from initial start-up date until claim must be maintained by Buyer and made available to the Seller upon request. Records must be provided in sufficient detail as applicable to verify the subject of a warranty claim and can include but is not limited to, operation data including information on feed water quality, temperatures, flows, trans-membrane pressures, aeration rates, permeate quality, cleaning intervals, cleaning chemical concentrations, elapsed time since start-up, relevant analytical data and reporting of any screen bypass events.

Buyer shall maintain and share access to a single reference copy in electronic form of a membrane module map containing the history of activity by membrane module and the serial number for each



module. Buyer shall log its procedures performed related to a membrane module including relocation of membrane modules, repairs, replacements and any other noteworthy events.

Buyer authorizes the Seller to conduct any reasonable review of operation and maintenance records or to inspect facilities where membrane modules are installed, upon reasonable notice to Buyer. Such reviews and/or inspections are intended to also assist the Seller and Buyer in detection of membrane system faults and to optimize the care and operation of the membrane modules.

10. Limitation of Warranties

Occurrence of any of the following as reasonably determined by the Seller will void this warranty:

- a. A material failure to operate the membrane system in accordance with Seller's operations and maintenance manual supplied to Buyer as part of the contract, including material failure to adhere to the Seller's specified membrane module cleaning procedures and the use of anything other than Seller-approved membrane module cleaning agents.
- b. Failure to adhere to the preventive maintenance program as presented in the Seller's operations and maintenance manual, in published product manuals and in specifications.
- c. Failure to adhere to all transportation and storage requirements. ZeeWeed membrane modules may be stored up to 12 months from date of receipt and must be transported and stored in original intact packaging out of direct sunlight in ambient temperatures between 5-35 Degrees Celsius. Storage beyond 12 months from date of receipt requires a written request to Veolia to maintain membrane module warranties.
- d. Introduction of destructive foreign materials and chemical agents into the membrane module.
- e. Failure to maintain and provide system operating data and repair history for the life of membrane modules which are the subject of a warranty claim.
- f. Physical abuse or misuse, incorrect removal or installation of membrane modules by non-Seller personnel including fiber damage caused by operator error in handling of membrane modules or cassettes.
- g. Unauthorized alteration of any components or parts originally supplied by the Seller.
- h. Intentional damage.

11. Return Procedure

In the event that the return of a membrane module is required pursuant to this warranty, Buyer will first obtain a Return Goods Authorization (RGA) number from the Seller. Membrane module(s) shipped to the Seller for warranty examination must be shipped freight prepaid in environmentally controlled freight and storage with ambient air temperature between 5-35 degree Celsius. If Buyer desires temporary replacement membrane module(s) to replace those alleged to be defective and returned to the Seller for warranty examination, Buyer shall be responsible for the cost associated with any such replacements until examination of the returned membrane modules pursuant to this warranty is complete. Any membrane module examined by Seller as part of a warranty claim where the membrane module is subsequently found to be performing as warranted or where a membrane module failure is not covered under the warranty will be returned to Buyer, freight collect or

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disposed of by Seller and the cost associated with any membrane analysis and diagnostic work will be levied against the Buyer based on Veolia standard labor rates.

12. Disclaimer and Limitation on Liability

To the maximum extent permitted by law, in no event shall Seller be liable for any loss of profit or revenues, loss of production, loss of use of equipment or services or any associated equipment, interruption of business, cost of capital, cost of replacement water or power, downtime costs, increased operating costs, claims of Buyer’s customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages arising out of or relating to the performance or actual or alleged breach of the agreement, regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory.

12 Terms and Conditions of Sale

A - Specific Terms and Conditions of Sale

These terms take precedence over the general terms and conditions of sale.

1 Legal Entity for Contracting

ZENON Environmental Corporation is the name of the Seller, and means a business component of, or legal entity within the Veolia Water Technologies & Solutions business (Veolia).

Please advise us if this Veolia entity is not set up in your purchasing system as a vendor and you do have another Veolia entity set up. We are keen to make the purchase process as convenient as possible for Marysville.

short form: Where a short reference is required in this document, for convenience, we are called simply **Veolia**.

2 Payment

Veolia prefers to receive payment by wire transfer and will also accept payment by courier check.

Wire transfer information for ZENON Environmental Corporation	
send details to: SHD WATS REMIT-NAM vtc.vwts.remit-nam.all@veolia.com	
Bank of America Merrill Lynch C/O ZENON Environmental Corporation 901 Main Street Dallas, TX 75202	ACCT# 4426318136 ABA# 026009593 SWIFT# BOFAUS3N ACH# 111000012

3 Payment Terms

On approved credit, payment terms are **net 30 days** from customer receipt of invoice. Please see the invoicing schedule in the price section. In the event an invoice is issued on shipment of goods from a Veolia Hungarian production facility, payment terms will be extended by an additional 45 days to account for the additional transit time to the delivery location.

4 Proposal Validity

Prices quoted and proposal terms are valid up to **sixty (60) days** after the date of issue of this proposal unless confirmed with a purchase order.



5 Bonds

Performance or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

6 Assignment of Membrane Warranty

The Buyer will be entitled to assign to a subsequent owner of the membranes the warranties of the Seller under this Agreement, provided that a prior written notification is sent to the Seller and the assignment agreement contains terms and conditions which provide the Seller with the protections of the warranties and limitations on liability contained in the Agreement. Subject to Buyer's compliance with the foregoing requirement, such warranty rights are expressly assignable by the Buyer to a subsequent owner of the membranes. Except as provided herein, Buyer is not entitled to extend or transfer this warranty to any other party.

7 Flight Booking

Prices quoted for installation which include airfare are either based on timely confirmation of a visit schedule or based on receipt of a purchase order in time to book any flights seven days in advance. Additional airfare charges related to late arrival of a purchase order will be extra and billed through to Marysville without mark-up.

8 Warranty on Programming

Veolia warrants that the PLC program will conform to the specifications in the relevant sections of the CLSC and OSC (revised for the project) and will be free from defects in workmanship when operated at all times in accordance with Veolia's written instructions. If any defects are found and reported by Marysville within a period not exceeding twelve (12) months beyond the completion of the site acceptance test, Veolia will make modifications to the PLC code as deemed necessary. Any changes requested by Marysville after this period will be at the customer's expense.

9 Purchase Order Guidelines

Please confirm that your purchase order has covered the following points. This will ensure accurate and prompt order entry, product delivery, invoicing and accounts receivables processing and will prevent administrative delays for all parties.

- **Documentation** – Our strong preference is to receive a hard or digital copy of your purchase order (PO) rather than a PO number alone. Your PO can be sent by email to nam.service.pocentral@veolia.com. If you are not able to provide a PO, please contact us for alternatives.
- **Veolia legal entity** – Please be sure your purchase order is issued in the name of the specific Veolia legal entity outlined in the quote. We will be glad to work with your purchasing department to set this entity up as an approved supplier/vendor. Please advise us if this Veolia entity is not set up in your purchasing system as a vendor and you do have another Veolia entity set up.
- **Quotation Number** – Please reference the quotation number in your PO.
- **Product** – Please note which product(s) you wish to purchase along with the quoted price, particularly if quantities or scope differ from the quotation.
- **Taxes** – Please provide any required tax exemption certificates. Please indicate if taxes have been added in your PO.
- **Payment Terms** – Please acknowledge the payment terms included with the quotation.
- **Bill-to Address** – Please include contact information for your accounts payable.
- **Ship-to Address** – Please clearly define the delivery location and the receiver's email & telephone. Please specify receiving hours and any special off-loading requirements.
- **Delivery Date** – Please include your requested delivery date.

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B – General Terms and Conditions of Sale

Veolia's standard terms and conditions apply. See Attachment B.

Note to purchasing agent: The Veolia's standard set of commercial terms & conditions are written for moderate value transactions to allow an efficient and rapid provision of services and parts. Where corporate agreement terms have been previously agreed, these may be brought forward by either party and applied by mutual consent. If either of these terms sets are not immediately acceptable, please expect a typical 6-10 week cycle of mutual review to build agreement on changes.



13 Signed Agreement

Through the issue of this proposal, Veolia signals their intent to enter into an agreement with Marysville. Marysville and Veolia acknowledge that they have read and understood this agreement and agree to be bound by the terms and conditions specified in it.

Offered by Legal Entity: ZENON Environmental Corporation, also known as Veolia or Seller

Accepted by Legal Entity: City of Marysville also known as Marysville or Buyer

Authorized Signature by: _____

Title: _____

Signature Date: _____

Signature: x _____

Purchase Order No: _____

Upon acceptance of this proposal, please forward the following either

• by email with .pdf attachments or • by postal mail.

1) this signature page completed and/or:

2) a hard copy of your purchase order referencing this proposal, and

3) any required tax exemption certificates

nam.service.pocentral@veolia.com

or

Veolia Water Technologies & Solutions

attention: Contracts Administrator

Please contact

nam.service.pocentral@veolia.com

for correct address if mailing a hard copy

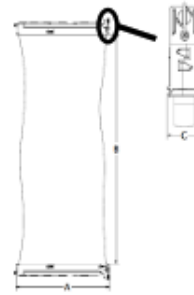
This agreement comes into force when Veolia has issued a formal acceptance of Marysville’s Purchase order or formal acceptance of this Marysville signed agreement.

doc. control: author: RM filename: Marysville WA 052050 REV-3 240 x ZW500Ds 350ft² Jan 25 2024 last modified: 1/25/2024 11:18 AM technical review: JD commercial review: DP/JD DOA: Blkt

Attachment A ZW500Ds membranes & cassettes



Module Dimensions				
Application	Product	Width (A) mm (in)	Header-to-Header Length (B) mm (in)	Depth (C) mm (in)
MBR	500D	844 (33.2)	1,940 (76.4)	49 (1.9)
Water	500D			52 (2.1)
	500Ds		1,577 (62.1)	52 (2.1)



Module Properties									
Application	Membrane Surface Area m ² (ft ²)	Max. Shipping Weight ¹ kg (lb)	Lifting Weight ² kg (lb)	Material	Nominal Pore Size (µm)	Fibre Diameter (mm)	Surface Properties	Fibre Tensile Strength (N)	Flow Path
MBR	40.0 (430)	28 (61)	28 – 75 (61 – 164)	PVDF	0.04	2.2	Non-ionic & Hydrophilic	> 600	Outside- In
Water	40.9 (440)	32 (70)	30 – 74 (66 – 163)			1.9			
	32.5 (350)	26 (57)	26 – 72 (57 – 159)			1.9			

¹ Packaged
² Varies with solids accumulation

Operating & Cleaning Specifications						
Application	TMP Range kPa (psig)	Max. Operating Temp. °C (°F)	Operating pH Range	Max. Cleaning Temp. °C (°F)	Cleaning pH Range	Max. Cl ₂ Conc'n (ppm)
MBR	-55 to 55 (-8 to 8)	40 (104)	5.0-9.5	40 (104)	2.0 – 10.5 (<30°C)	1,000
Water	-90 to 90 (-13 to 13)				2.0 -10.0 (30-40°C)	

Veolia Water Technologies
Please contact us via:
www.veoliawatertechnologies.com

WATER TECHNOLOGIES

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ZeeWeed* 500D Cassette for Water & Tertiary

FACT SHEET

Cassette Dimensions			
Product	Width (A) mm (in)	Length (B) mm (in)	Height (C) mm (in)
66M	1,745 (68.7)	2,136 (84.1)	2,561 (100.8)
20M	735 (29.1)	1,744 (68.7)	2,512 (98.9)
20Ms			2,149 (84.6)

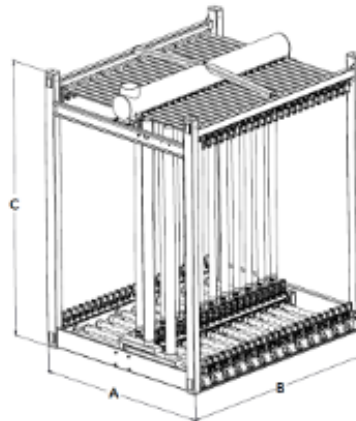


Figure 1: Example Drawing of Cassette

Cassette Tie-Points & Weights						
Product	Max. # of ZW Modules	Min. # of ZW Modules	Permeate Connection	Air Connection	Max. Shipping Weight* kg (lb)	Lifting Weight ** kg (lb)
66M D	65	34	1 x 6" horz. Pipe	1 x 3" FNPT	2,469 (5,455)	2,751 – 4,467 (6,066 – 9,850)
20M D	20	10	2 x 4" FNPT	1 x 3" FNPT	920 (2,029)	961 – 1,555 (2,029 – 3,426)
20M Ds	20	10			692 (1,966)	930-1,415 (2,051-3,121)

* Crated with maximum number of modules

** Varies with number of modules and solids accumulation

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WATER TECHNOLOGIES

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Attachment B Veolia Standard Terms and Conditions as amended 15/12/23

- 1. Exclusive Terms and Conditions.** Together with any other terms the Parties agree to in writing, these General Terms and Conditions – together with the last proposal in order of time issued by the Seller – form the exclusive terms (“Agreement”) whereby Buyer agrees to purchase, and Seller agrees to sell products and equipment (jointly “Equipment”) and to provide advice, instruction and other services in connection with the sale of that Equipment (“Services”). If Buyer sends to Seller other terms and conditions to which Seller may not respond, including but not limited to those contained in Buyer’s purchase order, such shall not apply. This Agreement may only be revised by a change order approved in writing by both Parties. All terms not defined herein shall be defined in Seller’s proposal.
- 2. Equipment and Services.** The Equipment to be delivered and the Services to be provided shall be as set out in this Agreement. Unloading, handling, storage, installation, and operation of Buyer’s systems or the Equipment are the responsibility of Buyer. Buyer shall not require or permit Seller’s personnel to operate Buyer’s systems or the Equipment at Buyer’s site.
- 3. Prices and Payment.** Buyer shall pay Seller for the Equipment and Services in accordance with the payment schedule (as set forth in Seller’s proposal or, if applicable, in any special conditions agreed to in writing by the Parties). Unless otherwise specified in writing, payment is due net thirty (30) days from the date of Seller’s invoice. Seller may require a Letter of Credit or other payment guarantee, in which case the stated amount of the guarantee will be adjusted by Buyer in the event of any currency-based adjustment to prices or payment amounts per the Payment Schedule, and Buyer shall deliver the adjusted guarantee within five (5) days of request by Seller. Buyer agrees to reimburse Seller for collection costs, including 2% (two percent) interest per month (not to exceed the maximum amount permitted by applicable law), should Buyer fail to timely pay. Buyer shall have no rights to make any deduction, retention, withholding or setoff relating to any payments due under this Agreement.
- 4. Taxes and Duties.** Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Agreement (“Seller Taxes”). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Agreement or the performance of or payment for work under the Agreement other than Seller Taxes (“Buyer Taxes”). The Agreement prices do not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Agreement price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. Buyer shall furnish Seller with evidence of tax exemption acceptable to taxing authorities if applicable, prior to execution of the Agreement by both Parties or issuance by the Seller of the order acceptance. Buyer’s failure to provide evidence of exemption at time of order will relieve Seller of any obligation to refund taxes paid by Seller.
- 5. Delivery, Title, Risk of Loss.** Unless otherwise specified in this Agreement, Seller shall deliver all Equipment to Buyer FCA (Incoterms 2020) Seller’s facility. The time for delivery of the Equipment to Buyer shall be specified in this Agreement. Seller’s sole liability for any delay in delivery of the Equipment shall be as expressly set out in this Agreement. The place of delivery specified herein shall be firm and fixed, provided that Buyer may notify Seller no later than forty-five (45) days prior to the scheduled shipment date of the Equipment of an alternate point of delivery, Buyer shall compensate Seller for any additional cost in implementing the change. If any part of the Equipment cannot be delivered when ready due to any cause not attributable to Seller, Buyer shall designate a climate-controlled storage location, and Seller shall ship such Equipment to storage. Title and risk of loss shall thereupon pass to Buyer and amounts payable to Seller upon delivery or shipment shall be paid by Buyer along with expenses incurred by Seller. Services provided herein shall be charged at the rate prevailing at the time of actual use and Buyer shall pay any increase, and Buyer shall pay directly all costs for storage and subsequent transportation. Failure by Buyer to take delivery of the Equipment shall be a material breach of this Agreement.



Title and risk of loss to the Equipment shall be transferred from Seller to Buyer at the point of delivery upon handover in accordance with this Agreement. Title and risk of loss to the Services shall pass as they are performed.

6. Warranties and Remedies. Seller warrants that Equipment shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Seller's warranty does not cover the results of improper handling, storage, installation, commissioning, operation or maintenance of the Equipment by Buyer or third parties, repairs or alterations made by Buyer without Seller's written consent, influent water which does not comply with agreed parameters, or fair wear and tear.

Unless otherwise expressly provided in this Agreement, the foregoing warranties are valid for:

- (a) Chemicals and services, for six (6) months from their date of delivery or the provision of Services;
- (b) Consumables, including filters and spiral wound membranes (other than spiral wound membranes for process treatment), the earlier of twelve (12) months from date of first use or fifteen (15) months from their date of delivery;
- (c) Spiral wound membranes for process fluid treatment, ninety (90) days from their date of first use;
- (d) Ultrafiltration membranes (ZW500, ZW700B, ZW1000, ZW1500), twelve (12) months from their date of delivery;
- (e) Equipment other than chemicals and consumables, the earlier of, fifteen (15) months from delivery or shipment to storage, or twelve (12) months from start-up/first use;
- (f) Software, ninety (90) days from the date of receipt;
- (g) Equipment not manufactured by Seller; the warranty shall be the manufacturer's transferable warranty only.

Any claim for breach of these warranties must be promptly notified in writing, and Buyer shall make the defective item available to the Seller, or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the Equipment or Services or any breach of these warranties is limited to repair at Seller's facility or (at Seller's option) replace at Seller's facility the defective item of Equipment and re-perform defective Services. In performance of its obligations hereunder, Seller will not control the actual operation of either Buyer's systems or the Equipment at the Buyer's site.

Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period.

The warranties and remedies are conditioned upon (a) proper unloading, handling, storage, installation, use, operation, and maintenance of the Equipment and Buyer's facility and all related system in accordance with Seller's instructions and, in the absence, generally accepted industry practice, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Equipment or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void.

The Buyer will be entitled to assign to a subsequent owner of the Equipment the warranties of the Seller under this Agreement, provided that a prior written notification is sent to the Seller and the assignment agreement contains terms and conditions which provide the Seller with the protections of the warranties and limitations on liability contained in the Agreement. Subject to Buyer's compliance with the foregoing requirement, such warranty rights are expressly assignable by the Buyer to a subsequent owner of the Equipment. Except as provided herein, Buyer is not entitled to extend or transfer this warranty to any other party. The warranties and remedies set forth in this article are in lieu of and exclude all other warranties and remedies, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.

Unless otherwise expressly stipulated in this Agreement, Seller gives no warranty or guarantee as to process results or performance of the Equipment, including but not limited to product quality, flow, production, capacity, membrane life, chemical consumption, regulatory compliance or energy consumption.

7. General Indemnity. Seller shall indemnify and hold harmless Buyer from claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Seller or its officers, agents, employees, and/or assigns while engaged in activities under this Agreement. Buyer shall likewise indemnify and hold harmless Seller from claims for physical damage to third party property or injury to persons, including death,



to the extent caused by the negligence of the Buyer, its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by the joint or concurrent negligence of Seller and Buyer, the loss shall be borne by each Party in proportion to its negligence. For the purposes of this article (i) "Third party" shall not include Buyer or any subsequent owner of the Equipment, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

8. Compliance with Laws and Permits. All permits, authorizations, and licenses which are required to construct, install and/or operate Buyer's facility or equipment, to use the Equipment, or to manage and dispose of any wastes, discharges, and residues resulting from Buyer's use of the Equipment, shall be obtained and maintained by Buyer at Buyer's sole expense. Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration, and labeling of all Equipment after delivery of the Equipment, as well as for the proper management and disposal of all wastes, discharges, and residues.

9. Buyer's Site Conditions. Buyer warrants that any data furnished to the Seller concerning conditions at Buyer's site (including but not limited to any existing Buyer facility, equipment or processes, influent water or other substances to be treated or measured with the Equipment) is accurate and complete, and the Seller reserves the right to utilize the most appropriate design compatible with generally accepted engineering practices, and to make changes in details of design, manufacture and arrangement of Equipment unless precluded by any limitations specified in this Agreement. Seller shall notify Buyer of (1) any conditions at Buyer's site which materially differ from those indicated in the data furnished by Buyer, (2) any previously unknown physical conditions at Buyer's site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of work provided for in this Agreement, and (3) the presence of any Hazardous Materials (as defined below), the existence of a contaminated soil, unexploded ordinance, or archaeological remains. If such conditions cause an increase in Seller's cost or in the time required for the performance of Seller's obligations, Seller shall be entitled to an equitable adjustment in the Agreement price and an extension in the time for performance.

10. Hazardous Materials and Wastes. In the event that Seller encounters any Hazardous Materials (meaning toxic substances, hazardous substances, pollutants, contaminants, regulated wastes, or hazardous wastes as such terms may be defined or classified in any law, statute, directive, ordinance or regulations promulgated by any applicable governmental entity) at Buyer's site, other than Hazardous Materials introduced by Seller or that are otherwise the express responsibility of Seller under this Agreement, Buyer shall immediately take whatever precautions are required to legally eliminate such Hazardous Materials so that the Seller's work under this Agreement may safely proceed. At no time shall Seller be deemed to have taken title to or the responsibility for the management or disposal of any wastes, Hazardous Materials, influent water, any resultant product streams, wastewater streams, discharges, cleaning materials, or any other materials or substances processed by the Equipment or otherwise located at Buyer's site. Seller does not take responsibility for and hereby expressly disclaims responsibility for the characterization or disposal of wastes, Hazardous Materials, or for the identification, selection, or management of disposal facilities for any wastes.

11. Excusable Delays. Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, natural disasters, unusually severe weather, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's contractors/suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If delivery or performance is delayed for a period exceeding 180 (one hundred and eighty) days, either Party may terminate this Agreement without further liability provided that Seller shall be paid an amount equal to that which would be payable to Seller under the article entitled "Termination". If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable adjustment in schedule, price and/or performance, as applicable.

12. Emergencies. If the safety of Seller's personnel is threatened or likely to be threatened by circumstances outside the reasonable control of Seller, including but not limited to war, armed conflict, civil unrest, riots, terrorism, kidnapping, presence of or exposure to hazardous materials, unsafe working conditions, or by the threat of such circumstances or a lack of adequate protections against such circumstances, Seller shall be entitled to take all necessary steps to ensure the security and safety of its personnel including the evacuation of personnel until such



circumstances no longer apply. Any such occurrence shall be considered an excusable delay event. Buyer shall reasonably assist in the event of any such evacuation.

13. Confidentiality, Intellectual Property. Both Parties agree to keep confidential the other Party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. *The party receiving proprietary non-public information, including without limitation non-public information as defined by the Public Records Act, may disclose such proprietary non-public information to the extent compelled to do so pursuant to any court order or statutory or regulatory authority. If City of Marysville is so required to disclose VVTS proprietary information, then City of Marysville shall: (i) promptly notify VVTS in order that VVTS may seek an appropriate protective order or other remedy (at VVTS's own expense), and (ii) disclose only such information as required in the opinion of City of Marysville legal advisors, is required in order to comply with its legal obligation.* Buyer will not, without Seller's advance written consent, subject Equipment to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables (including the Equipment) supplied or developed under this Agreement. Buyer agrees that it will not file patent applications on the Equipment or any development or enhancement of the Equipment, or of processes and methods of using the Equipment, without Seller's express prior written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its other buyers based upon purchase and use of such Equipment. Seller grants to Buyer a non-exclusive, non-terminable, royalty free license to use the intellectual property embedded in Equipment delivered to and paid for by the Buyer, as well as any drawings, design or data delivered to and paid for by the Buyer, for the purposes of owning, financing, using, operating and maintaining the relevant Equipment at Buyer's site. Such license may only be assigned to a subsequent owner of the Equipment or to an operations and maintenance subcontractor. Such license does not extend to the re-creation of the Equipment or the manufacture of spares or consumables by Buyer or third parties.

Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable royalty free project-specific license to such software for the use, operation or maintenance at Buyer's site of any Equipment purchased hereunder to which the software is a necessary component. Buyer agrees not to copy, sub-license, translate, transfer, reverse engineer, or decode the software.

Seller shall indemnify and hold harmless Buyer from any rightful claim of any third party that any Equipment or Service infringe a patent in effect in the USA, or country of delivery (provided there is a corresponding patent issued by the USA), or USA copyright or copyright registered in the country of delivery. *If the Buyer notifies the Seller promptly of the receipt of any such claim, does not take any position adverse to the Seller regarding such claim and gives the Seller information, assistance and exclusive authority to settle and defend the claim, the Seller shall, at its own expense and choice, either (i) settle or defend the claim and pay all damages and costs awarded in it against the Buyer, or (ii) procure for the Buyer the right to continue using the Equipment or Service, or (iii) modify or replace the Equipment or Service so that it becomes non-infringing, or (iv) remove the infringing Equipment and refund the price. The above paragraph shall not apply to any misuse of Equipment or Equipment which is manufactured to the Buyer's design, or to alleged infringement arising from the combination, operation, or use of any Equipment or Services with other equipment or services when such combination is part of any allegedly infringing subject matter. The foregoing list of sub-sections (i), (ii), (iii), and (iv) and related terms state the entire liability of the Seller for intellectual property infringement by any Equipment or Service.*

14. Limitations on Liability. Notwithstanding anything else contained in this Agreement, to the maximum extent permitted by law, and regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory:

- (a) THE TOTAL LIABILITY OF THE SELLER AND OF ITS INSURER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT OR USE OF ANY EQUIPMENT OR SERVICES SHALL NOT EXCEED THE TOTAL PRICE PAID BY BUYER UNDER THIS AGREEMENT OR (IN THE CASE OF AN AGREEMENT FOR SERVICES WITH A TERM OF MORE THAN ONE YEAR) THE ANNUAL PRICE PAYABLE BY BUYER UNDER THIS AGREEMENT;
- (b) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF PRODUCTION, LOSS OF USE OF EQUIPMENT OR SERVICES OR ANY ASSOCIATED EQUIPMENT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, COST OF REPLACEMENT WATER OR POWER, DOWNTIME COSTS, INCREASED OPERATING COSTS, CLAIMS OF BUYER'S CUSTOMERS FOR SUCH



DAMAGES, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES;

- (c) SELLER'S LIABILITY SHALL END UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY CONTINUE TO ENFORCE A CLAIM FOR WHICH IT HAS GIVEN NOTICE PRIOR TO THAT DATE BY COMMENCING AN ACTION OR ARBITRATION, AS APPLICABLE UNDER THIS AGREEMENT, BEFORE EXPIRATION OF ANY STATUTE OF LIMITATIONS OR OTHER LEGAL TIME LIMITATION BUT IN NO EVENT – TO THE EXTENT PERMITTED BY APPLICABLE LAW – LATER THAN FIVE (5) MONTHS AFTER EXPIRATION OF SUCH WARRANTY PERIOD.

For the purposes of this article, "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, individually or collectively. If Buyer is supplying Seller's Equipment or Services to a third party, Buyer shall require the third party to agree to be bound by this article. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this article.

15. Termination. This Agreement and any performance pursuant to it may be terminated by either Party, and the consequences of such termination shall be as set out in the next paragraph, if the other Party

- (a) Becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; or
- (b) Fails to make any payment when due or to establish any payment security required by this Agreement or commits a material breach or defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days of written notice from the other Party.

Upon the termination of this Agreement by Buyer for cause (i) Seller shall reimburse Buyer the difference between that portion of the Agreement price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Agreement price allocable to Equipment completed, and (b) amounts for Services performed before the effective date of termination. Upon the termination of this Agreement by Seller for cause Buyer shall pay to Seller within thirty (30) days of receipt of invoice the price of all Equipment or Services delivered at the date of termination, plus an amount equal to all costs and expenses incurred in the engineering, sourcing, financing, procurement, manufacture, storage and transportation of the Equipment including materials, work in progress and any cancellation charges assessed against Seller by Seller's suppliers including reasonable overhead and profit on all such costs and expenses. Alternatively, if any schedule of termination payments has been agreed between the Parties, Buyer shall pay to Seller within thirty (30) days of receipt of invoice the amounts set out in that schedule.

Seller shall have the right to suspend performance upon written notice to Buyer in any case where Seller would have the right to terminate the Agreement under this article, without prejudice to Seller's right to terminate this Agreement for cause. Any cost incurred by Seller in accordance with any such suspension (including storage costs) shall be payable by Buyer upon submission of the Seller's invoice(s). Performance of the Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of such suspension.

16. Governing Law, Dispute Resolution. This Agreement shall be governed by the substantive laws of the State of Washington. In the event of a dispute concerning this Agreement, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the Buyer and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this article.

Notwithstanding the foregoing, each Party shall have the right to commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Agreement, in order to seek and obtain a restraining order or injunction to enforce the confidentiality intellectual property provisions set forth in the first two paragraphs of article 13; nuclear use restrictions set forth in article 17, or to seek interim or conservatory measures not involving monetary damages.

17. No Nuclear Use. Equipment and Services sold by Seller are not intended for use in connection with any nuclear facility or activity, the Buyer warrants that it shall not use or permit others to use the Equipment or Services for



such purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, Seller (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Seller, Buyer shall indemnify and hold Seller (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability.

18. Export Control. Seller's obligations are conditioned upon Buyer's compliance with all USA and other applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Equipment (including software and technical data) other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

19. Changes. Each Party may at any time propose changes in the schedule or scope of Equipment or Services. All changes to the Equipment or Services shall be subject to mutual agreement via a written change order or variation, which shall only become effective once signed by both Parties. The scope, Agreement price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in Buyer's site-specific requirements or procedures, or in industry specifications, codes, standards, applicable laws or regulations. It shall be acceptable and not considered a change if Seller delivers Equipment (including Equipment replacement under warranty) that bears a different, superseding or new part or version number compared to the part or version number listed in the Agreement, provided that in no circumstance shall this affect any other of Seller's obligations including those set forth in article 6.

20. Conflicts; Survival, Assignment. If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in this Agreement shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and this Agreement shall be interpreted and implemented in a manner which best fulfills Parties' intended agreement. Those provisions which by their nature remain applicable after termination shall survive the termination of this Agreement for any reason. Seller may assign or novate its rights and obligations under the Agreement, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Agreement to any party without Buyer's consent, and the Buyer hereby agrees, by signing this Agreement, to such assignment and to execute any document that may be necessary to complete Seller's assignment or novation. This Agreement shall not otherwise be assigned by either Party without the other Party's prior written consent, and any assignment without such consent shall be void.

Seller may (i) manufacture and source the Equipment and any part thereof globally in the country or countries of its choosing; and (ii) may subcontract portions of the Services, so long as Seller remains responsible for such.

21. No Third Party Beneficiary. Except as specifically set forth in the article entitled "Limitations on Liability" and "No Nuclear Use", this Agreement is not intended to, and does not, give to any person who is not a party to this Agreement any rights to enforce any provisions contained in this Agreement.

22. Entire Agreement. This Agreement embodies the entire agreement between Buyer and Seller and supersedes any previous documents, correspondence or agreements between them. No modification, amendment, revision, waiver, or other change shall be binding on either Party unless agreed in writing by the Party's authorized representative. Any oral or written representation, warranty, course of dealing, or trade usage not specified herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement.



Attachment C ZENON Environmental W9

Form W-9
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Zenon Environmental Corporation

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

Individual/sole proprietor or single-member LLC

C Corporation

S Corporation

Partnership

Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Other (see instructions) ▶ _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) 5

Exemption from FATCA reporting code (if any) _____

5 Address (number, street, and apt. or suite no.) See instructions.
3600 Horizon Blvd.

6 City, state, and ZIP code
Trevese, PA 19053

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

				-					
--	--	--	--	---	--	--	--	--	--

OR

Employer identification number

3	8	-	2	5	4	9	3	2	6
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ▶ *Joseph J. D...*

Date ▶ 01/19/2023

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



ZENON ENVIRONMENTAL CORPORATION

ADDENDUM TO FORM W-9

Zenon Environmental Corporation owns or leases various properties in its business activities in addition to the Trevoise, PA property listed as the official Tax mailing address on lines 5 and 6 of Form W-9.

Specifically, Zenon Environmental Corporation operates from the following address:

3239 Dundas Street West
Oakville, Ontario, L6M 4B2 Canada

This address should be used for your billing records.



SOLE SOURCE JUSTIFICATION

Department Head: Jeff Laycock Department: Public Works/Water Quality

Sole Source for the Purchase of: Stillaguamish Treatment Plant Membrane Replacement & LRV Upgrade

Supplier: Zenon Environmental Corporation Cost Estimate: \$1,009,580.94

Sole source purchases are defined as being clearly and legitimately limited to a single supplier. Sole source purchases are normally not allowed except when based upon strong technological grounds such as operational compatibility with existing equipment and related parts, upon a clearly unique and cost effective feature requirement, or the basis of extraordinary market conditions. The use of sole source purchases shall be limited only to those specific instances which present the opportunity for extraordinary cost savings or are wholly justified to satisfy compatibility or technical performance needs.

STATEMENT OF NEED:

My department's recommendation for sole source purchase is based upon an objective review of the product/service required and appears to be in the best interest of the City. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors, or compromising action have taken place. My personal familiarity with particular brands, type of equipment, materials, or firms has not been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

1. Please describe the item and its function:

The Stillaguamish Treatment Plant is equipped with a Zenon filtration system. The treatment process utilizes membrane cassettes to filter the water. The current cassettes have reached end of life, posing the potential for failure and the inability to produce the full capacity of water if any from this site. The Zenon filtration system is a proprietary technology, requiring all parts and services be procured through Zenon. These membranes are not sold through distribution networks. I have included a letter from Zenon confirming they are the sole source supplier. The LRV (Log Removal Value) Upgrade is required by the Department of Health to be completed when the membranes are replaced.

2. This is a sole source* because:

- sole provider of a licensed or patented good or service
- sole provider of items that are compatible with existing equipment, inventory, systems, programs or services
- sole provider of goods and services for which the City has established a standard**
- sole provider of factory-authorized warranty service
- sole provider of goods and services that will meet the specialized needs of the City or perform the intended function (please detail below or in an attachment)

- sole provider possesses an item which represents a special bargain (surplus item, auction item, used item, "opened box," or similar special bargains) (please provide supporting material such as price comparison)
- sole provider can satisfy unique delivery schedule which did not result from City inaction
- sole provider is taking part in a trial or evaluation project

3. What necessary features does this vendor provide which are not available from other vendors? Please be specific.

N/A - Sole provider of proprietary technology, see attached letter.

4. What steps were taken to verify that these features are not available elsewhere?

- Other brands/manufacturers that were examined (please list phone numbers and names, and explain why these were not suitable).

N/A - Sole provider of proprietary technology, see attached letter

- Other vendors that were contacted (please list phone numbers and names, and explain why these were not suitable).

*Sole Source: only one vendor possesses the unique and singularly available capability to meet the requirement of the solicitation.

**Procurements of items for which the City has established a standard by designating a brand or manufacturing or by pre-approving via a testing shall be competitively bid if there is more than one vendor of the item.

Requestor

Kim Bryant / 1/29/24
Signature Date

Department Head

[Signature] / 1/29/2024
Signature Date

Finance Director

DocuSigned by:
Jennifer Ferrer-Santa Ines / 1/30/2024
0D2DBE1CDD8246D... Date

City Attorney

DocuSigned by:
Jon Walker / 1/30/2024
786AB5A2684C462... Date

Routing Instructions:

1. Route completed form, any supporting documents, and a contract routing cover sheet to the City Clerk's Office.

2. If service/product exceeds \$100,000 the executed form must be included in packet for Council.
3. Include the following sentence in the “recommended action” section on the agenda bill:

“I move to approve the contract for [insert description] in the amount of [insert dollar amount] as a legitimate sole source of supply for this service/product.”



Billy Gilbert
Water Quality Lead
City of Marysville, WA

Jason Diamond
Municipal Regional Lifecycle Manager

January 12, 2023

Dear Mr. Gilbert:

This letter is provided to confirm that a Sole Source Purchase from ZENON Environmental Corporation will be required to procure parts and/or services for ZeeWeed® hollow fiber immersed ultrafiltration membrane systems. ZeeWeed® membrane systems are a proprietary technology developed by ZENON Environmental Corporation, a wholly owned business of Veolia Water Technologies & Solutions (VWTS), subject to multiple patents.

Research and development work by Veolia Water Technologies & Solutions is regularly producing process and technology upgrade options. At the point where system upgrades are required, VWTS will work closely with each client to select the best options specific for your plant.

Veolia Water Technologies & Solutions has structured the after-purchase support of our ZeeWeed® clients to assure access to a very high level of service and product support. VWTS has a service team with extensive experience and the capabilities to provide technical and engineering services distinctive to maintaining a high level of performance from the ZeeWeed® hollow fiber ultrafiltration membranes. VWTS offers these unique services:

1. Insight™ Remote Process Monitoring
2. 24/7 Emergency Telephone Technical Support
3. On-Site Service Visits
4. Membrane Maintenance Services & System Upgrades
5. PLC Control System Component and Programming Upgrades
6. Membrane Replacement Planning
7. System spare parts

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Jason Diamond".

Jason Diamond, P.Eng.
Regional Lifecycle Manager - Veolia Water Technologies & Solutions

Veolia Water Technologies & Solutions
Head office: 3600 Horizon Blvd. Trevoise, PA 19053
off. +1-215-533-0000 - fax +215-633-0000
www.watertechnologies.com

ZENON Environmental Corporation
3239 Dundas St. W. Oakville, ON Canada
off. +1-905-465-3030



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Accounting Technician Shauna Crane, Finance

ITEM TYPE: Claims

AGENDA SECTION: **Consent**

SUBJECT: February 7, 2024 Claims in the Amount of \$1,184,469.89 Paid by EFT Transactions and Check Numbers 167842 through 168023

SUGGESTED ACTION:

SUMMARY:

ATTACHMENTS:
[020724.rtf](#)

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/7/2024 TO 2/7/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
167842	BOYD, RAE	NURSE CONTRACT	DETENTION & CORRECTION	60,900.00
167843	LICENSING, DEPT OF	FIREARMS SECTION	INTERGOVERNMENTAL	1,050.00
167844	LICENSING, DEPT OF	DLR LIC SECOND AMENDMENT ARMS	INTERGOVERNMENTAL	125.00
167845	3M	152ND ADDITION RPM'S	TRAFFIC CONTROL DEVICES	422.77
	3M		TRAFFIC CONTROL DEVICES	845.53
167846	911 SUPPLY INC.	CPRL CHEVRONS	POLICE PATROL	440.40
	911 SUPPLY INC.	UNIFORM - KAUR	POLICE PATROL	833.23
167847	ALEXANDER PRINTING	PRINTING SERVICE	POLICE PATROL	400.87
	ALEXANDER PRINTING		POLICE PATROL	496.21
	ALEXANDER PRINTING	PURCHASE ORDER BOOKS	EQUIPMENT RENTAL	1,504.36
167848	ALL BATTERY SALES &	SUPPLIES	EQUIPMENT RENTAL	163.13
	ALL BATTERY SALES &	BATTERY CHARGERS	EQUIPMENT RENTAL	1,553.48
167849	ALS TRUCK PARTS	AM/FM RADIO - 531	EQUIPMENT RENTAL	191.45
167850	ANDERSON, NICOLE	REFUND - LINE DANCING	PARKS-RECREATION	7.00
	ANDERSON, NICOLE	REFUND - TAP	PARKS-RECREATION	14.00
167851	ARAMARK UNIFORM	LINEN SERVICE	OPERA HOUSE	207.50
167852	ARLINGTON, CITY OF	ACCT #700033.31	WATER FILTRATION PLANT	37.80
167853	ART BY NATURE INC.	HYDRANT METER RENTAL REFUND	WATER-UTILITIES/ENVIRONMN	-150.00
	ART BY NATURE INC.		WATER/SEWER OPERATION	1,150.00
167854	ASSISTANCE LEAGUE	HUMAN SERVICE GRANT REIMBURSEMENT	RENTAL ASSISTANCE	20,000.00
167855	BAEZ, ISABEL	REFUND - MIND IN MOTION	PARKS-RECREATION	150.00
167856	BARKER, JAMES & SUSAN	UTILITY BILLING REFUND	GARBAGE	103.01
167857	BENNETT, TRICIA	REFUND MIND IN MOTION	PARKS-RECREATION	150.00
167858	BLEVINS, DAWN	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167859	BOB BARKER COMPANY	JAIL SUPPLIES	DETENTION & CORRECTION	152.34
	BOB BARKER COMPANY		DETENTION & CORRECTION	190.59
167860	BOB'S HEATING & A/C	REFUND - CREDIT CARD CONVENIENCE FEE	COMMUNITY DEVELOPMENT	7.70
167861	BRIDGEWAYS	MAP LIAISON WORK	DOMESTIC VIOLENCE	2,976.81
	BRIDGEWAYS		DOMESTIC VIOLENCE	11,562.81
	BRIDGEWAYS		DOMESTIC VIOLENCE	27,775.17
167862	BUILDERS EXCHANGE	PUBLISHING	WATER CAPITAL PROJECTS	45.00
	BUILDERS EXCHANGE		GMA - STREET	99.90
167863	CANAM FABRICATIONS	STEEL TABLETOP	EQUIPMENT RENTAL	1,192.46
167864	CASCADE COLUMBIA	POLY ALUMINUM CHLORIDE	WASTE WATER TREATMENT	16,547.36
167865	CASCADE SEPTIC PUM	CLEANING SERVICE	WATER DIST MAINS	381.85
167866	CASTLE TIRE DISPOSAL	TIRE DISPOSAL	EQUIPMENT RENTAL	1,188.98
167867	CATERING BY TARA	CATERING	OPERA HOUSE	3,614.57
167868	CENTRAL WELDING SUPP	GLOVES	ER&R	50.81
	CENTRAL WELDING SUPP	C02 TANK REFILLS	WATER/SEWER OPERATION	68.16
	CENTRAL WELDING SUPP	GLOVES	ER&R	229.58
	CENTRAL WELDING SUPP		WASTE WATER TREATMENT	290.80
	CENTRAL WELDING SUPP	RAIN PANTS/GLOVES	ER&R	547.27
	CENTRAL WELDING SUPP	RAIN PANTS/RAKE/VESTS/TAPE	ER&R	651.20
	CENTRAL WELDING SUPP	GLOVES	ER&R	734.64
	CENTRAL WELDING SUPP		ER&R	1,025.44
167869	CHAMPION BOLT	SUPPLIES	EQUIPMENT RENTAL	74.45
	CHAMPION BOLT		EQUIPMENT RENTAL	592.96
167870	CLERICO, MELINDA	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167871	CLOSE, BONNIE	UNIFORM REIMBURSEMENT	GENERAL	30.22
167872	COASTAL FARM & HOME	UNIFORM - ROSE	SOLID WASTE OPERATIONS	188.07
167873	COMCAST	ACCT #8498310021752089	COMPUTER SERVICES	599.46
167874	COMMERCIAL FIRE	ANNUAL INSPECTION/TEST	CIVIC CENTER	228.00
167875	COOLEY, KRISTA	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167876	COOP SUPPLY	PROPANE TANK FILL	GENERAL	60.71
167877	COPIERS NORTHWEST	CANON PRINTER/COPIER	FINANCE-GENL	2 233

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/7/2024 TO 2/7/2024

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
	COPIERS NORTHWEST		COMMUNITY SERVICES UNIT	52.88
	COPIERS NORTHWEST		DETENTION & CORRECTION	60.31
	COPIERS NORTHWEST		DETENTION & CORRECTION	86.38
	COPIERS NORTHWEST		OFFICE OPERATIONS	103.61
	COPIERS NORTHWEST		WASTE WATER TREATMENT	103.89
	COPIERS NORTHWEST		PROBATION	125.27
	COPIERS NORTHWEST		MUNICIPAL COURTS	141.50
	COPIERS NORTHWEST		WASTE WATER TREATMENT	177.12
	COPIERS NORTHWEST		GENERAL	236.43
	COPIERS NORTHWEST		UTIL ADMIN	236.43
	COPIERS NORTHWEST		ENGR-GENL	257.72
	COPIERS NORTHWEST		COMPUTER SERVICES	257.72
	COPIERS NORTHWEST		FINANCE-GENL	257.72
	COPIERS NORTHWEST		POLICE INVESTIGATION	261.04
	COPIERS NORTHWEST		RECREATION SERVICES	261.33
	COPIERS NORTHWEST		POLICE PATROL	285.97
	COPIERS NORTHWEST		PROPERTY TASK FORCE	334.82
	COPIERS NORTHWEST		COMMUNITY	391.93
	COPIERS NORTHWEST		UTILITY BILLING	391.94
	COPIERS NORTHWEST		UTIL ADMIN	414.88
	COPIERS NORTHWEST		DETENTION & CORRECTION	448.32
	COPIERS NORTHWEST		MUNICIPAL COURTS	582.83
	COPIERS NORTHWEST		OFFICE OPERATIONS	605.15
	COPIERS NORTHWEST		UTIL ADMIN	668.87
	COPIERS NORTHWEST		EXECUTIVE ADMIN	673.29
	COPIERS NORTHWEST		RECREATION SERVICES	696.83
	COPIERS NORTHWEST		POLICE PATROL	766.48
	COPIERS NORTHWEST		PERSONNEL ADMINISTRATION	939.27
	COPIERS NORTHWEST		POLICE INVESTIGATION	976.70
	COPIERS NORTHWEST		LEGAL - PROSECUTION	1,022.73
167878	CORRECTIONS, DEPT OF	INMATE MEALS	DETENTION & CORRECTION	3,593.00
	CORRECTIONS, DEPT OF		DETENTION & CORRECTION	10,204.00
167879	CRUPI JR. JOSEPH MJ	UTILITY BILLING REFUND	WATER/SEWER OPERATION	37.31
167880	DAILY JOURNAL OF COM	ADVERTISING	GMA - STREET	632.40
167881	DAMBACHER, KARLA	REFUND - TAP	PARKS-RECREATION	14.00
167882	DE JESUS, MARIAN	REFUND - BALLETTAP	PARKS-RECREATION	12.00
167883	DEATHERAGE, JESSICA	REFUND - NATURE EXPLORERS	PARKS-RECREATION	18.00
167884	DELL	LAPTOP, IPAD, MONITORS	UTIL ADMIN	239.98
	DELL		DETENTION & CORRECTION	1,375.00
	DELL		LEGAL - PROSECUTION	2,465.00
	DELL		CITY CLERK	2,465.00
	DELL		UTIL ADMIN	2,465.00
	DELL		IS REPLACEMENT ACCOUNTS	23,930.68
167885	DENNEY, NANCI	REFUND - RENTAL DEPOSIT	GENERAL FUND	500.00
167886	DICKS TOWING	TOWING - 24-4872	POLICE PATROL	77.54
	DICKS TOWING	TOWING - P194	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-3686	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-3711	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-4636	POLICE PATROL	77.54
	DICKS TOWING	TOWING 73256D	POLICE PATROL	77.54
	DICKS TOWING	TOWING 24-4613	POLICE PATROL	193.86
	DICKS TOWING	TOWING 24-5428	POLICE PATROL	267.48
167887	DOBBS PETERBILT	AIR BRAKE VALVE ASSEMBLY - J035	EQUIPMENT RENTAL	118.84
	DOBBS PETERBILT	DIFFERENTIAL AIR SWITCH - J025	EQUIPMENT RENTAL	164.99

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167888	DUTRO, JULIANNA	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167889	E&E LUMBER	KEYS	FACILITY MAINTENANCE	6.32
	E&E LUMBER	GARDEN HOSE	MAINT OF GENL PLANT	15.74
	E&E LUMBER	KEYS	FIRE ADMIN	16.94
	E&E LUMBER	SEALANT	EQUIPMENT RENTAL	20.45
	E&E LUMBER	RIP & CLAW HAMMER	FACILITY MAINTENANCE	39.89
	E&E LUMBER	SUPPLIES	PARK & RECREATION FAC	40.59
	E&E LUMBER		PARK & RECREATION FAC	59.83
	E&E LUMBER		EQUIPMENT RENTAL	94.85
	E&E LUMBER	PAIL, LID, RAKE, BROOM	PARK & RECREATION FAC	108.19
	E&E LUMBER	SUPPLIES	PARK & RECREATION FAC	126.02
	E&E LUMBER	CORD AND MAP PRO FUEL	WASTE WATER TREATMENT	131.84
	E&E LUMBER	PANELS	PARK & RECREATION FAC	315.07
167890	EDGERTON, MARY	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167891	ELDER, LISA		PARKS-RECREATION	12.00
167892	ELEEN, ORION	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167893	ENSOR, BROOKE		PARKS-RECREATION	8.00
167894	ENVIRO-CLEAN EQUIP	HYDRAULIC SYSTEM PRESSURE - H016	EQUIPMENT RENTAL	626.93
167895	ERZAR, OLIVIA	REFUND - TAP	PARKS-RECREATION	14.00
167896	EVERETT, CITY OF	LAB ANALYSIS	WASTE WATER TREATMENT	1,218.60
167897	FERGUSON ENTERPRISES	HYDRANT WRENCHES	ER&R	116.36
167898	FIDELITY NATIONAL	PARTIAL RECOVEYANCE	GMA - STREET	486.75
167899	FIRE PROTECTION INC	FIRE ALARM MONITORING ANNUAL FEE	WATER FILTRATION PLANT	262.32
167900	FIRESTONE	TIRES - V047	EQUIPMENT RENTAL	191.08
	FIRESTONE	TIRES - 115	EQUIPMENT RENTAL	533.19
167901	FORREY, LEAH	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167902	FORSLOF, WALLACE	RENTAL CAR	POLICE INVESTIGATION	259.63
167903	FRANCOTYP-POSTALIA	POSTAGE METER RENTAL	COMMUNITY	109.94
	FRANCOTYP-POSTALIA		UTIL ADMIN	109.95
167904	FULLER, HASKELL & RA	UTILITY BILLING REFUND	GARBAGE	460.00
167905	GALINDO, DARICE		WATER/SEWER OPERATION	57.78
167906	GASPERETTI, KARA	REFUND - BALLET/TAP	PARKS-RECREATION	14.00
167907	GERDE, JENNIFER	REFUND - NATURE EXPLORERS	PARKS-RECREATION	12.00
	GERDE, JENNIFER		PARKS-RECREATION	18.00
167908	GLASS, KELLY	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
167909	GOOLSBY, MATTHEW	PERDIEM - TRAINING	POLICE INVESTIGATION	176.50
167910	GRAINGER	SUPPLIES	EQUIPMENT RENTAL	66.43
	GRAINGER		EQUIPMENT RENTAL	175.07
	GRAINGER		ER&R	667.40
167911	GRAY AND OSBORNE	PROFESSIONAL SERVICE	SURFACE WATER CAPITAL	10,850.58
167912	GREENSHIELDS INDS	SUPPLIES	MAINT OF GENL PLANT	94.62
167913	GRITTON, DENISE	REFUND - TAP	PARKS-RECREATION	14.00
167914	GUILES, LAURA	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
167915	HACKER, EILIDH		PARKS-RECREATION	12.00
167916	HAIRSTON, LEA	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
	HAIRSTON, LEA		PARKS-RECREATION	12.00
167917	HARGROVE, KIMBERLY	DJ SERVICE	OPERA HOUSE	300.00
167918	HART, KYM	REFUND - TAP	PARKS-RECREATION	14.00
167919	HD FOWLER COMPANY	ANTI-ICE PARTS	SNOW & ICE REMOVAL	554.13
167920	HDR ENGINEERING	PROFESSIONAL SERVICE	GMA - STREET	1,427.55
	HDR ENGINEERING		GMA - STREET	1,890.06
167921	HECKER, DAWN	REFUND - BALLET/TAP	PARKS-RECREATION	14.00
	HECKER, DAWN		PARKS-RECREATION	14.00
167922	HERZOG, RICK	WAGES	GENERAL FUND	788.14
167923	HOFFMAN, SHUREE	REFUND - WEDDING	GENERAL FUND	25 235

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167924	HOME DEPOT USA	HAND SANITIZER	SOLID WASTE OPERATIONS	64.85
167925	HOUSE OF UPHOLSTERY	SEAT UPHOLSTERY COVER - 531	EQUIPMENT RENTAL	793.15
167926	ICONIX WATERWORKS	BRASS METER ADAPTER	WATER/SEWER OPERATION	78.79
167927	INTERMOUNTAIN LOCK	PADLOCKS	ER&R	524.86
167928	INTERSTATE BATTERY	BATTERY - LS05	EQUIPMENT RENTAL	307.06
167929	J & B TOOLS, LLC	SHOP SUPPLIES	EQUIPMENT RENTAL	326.59
167930	JUVINEL, KATIE	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
167931	KAZEN, ALENA	INSTRUCTOR PAYMENT	RECREATION SERVICES	180.00
167932	KELLER SUPPLY COMPANY	TOILET	MAINT OF GENL PLANT	381.03
167933	KENT, ALEXANDRIA	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167934	KILLIAN, BRITTANY		PARKS-RECREATION	12.00
167935	LAST LEAF PRODUCTION	PERFORMANCE	OPERA HOUSE	350.00
167936	LAWSON, MONICA	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
167937	LAYTON TREE CONSULT	TREE ASSESSMENT	STORM DRAINAGE	485.00
167938	LES SCHWAB TIRE CTR	TIRES/TUBES - 599	EQUIPMENT RENTAL	80.91
	LES SCHWAB TIRE CTR	FRONT-END ALIGNMENT - 531	EQUIPMENT RENTAL	125.80
	LES SCHWAB TIRE CTR	TIRES - INVENTORY	ER&R	740.19
	LES SCHWAB TIRE CTR	TIRES - 555	EQUIPMENT RENTAL	758.96
	LES SCHWAB TIRE CTR	TIRES - J040	EQUIPMENT RENTAL	864.49
	LES SCHWAB TIRE CTR	TIRES - INVENTORY	ER&R	986.92
	LES SCHWAB TIRE CTR	TIRES - H020	EQUIPMENT RENTAL	1,192.41
	LES SCHWAB TIRE CTR	TIRES	EQUIPMENT RENTAL	1,728.97
167939	LEWIS, MARISSA	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167940	LINC NW	REIMBURSEMENT - GRANT	RENTAL ASSISTANCE	40,000.00
167941	LOOMIS	ARMORED TRUCK SERVICE	MUNICIPAL COURTS	85.32
	LOOMIS		POLICE ADMINISTRATION	85.33
	LOOMIS		COMMUNITY	85.33
	LOOMIS		UTILITY BILLING	85.33
	LOOMIS		GOLF ADMINISTRATION	227.54
167942	LYLE, JANICE & GREG	TEMPORARY EASEMENT	GMA - STREET	452.00
167943	MC CLURE & SONS INC	PAY ESTIMATE 11	SEWER CAPITAL PROJECTS	149,920.28
167944	MCCARTHY HOME REMOD	EMERGENCY REPAIRS	GENERAL FUND	-1,892.99
	MCCARTHY HOME REMOD		FACILITY REPLACEMENT	37,859.86
167945	MCCOLE, STACI	REFUND - NATURE EXPLORERS	PARKS-RECREATION	18.00
167946	MEDINA, FATIMA	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167947	MENA BELLA STUDIOS	WELLNESS EVENT	POLICE ADMINISTRATION	900.00
167948	MICRO PRECISION	CALIBRATION SERVICE	WASTE WATER TREATMENT	1,137.00
167949	MONROE, KATIE	REFUND - WEDDING DEPOSIT	GENERAL FUND	500.00
167950	MORASCO, GWEN	PERDIEM - TRAINING	POLICE INVESTIGATION	176.50
	MORASCO, GWEN	HOSTAGE NEGOTIATION TRAINING	POLICE INVESTIGATION	297.00
167951	MOTOR TRUCKS	FILTERS, COOLANT	ER&R	779.28
167952	NAPA AUTO PARTS	OIL FILTER - M031	EQUIPMENT RENTAL	5.05
	NAPA AUTO PARTS	PREMIUM STARTER FLUID	ROADWAY MAINTENANCE	12.69
	NAPA AUTO PARTS	FUEL FILTER - M008	EQUIPMENT RENTAL	19.40
	NAPA AUTO PARTS	FUEL FILTER - H020	EQUIPMENT RENTAL	27.28
	NAPA AUTO PARTS	TRANSMISSION FILTER - J040	EQUIPMENT RENTAL	30.91
	NAPA AUTO PARTS	RADIATOR ASSEMBLY - J023	EQUIPMENT RENTAL	274.69
167953	NATL TACT OFFICERS	NTOA MEMBERSHIP DUES - WALLACE	POLICE INVESTIGATION	50.00
167954	NEHRING, JON	ROTARY DUES	NON-DEPARTMENTAL	400.00
167955	NELSON PETROLEUM	OIL, TRANSMISSION/HYDRAULIC FLUID	ER&R	518.45
	NELSON PETROLEUM	TUBE GREASE	ER&R	704.37
	NELSON PETROLEUM	OIL, TRANSMISSION/HYDRAULIC FLUID	ER&R	3,134.68
167956	NEWELL, KATIE	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
167957	NICHOLS, JOLLEE	REFUND - BALLET/TAP	PARKS-RECREATION	12.00

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167958	NICHOLSON, CHRIS & BO	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167959	NORTHSTAR CHEMICAL	SODIUM HYPOCHLORITE	WATER QUAL TREATMENT	1,109.50
167960	NORTHWEST SALES	SHOP LIFT PARTS	EQUIPMENT RENTAL	153.35
167961	NORTHWESTERN AUTO	ACCIDENTAL DAMAGE REPAIR - P194	EQUIPMENT RENTAL	5,568.27
167962	NOSEALY, LIGIA	REFUND - TAP	PARKS-RECREATION	14.00
167963	OBERSTADT, LISA	REFUND - DUELING PIANOS	PARKS-RECREATION	30.00
	OBERSTADT, LISA		PARKS-RECREATION	30.00
167964	OGAWA, CHARLOTTE	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167965	OGDEN ELECTRIC	NEW MOTOR FOR EXHAUST FAN	WATER QUAL TREATMENT	1,787.00
167966	OREILLY AUTO PARTS	CREDIT - INV# 2843-184898 & 2843-184717	EQUIPMENT RENTAL	-212.24
	OREILLY AUTO PARTS	CREDIT - INV# 2843-179875	EQUIPMENT RENTAL	-98.46
	OREILLY AUTO PARTS	531 - MISC PARTS	EQUIPMENT RENTAL	47.77
	OREILLY AUTO PARTS	J013 - SWITCH	EQUIPMENT RENTAL	55.73
	OREILLY AUTO PARTS	M016 - SPARK PLUG, FUEL/AIR FILTERS	EQUIPMENT RENTAL	62.68
	OREILLY AUTO PARTS	A007 - SPARK PLUGS, PLENUM GASKET	EQUIPMENT RENTAL	96.27
	OREILLY AUTO PARTS	V026 - AXLE SHAFT ASSEMBLY	EQUIPMENT RENTAL	97.57
	OREILLY AUTO PARTS	V024 - MISC. PARTS	EQUIPMENT RENTAL	189.51
	OREILLY AUTO PARTS	531 - MISC PARTS	EQUIPMENT RENTAL	239.13
	OREILLY AUTO PARTS	218 - STARTER ASSEMBLY	EQUIPMENT RENTAL	451.28
	OREILLY AUTO PARTS	115 - MISC PARTS	EQUIPMENT RENTAL	809.26
	OREILLY AUTO PARTS	531 - PARTS	EQUIPMENT RENTAL	925.87
167967	PACIFIC POWER BATTER	BATTERIES	FACILITY MAINTENANCE	42.01
167968	PACIFIC TOPSOILS	BRUSH DUMP	PARK & RECREATION FAC	24.70
	PACIFIC TOPSOILS		PARK & RECREATION FAC	24.70
	PACIFIC TOPSOILS		PARK & RECREATION FAC	24.70
	PACIFIC TOPSOILS		PARK & RECREATION FAC	24.70
	PACIFIC TOPSOILS		PARK & RECREATION FAC	49.40
	PACIFIC TOPSOILS	DUMP MIXED BRUSH	PARK & RECREATION FAC	100.05
167969	PACWEST MACHINERY	GUTTER BROOM MOUNTING DISC - H020	EQUIPMENT RENTAL	648.03
167970	PARAMETRIX	PROFESSIONAL SERVICE	SURFACE WATER CAPITAL	11,242.95
167971	PIERCE, TERESA	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167972	PLATT ELECTRIC	TRAILER LIGHTING PROGRAMMER	WASTE WATER TREATMENT	263.29
	PLATT ELECTRIC	BLACK BOX WITH LID	GMA-PARKS	274.57
	PLATT ELECTRIC		GMA-PARKS	274.57
	PLATT ELECTRIC		GMA-PARKS	274.57
	PLATT ELECTRIC		GMA-PARKS	274.57
	PLATT ELECTRIC		GMA-PARKS	549.13
167973	POSTAL SERVICE	GARBAGE RE-ROUTE NOTICES	SOLID WASTE OPERATIONS	3,649.64
167974	POTTER, BRENT	DOT/CDL PHYSICAL	UTIL ADMIN	125.00
167975	PREMIER GOLF CENTERS	MANAGEMENT SERVICES FOR GOLF	GOLF ADMINISTRATION	10,688.96
167976	PROFORCE LAW ENFORC	HANDGUN GRIPS	POLICE TRAINING-FIREARMS	1,077.81
167977	PROVIDENCE EVERETT M	INMATE EMERGENCY MEDICAL CARE	DETENTION & CORRECTION	4,173.72
167978	PUBLIC SAFETY TESTING	SAFETY TESTING	DETENTION & CORRECTION	78.00
	PUBLIC SAFETY TESTING		DETENTION & CORRECTION	99.00
	PUBLIC SAFETY TESTING		POLICE PATROL	143.00
	PUBLIC SAFETY TESTING		POLICE ADMINISTRATION	209.00
	PUBLIC SAFETY TESTING		POLICE ADMINISTRATION	1,100.00
167979	PUD	ACCT #205283641	STREET LIGHTING	8.90
	PUD	ACCT #205026479	STREET LIGHTING	12.21
	PUD		STREET LIGHTING	19.10
	PUD	ACCT #204584361	STREET LIGHTING	19.23
	PUD	ACCT #200998532	PARK & RECREATION FAC	23.63
	PUD	ACCT #204584361	STREET LIGHTING	25.50
	PUD	ACCT #202177861	PUMPING PLANT	30.13
	PUD	ACCT #221303498	STREET LIGHTING	3 237

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	PUD	ACCT #202791166	PUMPING PLANT	35.72
	PUD	ACCT #201380995	PUMPING PLANT	40.13
	PUD	ACCT #223286667	METER READING	47.72
	PUD	ACCT #202368536	TRANSPORTATION	57.28
	PUD	ACCT #220153100	TRANSPORTATION	67.54
	PUD	ACCT #202102190	TRANSPORTATION	67.96
	PUD	ACCT #202183679	TRANSPORTATION	68.40
	PUD	ACCT #222592917	PARK & RECREATION FAC	73.51
	PUD	ACCT #220339238	TRAFFIC CONTROL DEVICES	73.64
	PUD	ACCT #200800704	STREET LIGHTING	80.05
	PUD	ACCT #200869303	TRANSPORTATION	80.40
	PUD	ACCT #202220760	GOLF ADMINISTRATION	94.14
	PUD	ACCT #220298624	STREET LIGHTING	101.84
	PUD	ACCT #201931193	PARK & RECREATION FAC	127.45
	PUD	ACCT #202576112	STREET LIGHTING	134.18
	PUD	ACCT #202490637	SEWER LIFT STATION	157.22
	PUD	ACCT #202572327	STREET LIGHTING	166.47
	PUD	ACCT #202294336	STREET LIGHTING	166.76
	PUD	ACCT #202689105	WASTE WATER TREATMENT	171.30
	PUD	ACCT #202368197	PUMPING PLANT	190.78
	PUD	ACCT #202030078	TRANSPORTATION	213.82
	PUD	ACCT #203344585	STREET LIGHTING	214.31
	PUD	ACCT #220731285	STREET LIGHTING	231.49
	PUD	ACCT #200084150	TRANSPORTATION	257.83
	PUD	ACCT #200164598	SOURCE OF SUPPLY	457.29
	PUD	ACCT #221100092	GMA - STREET	1,113.45
	PUD	ACCT #201639630	GOLF ADMINISTRATION	1,161.64
	PUD	ACCT #201098969	PUMPING PLANT	1,363.09
	PUD	ACCT #202604203	STREET LIGHTING	1,849.84
	PUD	ACCT #201147253	PUMPING PLANT	2,406.76
	PUD	ACCT #202576112	STREET LIGHTING	2,549.45
	PUD	ACCT #202604203	STREET LIGHTING	2,774.78
	PUD	ACCT #200303477	WATER FILTRATION PLANT	3,127.21
	PUD	ACCT #201577921	PUMPING PLANT	5,441.88
167980	REECE TRUCKING	HYDRANT METER RENTAL REFUND	WATER/SEWER OPERATION	1,200.00
167981	REECE TRUCKING	PAY ESTIMATE 7	GMA - STREET	344,580.01
167982	ROCHIN, XAVIER	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167983	ROY, DEEANNA	REFUND - NATURE EXPLORERS	PARKS-RECREATION	18.00
167984	SAN DIEGO POLICE EQU	9MM AMMUNITION	POLICE TRAINING-FIREARMS	43,787.22
167985	SANDOVAL, LESLEY	REFUND - BALLET AND TAP	PARKS-RECREATION	12.00
	SANDOVAL, LESLEY		PARKS-RECREATION	12.00
167986	SEI, ERICA	APPRAISAL REIMBURSEMENT	GMA - STREET	600.00
167987	SELBY, BECKY	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167988	SERVPRO	SERVICE CHARGES	GENERAL FUND	-4,149.39
	SERVPRO		FACILITY REPLACEMENT	82,987.77
167989	SHELDON, JESSICA	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
167990	SHI INTERNATIONAL	ADOBE PRO LICENSES	COMPUTER SERVICES	216.58
	SHI INTERNATIONAL	MICROSOFT VISIO PRO	COMPUTER SERVICES	431.43
	SHI INTERNATIONAL	ANTENNAS	IS REPLACEMENT ACCOUNTS	7,506.81
167991	SIX ROBBLEES INC	BRAKE CLEANER	ER&R	256.00
167992	SNITZLER, GABRIELLE	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
167993	SNO CO PLAN & DEV	ANNUAL DUES	PLANNING & COMMUNITY DEV	17,917.00
167994	SOLID WASTE SYSTEMS	MUD FLAP, FRAME, FENDER - J068	EQUIPMENT RENTAL	820.17
167995	SOUND PUBLISHING	PUBLISHING BIDS	GMA - STREET	227.28

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167996	SOUND PUBLISHING	ADVERTISING	GMA - STREET	247.92
167997	SOUND PUBLISHING		GMA - STREET	189.44
167998	SOUND SAFETY	UNIFORM - DEAVER	TRANSPORTATION	127.87
	SOUND SAFETY	UNIFORM - WOOD	GENERAL	130.76
	SOUND SAFETY	UNIFORM - MATHEWS	TRANSPORTATION	142.07
	SOUND SAFETY	UNIFORM - REISWIG	GENERAL	147.52
	SOUND SAFETY	UNIFORM - NORSEBY	FACILITY MAINTENANCE	163.92
	SOUND SAFETY	UNIFORM - REISWIG	GENERAL	185.79
	SOUND SAFETY	UNIFORM - DEAVER	TRANSPORTATION	196.71
	SOUND SAFETY	UNIFORM - MATHEWS	TRANSPORTATION	214.22
	SOUND SAFETY	UNIFORM - NORSEBY	FACILITY MAINTENANCE	236.26
167999	SOVIA, CHAD & JENNIF	UTILITY BILLING REFUND	WATER/SEWER OPERATION	187.96
168000	STAFFORD, LEE	REFUND - CREATIVE DANCE	PARKS-RECREATION	8.00
168001	STAPLES	SUPPLIES	POLICE PATROL	150.83
	STAPLES		POLICE PATROL	221.01
168002	STONWAY ELECTRIC	COOPER LIGHTING	PARK & RECREATION FAC	99.36
168003	SUMMIT LAW GROUP	LABOR RELATIONS	PERSONNEL ADMINISTRATION	225.00
	SUMMIT LAW GROUP	LABOR BARGAINING	PERSONNEL ADMINISTRATION	252.00
168004	SUNBELT RENTALS	REFRIGERANT DEHUMIDIFIER RENTAL	PARK & RECREATION FAC	508.99
168005	SUPERIOR SOLE WELDING	ELECTRICAL COVER	PARK & RECREATION FAC	1,553.48
168006	TACOMA SCREW PRODUCT	SUPPLIES	EQUIPMENT RENTAL	5.70
168007	TAYLOR, CHRISTINE	REFUND - TAP	PARKS-RECREATION	14.00
168008	TAYLORS EXCAVATORS	HYDRANT METER RENTAL REFUND	WATER-UTILITIES/ENVIRONME	-150.00
	TAYLORS EXCAVATORS		WATER/SEWER OPERATION	1,150.00
168009	TEAL, KAYLEE	REFUND - BALLET/TAP	PARKS-RECREATION	12.00
	TEAL, KAYLEE	REFUND - NATURE EXPLORERS	PARKS-RECREATION	18.00
	TEAL, KAYLEE	REFUND - NATURE EXPLORERS	PARKS-RECREATION	18.00
168010	TEERLINK, AHREN	REFUND - TAP	PARKS-RECREATION	14.00
168011	TEREX USA LLC	ANNUAL INSPECTION/L&I CERTIFICATION	EQUIPMENT RENTAL	1,120.27
	TEREX USA LLC	ANNUAL INSPECTION & DIELECTRIC TEST	EQUIPMENT RENTAL	1,432.87
168012	THYSSENKRUPP ELEVATOR	ELEVATOR MAINTENANCE	CIVIC CENTER	387.68
168013	TRINITY EVANGEL CHUR	TEMPORARY EASEMENT	GMA - STREET	2,100.00
168014	ULINE	EVIDENCE SUPPLIES	POLICE PATROL	536.38
168015	UNITED RENTALS	CONTAINER RENTAL	PARK & RECREATION FAC	138.31
168016	VANLEUVEN, ALLISON	REFUND - BALLET/TAP	PARKS-RECREATION	14.00
168017	VERIZON	WIRELESS MODEMS	COMMUNITY SERVICES UNIT	160.04
	VERIZON	AMR LINES	METER READING	462.37
	VERIZON	WIRELESS MODEMS	POLICE INVESTIGATION	520.17
	VERIZON		POLICE PATROL	3,006.86
168018	WA AUDIOLOGY SRVCS	OSHA/MSHA HEARING TESTS	POLICE PATROL	286.00
168019	WHISTLE WORKWEAR	UNIFORM - WATSON	ENGR-GENL	126.58
	WHISTLE WORKWEAR	UNIFORM - SMITH	ENGR-GENL	138.45
	WHISTLE WORKWEAR	UNIFORM - WESSEL	ENGR-GENL	148.34
	WHISTLE WORKWEAR	UNIFORM - SMITH	ENGR-GENL	159.34
	WHISTLE WORKWEAR	UNIFORM - WINELAND	FACILITY MAINTENANCE	168.11
	WHISTLE WORKWEAR	UNIFORM - GANT	UTIL ADMIN	178.03
	WHISTLE WORKWEAR		UTIL ADMIN	192.31
	WHISTLE WORKWEAR	UNIFORM - DAY	UTIL ADMIN	192.84
	WHISTLE WORKWEAR	UNIFORM - GANT	UTIL ADMIN	192.84
	WHISTLE WORKWEAR	UNIFORM - WATSON	ENGR-GENL	208.80
	WHISTLE WORKWEAR	UNIFORM - DAY	UTIL ADMIN	214.29
	WHISTLE WORKWEAR	UNIFORM - WINELAND	FACILITY MAINTENANCE	227.47
168020	WHITE CAP CONSTRUCT	BOTTLED WATER	MAINT OF GENL PLANT	917.12
168021	WINNINGHAM, TAYLOR	INSTRUCTOR PAYMENT	RECREATION SERVICES	725.40
168022	ZENON ENVIRONMENTAL	TECHNOLOGY SERVICE	WATER FILTRATION PLANT	31,09 239

DATE: 2/8/2024
TIME: 10:02:34AM

CITY OF MARYSVILLE
INVOICE LIST
FOR INVOICES FROM 2/7/2024 TO 2/7/2024

PAGE: 8

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
	ZENON ENVIRONMENTAL	TECHNOLOGY SERVICE	WATER FILTRATION PLANT	72,550.59
168023	ZIPLY FIBER	ACCT #3606517319	TRAFFIC CONTROL DEVICES	66.30
	ZIPLY FIBER	ACCT #3606577108	STREET LIGHTING	67.87
	ZIPLY FIBER	ACCT #3606594398	PUBLIC SAFETY BLDG	124.96
	ZIPLY FIBER	ACCT #3606534028	CITY HALL	128.82

WARRANT TOTAL: 1,184,469.89

REASON FOR VOIDS:

INITIATOR ERROR

CHECK LOST/DAMAGED

UNCLAIMED PROPERTY

WARRANT TOTAL: \$1,184,469.89



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Project Manager Bryan Milligan, Executive

ITEM TYPE: Bid Award

AGENDA SECTION: **Review Bids**

SUBJECT: Contract Award - MCC Perimeter Gate and Access Control Project *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the MCC Perimeter Gate and Access Control contract with Automatic Door & Gate Co. in the amount of \$235,210.00.

SUMMARY: This contract will provide the furnishing and installation of two secure, access controlled, and fully automated vehicle gates. The modification of the two existing pedestrian gates with security and access control. The infilling of chain link fencing at the gate locations to complete the security lines to fully secure the west parking lot of the MCC. Including the installation and connection of all electrical, and security cabling. Removal & replacement of site hardscape for trenching & installation and complete restoration of impacted site, including landscape.

ATTACHMENTS:
[PW5 - Perimeter Gates Contract.pdf](#)

SMALL PUBLIC WORKS CONTRACT

THIS SMALL PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”), and Automatic Door & Gate Co., a corporation, organized under the laws of the state of Washington, located and doing business at 9010 Market Place PMB 9, Lake Stevens, WA 98258 (the “Contractor”).

WHEREAS, the City desires the Contractor to furnish and install all material & labor to provide two new vehicle gates with access control, modify existing pedestrian gates with security & access control and infill with new chainlink fencing to complete security lines. Including all electrical, site concrete cutting, removal, replacement and restoration of site & landscape ; and

WHEREAS, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform, carry out, and complete the project and submitted a bid, proposal, or quote to the City to carry out the project; and

WHEREAS, the Contractor and the City desire to enter into this Contract for completion of the project in accordance with the terms and conditions of this Contract;

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performances contained herein, the City and the Contractor agree as follows:

1. Scope of Work—the Project.

The Contractor shall perform, carry out, and complete the MCC Perimeter Gates and Access Control Project (the “Project”) more fully described in **EXHIBIT A** which is attached hereto and incorporated by this reference. Exhibit A may reference or include a description of the Project, the Contractor’s bid/proposal, plans, drawings, or technical specifications (collectively, with this Contract, the “Contract Documents”).

2. Term of Contract.

The term of this Contract shall commence upon full execution of this Contract by the City and the Contractor and shall terminate upon final payment by the City to the Contractor, unless sooner terminated by either party under Section 8 or another applicable provision of the Contract. The Project shall be completed no later than July 30, 2024.

3. Commencement of Work.

The Contractor shall not commence any work under this Contract until the City issues a Notice to Proceed. The City will not issue a Notice to Proceed until the Contractor satisfies the following conditions:

- a. The Contract has been signed and fully executed by the parties.
- b. The Contractor has provided the City with satisfactory documentation that the Contractor is licensed and bonded as a contractor in the State of Washington.

- c. The Contractor has obtained a City of Marysville Business License and a State of Washington Unified Business Identifier number.
- d. The Contractor has provided the City with satisfactory documentation that it has industrial insurance coverage as required by Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW.
- e. The Contractor has provided the City with satisfactory documentation that it is not disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
- f. The Contractor has provided the City with all certificates of insurance required under Section 13.

The Contractor must satisfy the proceeding conditions within fourteen (14) calendar days of the City providing the Contractor notice of the award of the Contract. The Contractor shall commence work on the Project within seven (7) calendar days of the City issuing the Notice to Proceed.

4. Payment for Project.

a. Total Contract Sum for the Project. The City shall pay the Contractor, for satisfactory completion of the Project, a Total Contract Sum not to exceed two hundred thirty five thousand, two hundred ten dollars (\$235,210.00) including all applicable Washington State Sales Tax. The Total Contract Sum includes all expenses and costs incurred in planning, designing, and constructing the Project, including, but not limited to, applicable sales and use taxes, costs and expenses for overhead, profit, labor, materials, supplies, permits, subcontractors, consultants, and professional services necessary to construct and complete the Project in conformance with the Contract Documents.

b. Statement of Intent to Pay Prevailing Wages. The City will not make any payment to the Contractor prior to receiving a copy of Contractor's Intent to Pay Prevailing Wages (or a Combined Intent/Affidavit if approved by the City).

c. Payments. The City will only pay the Contractor for satisfactorily completed work on the Project within the scope of the Contract Documents. Progress payments shall be based on the timely submittal by the Contractor of an invoice in a form acceptable to the City. The form shall be appropriately completed and signed by the Contractor. Invoices not signed and/or completed shall be considered incomplete and ineligible for payment consideration. The City shall initiate authorization for payment after receipt of a satisfactorily completed invoice form and shall make payment to the Contractor within approximately thirty (30) calendar days thereafter. Progress payments shall be subject to retainage in accordance with subsection 7(b) below.

d. Withholding for Defective or Unauthorized Work. The City reserves the right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of the Contract Documents; and extra work and materials furnished without the City's written approval. If, during the course of the Contract, the work rendered does not meet the

requirements set forth in the Contract Documents, the Contractor shall correct or modify the work to comply with the requirements of the Contract Documents. The City shall have the right to withhold payment for such work until it meets the requirements of the Contract Documents. The City's decision not to, or failure to, withhold payment shall not constitute a waiver of the City's right to final inspection and acceptance of the Project.

e. Final Acceptance. Final Acceptance of the Project is determined when the Project is accepted by the Public Works Director or designee as being one hundred percent (100%) complete.

f. Final Payment: Waiver of Claims. The Contractor must request all changes and equitable adjustments, as provided for in Section 6, prior to seeking final payment. The Contractor's acceptance of final payment shall constitute a waiver of the Contractor's claims, except those previously and properly made and identified by the Contractor as unsettled at the time final payment is made and accepted.

g. Maintenance and Inspection of Financial Records. The Contractor shall maintain reasonable books, accounts, records, documents, and other evidence pertaining to the costs and expenses incurred and the consideration paid under this Contract, in accordance with reasonable and customary accepted accounting practices. All such records and accounts shall be subject to inspection and audit by representatives of City and the Washington State Auditor at all reasonable times and the Contractor shall provide the City copies upon request. The Contractor shall preserve and make available all such records and accounts for a period of three (3) years after final payment under this Contract.

5. Time is of the Essence/Liquidated Damages.

Time is of the essence in the performance of this Contract. The Contractor shall diligently pursue the Project work to physical completion by the date specified in Section 2. If said work is not completed within the time specified, the City will suffer harm, and the Contractor agrees to pay the City, as liquidated damages and for each and every calendar day said work remains uncompleted after expiration of the specified time, the sum set forth in the Liquidated Damages Formula below and incorporated herein by this reference. This amount shall be fixed as liquidated damages that the City will suffer by reason of such delay and not as a penalty. The City will have the right to deduct and retain the amount of liquidated damages from any amounts due or to become due to the Contractor. The Contractor shall not be liable for liquidated damages if the delay was due to causes not reasonably foreseeable to the parties at the time of contracting or causes that are entirely beyond the control and without the fault or negligence of the Contractor.

Liquidated Damages Formula:

$$LD = \frac{0.15 \times C}{T}$$

Where:

- LD = liquidated damages per working day (rounded to the nearest dollar)
- C = original Contract amount
- T = original time for Physical Completion

6. Changes.

The City may issue a written change order for any change in the work specified in the Contract Documents during the performance of the Contract. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the City's Contract Representative within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the Contractor fails to request a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the Project.

If the City determines that the change order increases or decreases the Contractor's costs or time for completion, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order.

The Contractor accepts all requirements of a change order by (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting it within five (5) business days. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for direct, indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

7. Bonding and Retainage.

a. Payment and Performance Bond. Pursuant to Chapter 39.08 RCW, the Contractor shall provide the City a payment and performance bond for the Total Contract Sum to be in effect until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW.

b. Retainage. The City shall withhold retainage in the amount of five percent (5%) of any and all payments made to the Contractor until the later of: sixty (60) days after the date of Final Acceptance, receipt of all necessary releases from applicable state agencies, or until settlement of any liens filed under Chapter 60.28 RCW. The amount retained shall be placed in a fund by the City pursuant to RCW 60.28.011(4)(a), unless otherwise instructed by the Contractor within fourteen (14) calendar days of Contractor's execution of this Contract.

8. Termination of Contract.

a. Termination. The City may terminate this Contract and take possession of the premises and all materials thereon and finish the Project by whatever methods it may deem expedient, by giving ten (10) business days written notice to the Contractor, upon the occurrence of any one or more of the following: (1) The Contractor makes a general assignment for the benefit of its creditors, has a receiver appointed as a result of insolvency, or files for bankruptcy; (2) The

Contractor persistently or repeatedly refuses or fails to complete the work herein necessary to complete the Project; (3) The Contractor fails to make prompt payment to a subcontractor for material or labor; (4) The Contractor persistently disregards instructions of the City's Contract Representative or otherwise substantially violates the terms of this Contract; or (5) The Contractor persistently disregards federal, state, or local laws, ordinances, regulations, or codes.

b. Payment in the Event of Termination. In the event this Contract is terminated by either party, the Contractor shall not be entitled to receive any further amounts due under this Contract until the work specified in the Contract Documents is satisfactorily completed, as scheduled, up to the date of termination. At such time, if the unpaid balance of the amount to be paid under this Contract exceeds the expense incurred by the City in finishing the Project and all damages sustained by the City or which may be sustained by reason of such refusal, neglect, failure, or discontinuance of performance, such excess shall be paid by the City to the Contractor. Such expense and damages shall include all reasonable legal expenses and costs incurred by the City to protect the rights and interests of the City under the Contract.

9. Contractor's Status as Independent Contractor.

The Contractor is a licensed, bonded, and insured contractor as required and in accordance with the laws of the State of Washington. The Contractor is acting as an independent contractor and has the ability to control and direct the performance and details of its work in the performance of each and every part of this Contract. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between the Contractor and the City. No officer, employee, volunteer, agents, contractors, or subcontractors of the Contractor shall act on behalf of or represent him or herself as an agent or representative of the City. The Contractor and its officers, employees, volunteers, agents, contractors, and subcontractors shall not make a claim of City employment and shall not make a claim against the City for any employment related benefits, social security, and/or retirement benefits. The Contractor shall be solely responsible for compensating its officers, employees, volunteers, agents, contractors, and subcontractors and for paying all related taxes, deductions, and assessments, including, but not limited to, applicable use and sales taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Contract.

10. Prevailing Wages.

This Contract is subject to the requirement of Chapter 39.12 RCW and no worker, laborer, or mechanic employed in the performance of any part of this Contract shall be paid less than the prevailing rate of wage as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington. The Contractor shall assure that it and any subcontractors fully comply with the requirements of Chapter 39.12 RCW, Chapter 49.28 RCW, and any further laws or regulations applicable because of federal funding, including the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) and the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3) and ensure that any subcontractors also comply with these requirements.

The State of Washington prevailing wage rates for Snohomish County apply to work performed under this Contract. The applicable prevailing wage rates may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>
A copy of the applicable prevailing wage rates are available for viewing at the City and upon request, the City will mail a hard copy of the applicable prevailing wages.

11. Contractor's Risk of Loss.

The Contractor understands that the whole of the work under this Contract is to be done at the Contractor's risk. The Contractor is familiar with all existing conditions and other contingencies likely to affect the work on the Project, and has made its proposal, bid, or quote accordingly. The Contractor assumes the responsibility and risk of all loss or damage to materials or work which may arise from any cause whatsoever prior to completion of the Project.

12. Indemnification and Hold Harmless.

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

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

c. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of the Contractor under this subsection have been mutually negotiated by the parties hereto, and the Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

_____ (City Initials) _____ (Contractor Initials)

d. The provisions of this Section shall survive the expiration or termination of this Contract.

13. Insurance.

a. Insurance Term. The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the Contract and for thirty (30) days after the Final Acceptance date, unless otherwise indicated herein.

b. No Limitation. The Contractor's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

c. Minimum Scope of Insurance. The Contractor's required insurance shall be of the types and coverage as stated below:

- i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- ii. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Minimum Amounts of Insurance.

The Contractor shall maintain the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and a \$2,000,000 products-completed operations aggregate limit.

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

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

g. Contractor's Insurance for Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.

h. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire or other perils to the extent covered by other property insurance obtained pursuant to this Section or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

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

j. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this Contract and evidence of all subcontractors' coverage.

k. Subcontractors. The Contractor shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The Contractor shall ensure that the City is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

l. Notice of Cancellation. The Contractor shall provide the City and all additional insureds for this work with written notice of any policy cancellation within two business days of its receipt of such notice.

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

14. Additional Responsibilities of the Contractor.

a. Permits. The Contractor will apply for, pay for, and obtain any and all City, county, state, or federal permits necessary to commence, construct, and complete the Project. All required permits and associated costs shall be included in the Total Contract Sum for the Project.

b. Work Ethic. The Contractor shall perform all work and services under and pursuant to this Contract in timely, professional, and workmanlike manner.

c. Safety. The Contractor shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and local laws, ordinances, regulations, and codes. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against known and unusual hazards. The Contractor shall ensure that all trenches are provided with adequate safety systems as required by RCW Chapter 49.17 and WAC 296-155-650 and -655. The Contractor is responsible for providing the competent person and registered professional engineer required by WAC 296-155-650 and -655.

d. Warranty and Correction of Defects. The Contractor guarantees and warrants all its work, materials, and equipment provided and utilized for the Project to be free from defects, damage, or failure which the City may, in its sole discretion, determine is the responsibility of the Contractor, for a period of one (1) year from the date of Final Acceptance of the Project. The Contractor is liable for any costs, losses, expenses, additional damages including consequential damages suffered by the City resulting from defects in, damage, or failure of the Contractor's work, materials, or equipment including, but not limited to, cost of materials and labor expended by the City in making repairs and the cost of engineering, inspection, and supervision by the City.

i. The Contractor is responsible for correcting all defects in workmanship, materials, or equipment discovered within one (1) year after Final Acceptance.

ii. Within seven (7) calendar days of receiving notice of a defect, the Contractor shall start work to correct such defects and shall complete the work within a reasonable time. After performing corrections, the Contractor is responsible for defects in workmanship, materials, and equipment for one (1) year after the City's acceptance of those corrections.

iii. If damage may result from delay or where loss of service may result, the City may choose to complete such corrections by contract or any other means, in which case the costs associated with correcting the defects and any damages resulting from the defects shall be borne by the Contractor.

iv. If the Contractor fails to correct a defect after receiving notice of the defect from the City or fails to bear the costs associated with correcting a defect, the Contractor will thereafter be considered non-responsible with regards to all City projects for one (1) year following the notice of the defect.

e. Compliance with Laws. The Contractor shall perform all work and services under and pursuant to this Contract in full compliance with any and all federal, state, or local laws, ordinances, regulations, or codes. The Contractor shall obtain a City of Marysville Business License prior to commencement of work under this Contract.

f. Nondiscrimination. The Contractor agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Contract because of race, religion, creed, color, national origin, marital status, sex, sexual orientation, gender identity, age, disability, or other circumstances as may be defined by federal, state, or local law, ordinance, or regulation except for a bona fide occupational qualification.

15. City Ownership of Work Products.

All work products (reports, maps, designs, specifications, etc.) prepared by or at the request of the Contractor regarding the planning, design, and construction of the Project shall be the property of the City. The Contractor shall provide the City with paper and electronic copies of all work products in possession or control of Contractor at the time the Contractor requests final payment from or upon written request from the City.

16. Assignment and Subcontractors.

a. The Contractor shall not assign this Contract or any interest herein, nor any money due to or to become due hereunder, without first obtaining the written consent of the City.

b. The Contractor shall not subcontract any part of the work to be performed under this Contract without first obtaining the consent of the City and complying with the provisions of this Section.

c. In the event the Contractor does assign this Contract or employ any subcontractor, the Contractor agrees to bind in writing every assignee and subcontractor to the applicable terms and conditions of the Contract Documents.

d. The Contractor shall, before commencing any work, notify the City in writing of the names of any proposed subcontractors. The Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items or materials or equipment), whether initially or as a substitute, against whom the City may have reasonable objection. Each subcontractor or other person or organization shall be identified in writing to the City by the Contractor prior to the date this Contract is signed by the Contractor. Acceptance of any subcontractor or assignee by the City shall not constitute a waiver of any right of the City to reject defective work or work not in conformance with the Contract Documents. If the City, at any time, has reasonable objection to a subcontractor or assignee, the Contractor shall submit an acceptable substitute.

e. The Contractor shall be fully responsible for all acts and omissions of its assignees, subcontractors and of persons and organization directly or indirectly employed by it and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of person directly employed by it.

f. The Contract does not and shall not create or be construed to create any relationship, contractual or otherwise, between the City and any subcontractor or assignee. Nothing in the Contract shall create any obligation on the part of the City to pay or to assure payment of any monies due any subcontractor or assignee.

17. Notices and Contract Representatives.

All notices under this Contract shall be sent by registered or certified mail, postage prepaid, or hand-delivered to the addresses for each Contract Representative listed below. When hand delivered, notices are deemed effective on the date of receipt. When mailed, notices are deemed effective three (3) business days after deposit in the U.S. mail.

This Contract shall be administered for the City by the City's Contract Representative, Bryan Milligan, and shall be administered for the Contractor by the Contractor's Contract Representative, Jerome Bayha. The parties may designate different Contract Representatives by sending written notice to the other party.

To the City: Bryan Milligan, Project Manager
City of Marysville
80 Columbia Avenue
Marysville, WA 98270

To Contractor: Jerry Bayha, President
Automatic Door & Gate Co.
9010 Market Place, PMB 9
Lake Stevens, WA 98258

18. Conflict and Severability.

If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining parts, terms, or provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular part, term, or provision held to be invalid.

If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

19. Integration, Supersession, and Modification.

This Contract, together with the Contract Documents, exhibits, and attachments represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended, modified, or added to only by a written amendment properly executed by both parties.

20. Non-Waiver.

A waiver by either party of a breach by the other party of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay, or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Contract, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition, or right.

21. Survival.

Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

22. Third Parties.

The City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

23. Governing Law.

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

24. Venue.

The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Snohomish County, Washington.

25. Attorney Fees.

Should either the City or the Contractor commence any legal action relating to the provisions of this Contract or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses, and reasonable attorney fees.

26. Authority to Bind Parties and Enter into Contract.

The undersigned represent that they have full authority to enter into this Contract and to bind the parties for and on behalf of the legal entities set forth herein.

27. Counterparts.

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Contract.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

AUTOMATIC DOOR & GATE CO.

By: _____
Jerry Bayha
Its: President

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A
Scope of Work

Automatic Door & Gate Co.

9010 Market Place PMB 9
 Lake Stevens, WA 98258
 425-259-6559

Bid

DATE	Agreement #
12/21/23	11483

Bill To
City of Marysville Attn: Brian Milligan 501 Delta Ave. Marysville, WA 98270

Service Address
Marysville Civic Center 501 Delta Ave Marysville, WA 98270

P.O. NO.

TERMS
contract

SCOPE OF WORK	QTY	COST	U/M	Total
City of Marysville call for bids MCC perimeter gates and access control project				
Gate #2 Provide and install 1 - 26' wide x 6' high black aluminum mesh single vertical pivot gate (Tilt a way) including 2 - BEA laser scanners for free exit and safety, 2 - reversing edge switches, 1 - Tomar fire dept. access switch, 20 - transmitters for vehicles, infrared safety beam and 1 - HID card reader with stanchion.				
Gate #3 Provide and install 1 - 26' wide x 6' high black aluminum mesh single vertical pivot gate (Tilt a way) including 2 - BEA laser scanners for free exit and safety, 2 - reversing edge switches, 1 - Tomar fire dept. access switch, 20 - transmitters for vehicles, infrared safety beam and 1 - HID card reader with stanchion.				
Gate #P1 Provide labor and materials to modify existing black chain link single swing gates for magnetic locks, gate closer and HID card reader.				
Gate #P2				
see terms and conditions at www.autodoorandgate.com			Subtotal	
			Tax (9.4%)	
			Total	

Authorized Signature

Date Signed

Automatic Door & Gate Co.

9010 Market Place PMB 9
 Lake Stevens, WA 98258
 425-259-6559

Bid

DATE	Agreement #
12/21/23	11483

Bill To
City of Marysville Attn: Brian Milligan 501 Delta Ave. Marysville, WA 98270

Service Address
Marysville Civic Center 501 Delta Ave Marysville, WA 98270

P.O. NO.

TERMS
contract

SCOPE OF WORK	QTY	COST	U/M	Total
Provide labor and materials to modify existing black chain link single swing gates for magnetic locks, gate closer and HID card reader.				
All above work includes 2 - 120 vac power circuits, cutting concrete side walks for power trench's, re-pouring concrete side walks, restoring landscaping and installing new chain link fence to complete security lines surrounding new gates				
Total of materials, labor, equipment and electrical permit	1	215,000.00		215,000.00

see terms and conditions at www.autodoorandgate.com

Subtotal	
Tax (9.4%)	\$20,260.00
Total	\$235,260.00

Authorized Signature

Date Signed



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Review Bids**

SUBJECT: Contract Award - Lake Goodwin Standpipe Replacement Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to award and execute the contract with Reece Construction Company for the Lake Goodwin Standpipe Replacement Project in the amount of \$238,832.00 and approve a \$23,883.00 management reserve for a total allocation of \$262,715.00.

SUMMARY:

The Lake Goodwin Standpipe Replacement Project will construct a replacement for the existing failing potable water standpipe at the City's Lake Goodwin well site. The replacement will consist of a fabricated high density polyethylene (HDPE) standpipe, foundation, plumbing, controls, and appurtenances. Following construction, cleaning, and testing, the existing standpipe will be demolished and disposed of offsite. The project also includes site improvements for use by the Contractor during the construction, which the City will be able to utilize for site maintenance and future site work.

Bids for the project were opened on January 4, 2024. A total of fourteen (14) bids were received as shown on the certified Bid Tab. Reece Construction Company was lowest responsible and responsive bidder with a bid of \$238,832.00 including sales tax. The Engineer's Estimate for the project is \$361,030.94. The apparent low bidder – PELLCO Construction, LLC., was deemed non-responsive as all required bid forms were not included in the bid proposal package.

References for Reece Construction Company have been check and staff recommend award in the amount of \$238,832.00 including sales tax. Staff also recommend that Council authorize a ten-percent management reserve of \$23,832.00 for a total allocation of \$262,715.00.

ATTACHMENTS:

[W2104_Public Works Contract_Reece.pdf](#)

[W2104_Bid Tab.pdf](#)

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Reece Construction Company (Contractor), a Corporation, organized under the laws of the State of Washington, located and doing business at 1607 114th St NE, Tulalip, WA 98271, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

Lake Goodwin Standpipe Replacement, 40220594.563000 W2104

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2023 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor’s bid;
- D. Special Provisions
- E. Plans, Drawings, Project and Technical Specifications;
- F. Addenda (if any)
- G. Contractor's Proposal/Bid
- H. Payment Bond and Performance Bond; and
- I. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

The Contractor shall guarantee said materials and work for a period of one year after completion of this Contract.

- II. TIME FOR COMPLETION & LIQUIDATED DAMAGES.** Substantial completion shall be achieved within ninety (90) working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.
- III. COMPENSATION AND METHOD OF PAYMENT.** The lump sum/total itemized amount of the Contract is two hundred and thirty eight thousand and eight hundred thirty two (\$238,823.00) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated January 4, 2024. The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.
- IV. ATTORNEY FEES.** Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.
- V. INDEMNIFICATION.** In addition to any other obligations contained in the Contract Documents,
- A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.
 - B. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.
 - C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as

provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

_____ (City initials) _____ (Contractor initials)

D. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered Keanae Berger (Contractor Representative) on behalf of the Contractor and by Sam Adlington (City Representative) on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u> _____ _____ _____ _____	<u>City:</u> City of Marysville Public Works – Attn: Sam Adlington 501 Delta Ave Marysville, WA 98270
--	---

VII. PREVAILING WAGES. The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

_____(CONTRACTOR)

By: _____

_____(Name)

Its: _____ (Title)

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 4, 2024 at 10:00 a.m.

Lake Goodwin Standpipe Replacement Project, Project No. W2104

Apparent Low Bidder

ITEM NO.	ITEM	QUANTITY	UNIT	Engineer's Estimate		Slateco, LLC.		Clearwater Excavation, LLC.		Colacurcio Brothers, Inc.		Kornerup Construction, Inc.		Pelco Construction, Inc.	
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization, Demobilization, Site Preparation, and Cleanup (10% Maximum)	1	LS	\$ 29,910.00	\$ 29,910.00	\$23,000.00	\$ 23,000.00	\$ 27,500.00	\$ 27,500.00	\$ 28,000.00	\$ 28,000.00	\$ 26,000.00	\$ 26,000.00	\$ 20,500.00	\$ 20,500.00
2	Temporary Sedimentation and Erosion Control	1	LS	\$ 2,500.00	\$ 2,500.00	\$2,000.00	\$ 2,000.00	\$ 18,000.00	\$ 18,000.00	\$ 3,000.00	\$ 3,000.00	\$ 1,000.00	\$ 1,000.00	\$ 8,400.00	\$ 8,400.00
3	Trench Safety and Shoring	1	LS	\$ 1,000.00	\$ 1,000.00	\$1,000.00	\$ 1,000.00	\$ 20,000.00	\$ 20,000.00	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 600.00	\$ 600.00
4	Site Work	1	LS	\$ 139,000.00	\$ 139,000.00	\$21,000.00	\$ 21,000.00	\$ 32,000.00	\$ 32,000.00	\$ 80,000.00	\$ 80,000.00	\$ 70,000.00	\$ 70,000.00	\$ 62,120.00	\$ 62,120.00
5	Reservior Foundation	1	LS	\$ 10,000.00	\$ 10,000.00	\$19,000.00	\$ 19,000.00	\$ 35,000.00	\$ 35,000.00	\$ 50,000.00	\$ 50,000.00	\$ 20,000.00	\$ 20,000.00	\$ 17,800.00	\$ 17,800.00
6	HDPE Standpipe Reservior	1	LS	\$ 80,000.00	\$ 80,000.00	\$141,000.00	\$ 141,000.00	\$ 97,000.00	\$ 97,000.00	\$ 100,000.00	\$ 100,000.00	\$ 105,000.00	\$ 105,000.00	\$ 69,700.00	\$ 69,700.00
7	Removal of Existing Standpipe Reservior	1	LS	\$ 30,000.00	\$ 30,000.00	\$6,000.00	\$ 6,000.00	\$ 18,000.00	\$ 18,000.00	\$ 6,000.00	\$ 6,000.00	\$ 14,000.00	\$ 14,000.00	\$ 6,230.00	\$ 6,230.00
8	Electrical	1	LS	\$ 17,600.00	\$ 17,600.00	\$15,000.00	\$ 15,000.00	\$ 14,000.00	\$ 14,000.00	\$ 20,000.00	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00	\$ 4,000.00	\$ 4,000.00
9	Construction Records and O&M Manual	1	LS	\$ 5,000.00	\$ 5,000.00	\$1,000.00	\$ 1,000.00	\$ 8,500.00	\$ 8,500.00	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 2,000.00	\$ 4,400.00	\$ 4,400.00
10	Testing, Startup, and Training (\$5,000 Minimum)	1	LS	\$ 5,000.00	\$ 5,000.00	\$5,000.00	\$ 5,000.00	\$ 10,000.00	\$ 10,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,900.00	\$ 5,900.00
11	Minor Change (\$10,000)	1	FA	\$ 10,000.00	\$ 10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Subtotal					\$330,010.00		\$244,000.00		\$290,000.00		\$303,500.00		\$264,000.00		\$209,650.00
Sales Tax (9.4%)					\$31,020.94		\$22,936.00		\$27,260.00		\$28,529.00		\$24,816.00		\$19,707.10
TOTAL BID					\$361,030.94		\$266,936.00		\$317,260.00		\$332,029.00		\$288,816.00		\$229,357.10



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.

Bid package missing required item #6 on the Bidder's Checklist - Certificate of Compliance with Wage Payment Statutes. Per Standard Specification 1-2.06, this form must be submitted collectively with the Bid Proposal. As such this bid is non-responsive.



**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 4, 2024 at 10:00 a.m.

Lake Goodwin Standpipe Replacement Project, Project No. W2104

Responsible / Responsive
Low Bidder

ITEM NO.	ITEM	QUANTITY	UNIT	McClure and Sons, Inc.		WSB Excavation and Utilities, LLC.		SRV Construction, Inc.		Earthwork Solutions, LLC		Trimaxx Construction, Inc.		Reece Construction Company	
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization, Demobilization, Site Preparation, and Cleanup (10% Maximum)	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 13,500.00	\$ 13,500.00	\$ 18,000.00	\$ 18,000.00	\$ 17,310.79	\$ 17,310.79
2	Temporary Sedimentation and Erosion Control	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 12,000.00	\$ 12,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,450.00	\$ 3,450.00	\$ 2,400.00	\$ 2,400.00	\$ 3,600.00	\$ 3,600.00
3	Trench Safety and Shoring	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 7,000.00	\$ 7,000.00	\$ 1,000.00	\$ 1,000.00	\$ 2,875.00	\$ 2,875.00	\$ 1,400.00	\$ 1,400.00	\$ 1,800.00	\$ 1,800.00
4	Site Work	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 60,000.00	\$ 60,000.00	\$ 45,500.00	\$ 45,500.00	\$ 72,450.00	\$ 72,450.00	\$ 56,000.00	\$ 56,000.00	\$ 57,000.00	\$ 57,000.00
5	Reservior Foundation	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 45,000.00	\$ 45,000.00	\$ 41,000.00	\$ 41,000.00	\$ 30,590.00	\$ 30,590.00	\$ 40,000.00	\$ 40,000.00	\$ 33,000.00	\$ 33,000.00
6	HDPE Standpipe Reservior	1	LS	\$ 146,296.00	\$ 146,296.00	\$ 100,000.00	\$ 100,000.00	\$ 138,750.00	\$ 138,750.00	\$ 85,100.00	\$ 85,100.00	\$ 138,000.00	\$ 138,000.00	\$ 69,000.00	\$ 69,000.00
7	Removal of Existing Standpipe Reservior	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 30,000.00	\$ 30,000.00	\$ 12,500.00	\$ 12,500.00	\$ 9,200.00	\$ 9,200.00	\$ 31,000.00	\$ 31,000.00	\$ 10,000.00	\$ 10,000.00
8	Electrical	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 32,000.00	\$ 32,000.00	\$ 14,420.00	\$ 14,420.00	\$ 8,050.00	\$ 8,050.00	\$ 12,000.00	\$ 12,000.00	\$ 7,800.00	\$ 7,800.00
9	Construction Records and O&M Manual	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 3,000.00	\$ 3,000.00	\$ 1,950.00	\$ 1,950.00	\$ 2,875.00	\$ 2,875.00	\$ 900.00	\$ 900.00	\$ 1,600.00	\$ 1,600.00
10	Testing, Startup, and Training (\$5,000 Minimum)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 7,000.00	\$ 7,000.00	\$ 5,000.00	\$ 5,000.00	\$ 8,280.00	\$ 8,280.00	\$ 5,000.00	\$ 5,000.00	\$ 7,200.00	\$ 7,200.00
11	Minor Change (\$10,000)	1	FA	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Subtotal					\$291,296.00		\$336,000.00		\$303,120.00		\$246,370.00		\$314,700.00		\$218,310.79
Sales Tax (9.4%)					\$27,381.82		\$31,584.00		\$28,493.28		\$23,158.78		\$29,581.80		\$20,521.21
TOTAL BID					\$318,677.82		\$367,584.00		\$331,613.28		\$269,528.78		\$344,281.80		\$238,832.00



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.

City of Marysville
Certified Bid Tabulation
Lake Goodwin Standpipe Replacement Project, Project No. W2104

ITEM NO.	ITEM	QUANTITY	UNIT	Road Construction Northwest, Inc.		Excavation West, Inc.		Gary Harper Construction, Inc.	
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization, Demobilization, Site Preparation, and Cleanup (10% Maximum)	1	LS	\$ 25,000.00	\$ 25,000.00	\$ 30,489.94	\$ 30,489.94	\$ 27,700.00	\$ 27,700.00
2	Temporary Sedimentation and Erosion Control	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 21,834.79	\$ 21,834.79	\$ 2,800.00	\$ 2,800.00
3	Trench Safety and Shoring	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
4	Site Work	1	LS	\$ 65,000.00	\$ 65,000.00	\$ 91,130.39	\$ 91,130.39	\$ 103,100.00	\$ 103,100.00
5	Reservior Foundation	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 21,187.53	\$ 21,187.53	\$ 22,600.00	\$ 22,600.00
6	HDPE Standpipe Reservior	1	LS	\$ 110,000.00	\$ 110,000.00	\$ 68,427.68	\$ 68,427.68	\$ 88,700.00	\$ 88,700.00
7	Removal of Existing Standpipe Reservior	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 12,363.39	\$ 12,363.39	\$ 13,200.00	\$ 13,200.00
8	Electrical	1	LS	\$ 11,000.00	\$ 11,000.00	\$ 17,017.75	\$ 17,017.75	\$ 10,000.00	\$ 10,000.00
9	Construction Records and O&M Manual	1	LS	\$ 1,500.00	\$ 1,500.00	\$ 250.00	\$ 250.00	\$ 2,500.00	\$ 2,500.00
10	Testing, Startup, and Training (\$5,000 Minimum)	1	LS	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 7,000.00	\$ 7,000.00
11	Minor Change (\$10,000)	1	FA	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
Subtotal				\$252,000.00		\$278,701.47		\$288,600.00	
Sales Tax (9.4%)				\$23,688.00		\$26,197.94		\$27,128.40	
TOTAL BID				\$275,688.00		\$304,899.41		\$315,728.40	



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Review Bids**

SUBJECT: Contract Award - State Ave NHS Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to award and execute the State NHS Project contract to Reece Construction Company in the amount of \$1,311,806.00 and approve a management reserve of \$131,180.00 for a total allocation of \$1,442,986.00.

SUMMARY:

The City has been awarded \$2,690,500 from the WSDOT National Highway System (NHS) Asset Management Program for the State Avenue Corridor Pavement Preservation NHS Project between 1st Street and Grove Street. The awarded funds include costs of construction, construction management and material testing.

The project includes a full width 2-inch grind and overlay, pavement repair where necessary, curb ramp replacement to meet ADA requirements, replacement of signal equipment triggered by ramp upgrades, signal detection, and pavement marking to current standards for the segment of State Avenue between 1st Street and Grove Street.

Bids for the project were opened on January 18, 2024. A total of seven (7) bids were received as shown on the certified Bid Tab. Reece Construction Company was lowest responsible and responsive bidder with a bid of \$1,311,806.00. The Engineer's Estimate for the project is \$2,371,250.20.

References for Reece Construction Company have been checked and WSDOT concurrence to award the project was issued on January 26, 2024. Staff recommend award in the amount of \$1,311,806.00 and that Council authorize a ten-percent (10%) management reserve of \$131,180.00 for a total allocation of \$1,442,986.00. Construction is fully funded by the NHS grant.

ATTACHMENTS:

[R2107_Certified Bid Tab.pdf](#)

[R2107_Contract Document.pdf](#)

City of Marysville
Certified Bid Tabulation
State Ave Corridor Pavement Preservation Project NHS, Project No. R2107

Bid Opening: January 18, 2024 at 1:00p.m.

Apparent Low Bidder

ITEM NO.	ITEM	QUANTITY	UNIT	Engineer's Estimate		In Depth Excavation		Lakeside Industries Inc.		Faber Construction Corporation		SRV Construction Inc.		Granite Construction Company		Reece Construction Company		New X Inc.		
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE
1	Minor Change, Force Account	1	FA	\$ 24,068.00	\$ 24,068.00	\$20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
2	Roadway Surveying, Lump Sum	1	LS	\$ 9,627.20	\$ 9,627.20	\$6,750.00	\$ 6,750.00	\$ 8,000.00	\$ 8,000.00	\$ 9,096.00	\$ 9,096.00	\$ 8,000.00	\$ 8,000.00	\$ 8,800.00	\$ 8,800.00	\$ 11,500.00	\$ 11,500.00	\$ 7,293.00	\$ 7,293.00	
3	ADA Features Surveying, Lump Sum	1	LS	\$ 24,068.00	\$ 24,068.00	\$6,750.00	\$ 6,750.00	\$ 8,000.00	\$ 8,000.00	\$ 8,231.00	\$ 8,231.00	\$ 7,500.00	\$ 7,500.00	\$ 4,100.00	\$ 4,100.00	\$ 2,300.00	\$ 2,300.00	\$ 6,600.00	\$ 6,600.00	
4	Record Drawings (minimum bid \$2,000), Lump Sum	1	LS	\$ 2,406.80	\$ 2,406.80	\$2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 3,274.00	\$ 3,274.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,900.00	\$ 2,900.00	\$ 2,000.00	\$ 2,000.00	
5	SPCC Plan, Lump Sum	1	LS	\$ 1,805.10	\$ 1,805.10	\$1,000.00	\$ 1,000.00	\$ 800.00	\$ 800.00	\$ 1,211.00	\$ 1,211.00	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 1,000.00	\$ 800.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00	
6	Mobilization, Lump Sum	1	LS	\$ 155,238.60	\$ 155,238.60	\$65,000.00	\$ 65,000.00	\$ 105,000.00	\$ 105,000.00	\$ 103,572.00	\$ 103,572.00	\$ 177,000.00	\$ 177,000.00	\$ 142,000.00	\$ 142,000.00	\$ 65,500.00	\$ 65,500.00	\$ 200,000.00	\$ 200,000.00	
7	Other Temporary Traffic Control Devices, Lump Sum	1	LS	\$ 81,004.00	\$ 81,004.00	\$10,000.00	\$ 10,000.00	\$ 100,000.00	\$ 100,000.00	\$ 50,489.00	\$ 50,489.00	\$ 10,000.00	\$ 10,000.00	\$ 40,000.00	\$ 40,000.00	\$ 11,200.00	\$ 11,200.00	\$ 124,000.00	\$ 124,000.00	
8	Portable Changeable Message Sign, Hour	1,600	HR	\$ 15.40	\$ 24,640.00	\$5.00	\$ 8,000.00	\$ 16.00	\$ 25,600.00	\$ 9.00	\$ 14,400.00	\$ 9.70	\$ 15,520.00	\$ 7.00	\$ 11,200.00	\$ 8.00	\$ 12,800.00	\$ 5.00	\$ 8,000.00	
9	Contractor Provided Uniformed Police Office, Hour	40	HR	\$ 239.80	\$ 9,592.00	\$170.00	\$ 6,800.00	\$ 180.00	\$ 7,200.00	\$ 190.00	\$ 7,600.00	\$ 175.00	\$ 7,000.00	\$ 150.00	\$ 6,000.00	\$ 150.00	\$ 6,000.00	\$ 191.00	\$ 7,640.00	
10	Flaggers, Hour	180	HR	\$ 113.30	\$ 20,394.00	\$75.00	\$ 13,500.00	\$ 90.00	\$ 16,200.00	\$ 81.00	\$ 14,580.00	\$ 91.00	\$ 16,380.00	\$ 80.00	\$ 14,400.00	\$ 75.00	\$ 13,500.00	\$ 81.00	\$ 14,580.00	
11	Work Zone Safety Contingency, Force Account	1	FA	\$ 30,085.00	\$ 30,085.00	\$25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	
12	Traffic Control Labor, Hour	360	HR	\$ 93.50	\$ 33,660.00	\$70.00	\$ 25,200.00	\$ 95.00	\$ 34,200.00	\$ 81.00	\$ 29,160.00	\$ 96.00	\$ 34,560.00	\$ 95.00	\$ 34,200.00	\$ 75.00	\$ 27,000.00	\$ 88.00	\$ 31,680.00	
13	Traffic Control Supervisor, Lump Sum	1	LS	\$ 38,989.50	\$ 38,989.50	\$20,000.00	\$ 20,000.00	\$ 150,000.00	\$ 150,000.00	\$ 41,410.00	\$ 41,410.00	\$ 21,000.00	\$ 21,000.00	\$ 40,000.00	\$ 40,000.00	\$ 45,000.00	\$ 45,000.00	\$ 31,680.00	\$ 31,680.00	
14	Removing Cement Conc. Sidewalk, Square Yard	495	SY	\$ 35.20	\$ 17,424.00	\$30.00	\$ 14,850.00	\$ 65.00	\$ 32,175.00	\$ 24.00	\$ 11,880.00	\$ 35.00	\$ 17,325.00	\$ 95.00	\$ 47,025.00	\$ 60.00	\$ 29,700.00	\$ 35.00	\$ 17,325.00	
15	Removing Cement Conc. Curb, Linear Foot	410	LF	\$ 35.20	\$ 14,432.00	\$20.00	\$ 8,200.00	\$ 45.00	\$ 18,450.00	\$ 11.00	\$ 4,510.00	\$ 21.00	\$ 8,610.00	\$ 55.00	\$ 22,550.00	\$ 40.00	\$ 16,400.00	\$ 35.00	\$ 14,350.00	
16	Trimming and Cleanup, Lump Sum	1	LS	\$ 9,627.20	\$ 9,627.20	\$5,000.00	\$ 5,000.00	\$ 15,000.00	\$ 15,000.00	\$ 43,622.00	\$ 43,622.00	\$ 8,000.00	\$ 8,000.00	\$ 10,000.00	\$ 10,000.00	\$ 2,400.00	\$ 2,400.00	\$ 50,000.00	\$ 50,000.00	
17	Pavement Repair Excavation Incl. Haul, Square Yard	580	SY	\$ 113.30	\$ 65,714.00	\$950.00	\$ 551,000.00	\$ 175.00	\$ 101,500.00	\$ 12.00	\$ 6,960.00	\$ 34.00	\$ 19,720.00	\$ 55.00	\$ 31,900.00	\$ 48.00	\$ 27,840.00	\$ 52.00	\$ 30,160.00	
18	Planning Bituminous Pavement, Square Yard	28,930	SY	\$ 14.30	\$ 413,699.00	\$3.00	\$ 86,790.00	\$ 4.00	\$ 115,720.00	\$ 4.00	\$ 115,720.00	\$ 3.00	\$ 86,790.00	\$ 2.00	\$ 57,860.00	\$ 4.00	\$ 115,720.00	\$ 5.00	\$ 144,650.00	
19	HMA LC, 1/2-IN. PG 58H-22, Ton	3,310	Ton	\$ 192.50	\$ 637,175.00	\$135.00	\$ 446,850.00	\$ 125.00	\$ 413,750.00	\$ 164.00	\$ 542,840.00	\$ 129.50	\$ 428,645.00	\$ 122.00	\$ 403,820.00	\$ 115.00	\$ 380,650.00	\$ 125.00	\$ 413,750.00	
20	Adjust Manhole, Each	17	EA	\$ 1,082.40	\$ 18,400.80	\$1,500.00	\$ 25,500.00	\$ 1,200.00	\$ 20,400.00	\$ 1,392.00	\$ 23,664.00	\$ 1,360.00	\$ 23,120.00	\$ 1,000.00	\$ 17,000.00	\$ 975.00	\$ 16,575.00	\$ 750.00	\$ 12,750.00	
21	Adjust Catch Basin, Each	36	EA	\$ 962.50	\$ 34,650.00	\$1,200.00	\$ 43,200.00	\$ 1,400.00	\$ 50,400.00	\$ 1,220.00	\$ 43,920.00	\$ 1,360.00	\$ 48,960.00	\$ 750.00	\$ 27,000.00	\$ 200.00	\$ 7,200.00	\$ 750.00	\$ 27,000.00	
22	Adjust Valve Box, Each	34	EA	\$ 601.70	\$ 20,457.80	\$1,000.00	\$ 34,000.00	\$ 1,000.00	\$ 34,000.00	\$ 862.00	\$ 29,308.00	\$ 665.00	\$ 22,610.00	\$ 750.00	\$ 25,500.00	\$ 900.00	\$ 30,600.00	\$ 400.00	\$ 13,600.00	
23	Erosion Control and Water Pollution Prevention, Lump Sum	1	LS	\$ 6,017.00	\$ 6,017.00	\$2,000.00	\$ 2,000.00	\$ 700.00	\$ 700.00	\$ 35,692.00	\$ 35,692.00	\$ 2,950.00	\$ 2,950.00	\$ 7,500.00	\$ 7,500.00	\$ 2,400.00	\$ 2,400.00	\$ 150,000.00	\$ 150,000.00	
24	Inlet Protection, Each	99	EA	\$ 169.40	\$ 16,770.60	\$40.00	\$ 3,960.00	\$ 86.00	\$ 8,514.00	\$ 148.00	\$ 14,652.00	\$ 90.00	\$ 8,910.00	\$ 60.00	\$ 5,940.00	\$ 50.00	\$ 4,950.00	\$ 100.00	\$ 9,900.00	
25	Topsoil Type B, Cubic Yard	2	CY	\$ 78.10	\$ 156.20	\$35.00	\$ 70.00	\$ 1,000.00	\$ 2,000.00	\$ 262.00	\$ 524.00	\$ 177.00	\$ 354.00	\$ 50.00	\$ 100.00	\$ 125.00	\$ 250.00	\$ 1,500.00	\$ 3,000.00	
26	PSIPE ACER Plantainoides (Crimson Sentry), Each	1	EA	\$ 902.00	\$ 902.00	\$400.00	\$ 400.00	\$ 1,500.00	\$ 1,500.00	\$ 1,310.00	\$ 1,310.00	\$ 1,160.00	\$ 1,160.00	\$ 1,000.00	\$ 1,000.00	\$ 500.00	\$ 500.00	\$ 2,500.00	\$ 2,500.00	
27	Cement Conc. Traffic Curb and Gutter, Linear Foot	404	LF	\$ 113.30	\$ 45,773.20	\$100.00	\$ 40,400.00	\$ 40.00	\$ 16,160.00	\$ 52.00	\$ 21,008.00	\$ 67.00	\$ 27,068.00	\$ 88.00	\$ 35,552.00	\$ 65.00	\$ 26,260.00	\$ 82.00	\$ 33,128.00	
28	Cement Conc. Pedestrian Curb, Linear Foot	20	LF	\$ 113.30	\$ 2,266.00	\$150.00	\$ 3,000.00	\$ 33.00	\$ 660.00	\$ 52.00	\$ 1,040.00	\$ 73.50	\$ 1,470.00	\$ 95.00	\$ 1,900.00	\$ 55.00	\$ 1,100.00	\$ 78.00	\$ 1,560.00	
29	Raised Pavement Marker Type 2, Hundred	3.00	Hund	\$ 2,406.80	\$ 7,220.40	\$1,000.00	\$ 3,000.00	\$ 1,100.00	\$ 3,300.00	\$ 1,244.00	\$ 3,732.00	\$ 1,120.00	\$ 3,360.00	\$ 1,000.00	\$ 3,000.00	\$ 1,100.00	\$ 3,300.00	\$ 1,200.00	\$ 3,600.00	
30	Adjust Monument Cases and Cover, Each	10	EA	\$ 721.60	\$ 7,216.00	\$1,000.00	\$ 10,000.00	\$ 1,500.00	\$ 15,000.00	\$ 2,292.00	\$ 22,920.00	\$ 970.00	\$ 9,700.00	\$ 850.00	\$ 8,500.00	\$ 1,150.00	\$ 11,500.00	\$ 650.00	\$ 6,500.00	
31	Cement Conc. Sidewalk, Square Yard	390	SY	\$ 132.00	\$ 51,480.00	\$155.00	\$ 60,450.00	\$ 85.00	\$ 33,150.00	\$ 119.00	\$ 46,410.00	\$ 140.00	\$ 54,600.00	\$ 170.00	\$ 66,300.00	\$ 111.00	\$ 43,290.00	\$ 118.00	\$ 46,020.00	
32	Cement Conc. Curb Ramp Type Parallel, Each	3	EA	\$ 4,813.60	\$ 14,440.80	\$5,250.00	\$ 15,750.00	\$ 4,700.00	\$ 14,100.00	\$ 7,203.00	\$ 21,609.00	\$ 7,525.00	\$ 22,575.00	\$ 4,800.00	\$ 14,400.00	\$ 4,200.00	\$ 12,600.00	\$ 5,408.00	\$ 16,224.00	
33	Cement Conc. Curb Ramp Type Perpendicular, Each	6	EA	\$ 4,813.60	\$ 28,881.60	\$5,250.00	\$ 31,500.00	\$ 4,100.00	\$ 24,600.00	\$ 7,858.00	\$ 47,148.00	\$ 7,500.00	\$ 45,000.00	\$ 3,000.00	\$ 18,000.00	\$ 3,366.00	\$ 20,196.00	\$ 3,859.00	\$ 23,154.00	
34	Grinding or Horizontal Cutting of Existing Sidewalk Panels for ADA Compliance, Linear Foot	20	LF	\$ 71.50	\$ 1,430.00	\$1,500.00	\$ 30,000.00	\$ 100.00	\$ 2,000.00	\$ 33.00	\$ 660.00	\$ 95.00	\$ 1,900.00	\$ 255.00	\$ 5,100.00	\$ 300.00	\$ 6,000.00	\$ 50.00	\$ 1,000.00	
35	Concrete Raising fro Depressed or Settled Panels (Per Sidewalk Panel), Each	3	EA	\$ 1,082.40	\$ 3,247.20	\$3,000.00	\$ 9,000.00	\$ 1,100.00	\$ 3,300.00	\$ 1,965.00	\$ 5,895.00	\$ 1,800.00	\$ 5,400.00	\$ 2,400.00	\$ 7,200.00	\$ 2,900.00	\$ 8,700.00	\$ 2,500.00	\$ 7,500.00	
36	Adjust Junction Box, Each	12	EA	\$ 1,805.10	\$ 21,661.20	\$500.00	\$ 6,000.00	\$ 700.00	\$ 8,400.00	\$ 982.00	\$ 11,784.00	\$ 885.00	\$ 10,620.00	\$ 760.00	\$ 9,120.00	\$ 875.00	\$ 10,500.00	\$ 500.00	\$ 6,000.00	
37	Traffic Signal System Modification - State Ave & 3rd St, Lump Sum	1	LS	\$ 37,305.40	\$ 37,305.40	\$45,000.00	\$ 45,000.00	\$ 38,000.00	\$ 38,000.00	\$ 32,218.00	\$ 32,218.00	\$ 30,000.00	\$ 30,000.00	\$ 27,000.00	\$ 27,000.00	\$ 28,600.00	\$ 28,600.00	\$ 40,908.00	\$ 40,908.00	
38	Traffic Signal System Modification - State Ave & 4th St, Lump Sum	1	LS	\$ 24,068.00	\$ 24,068.00	\$30,000.00	\$ 30,000.00	\$ 31,000.00	\$ 31,000.00	\$ 20,431.00	\$ 20,431.00	\$ 19,000.00	\$ 19,000.00	\$ 16,000.00	\$ 16,000.00	\$ 18,000.00	\$ 18,000.00	\$ 26,300.00	\$ 26,300.00	
39	Traffic Signal System Modification - State Ave & 6th St, Lump Sum	1	LS	\$ 86,644.80	\$ 86,644.80	\$100,000.00	\$ 100,000.00	\$ 70,000.00	\$ 70,000.00	\$ 57,627.00	\$ 57,627.00	\$ 52,000.00	\$ 52,000.00	\$ 53,000.00	\$ 53,000.00	\$ 57,000.00	\$ 57,000.00	\$ 94,000.00	\$ 94,000.00	
40	Traffic Signal System Modification - State Ave & 8th St, Lump Sum	1	LS	\$ 37,305.40	\$ 37,305.40	\$45,000.00	\$ 45,000.00	\$ 32,000.00	\$ 32,000.00	\$ 31,957.00	\$ 31,957.00	\$ 29,000.00	\$ 29,000.00	\$ 27,000.00	\$ 27,000.00	\$ 28,300.00	\$ 28,300.00	\$ 39,900.00	\$ 39,900.00	
41	Traffic Signal System Modification - State Ave & 72nd St NE/Grove St, Lump Sum	1	LS	\$ 31,288.40	\$ 31,288.40	\$44,000.00	\$ 44,000.00	\$ 35,000.00	\$ 35,000.00	\$ 31,433.00	\$ 31,433.00	\$ 28,500.00	\$ 28,500.00	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00	\$ 28,000.00	\$ 39,800.00	\$ 39,800.00	
42	Plastic Line, Linear Foot	16,400	LF	\$ 5.50	\$ 90,200.00	\$27.50	\$ 45,100.00	\$ 3.00	\$ 49,200.00	\$ 3.00	\$ 49,200.00	\$ 2.95	\$ 48,380.00	\$ 2.50	\$ 41,000.00	\$ 3.00	\$ 49,200.00	\$ 3.50	\$ 57,400.00	
43	Plastic Wide Line, Linear Foot	1,425	LF	\$ 17.60	\$ 25,080.00	\$7.00	\$ 9,975.00	\$ 10.00	\$ 14,250.00	\$ 9.00	\$ 12,825.00	\$ 7.70	\$ 10,972.50	\$ 7.00	\$ 9,975.00	\$ 7.50	\$ 10,687.50	\$ 8.00	\$ 11,400.00	
44	Plastic Stop Line, Linear Foot	525	LF	\$ 29.70	\$ 15,592.50	\$16.50	\$ 8,662.50	\$ 17.00	\$ 8,925.00	\$ 20.00	\$ 10,500.00	\$ 18.00	\$ 9,450.00	\$ 16.00	\$ 8,400.00	\$ 17.50	\$ 9,187.50	\$ 18.00	\$ 9,450.00	
45	Plastic Crosswalk Line, Square Foot	2,900	SF	\$ 29.70	\$ 86,130.00	\$14.50	\$ 42,050.00	\$ 16.00	\$ 46,400.00	\$ 18.00	\$ 52,200.00	\$ 16.00	\$ 46,400.00	\$ 15.00	\$ 43,500.00	\$ 16.00	\$ 46,400.00	\$ 15.00	\$ 43,500.00	
46	Plastic Traffic Arrow, Each	55	EA	\$ 782.10	\$ 43,015.50	\$245.00	\$ 13,475.00	\$ 290.00	\$ 15,950.00	\$ 295.00	\$ 16,225.00	\$								

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Reece Construction Company (Contractor), a profit corporation, organized under the laws of the State of Washington, located and doing business at 1607 114th St NE, Tulalip, WA, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

**STATE AVENUE CORRIDOR PAVEMENT PRESERVATION NHS,
PROJECT NO. R2107**

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2023 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor’s bid;
- D. Special Provisions
- E. Plans, Drawings, Project and Technical Specifications;
- F. Addenda (if any)
- G. Contractor's Proposal/Bid
- H. Payment Bond and Performance Bond; and
- I. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

II. TIME FOR COMPLETION & LIQUIDATED DAMAGES. Physical completion shall be achieved within Forty Five (45) working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.

III. COMPENSATION AND METHOD OF PAYMENT. The lump sum/total itemized amount of the Contract is [Contract Amount] (\$ 1,311,806.00) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated January 18, 2024 . The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.

IV. ATTORNEY FEES. Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.

V. INDEMNIFICATION. In addition to any other obligations contained in the Contract Documents,

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

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

C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract

shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

_____ (City initials) _____ (Contractor initials)

D. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered _____ (Contractor Representative) on behalf of the Contractor and by _____ (City Representative) on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u>	<u>City:</u>
_____	City of Marysville
_____	Public Works – Attn: Sam Adlington
_____	501 Delta Ave
_____	Marysville, WA 98270

VII. PREVAILING WAGES. The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20____.

_____(CONTRACTOR)

By: _____

(Name)

Its: _____

(Title)

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Coordinator Laurie Barbosa, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Review Bids**

SUBJECT: Contract Award - SR 531/172nd St NE Shoulder Improvements

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to award and execute the contract for the SR 531/172nd St NE Shoulder Improvements project to Reece Construction Company in the amount of \$180,800.00 and to approve a management reserve of \$18,080.00 for a total allocation of \$198,880.00.

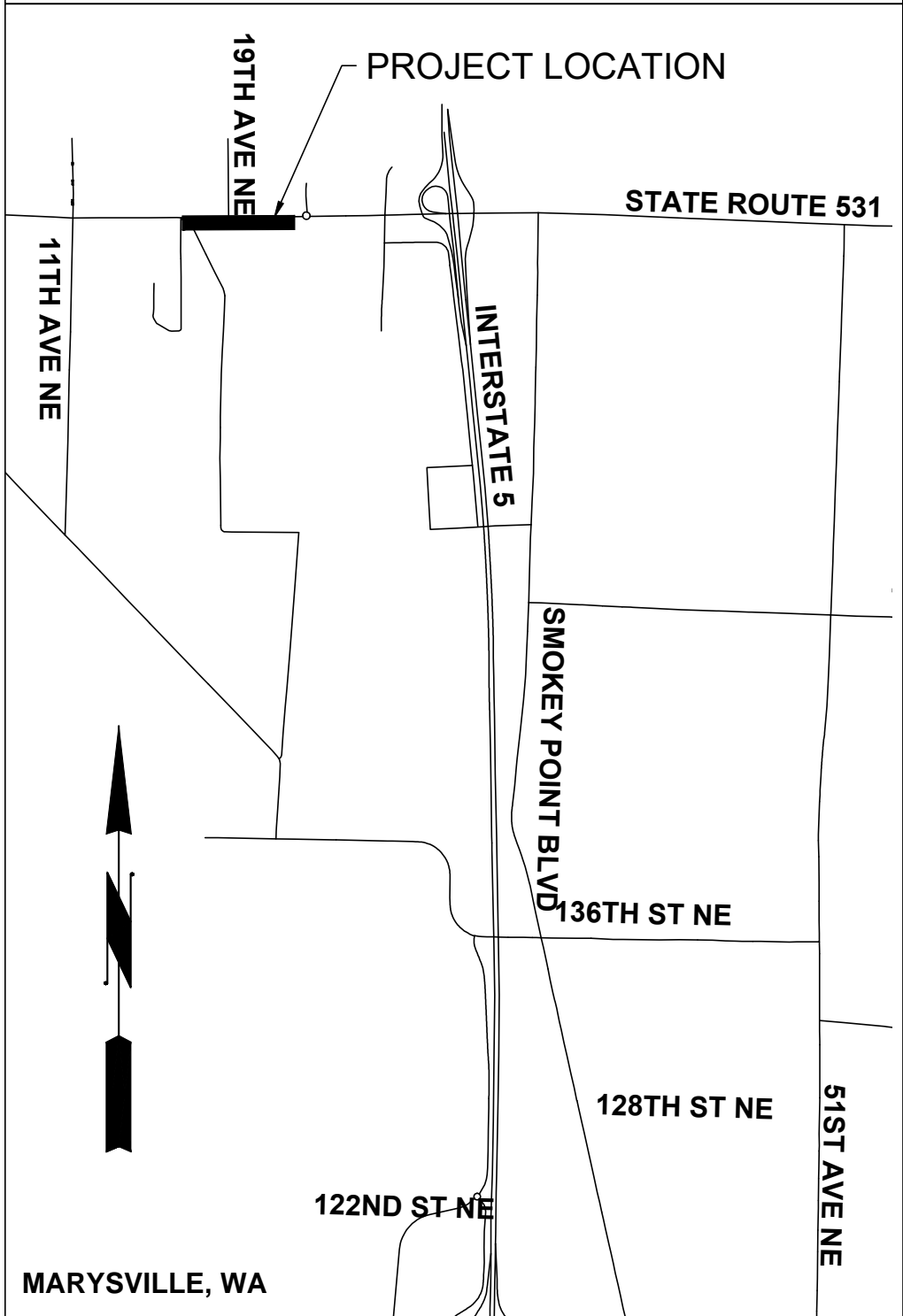
SUMMARY: The SR 531/172nd St NE Shoulder Improvements project will involve minor shoulder widening and improvements along the south side of SR 531 (172nd Street NE) between 16th DR NE and 23rd Ave NE. The aforementioned improvements include the installation of 54 tons of HMA, pavement marking adjustments, delineator posts, and other miscellaneous work.

The project was advertised for a January 23, 2024 bid opening. The City received ten (10) bids as shown on the attached bid tabulation. The apparent low bidder was Reece Construction Company at \$180,800.00. The engineer’s estimate was \$235,577.00. References have been checked and found to be satisfactory. Staff therefore recommends award to the apparent low bidder, Reece Construction Company, in the amount of \$180,800.00 and that Council authorize a ten-percent (10%) management reserve of \$18,080.00 for a total allocation of \$198,880.00.

ATTACHMENTS:
[Vicinity Map.pdf](#)

Certified Bid Tabulation.pdf

SR 531-172nd St NE Shoulder Improvements.pdf



VICINITY MAP

N.T.S.

**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 23, 2024 at 10:00 a.m.

SR 531 / 172nd St NE Shoulder Improvements, Project No. R2403

				Engineer's Estimate		All Terrain Excavating LLC		Colacurcio Brothers, Inc.	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization	1	LS	\$ 18,000.00	\$ 18,000.00	\$18,100.00	\$ 18,100.00	\$ 15,000.00	\$ 15,000.00
2	Shoulder Improvements	1	LS	\$ 180,577.00	\$ 180,577.00	\$162,900.00	\$ 162,900.00	\$ 153,000.00	\$ 153,000.00
3	Minor Changes	1	LS	\$ 20,000.00	\$ 20,000.00	\$20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
4	Rail Control	1	LS	\$ 15,000.00	\$ 15,000.00	\$1,000.00	\$ 1,000.00	\$ 5,000.00	\$ 5,000.00
5	Record Drawings	1	LS	\$ 1,500.00	\$ 1,500.00	\$2,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,000.00
6	SPCC Plan	1	LS	\$ 500.00	\$ 500.00	\$100.00	\$ 100.00	\$ 500.00	\$ 500.00
TOTAL BID				\$235,577.00		\$204,100.00		\$195,500.00	



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.



**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 23, 2024 at 10:00 a.m.

SR 531 / 172nd St NE Shoulder Improvements, Project No. R2403

				Always Active Services LLC		Konnerup Construction, Inc.		SRV Construction, Inc.	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization	1	LS	\$ 40,000.00	\$ 40,000.00	\$ 20,000.00	\$ 20,000.00	\$ 23,350.00	\$ 23,350.00
2	Shoulder Improvements	1	LS	\$ 132,900.00	\$ 132,900.00	\$ 175,190.00	\$ 175,190.00	\$ 190,000.00	\$ 190,000.00
3	Minor Changes	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
4	Rail Control	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 2,500.00	\$ 2,500.00	\$ 5,500.00	\$ 5,500.00
5	Record Drawings	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00	\$ 2,000.00	\$ 2,000.00
6	SPCC Plan	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 1,000.00	\$ 1,000.00	\$ 200.00	\$ 200.00
TOTAL BID				\$197,900.00		\$223,690.00		\$241,050.00	



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.

**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 23, 2024 at 10:00 a.m.

SR 531 / 172nd St NE Shoulder Improvements, Project No. R2403

				Granite Construction Company		Reece Construction Company		Earthwork Solutions LLC	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization	1	LS	\$ 19,000.00	\$ 19,000.00	\$ 13,000.00	\$ 13,000.00	\$ 22,427.00	\$ 22,427.00
2	Shoulder Improvements	1	LS	\$ 187,200.00	\$ 187,200.00	\$ 142,000.00	\$ 142,000.00	\$ 174,940.00	\$ 174,940.00
3	Minor Changes	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
4	Rail Control	1	LS	\$ 11,000.00	\$ 11,000.00	\$ 2,500.00	\$ 2,500.00	\$ 3,145.00	\$ 3,145.00
5	Record Drawings	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 2,500.00	\$ 2,500.00	\$ 3,145.00	\$ 3,145.00
6	SPCC Plan	1	LS	\$ 100.00	\$ 100.00	\$ 800.00	\$ 800.00	\$ 1,887.00	\$ 1,887.00
TOTAL BID				\$239,300.00		\$180,800.00		\$225,544.00	

Responsible / Responsive
Low Bidder



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.

**City of Marysville
Certified Bid Tabulation**

Bid Opening: January 23, 2024 at 10:00 a.m.

SR 531 / 172nd St NE Shoulder Improvements, Project No. R2403

				New X Inc.		Kamins Construction Inc	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Mobilization	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 7,680.00	\$ 7,680.00
2	Shoulder Improvements	1	LS	\$ 155,232.00	\$ 155,232.00	\$ 151,197.29	\$ 151,197.29
3	Minor Changes	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00
4	Rail Control	1	LS	\$ 1,000.00	\$ 1,000.00	\$ 9,600.00	\$ 9,600.00
5	Record Drawings	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 3,600.00	\$ 3,600.00
6	SPCC Plan	1	LS	\$ 500.00	\$ 500.00	(no entry)	(no entry)
TOTAL BID					\$193,732.00		\$192,077.29



We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.



BIDDER'S CHECKLIST

The bidder's attention is especially called to the following forms that must be completed in full as requested and submitted collectively as the Bid Proposal package.

- 1. **Statement of Bidder's Qualifications**
- 2. **Bid Proposal Form.** All portions of the Bid Schedule, Bid Additive, Total Bid, Signature Page, and Proof of Authority to Sign Bid must be completed.
- 3. **Bid Deposit and Statement of Intended Surety**
- 4. **Notarized Power-Of-Authority for Surety's Agent to Execute Bid Bond**
- 5. **Acknowledgement of Receipt of Addenda** (on Bid Proposal Signature Page)
- 6. **Certification of Compliance with Wage Payment Statutes**

The successful bidder shall execute and submit the following contract forms following contract award. Bidders are encouraged to carefully examine the included documents:

- 1. **Contract**
The successful bidder shall execute the Contract in two counterparts.
- 2. **Performance Bond**
To be executed by the successful bidder and the bidder's surety company.
- 3. **Payment Bond**
To be executed by the successful bidder and the bidder's surety company.
- 4. **Contractor's Declaration of Option for Management of Statutory Retained Percentage**
The successful bidder shall complete the attached form, and any forms for the retainage option selected that may be required.

PART 2 - BID PROPOSAL DOCUMENTS

The documents contained within this section constitute the formal proposal from the bidder to the City for this project. Failure of the bidder to submit all pages contained in PART 2 with its bid and to accurately complete all applicable forms may be grounds for the Owner to consider the bid non-responsive.

STATEMENT OF BIDDER'S QUALIFICATIONS

Name of Contractor: Reece Construction Company

Address: PO Box 1531, Marysville, WA 98270

Contact Person: Keanae Berger Phone: 360-659-9600

Contractor has engaged in the construction business under the present firm name indicated for the past 9 years.

Gross dollar amount of work currently under contract \$ 43,000,000.00

Approximate percentage of current contracts outstanding 44 %

Type of work generally performed by Contractor Civil Highway, Underground Utilities, Paving, Milling, Commercial Buildings, Site Work

List five major projects of a similar nature completed within the last ten years and the gross dollar amount of each project.

<u>City of Marysville 2023 Pavement Preservation Project</u>	<u>\$ 4,153,293.47</u>
<u>City of Everett 2023 Pavement Maintenance Overlay</u>	<u>\$ 1,616,161.61</u>
<u>City of Marysville 2022 Pavement Preservation Project</u>	<u>\$ 1,888,666.00</u>
<u>Pavement Rehabilitation and Safety Improvements Projects</u>	<u>\$ 2,440,331.81</u>
<u>4-Year Utility Improvement & Pavement Preservation Program - Year 2021</u>	<u>\$ 2,139,164.00</u>

List of five major pieces of equipment that are anticipated to be used on the project by the Contractor and ownership of the item.

Owned	Leased	Rented	Description of Equipment
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>See attached list any of which can be made available for this project</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u></u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u></u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u></u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u></u>

STATEMENT OF BIDDER'S QUALIFICATIONS (continued)

Bank References: Bank of America
8815 34th Ave NE, Tulalip, WA 98271
Kelly, 360-653-3467

How many general superintendents or other responsible employees in a supervisory position do you have at this time and how long have they been with the Contractor? 4 General Superintendents
That have been employed with Reece Construction Company from 1 to 16 Years

Have you changed bonding companies within the last three years? Yes No

If so, why? N/A

Have you ever sued or been sued by any special district, municipality, county, or state government, concerning a public works contract? Yes No

If so, explain. N/A

If so, name the agencies and reasons therefore. N/A

Disposition of case, if settled: N/A

Washington State UBI No: 602-893-954

Washington State Contractor's Registration No.: REECECC852C7

Washington State Worker's Comp Account No.: 975,038-01

IRS Employer Number: 26-1922636

Or, if individual, Social Security Number: N/A

LIST OF SUBCONTRACTORS
(Contracts Estimated to Cost Over \$1,000,000.00)

Failure to list subcontractors with whom the bidder, if awarded the contract, will directly subcontract for performance of the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical, as described in Chapter 19.28 RCW or naming more than one subcontractor to perform the same work will result in your bid being non-responsive and therefore void.

Subcontractor(s) with whom the bidder will directly subcontract that are proposed to perform the work of heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

To the extent the Project includes one or more categories of work referenced in RCW 39.30.060, and no subcontractor is listed below to perform such work, the bidder certifies that the work will either (i) be performed by the bidder itself, or (ii) be performed by a lower tier subcontractor who will not contract directly with the bidder.

Subcontractor Name No Electrical On This Project
Work to be Performed Electrical

Subcontractor Name No Plumbing On This Project
Work to be Performed Plumbing

Subcontractor Name No HVAC On This Project
Work to be Performed HVAC

Subcontractor Name Reece Construction Company to Self Perform
Work to be Performed Structural Steel

Subcontractor Name Reece Construction Company to Self Perform
Work to be Performed Rebar Installation

**LIST OF SUBCONTRACTORS
(All Contracts)**

The City requests, for informational purposes and as a courtesy, that bidders list other Subcontractors, whose dollar value of work exceeds either (a) 10% of the total project cost or (b) \$10,000.

NOTE: Failure to submit the information requested on this sheet will not result in the City finding the bid non-responsive.

	Subcontractor Name	Type of Work	Approx. Value
(1)	Specialized Pavement Markings	Striping	\$74,507.50
(2)			
(3)			
(4)			
(5)			
(6)			
(7)			
(8)			

BID PROPOSAL FORM

TO: CITY OF MARYSVILLE
501 DELTA AVENUE
MARYSVILLE, WA 98270

The undersigned bidder declares that the bidder has carefully examined the Project Manual including the Plans and Specifications, Call for Bids, Information for Bidders, Standard Specifications, General and/or Special Provisions, Proposal Documents, Contract Documents, and any other documents relating to the **SR 531/172nd St NE Shoulder Improvements**, has made such investigations as are necessary to determine the premises and conditions to be encountered in the work, will enter into a contract with the City in the form of the Contract enclosed, and will, to the extent required, furnish all labor and materials and perform all work as required for construction of the improvements in strict accordance with the Contract Documents for the unit prices shown on the Bid Schedule.

The bidder further declares that this Proposal is in all respects fair and is made without collusion on the part of any person, firm, or corporation mentioned below, and that no officer or employee of the City of Marysville is personally or financially interested, directly or indirectly, in the Proposal or in any purchase of or sale of any materials or supplies for the work to which it relates, or any portion of the profits thereof.

The bidder agrees that it will hold its bid proposal open for forty-five (45) days after the actual date of bid opening and if its proposal is accepted, will timely execute a contract in the form of the contract included herein, will execute and provide all bonds, certifications, and documents required herein, and will timely commence work following execution of the contract. Thereafter, the bidder declares that it will timely complete the work in accordance with the Contract Documents and in the event that the bidder fails to complete the work within the time specified in the Contract Documents, will pay liquidated damages to the City of Marysville per the specifications and requirements of the Contract Documents.

The bidder further agrees that the bid bond or deposit accompanying this bid shall be left in escrow with the City, and that the liquidated damages which the City will sustain by the failure of the undersigned bidder to execute and deliver the contract and performance bond will be equal to five percent (5%) of the total bid. If the undersigned bidder defaults in executing that contract and in furnishing the contract performance bond within twenty (20) days of the date on the Notice of Award, then the bid guaranty shall become the property of the City. If, however, the City does not accept this bid or any part thereof within forty-five (45) days of the time set for the opening of bids, or if the undersigned bidder executes and delivers said contract and surety bond, the bid guaranty shall be returned to the bidder.

By signing and submitting this Bid Proposal, the bidder swears, under penalty of perjury under the laws of the State of Washington and the laws of the United States, and affirms that the following items are true and correct.

Non-Collusion Affidavit

That said person(s), firm, association, or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

City of Marysville
SR 531/172nd St NE Shoulder Improvements Project
Form Rev. 08/2022

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Furthermore, that the bid submitted herewith is a genuine bid and not a collusive or sham bid or made in the interest or on behalf of any person herein named and that the person, firm, association, joint venture, co-partnership, or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in the preparation and submission of a bid for consideration in the award of a contract for the improvement described in these documents.

The bidder further acknowledges that by signing this proposal, the bidder has agreed to the provisions of this Non-Collusion Affidavit.

Anti-Discrimination Certification

The bidder hereby covenants, stipulates and agrees that no person shall be discriminated against in the bidding of the service and/or materials hereunder and that the bidder shall not refuse to hire any person therefore because of such person's race, creed, color or national origin, unless based on a bona fide occupational qualification. Also, the bidder will in no matter discriminate against any person because of such person's race, creed, color or national origin. Any such discrimination shall be deemed a violation of this bid and shall render this bid subject to forfeiture.

NOTICE TO ALL BIDDERS

To report rigging activities, call: 1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., ET. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of the USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

BID SCHEDULE

SR 531/172nd St NE Shoulder Improvements

Note: Unit prices for all Bid Items must be shown. All entries must be typed or in ink.

ITEM NO.	PLAN QUANTITY	ITEM DESCRIPTION	UNIT PRICE (Figures)	TOTAL AMOUNT (Figures)
1	1 LS	Mobilization 2-09.7	\$13,000.00	\$13,000.00
2	1 LS	Shoulder Improvements, Lump Sum 5-06	\$142,000.00	\$142,000.00
3	1 FA	Minor Changes, Force Account 1-04	\$20,000	\$20,000.00
4	1 LS	Rail Control, Lump Sum Spec Section 1-07.28 (minimum bid: \$1,000)	\$2,500.00	\$2,500.00
5	1 LS	Record Drawings (Minimum Bid \$2,000.00) Spec Section 1-05.18 (minimum bid: \$2,000)	\$2,500.00	\$2,500.00
6	1 LS	SPCC Plan, Lump Sum 1-07.15	\$800.00	\$800.00

TOTAL BID*:

\$180,800.00

*The City reserves the right to award the lowest responsive, responsible bidder based on the Total Bid.

IN WITNESS hereto, the undersigned bidder:

- a) Agrees to the conditions of this bid;
- b) Certifies that this bid has not been restricted, modified or conditioned;
- c) Acknowledges receipt of addenda _____ to _____;
- d) Attests to the absence of collusion in the Non-Collusion Affidavit above and agrees to be bound by its provisions;
- e) Covenants, stipulates and agrees in accordance with the Anti-Discrimination Certification above;
- f) Declares, accepts and understands the requirements of the Contract Documents;
- g) Has reviewed the insurance provisions of the Contract Documents and certifies that coverage will be provided as required;
- h) Understands and agrees as to the completion time and liquidated damages as above, and
- i) With the full authority of the firm submitting this bid has signed below this 23rd day of January, 2024

X 

Signature of bidder

Andy Reece

Printed Name

President

Title

Reece Construction Company

Company Name

Address at which to direct correspondence:

PO Box 1531

City Marysville State: WA Zip: 98270

Phone: 360-659-9600

Fax: 360-659-9633

Email: bids@reece-construction.com

License No.: REECECC852C7

Sworn before me this 23rd day of January, 2024.



Keanae Danielle Berger (Print Name)

Notary Public in and for the State of Washington,

residing at: Marysville

My appointment expires: 08/15/2024



City of Marysville

SR 531/172nd St NE Shoulder Improvements Project

Form Rev. 08/2022

PROOF OF AUTHORITY TO SIGN BID

The party by whom this bid is submitted and by whom the contract will be entered into, in case the award is made to said party, is

Firm Name: Reece Construction Company

- Corporation
- Partnership
- Individual

Doing business at PO Box 1531 Marysville, WA 98270
 Address City/State

Which is the address to which all communications concerned with this bid and contract should be sent.

The name of the president, treasurer, and manager of the bidding corporation, or the names of all persons and parties interested in this bid as partners or principals are as follows:

<u>Name/Title</u>	<u>Address</u>
<u>Andy Reece, President, Tresurer and Manager</u>	<u>Arlington, WA</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

If Sole Proprietor or Partnership


IN WITNESS hereto, the undersigned has set his (its) hand this ___ day of _____, 20__.

Signature of bidder

Title


If Corporation

IN WITNESS WHEREOF, the undersigned corporation has caused this instrument to be executed and its seal affixed by its duly authorized officers this 23rd day of January, 2024.



Secretary Andy Reece

Reece Construction Company


Name of Corporation


By

Title Andy Reece, President

- NOTE:
- 1. If the bidder is a co-partnership, so state, giving the name under which business is transacted.
 - 2. If the bidder is a corporation, only a duly authorized official may execute this Bid Proposal. This proof of authority must be notarized.

Sworn before me this 23rd day of January, 2024.



Keanae Danielle Berger (Print Name)
Notary Public in and for the State of Washington State,
residing at: Marysville
My appointment expires: 08/15/2024



BID DEPOSIT

A Bid Deposit shall be made payable to the City of Marysville in the amount of five percent (5%) of the Total Bid Amount(s) for all schedules, based upon the Lump Sum or Bid Schedule quantities at the unit prices, including applicable taxes, and in the form indicated below and on the following page.

- Cashier's Check
- Certified Check
- Bid Bond

Amount: \$ 5% of total bid amount

Note: If a Bid Bond is provided, it must be accompanied by a power of attorney which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal, and delivery the Bid Bond.

Proposed Contract Performance Bond Surety

If the bidder is awarded a construction contract on this bid, the Surety who will provide the Contract Performance Bond will be HUB International

Whose address is:

12100 NE 195th St #200

Street

Bothell

WA

98011

City

State

Zip Code

Phone: 425-765-3889

**DEPOSIT OR BID BOND FORM
DEPOSIT STATEMENT**

Herewith find deposit in the form of certified check or cashier's check in the amount of \$ _____, which amount is not less than five percent of the total bid.

SIGN HERE _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, Reece Construction Company, as Principal, and Fidelity and Deposit Company of Maryland, as Surety, are held firmly bound unto the CITY OF MARYSVILLE, Washington, as Obligee, in the penal sum of Five Percent (5%) of Total Amount Bid Dollars, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

The condition of this obligation is such that, if the Obligee shall make any award to the Principal for the "SR 531/172nd St NE Shoulder Improvements, R2403 Project," according to the terms of the bid made by the Principal therefore, the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee, or if the Principal shall, in case of failure to so do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED, AND DATED THIS 23rd DAY OF January, 2024.

Reece Construction Company
Principal

By: 
Its: Andy Reece, President

Fidelity and Deposit Company of Maryland
Surety

By: 
Its: Emma C. Doleshel, Attorney-in-Fact

Received return of deposit in the sum of \$ _____

**ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND
 POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint Jim W. DOYLE, Natalie C. CHAU, Steven M. WAGNER, Michael A. MURPHY, Chad M. EPPLE, S.M. SCOTT, Andy D. PRILL, Heather L. ALLEN, Dana BROWN, Theresa A. LAMB, Adam HOWARD, Jim S. KUICH, Emma C. DOLESHEL all of Bothell, Washington, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 27th day of September, A.D. 2023.



ATTEST:
**ZURICH AMERICAN INSURANCE COMPANY
 COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
 FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: Robert D. Murray
 Vice President

By: Dawn E. Brown
 Secretary

**State of Maryland
 County of Baltimore**

On this 27th day of September, A.D. 2023, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison

GENEVIEVE M. MAISON
 NOTARY PUBLIC
 BALTIMORE COUNTY, MD
 My Commission Expires JANUARY 27, 2025



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790



CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date 01/09/2024, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Reece Construction Company

Bidder's Business Name

Signature of Authorized Official*

Andy Reece

Printed Name

President

Title

01/23/2024

Date

Arlington

City

WA

State

Check One:

Sole Proprietorship Partnership Joint Venture Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington State

If a co-partnership, give firm name under which business is transacted:

N/A

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

PART 3 - CONTRACT DOCUMENTS

PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Reece Construction Company, a Corporation, organized under the laws of the State of Washington, located and doing business at 1607 114TH ST NE Tulalip WA 98271-9404, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

SR 531/172nd St NE Shoulder Improvements

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2023 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor’s bid;
- D. Special Provisions
- E. Plans, Drawings, Project and Technical Specifications;
- F. Addenda (if any)
- G. Contractor's Proposal/Bid
- H. Payment Bond and Performance Bond; and
- I. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

The Contractor shall guarantee said materials and work for a period of one year after completion of this Contract.

- II. TIME FOR COMPLETION & LIQUIDATED DAMAGES.** Substantial completion shall be achieved within Twenty (20) working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.

- III. COMPENSATION AND METHOD OF PAYMENT.** The lump sum/total itemized amount of the Contract is One Hundred Eighty Thousand Eight Hundred Dollars and Zero Cents (\$180,800.00) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated January 23, 2024. The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.

- IV. ATTORNEY FEES.** Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.

- V. INDEMNIFICATION.** In addition to any other obligations contained in the Contract Documents,
 - A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

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

 - C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as

provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.
_____ (City initials) AR (Contractor initials)

D. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered Andy Reece (Contractor Representative) on behalf of the Contractor and by Nick Loutsis on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u>	<u>City:</u>
<u>Reece Construction Company</u>	City of Marysville
<u>Andy Reece</u>	Public Works – Attn: Nick Loutsis, PE
<u>PO Box 1531</u>	501 Delta Ave
<u>Marysville WA 98270</u>	Marysville, WA 98270

VII. PREVAILING WAGES. The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

REECE CONSTRUCTION COMPANY

DocuSigned by:
By: Andy Reece
Andy Reece 059909374683419... (Name)
Its: President (Title)

Attested/Authenticated:

_____, Deputy
City Clerk

Approved as to form:

Jon Walker, City Attorney



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Services Manager Ken McIntyre, Public Works

ITEM TYPE: Agreement

AGENDA SECTION: **Review Bids**

SUBJECT: Contract Award – 116th St NHS Project

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to award and execute the 116th St NHS contract with Reece Construction Company in the amount of \$764,467.00, and approve a management reserve of \$114,670.05 for a total allocation of \$879,137.05.

SUMMARY: The City has been awarded \$1,581,400 from the WSDOT National Highway System (NHS) Asset Management Program for the 116th Street Corridor Pavement Preservation NHS project between I-5 and State Avenue. The awarded funds include costs of construction, construction management and material testing.

The project includes a full-width 2-inch grind and overlay, pavement repair where necessary, curb ramp replacement to meet ADA requirements, replacement of signal equipment triggered by ramp upgrades, signal detection, and pavement markings to current standards.

Bids for the project were opened on January 31, 2024. A total of four (4) bids were received as shown on the certified bid tab. Reece Construction Company was the lowest responsible bidder with a bid of \$764,467.00. The Engineer’s Estimate for the project is \$1,374,000.00. References for Reece Construction Company have been checked. Staff recommends award in the amount of \$764,467.00, and that Council authorize a fifteen-percent (15%) management-reserve of \$114,670.05, for a total allocation of \$879,137.05. Construction is fully funded by the NHS Grant

ATTACHMENTS:

116th NHS - Bid Tab.pdf

116th NHS Executed by Contractor.pdf

City of Marysville
Certified Bid Tabulation
116th St Pavement Preservation NHS, Project No. R2108

Apparent Low Bidder

ITEM NO.	ITEM	QUANTITY	UNIT	Engineer's Estimate			Granite Construction Company			Lakeside Industries Inc.			Reece Construction Company		
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT		
1	Minor Change, Force Account	1	FA	\$ 10,840.00	\$ 12,034.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00		
2	Roadway Surveying, Lump Sum	1	LS	\$ 6,564.00	\$ 7,220.00	\$ 6,600.00	\$ 6,600.00	\$ 8,200.00	\$ 8,200.00	\$ 8,200.00	\$ 8,200.00	\$ 8,200.00	\$ 8,200.00		
3	ADA Features Surveying, Lump Sum	1	LS	\$ 6,564.00	\$ 7,220.00	\$ 4,250.00	\$ 4,250.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00		
4	Record Drawings (minimum bid \$2,000), Lump Sum	1	LS	\$ 1,641.00	\$ 1,805.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00		
5	SPCC Plan, Lump Sum	1	LS	\$ 1,641.00	\$ 1,805.00	\$ 150.00	\$ 150.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 750.00	\$ 750.00		
6	Mobilization, Lump Sum	1	LS	\$ 79,862.00	\$ 87,848.00	\$ 85,000.00	\$ 85,000.00	\$ 52,000.00	\$ 52,000.00	\$ 52,000.00	\$ 52,000.00	\$ 32,458.00	\$ 32,458.00		
7	Other Temporary Traffic Control Devices	1	LS	\$ 60,345.00	\$ 66,380.00	\$ 42,000.00	\$ 42,000.00	\$ 122,000.00	\$ 122,000.00	\$ 122,000.00	\$ 122,000.00	\$ 7,700.00	\$ 7,700.00		
8	Portable Changeable Message Sign, Hour	1,440	HR	\$ 14.00	\$ 22,176.00	\$ 13.00	\$ 18,720.00	\$ 13.50	\$ 19,440.00	\$ 13.50	\$ 19,440.00	\$ 5.00	\$ 7,200.00		
9	Contractor Provided Uniformed Police Officer, Hour	60	HR	\$ 218.00	\$ 14,388.00	\$ 115.00	\$ 10,200.00	\$ 167.00	\$ 10,020.00	\$ 167.00	\$ 10,020.00	\$ 150.00	\$ 9,000.00		
10	Flangers, Hour	16	HR	\$ 103.00	\$ 1,613.00	\$ 85.00	\$ 1,360.00	\$ 91.75	\$ 1,468.00	\$ 91.75	\$ 1,468.00	\$ 83.00	\$ 1,328.00		
11	Work Zone Safety Contingency, Force Account	1	FA	\$ 27,350.00	\$ 30,085.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00		
12	Traffic Control Labor	320	LS	\$ 31,507.00	\$ 34,658.00	\$ 85.00	\$ 27,200.00	\$ 97.75	\$ 31,280.00	\$ 97.75	\$ 31,280.00	\$ 83.00	\$ 26,560.00		
13	Traffic Control Supervisor, Lump Sum	1	LS	\$ 29,538.00	\$ 32,482.00	\$ 28,000.00	\$ 28,000.00	\$ 90,000.00	\$ 90,000.00	\$ 90,000.00	\$ 90,000.00	\$ 24,500.00	\$ 24,500.00		
14	Removal of Structures and Obstructions	1	LS	\$ 32.00	\$ 15,488.00	\$ 20.00	\$ 8,600.00	\$ 43.00	\$ 18,920.00	\$ 43.00	\$ 18,920.00	\$ 31.00	\$ 13,640.00		
15	Removing Cement Conc. Curb, Linear Foot	440	LF	\$ 32.00	\$ 14,112.00	\$ 20.00	\$ 8,800.00	\$ 225.00	\$ 18,000.00	\$ 225.00	\$ 18,000.00	\$ 59.00	\$ 4,720.00		
16	Removing Cement Conc. Sidewalk, Square Yard	80	SY	\$ 8,205.00	\$ 9,026.00	\$ 5,000.00	\$ 5,000.00	\$ 13,250.00	\$ 13,250.00	\$ 13,250.00	\$ 13,250.00	\$ 4,000.00	\$ 4,000.00		
17	Trimming and Cleanup, Lump Sum	1	LS	\$ 103.00	\$ 75,911.00	\$ 32.00	\$ 21,440.00	\$ 38.00	\$ 25,460.00	\$ 38.00	\$ 25,460.00	\$ 16.00	\$ 10,720.00		
18	Pavement Repair Excavation Incl. Haul	670	SY	\$ 13.00	\$ 191,048.00	\$ 3.00	\$ 40,080.00	\$ 7.50	\$ 100,200.00	\$ 7.50	\$ 100,200.00	\$ 4.00	\$ 53,440.00		
19	Planning Bituminous Pavement, Square Yard	13,360	SY	\$ 175.00	\$ 2,336,800.00	\$ 137.00	\$ 1,830,320.00	\$ 145.00	\$ 2,140,000.00	\$ 145.00	\$ 2,140,000.00	\$ 120.00	\$ 160,800.00		
20	HMA CL, 1/2-IN. PG 58H-22, Ton	1,530	TN	\$ 175.00	\$ 267,750.00	\$ 159.00	\$ 243,170.00	\$ 145.00	\$ 221,850.00	\$ 145.00	\$ 221,850.00	\$ 160.00	\$ 244,800.00		
21	Commercial HMA	205	TN	\$ 147.00	\$ 30,135.00	\$ 137.00	\$ 28,115.00	\$ 145.00	\$ 29,925.00	\$ 145.00	\$ 29,925.00	\$ 160.00	\$ 32,800.00		
22	Adjust Manhole, Each	5	EA	\$ 1,094.00	\$ 5,470.00	\$ 1,300.00	\$ 6,500.00	\$ 2,000.00	\$ 10,000.00	\$ 2,000.00	\$ 10,000.00	\$ 975.00	\$ 4,875.00		
23	Adjust Valve Box, Each	2	EA	\$ 547.00	\$ 1,094.00	\$ 1,000.00	\$ 2,000.00	\$ 2,200.00	\$ 4,400.00	\$ 2,200.00	\$ 4,400.00	\$ 975.00	\$ 1,950.00		
24	Adjust Valve Box, Each	15	EA	\$ 547.00	\$ 8,205.00	\$ 1,000.00	\$ 15,000.00	\$ 900.00	\$ 13,500.00	\$ 900.00	\$ 13,500.00	\$ 975.00	\$ 14,625.00		
25	Erosion Control and Water Pollution Prevention, Lump Sum	1	LS	\$ 5,470.00	\$ 6,017.00	\$ 2,000.00	\$ 2,000.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 650.00	\$ 2,500.00	\$ 2,500.00		
26	Inlet Protection, Each	40	EA	\$ 164.00	\$ 6,560.00	\$ 120.00	\$ 4,800.00	\$ 80.00	\$ 3,200.00	\$ 80.00	\$ 3,200.00	\$ 170.00	\$ 6,800.00		
27	Cement Conc. Traffic Curb and Gutter, Linear Foot	92	LF	\$ 103.00	\$ 9,476.00	\$ 70.00	\$ 6,440.00	\$ 87.00	\$ 8,004.00	\$ 87.00	\$ 8,004.00	\$ 76.00	\$ 6,992.00		
28	Cement Conc. Pedestrian Curb, Linear Foot	34	LF	\$ 103.00	\$ 3,502.00	\$ 58.00	\$ 1,972.00	\$ 84.00	\$ 2,856.00	\$ 84.00	\$ 2,856.00	\$ 50.00	\$ 1,700.00		
29	Precast Sloped Mountable Curb, Linear Foot	1,250	LF	\$ 108.00	\$ 135,000.00	\$ 53.00	\$ 66,250.00	\$ 68.00	\$ 85,000.00	\$ 68.00	\$ 85,000.00	\$ 64.00	\$ 80,000.00		
30	Precast Dual Faced Sloped Mountable Curb, Linear Foot	346	LF	\$ 131.00	\$ 45,326.00	\$ 53.00	\$ 18,338.00	\$ 68.00	\$ 23,528.00	\$ 68.00	\$ 23,528.00	\$ 64.00	\$ 22,144.00		
31	Raised Pavement Marker Type 2, Hundred	1.75	Hund	\$ 2,188.00	\$ 3,829.00	\$ 1,250.00	\$ 2,187.50	\$ 1,500.00	\$ 2,625.00	\$ 1,500.00	\$ 2,625.00	\$ 1,400.00	\$ 2,450.00		
32	Flexible Guide Post	2	EA	\$ 82.00	\$ 164.00	\$ 450.00	\$ 900.00	\$ 550.00	\$ 1,100.00	\$ 550.00	\$ 1,100.00	\$ 525.00	\$ 1,050.00		
33	Adjust Monument Cases and Cover, Each	2	EA	\$ 686.00	\$ 1,372.00	\$ 1,000.00	\$ 2,000.00	\$ 985.00	\$ 1,970.00	\$ 985.00	\$ 1,970.00	\$ 975.00	\$ 1,950.00		
34	Cement Conc. Sidewalk, Square Yard	40	SY	\$ 120.00	\$ 4,800.00	\$ 137.00	\$ 5,480.00	\$ 168.00	\$ 6,720.00	\$ 168.00	\$ 6,720.00	\$ 169.00	\$ 6,760.00		
35	Cement Conc. Curb Ramp Type Parallel, Each	2	EA	\$ 4,376.00	\$ 8,752.00	\$ 7,000.00	\$ 14,000.00	\$ 8,900.00	\$ 17,800.00	\$ 8,900.00	\$ 17,800.00	\$ 4,400.00	\$ 8,800.00		
36	Cement Conc. Curb Ramp Type Perpendicular, Each	2	EA	\$ 4,376.00	\$ 8,752.00	\$ 7,000.00	\$ 14,000.00	\$ 8,900.00	\$ 17,800.00	\$ 8,900.00	\$ 17,800.00	\$ 3,900.00	\$ 7,800.00		
37	Adjust Junction Box, Each	1	EA	\$ 1,670.00	\$ 1,670.00	\$ 5,500.00	\$ 5,500.00	\$ 750.00	\$ 750.00	\$ 750.00	\$ 750.00	\$ 700.00	\$ 700.00		
38	Traffic Signal System Modification - 116th St NE & State Ave	1	LS	\$ 25,162.00	\$ 27,678.00	\$ 61,000.00	\$ 61,000.00	\$ 61,500.00	\$ 61,500.00	\$ 61,500.00	\$ 61,500.00	\$ 58,000.00	\$ 58,000.00		
39	Plastic Line, Linear Foot	6,200	LF	\$ 5.00	\$ 31,100.00	\$ 3.00	\$ 18,600.00	\$ 3.75	\$ 23,250.00	\$ 3.75	\$ 23,250.00	\$ 3.50	\$ 21,700.00		
40	Plastic Wide Line, Linear Foot	1,175	LF	\$ 16.00	\$ 18,800.00	\$ 4.00	\$ 4,700.00	\$ 6.40	\$ 7,520.00	\$ 6.40	\$ 7,520.00	\$ 6.00	\$ 7,050.00		
41	Plastic Stop Line, Linear Foot	225	LF	\$ 27.00	\$ 6,075.00	\$ 11.00	\$ 2,475.00	\$ 15.00	\$ 3,375.00	\$ 15.00	\$ 3,375.00	\$ 14.00	\$ 3,150.00		
42	Painted Crosswalk Marking	85	LF	\$ 4.00	\$ 340.00	\$ 45.00	\$ 3,825.00	\$ 54.40	\$ 4,624.00	\$ 54.40	\$ 4,624.00	\$ 51.00	\$ 4,335.00		
43	Plastic Crosswalk Line, Square Foot	1,500	SF	\$ 27.00	\$ 40,500.00	\$ 10.00	\$ 15,000.00	\$ 13.80	\$ 20,700.00	\$ 13.80	\$ 20,700.00	\$ 13.00	\$ 19,500.00		
44	Plastic Traffic Arrow, Each	21	EA	\$ 711.00	\$ 14,931.00	\$ 200.00	\$ 4,200.00	\$ 275.00	\$ 5,775.00	\$ 275.00	\$ 5,775.00	\$ 250.00	\$ 5,250.00		
45	Plastic Traffic Letter, Each	8	EA	\$ 711.00	\$ 5,688.00	\$ 115.00	\$ 920.00	\$ 152.00	\$ 1,216.00	\$ 152.00	\$ 1,216.00	\$ 140.00	\$ 1,120.00		
TOTAL BID					\$1,374,157.00		\$886,692.50		\$1,190,826.00		\$764,467.00				



Note: Engineer's Estimate included items 12 & 13 together as a lump-sum item

We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.



1.31.24

**City of Marysville
Certified Bid Tabulation
116th St Pavement Preservation NHS, Project No. R2108**

ITEM NO.	ITEM	QUANTITY	UNIT	SRV Construction Inc.		Contractor		Contractor		Contractor	
				UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT	UNIT PRICE	EXTENDED AMOUNT
1	Minor Change, Force Account	1	FA	\$ 10,000.00	\$ 10,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	Roadway Surveying, Lump Sum	1	LS	\$ 7,875.00	\$ 7,875.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	ADA Features Surveying, Lump Sum	1	LS	\$ 5,000.00	\$ 5,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	Record Drawings (Minimum bid \$2,000), Lump Sum	1	LS	\$ 1,445.00	\$ 1,445.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	SPCC Plan, Lump Sum	1	LS	\$ 300.00	\$ 300.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Mobilization, Lump Sum	1	LS	\$ 103,500.00	\$ 103,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7	Other Temporary Traffic Control Devices	1	LS	\$ 10,000.00	\$ 10,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	Portable Changeable Message Sign, Hour	1,440	HR	\$ 9.00	\$ 12,960.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9	Contractor Provided Uniformed Police Office, Hour	60	HR	\$ 180.00	\$ 10,800.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10	Flaggers, Hour	16	HR	\$ 77.00	\$ 1,232.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	Work Zone Safety Contingency, Force Account	1	FA	\$ 25,000.00	\$ 25,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	Traffic Control Labor	320	HR	\$ 81.00	\$ 25,920.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13	Traffic Control Supervisor, Lump Sum	1	LS	\$ 16,000.00	\$ 16,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14	Removal of Structures and Obstructions	1	LS	\$ 25.00	\$ 25.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15	Removing Cement Conc. Curb, Linear Foot	440	LF	\$ 70.00	\$ 5,600.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
16	Removing Cement Conc. Sidewalk, Square Yard	80	SY	\$ 4.50	\$ 360.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17	Trimming and Cleanup, Lump Sum	1	LS	\$ 4,150.00	\$ 4,150.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
18	Pavement Repair Excavation Incl. Haul	670	SY	\$ 51.00	\$ 34,170.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
19	Planning Bituminous Pavement, Square Yard	13,360	SY	\$ 4.50	\$ 60,120.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
20	HMA CL 1/2-IN, PG 58H-22, Ton	1,530	TN	\$ 153.00	\$ 234,090.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21	Commercial HMA	205	TN	\$ 182.00	\$ 37,310.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
22	Adjust Manhole, Each	5	EA	\$ 1,385.00	\$ 6,925.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
23	Adjust Catch Basin, Each	2	EA	\$ 1,385.00	\$ 2,770.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
24	Adjust Valve Box, Each	15	EA	\$ 675.00	\$ 10,125.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
25	Erosion Control and Water Pollution Prevention, Lump Sum	1	LS	\$ 3,000.00	\$ 3,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
26	Inlet Protection, Each	40	EA	\$ 114.00	\$ 4,560.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
27	Cement Conc. Traffic Curb and Gutter, Linear Foot	92	LF	\$ 180.00	\$ 16,560.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
28	Cement Conc. Pedestrian Curb, Linear Foot	34	LF	\$ 206.00	\$ 7,004.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
29	Precast Sloped Mountable Curb, Linear Foot	1,250	LF	\$ 66.00	\$ 82,500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
30	Precast Dual Faced Sloped Mountable Curb, Linear Foot	346	LF	\$ 66.00	\$ 22,836.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
31	Raised Pavement Marker Type 2, Hundred	1.75	Hund	\$ 1,465.00	\$ 2,563.75	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
32	Flexible Guide Post	2	EA	\$ 540.00	\$ 1,080.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
33	Adjust Monument Cases and Cover, Each	2	EA	\$ 988.00	\$ 1,976.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
34	Cement Conc. Sidewalk, Square Yard	40	SY	\$ 350.00	\$ 14,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
35	Cement Conc. Curb Ramp Type Parallel, Each	2	EA	\$ 17,715.00	\$ 35,430.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
36	Cement Conc. Curb Ramp Type Perpendicular, Each	2	EA	\$ 17,715.00	\$ 35,430.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
37	Adjust Junction Box, Each	1	EA	\$ 6,420.00	\$ 6,420.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
38	Traffic Signal System Modification - 116th St NE & State Ave	1	LS	\$ 70,000.00	\$ 70,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
39	Plastic Line, Linear Foot	6,200	LF	\$ 3.60	\$ 22,320.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
40	Plastic Wide Line, Linear Foot	1,175	LF	\$ 6.00	\$ 7,050.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
41	Plastic Stop Line, Linear Foot	225	LF	\$ 14.40	\$ 3,240.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
42	Painted Crosshatch Marking	85	LF	\$ 53.00	\$ 4,505.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
43	Plastic Crosswalk Line, Square Foot	1,500	SF	\$ 13.20	\$ 19,800.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
44	Plastic Traffic Arrow, Each	21	EA	\$ 266.00	\$ 5,586.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
45	Plastic Traffic Letter, Each	8	EA	\$ 145.00	\$ 1,160.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL BID				\$1,030,712.75	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

We hereby certify that this bid tabulation represents all bids received and that all calculations have been checked and are correct.



PUBLIC WORKS CONTRACT

THIS PUBLIC WORKS CONTRACT (the “Contract”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a Washington State municipal corporation (the “City”) and Reece Construction Company (Contractor), a profit corporation, organized under the laws of the State of Washington, located and doing business at 1607 114th St NE, Tulalip, WA, (the “Contractor”).

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

- I. SCOPE OF WORK.** The Contractor agrees to do all work and furnish all labor, tools, materials, equipment, and supplies required to build and construct and to build and construct in a workmanlike manner the work, improvements, and appurtenances in order to accomplish the following project:

STATE AVENUE CORRIDOR PAVEMENT PRESERVATION NHS, PROJECT NO. R2107

All such work, labor, tools, materials, equipment, and supplies to be procured and furnished in accordance with the following documents (the “Contract Documents”) which are incorporated by reference and are hereby made a part of this Contract:

- A. This Contract;
- B. The Call for Bids, Information for Bidders, and Bidder’s Checklist;
- C. 2023 Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction as modified by all amendments thereto as of the date of the Contractor’s bid;
- D. Special Provisions
- E. Plans, Drawings, Project and Technical Specifications;
- F. Addenda (if any)
- G. Contractor's Proposal/Bid
- H. Payment Bond and Performance Bond; and
- I. All provisions required by law whether set forth and reproduced herein or not.

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Contract Documents.

- II. TIME FOR COMPLETION & LIQUIDATED DAMAGES.** Physical completion shall be achieved within Forty Five (45) working days of the effective date of the Notice to Proceed. If said work is not completed within the time specified, the Contractor agrees to pay the City liquidated damages as provided in Section 1-08.9 of the Standard Specifications.

- III. COMPENSATION AND METHOD OF PAYMENT.** The lump sum/total itemized amount of the Contract is [Contract Amount] (\$ 1,311,806.00) including Washington State Sales Tax. The total Project cost includes all costs associated with the Project work, including, but not limited to labor, materials, overhead, and administrative, permit, and regulatory costs, unless otherwise agreed in writing. The Project cost is based on the proposal/bid submitted by the Contractor dated January 18, 2024 . The basis for final payment will be the actual amount of work performed according to the Contract Documents and payments, whether partial or final, shall be made as specified therein.

- IV. ATTORNEY FEES.** Should either the City or the Contractor commence any legal action relating to the provisions of this Contract, or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses and reasonable attorney fees.

- V. INDEMNIFICATION.** In addition to any other obligations contained in the Contract Documents,
 - A. The Contractor shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

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

 - C. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract

shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.
_____ (City initials) AK (Contractor initials)

D. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

VI. CONTRACT ADMINISTRATION.

This Contract shall be administered Andy Reece (Contractor Representative) on behalf of the Contractor and by Sam Adlington (City Representative) on behalf of the City. Any written notices required by the terms of this Contract shall be served or mailed to the following addresses:

<u>Contractor:</u>	<u>City:</u>
<u>Reece Construction Company</u>	City of Marysville
<u>Andy Reece</u>	Public Works – Attn: Sam Adlington
<u>PO Box 1531</u>	501 Delta Ave
<u>Marysville WA 98270</u>	Marysville, WA 98270

VII. PREVAILING WAGES. The Contractor shall comply with all state and federal laws relating to the employment of labor and wage rates to be paid.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

DATED this _____ day of _____, 20_____.

CITY OF MARYSVILLE

By: _____
Jon Nehring, Mayor

DATED this _____ day of _____, 20_____.

_____(CONTRACTOR)

DocuSigned by:
By: Andy Reece
0BDB8F374683 Andy Reece (Name)
Its: President (Title)

Attested/Authenticated:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

BID DEPOSIT

A Bid Deposit shall be made payable to the City of Marysville in the amount of five percent (5%) of the Total Bid Amount(s) for all schedules, based upon the Lump Sum or Bid Schedule quantities at the unit prices, including applicable taxes, and in the form indicated below and on the following page.

- Cashier's Check
- Certified Check
- Bid Bond

Amount: \$ 5% of total bid amount

Note: If a Bid Bond is provided, it must be accompanied by a power of attorney which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal, and delivery the Bid Bond.

Proposed Contract Performance Bond Surety

If the bidder is awarded a construction contract on this bid, the Surety who will provide the Contract Performance Bond will be HUB International

Whose address is:

12100 NE 195th St #200,
Street
Bothell WA 98011
City State Zip Code

Phone: Chad Epple Phone # 425-765-3889

**DEPOSIT OR BID BOND FORM
DEPOSIT STATEMENT**

Herewith find deposit in the form of certified check or cashier's check in the amount of \$ _____, which amount is not less than five percent of the total bid.

SIGN HERE _____

BID BOND


KNOW ALL MEN BY THESE PRESENTS:

That we, Reece Construction Company, as Principal, and Fidelity and Deposit Company of Maryland, as Surety, are held firmly bound unto the CITY OF MARYSVILLE, Washington, as Obligee, in the penal sum of Five Percent (5%) of Total Amount Bid Dollars, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

The condition of this obligation is such that, if the Obligee shall make any award to the Principal for the "State Avenue Corridor Pavement Preservation NHS, #R2107 Project," according to the terms of the bid made by the Principal therefore, the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee, or if the Principal shall, in case of failure to so do, pay and forfeit to the Obligee the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

SIGNED, SEALED, AND DATED THIS 18th DAY OF January, 2024.

Reece Construction Company
Principal

By: 
Its: Andy Reece, President

Fidelity and Deposit Company of Maryland
Surety

By: 
Its: Emma C. Doleshel, Attorney-in-Fact

Received return of deposit in the sum of \$ _____



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: City Attorney Jon Walker, Legal

ITEM TYPE: Ordinance

AGENDA SECTION: New Business

SUBJECT: An **Ordinance** of the City Council of the City of Marysville, Washington, authorizing the Mayor to accept certain donations.

SUGGESTED ACTION: Recommended Motion: I move to adopt Ordinance No. _____.

SUMMARY:

RCW 35A.11.040 authorizes the city council to accept gifts on behalf of the city. From time-to-time citizens or businesses offer in-kind donations or smaller monetary donations to support city events or programs (e.g. a chipper for a Christmas tree recycling event). The council may delegate this authority and because these offers are sometimes time-sensitive, the council may wish to delegate authority to the mayor.

This ordinance would authorize the mayor to accept monetary donations of \$1,000 or less and in-kind donations valued at \$1,000 or less. The mayor would be required to consult with the council president prior to accepting a donation and the council president may require that the full council consider whether to accept a particular donation.

The mayor would not be authorized to accept devises (leaving real property via a will) or bequests (leaving other property or money via a will) or property that is not an in-kind donation (e.g. artwork). Such donations would still require the council to act to accept them.

The purpose of council engagement in the donation process is that accepting a donation can associate the city with the giver and there may be instances where the council determines that they do not wish to have the city associated with a particular organization. This risk seems low with in-kind and small monetary donations and authorizing the mayor to accept them would facilitate civic engagement by citizens and local businesses.

ATTACHMENTS:

[Ordinance - Donations.pdf](#)

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,
WASHINGTON, AUTHORIZING THE MAYOR TO ACCEPT CERTAIN
DONATIONS.**

WHEREAS, RCW 35A.11.040 authorizes the city to accept gifts; and

WHEREAS, from time-to-time residents or local businesses may offer smaller monetary gifts or in-kind donations, such as the use of equipment, in support of city programs or activities; and

WHEREAS, authorizing the mayor to accept such gifts with the concurrence of the council president will facilitate public support of city programs and activities.

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

SECTION 1. Section 3.96.010 of the municipal code is amended as set forth in Exhibit A.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 3. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 4. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2024.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
_____, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

3.96.010 City authorized to accept – Terms and conditions.

(1) Pursuant to RCW 35A.11.040, the city is authorized to accept any money or property donated, devised or bequeathed to it, and to carry out the terms of the donation, devise or bequest if within the powers granted by law. If no terms or conditions are attached to the donation, ~~devise~~devise or bequest, the city may expend or use the same for any municipal purpose.

(2) The mayor is authorized to accept monetary or in-kind donations to the city valued at one thousand dollars or less, provided that the donation is related to a city program or activity. The mayor will promptly notify the council president of the proposed donation. If the council president concurs that the donation should be accepted, the mayor may accept the donation without any action by council. If the council president notifies the mayor that he or she believes the city should not accept the donation, the donation will not be accepted until such time as the full council has had an opportunity to consider the donation.

(3) Only the city council may accept any devise or bequest, any donation of property, or any monetary or in-kind donation that exceeds one thousand dollars in value.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: City Attorney Jon Walker, Legal

ITEM TYPE: Ordinance

AGENDA SECTION: New Business

SUBJECT: An **Ordinance** of the City Council of the City of Marysville, Washington, designating the Mayor to act in the event of an emergency in regard to competitive bidding requirements.

SUGGESTED ACTION: Recommended Motion: I move to adopt Ordinance No. ____.

SUMMARY: RCW 39.04.280 authorizes the city to waive competitive bidding requirements when unforeseen circumstances either (a) present a real, immediate threat to the proper performance of essential city functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. Because immediate action is critical in such situations, the mayor is best positioned to determine whether an emergency exists and whether competitive bidding should be waived. Designating the mayor to make such determinations and declarations will ensure the preservation and continuity of city infrastructure and essential city functions.

All contracts of \$100,000 or more will be presented to the council for ratification. Resolution No. 2486, section 6, authorizes the mayor to act on contracts of less than \$100,000.

ATTACHMENTS:
[Ordinance - Waiving Competitive Bidding due to Emergency.pdf](#)

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARYSVILLE,
WASHINGTON, DESIGNATING THE MAYOR TO ACT IN THE EVENT OF
AN EMERGENCY IN REGARD TO COMPETITIVE BIDDING
REQUIREMENTS.**

WHEREAS, providing public services requires that city infrastructure be in good working order; and

WHEREAS, when emergency repairs are required to maintain city infrastructure time is of the essence; and

WHEREAS, RCW 39.04.280 authorizes competitive bidding requirements to be waived in the event of an emergency; and

WHEREAS, ensuring the continuity of municipal services and the preservation of city infrastructure is best managed by designating the mayor to declare an emergency and act in the event of an emergency.

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

SECTION 1. A new section is added to chapter 2.12 of the municipal code as set forth in Exhibit A.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

SECTION 3. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener's errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

SECTION 4. Effective Date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2024.

CITY OF MARYSVILLE

By _____
JON NEHRING, MAYOR

Attest:

By _____
_____, DEPUTY CITY CLERK

Approved as to form:

By _____
JON WALKER, CITY ATTORNEY

Date of publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A

2.12.060 Emergency repairs and maintenance

When unforeseen circumstances beyond the control of the city either: (a) present a real, immediate threat to the proper performance of essential city functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken, the mayor is designated to act and may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, the mayor will make a written finding of the existence of an emergency no later than two weeks following the award of the contract. Except as provided by resolution, the city council will ratify all contracts awarded without competitive bidding.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Jennifer Ferrer-Santa Ines, Finance

ITEM TYPE: Discussion Item

AGENDA SECTION: New Business

SUBJECT: An **Ordinance** of the City of Marysville amending the 2023-2024 Biennial Budget.

SUGGESTED ACTION: Recommended Motion: I move to adopt Ordinance No. ____.

SUMMARY: This amendment is to modify the budget based on new information and changes to work plans.

ATTACHMENTS:
[02_05_24_BA_Ordinance.docx](#)
[Feb 2024 Budget Amendment Memo.docx](#)

CITY OF MARYSVILLE
Marysville, Washington

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MARYSVILLE AMENDING THE 2023-2024 BIENNIAL BUDGET AND PROVIDING FOR THE INCREASE/DECREASE OF CERTAIN EXPENDITURE ITEMS AS BUDGETED FOR IN ORDINANCE NO. 3239.

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Since the adoption of the 2023-2024 budget by the City Council on November 28, 2022, it has been determined that the interests of the residents of the City of Marysville may best be served by the increase of certain expenditures in the 2023-2024 budget. The following funds as referenced in Ordinance No. 3239 are hereby amended to read as follows:

Description		Revenue Adjustment	Appropriation Adjustment	Ending Fund Balance Adjustment
General Fund				
Carry over/Trnsfr	Code Enf Maverick, Paint Truck, St Mower		445,816	(445,816)
Carry over/Trnsfr	P147 and P159 Repl, Prewetting Equip		187,373	(187,373)
Carry over	Neighborhood Traffic Safety		150,000	(150,000)
Grant/exp	EECBG-Civic Ctr Solar Panels	124,740	124,740	-
Grant/exp	Hotel Vouchers Consolidated Homeless Grant-Linc NW	150,000	150,000	-
Grant	SPAR Program Funding	175,000	-	175,000
	Sno911 cost increase		30,000	(30,000)
	Public Defense increase		181,000	(181,000)
	Labor & Industries increase		245,000	(245,000)
		449,740	1,513,929	- (1,064,189)
Technology Infrastructure (I/Net) - Fund 108				
Carry over	City Fiber Infrastructure		530,000	(530,000)
		-	530,000	- (530,000)
City Facilities - Fund 314				
Carry over	Perimeter Gates/Access Control-MCC		235,210	(235,210)
Carry over	Waterfront Redevelopment Project		146,000	(146,000)
		-	381,210	- (381,210)
Water/Sewer Operating - Fund 401				
Carry over/Trnsfr	Water F150, Waste Trucks		485,330	(485,330)
Carry over	Fork Scale Weight		43,361	(43,361)
Carry over	Meter purchases, tree removal, upgrade, Cathodic Proetc, Misc		778,000	(778,000)
Carry over/Trnsfr	J012 Replacement		80,000	(80,000)
New FTE	Water Quality Inspector		150,000	(150,000)
		-	1,536,691	- (1,536,691)
Fleet Maintenance - Fund 501				
Carry over/Trnsfr	Code Enf Maverick, Paint Truck, St Mower	445,816	445,816	-
Carry over/Trnsfr	Water F150, Waste Trucks	485,330	485,330	-
Carry over/Trnsfr	P147 and P159 Repl, Prewetting Equip	187,373	187,373	-
Carry over/Trnsfr	J012 Replacement	80,000	80,000	-
Carry over	Parts Washer	-	17,000	(17,000)
Carry over/Trnsfr	Asphalt Crack Sealer	34,160	34,160	-
		1,232,679	1,249,679	- (17,000)
GRAND TOTAL		1,682,419	5,211,509	- (3,529,090)

The detail concerning the above – referenced amendments are attached hereto as Exhibit “A”.

Section 2. Since the adoption of the 2023-2024 budget and in accordance with MMC 2.50.030, the 2023-2024 biennial budget hereby directs that City employees shall be compensated in accordance with the established pay classifications and grades or ranges attached hereto and contained in Exhibit “B”.

Section 3. Except as provided herein, all other provisions of Ordinance No. 3239 shall remain in full force and effect, unchanged.

Section 4. Upon approval by the city attorney, the city clerk or the code reviser are authorized to make necessary corrections to this ordinance, including scrivener’s errors or clerical mistakes; references to other local, state, or federal laws, rules, or regulations; or numbering or referencing of ordinances or their sections and subsections.

Section 5. Effective date. This ordinance shall become effective five days after the date of its publication by summary.

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2024.

CITY OF MARYSVILLE

By _____
MAYOR

ATTEST:

By _____
CITY CLERK

Approved as to form:

By _____
CITY ATTORNEY

Date of Publication: _____

Effective Date (5 days after publication): _____

EXHIBIT A – 2023-2024
Amendment Account Detail

Fund Title	Fund No.	Description	Current Budget	Amended Budget	Amount of Inc/(Dec)
General Fund	001	Beginning Fund Balance	\$ 17,553,776	\$ 17,553,776	\$ -
General Fund	001	Revenue	125,929,046	126,378,786	449,740
General Fund	001	Expenditures	136,165,672	137,679,601	1,513,929
General Fund	001	Ending Fund Balance	7,317,150	6,252,961	(1,064,189)
Technology (I/Net)	108	Beginning Fund Balance	8,770,299	\$ 8,770,299	\$ -
Technology (I/Net)	108	Revenue	5,104,966	5,104,966	-
Technology (I/Net)	108	Expenditures	8,150,000	8,680,000	530,000
Technology (I/Net)	108	Ending Fund Balance	5,725,265	5,195,265	(530,000)
City Facilities	314	Beginning Fund Balance	15,712	15,712	-
City Facilities	314	Revenue	6,645,652	6,645,652	-
City Facilities	314	Expenditures	6,662,504	7,043,714	381,210
City Facilities	314	Ending Fund Balance	(1,140)	(382,350)	(381,210)
Water/Sewer Utilities	401	Beginning Fund Balance	15,132,192	15,132,192	-
Water/Sewer Utilities	401	Revenue	62,468,161	62,468,161	-
Water/Sewer Utilities	401	Expenditures	71,268,496	72,805,187	1,536,691
Water/Sewer Utilities	401	Ending Fund Balance	6,331,857	4,795,166	(1,536,691)
Fleet Services	501	Beginning Fund Balance	448,479	448,479	-
Fleet Services	501	Revenue	8,376,113	9,608,792	1,232,679
Fleet Services	501	Expenditures	8,461,688	9,711,367	1,249,679
Fleet Services	501	Ending Fund Balance	362,904	345,904	(17,000)
Net Increase/(Decrease) \$					(3,529,090)

EXHIBIT B – 2024 Compensation Grids

CITY OF MARYSVILLE MANAGEMENT PAY GRID 2024

5% Increase

PAY CODE	TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	
M112	No Position	\$ 84,317 \$ 40.54	\$ 86,853 \$ 41.76	\$ 89,435 \$ 43.00	\$ 92,113 \$ 44.29	\$ 94,912 \$ 45.63	\$ 97,733 \$ 46.99	\$ 100,675 \$ 48.40	\$ 103,210 \$ 49.62	\$ 105,768 \$ 50.85	Annual Hourly
M113	Assistant Court Administrator Athletic Supervisor Cultural Arts Supervisor Recreation Supervisor Utility Billing Supervisor Police Records Supervisor	\$ 91,899 \$ 44.18	\$ 94,648 \$ 45.50	\$ 97,519 \$ 46.88	\$ 100,412 \$ 48.27	\$ 103,448 \$ 49.73	\$ 106,558 \$ 51.23	\$ 109,739 \$ 52.76	\$ 112,488 \$ 54.08	\$ 115,287 \$ 55.43	Annual Hourly
M114	HR Business Partner Senior Financial Analyst Management Analyst Prosecutor I	\$ 98,666 \$ 47.44	\$ 101,632 \$ 48.86	\$ 104,692 \$ 50.33	\$ 107,800 \$ 51.83	\$ 111,054 \$ 53.39	\$ 114,378 \$ 54.99	\$ 117,845 \$ 56.66	\$ 120,763 \$ 58.06	\$ 123,775 \$ 59.51	Annual Hourly
M115	Administrative Services Supervisor Training & Community Outreach Administrator Fleet and Facilities Supervisor IT Services Supervisor	\$ 105,601 \$ 50.77	\$ 108,735 \$ 52.28	\$ 112,010 \$ 53.85	\$ 115,381 \$ 55.47	\$ 118,850 \$ 57.14	\$ 122,413 \$ 58.85	\$ 126,096 \$ 60.62	\$ 129,204 \$ 62.12	\$ 132,431 \$ 63.67	Annual Hourly
M116	Parks Maintenance Supervisor Prosecutor II Solid Waste Supervisor Storm/Sewer Supervisor Street Supervisor Water Utility Supervisor Water Quality Supervisor Water Resource Supervisor Safety Manager Legal Services Manager Emergency Preparedness Manager GIS Manager Principal Planner	\$ 112,991 \$ 54.32	\$ 116,362 \$ 55.94	\$ 119,853 \$ 57.62	\$ 123,441 \$ 59.35	\$ 127,148 \$ 61.13	\$ 130,973 \$ 62.97	\$ 134,896 \$ 64.85	\$ 138,266 \$ 66.47	\$ 141,710 \$ 68.13	Annual Hourly
M117	Building Official Financial Operations Manager Financial Planning Manager Planning Manager Senior Project Engineer IT Operations Supervisor Human Resources Program Manager Communications Manager	\$ 118,609 \$ 57.02	\$ 122,174 \$ 58.74	\$ 125,832 \$ 60.50	\$ 129,610 \$ 62.31	\$ 133,533 \$ 64.20	\$ 137,502 \$ 66.11	\$ 141,638 \$ 68.10	\$ 145,178 \$ 69.80	\$ 148,813 \$ 71.54	Annual Hourly
M118	Engineering Services Manager Senior Project Manager Civic Campus Project Manager Public Works Services Manager Traffic Engineering Manager	\$ 124,565 \$ 59.89	\$ 128,271 \$ 61.67	\$ 132,122 \$ 63.52	\$ 136,091 \$ 65.43	\$ 140,204 \$ 67.41	\$ 144,389 \$ 69.42	\$ 148,717 \$ 71.50	\$ 152,447 \$ 73.29	\$ 156,251 \$ 75.12	Annual Hourly
M119	Assistant Parks Director Storm and Wastewater Utility Manager Water Utility Manager Transportation and Parks Maintenance Manager Court Administrator Lead Prosecutor	\$ 130,782 \$ 62.88	\$ 134,703 \$ 64.76	\$ 138,746 \$ 66.70	\$ 142,906 \$ 68.70	\$ 147,186 \$ 70.76	\$ 151,612 \$ 72.89	\$ 156,154 \$ 75.07	\$ 160,053 \$ 76.95	\$ 164,069 \$ 78.88	Annual Hourly
M120	Assistant City Engineer Economic Development Manager	\$ 137,310 \$ 66.01	\$ 141,423 \$ 67.99	\$ 145,656 \$ 70.03	\$ 150,056 \$ 72.14	\$ 154,553 \$ 74.30	\$ 159,192 \$ 76.53	\$ 163,973 \$ 78.83	\$ 168,063 \$ 80.80	\$ 172,270 \$ 82.82	Annual Hourly
M121	No Position	\$ 144,197 \$ 69.33	\$ 148,526 \$ 71.41	\$ 152,949 \$ 73.53	\$ 157,541 \$ 75.74	\$ 162,275 \$ 78.02	\$ 167,154 \$ 80.36	\$ 172,177 \$ 82.78	\$ 176,456 \$ 84.83	\$ 180,856 \$ 86.95	Annual Hourly
M122	Economic Development & Real Property Manager Assistant Public Works Director/City Engineer Deputy City Attorney	\$ 151,395 \$ 72.79	\$ 155,915 \$ 74.96	\$ 160,602 \$ 77.21	\$ 165,457 \$ 79.55	\$ 170,407 \$ 81.93	\$ 175,500 \$ 84.38	\$ 180,762 \$ 86.90	\$ 185,304 \$ 89.09	\$ 189,920 \$ 91.31	Annual Hourly
M123	Assistant Police Chief	\$ 166,532 \$ 80.06	\$ 171,529 \$ 82.47	\$ 176,672 \$ 84.94	\$ 181,980 \$ 87.49	\$ 187,408 \$ 90.10	\$ 193,052 \$ 92.81	\$ 198,840 \$ 95.60	\$ 203,813 \$ 97.99	\$ 208,907 \$ 100.44	Annual Hourly
M124	Community Development Director Parks Director IS Director HR Director	\$ 174,854 \$ 84.06								\$ 223,804 \$ 107.60	Annual Hourly
M125	Finance Director	\$ 183,606 \$ 88.27								\$ 234,997 \$ 112.98	Annual Hourly
M126	Police Chief City Attorney Public Works Director	\$ 192,788 \$ 92.69								\$ 246,762 \$ 118.64	Annual Hourly
M130	Chief Administrative Officer	\$ 208,357 \$ 100.17								\$ 266,697 \$ 128.22	Annual Hourly

NON REPRESENTED PAY GRID 2024

5% Increase

PAY CODE	TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	
N110	Human Resource Assistant	\$ 74,346	\$ 76,570	\$ 78,867	\$ 81,233	\$ 83,672	\$ 86,184	\$ 88,766	\$ 90,991	\$ 93,263	Annual Hourly
	Planning Technician	35.74	36.81	37.92	39.05	40.23	41.43	42.68	43.75	44.84	
	Confidential Legal Assistant										
	Computer Technician Victim/Witness Coordinator										
N111	Deputy City Clerk	\$ 78,794	\$ 81,186	\$ 83,601	\$ 86,112	\$ 88,695	\$ 91,325	\$ 94,099	\$ 96,441	\$ 98,858	Annual Hourly
	Probation Officer	\$ 37.88	\$ 39.03	\$ 40.19	\$ 41.40	\$ 42.64	\$ 43.91	\$ 45.24	\$ 46.37	\$ 47.53	
	Communications/Marketing Specialist										
	Confidential Admin Specialist										
N112	Code Enforcement Officer	\$ 84,317	\$ 86,853	\$ 89,435	\$ 92,113	\$ 94,912	\$ 97,733	\$ 100,675	\$ 103,210	\$ 105,768	Annual Hourly
	Confidential Admin Associate	40.54	41.76	43.00	44.29	45.63	46.99	48.40	49.62	50.85	
	Development Services Technician										
	Engineering Coordinator										
	GIS Technician										
	Inspector I - Building										
	Inspector I - Construction										
	Planning Assistant										
	Surface Water Specialist										
	Surface Water Inspector										
	Community Intervention Specialist I										
	Emergency Preparedness Specialist										
	Volunteer & Community Event Coordinator										
	N113	Associate Planner	\$ 91,899	\$ 94,648	\$ 97,496	\$ 100,412	\$ 103,425	\$ 106,558	\$ 109,739	\$ 112,488	
I.S. Analyst		\$ 44.18	\$ 45.50	\$ 46.88	\$ 48.27	\$ 49.73	\$ 51.23	\$ 52.76	\$ 54.08	\$ 55.43	
Engineering Technician											
Financial Analyst											
GIS Analyst											
Human Resource Specialist											
Inspector II - Building											
Inspector II - Construction											
Executive Services Coordinator											
NPDES Coordinator											
Senior Communications Specialist/PIO Community Intervention Specialist II											
N114	Crime & Intelligence Analyst	\$ 98,666	\$ 101,632	\$ 104,692	\$ 107,800	\$ 111,054	\$ 114,378	\$ 117,845	\$ 120,763	\$ 123,775	Annual Hourly
	Electronic Control Systems Administrator	\$ 47.44	\$ 48.86	\$ 50.33	\$ 51.83	\$ 53.39	\$ 54.99	\$ 56.66	\$ 58.06	\$ 59.51	
	Inspector III - Combo										
	Inspector III - Electrical Planner Systems & Database Analyst										
N115	Assistant Building Official	\$ 105,601	\$ 108,735	\$ 112,010	\$ 115,381	\$ 118,850	\$ 122,413	\$ 126,096	\$ 129,204	\$ 132,431	Annual Hourly
	Civil Plan Review	\$ 50.77	\$ 52.28	\$ 53.85	\$ 55.47	\$ 57.14	\$ 58.85	\$ 60.62	\$ 62.12	\$ 63.67	
	Project Engineer										
	Senior Planner										
	Associate Traffic Engineer City Clerk										
N116	IS System Administrator	\$ 112,991	\$ 116,362	\$ 119,853	\$ 123,441	\$ 127,148	\$ 130,973	\$ 134,896	\$ 138,266	\$ 141,710	Annual Hourly
	Risk and Program Manager	\$ 54.32	\$ 55.94	\$ 57.62	\$ 59.35	\$ 61.13	\$ 62.97	\$ 64.85	\$ 66.47	\$ 68.13	

MPOA - (OFFICERS & SERGEANTS)						
January 1, 2024 Through December 31, 2024						
5% increase						
Monthly						
PAY CODE	Step 0	Step 1	Step 2	Step 3	Step 4	Step 5
Entry Police	6,883					
Police Officers	7,648	7,940	8,225	8,673	9,173	9,537
Police Corporal		10,395				
Police Sergeant	10,784	11,253				

MPOA - (CUSTODY OFFICER, CORPORAL & COMMUNITY SERVICE OFFICER)							
January 1, 2024 - December 31, 2024							
4% increase							
Monthly							
PAY CODE	Step 0	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
	0-12 mo	13-24 m	25-36 m	37-48 m	49-60 m	61+ m	73+ m
Community Service Officer	5,586	5,814	6,052	6,300	6,559	6,828	7,093
Custody Sergeant	8,347	8,547					
Custody Corporal	7,452	7,631					
Custody Officer	5,726	5,970	6,179	6,396	6,647	6,926	7,132

MPMA - COMMANDER PAY GRID 2024

4.5% Increase

TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	
Police Commander	\$ 160,134	\$ 164,931	\$ 169,881	\$ 174,987	\$ 180,248	\$ 184,734	\$ 189,350	Annual
	\$ 76.99	\$ 79.29	\$ 81.67	\$ 84.13	\$ 86.66	\$ 88.81	\$ 91.03	Hourly

Teamsters Pay Grid 2024

5.0% Increase

2024 Classifications	Pay Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	
Custodian	U20	\$50,885	\$52,412	\$53,984	\$55,604	\$57,272	\$58,990	\$60,764	\$61,976	Annual
Maintenance Assistant		\$24.46	\$25.20	\$25.95	\$26.73	\$27.53	\$28.36	\$29.07	\$29.80	Hourly
Customer Service Representative	U25	\$61,063	\$62,894	\$64,781	\$66,724	\$68,726	\$70,788	\$72,558	\$74,372	Annual
Parks Maintenance Tech I		\$29.36	\$30.24	\$31.14	\$32.08	\$33.04	\$34.03	\$34.88	\$35.76	Hourly
Streets Maintenance Tech I										
Custodian Lead										
Accounting Tech - AP	U30	\$64,726	\$66,668	\$68,668	\$70,728	\$72,850	\$75,035	\$76,911	\$78,834	Annual
Accounting Tech - Utility Billing		\$31.12	\$32.05	\$33.01	\$34.00	\$35.02	\$36.07	\$36.98	\$37.90	Hourly
CD Program Specialist										
Purchasing/Inventory Specialist										
PW Administrative Assistant										
Storm/Sewer Tech I										
Utility Locator										
Judicial Process Specialist	U35	\$69,904	\$72,002	\$74,162	\$76,386	\$78,678	\$81,038	\$83,064	\$85,140	Annual
Meter Technician		\$33.61	\$34.62	\$35.65	\$36.72	\$37.83	\$38.96	\$39.93	\$40.93	Hourly
Parks Administrative Associate										
Police Records Tech										
Police Public Disclosure Specialist										
Parks Maintenance Tech II										
Solid Waste Tech II										
Streets Maintenance Tech II										
Storm/Sewer Tech II										
Traffic Maintenance Worker II										
Traffic Control Systems Tech										
Evidence Specialist	U40	\$74,099	\$76,321	\$78,611	\$80,970	\$83,398	\$85,901	\$88,048	\$90,249	Annual
Parks Administrative Specialist		\$35.62	\$36.69	\$37.79	\$38.93	\$40.10	\$41.30	\$42.33	\$43.39	Hourly
Planning Administrative Specialist										
PW Administrative Specialist										
Police Administrative Specialist										
Senior Accounting Tech										
Senior Permit Tech										
WWTP Maintenance Tech I										
Cross Connection Control Specialist	U45	\$77,803	\$80,137	\$82,542	\$85,017	\$87,568	\$90,195	\$92,450	\$94,761	Annual
Parks Maintenance Lead I		\$37.41	\$38.53	\$39.68	\$40.87	\$42.10	\$43.36	\$44.45	\$45.56	Hourly
Police Records Tech Lead										
Streets Maintenance Lead I										
Storm/Sewer Lead I										
Water Operations Tech II										
Construction Tech II										
Water Quality Specialist										
Facilities Maintenance Journeyman	U50	\$83,249	\$85,747	\$88,320	\$90,969	\$93,698	\$96,509	\$98,922	\$101,394	Annual
Industrial Waste/Pretreatment Technician		\$40.02	\$41.22	\$42.46	\$43.74	\$45.05	\$46.40	\$47.56	\$48.75	Hourly
Mechanic										
Streets Maintenance Tech Lead II										
Storm/Sewer Tech Lead II										
Solid Waste Lead II										
Parks Maintenance Lead II										
WWTP Operator										
Construction Lead I										
Water Operator										
WWTP Maintenance Tech II										
Mechanic Lead II	U55	\$89,077	\$91,749	\$94,502	\$97,337	\$100,257	\$103,264	\$105,846	\$108,492	Annual
Senior Traffic Control Systems Tech		\$42.83	\$44.11	\$45.43	\$46.80	\$48.20	\$49.65	\$50.89	\$52.16	Hourly
Construction Lead II										
Water Operations Lead II										
Water Quality Lead										
WWTP Maintenance Lead										
WWTP Operations Lead										
Utility Electrician										



MARYSVILLE
FINANCE

TO: Mayor and City Council
FROM: Jennifer Ferrer-Santa Ines, Finance Director
DATE: February 1, 2024
RE: Q1 2024 Budget Amendment Memo

This budget ordinance provides for course corrections based on new information for the 2024 budget year that was not known at the time of budget adoption. Staff routinely brings budget amendments to be transparent and accountable.

A budget amendment is a recurring budget process step; staff accumulates new information anticipating to bring adjustments of this type to Council and is typically for one of four reasons:

- 1) New additional revenue makes it possible to approve additional related expenses,
- 2) Prior-year budgeted obligations need to be rolled forward to match disbursement in the current year, if not yet disbursed by February 2nd,
- 3) Accumulated fund balances can be appropriated, and
- 4) Corrections or changes between funds.

Revenue adjustments included in this amendment total \$1,682,419. Expenditure adjustments total \$5,211,509 for a net decrease of \$3,529,090.

This amendment includes carry-over adjustments for planned work or purchases in 2023 that either did not take place or disbursement of funds will be made in 2024. There are also cost increases associated with public defense cost, Sno911, and Labor & Industries due to claims experience. Additionally, grant funds that have been awarded to the City after budget adoption are also included.

The revised salary grids included in the Ordinance reflect a new Water Quality Supervisor budgeted at \$150,000 (salaries and benefits). This additional supervisor will provide the necessary oversight of operations and personnel within the water utility division to ensure continuity within the Public Works Department.

(360) 363-8000

Civic Center
501 Delta Ave
Marysville, WA 98270



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Grant Coordinator Kari Chennault, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Energy Efficiency and Conservation Block Grant (EECBG) Program Equipment Rebate Voucher *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the Equipment Rebate Terms and Conditions to receive a voucher in the amount of \$124,740.

SUMMARY: City staff have been notified by the U.S. Department of Energy that they have approved the city’s EECBG Program Equipment Rebate Voucher application. In order to accept the award, the city needs to sign the attached terms and conditions of the award.

The city will receive a voucher for \$124,740 to be used towards the purchase and installation of solar panels for the City of Marysville’s Civic Center Building.

ATTACHMENTS:
[Equipment Rebate Terms and Conditions.pdf](#)

Special Terms and Conditions

Entity Name: _____ (“Recipient”), which is identified in the Assistance Agreement, and the Office of State and Community Energy Programs (“SCEP”), and Energy Efficiency and Conservation Block Grant Program (“EECBG”), an office within the United States Department of Energy (“DOE”), enters into this Award, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Special Terms and Conditions
Attachment 1	Federal Assistance Reporting Checklist (FARC) ¹
Attachment 2	NEPA Determination ²

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- National Policy Requirements (November 12, 2020) at <http://www.nsf.gov/awards/managing/rtc.jsp>.
- The Recipient’s application/proposal as approved by SCEP.
- Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).

¹ The FARC will be provided at a later date.

² The NEPA Determination is attached to your application in the EECBG Program Voucher Application Portal

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Subpart A. General Provisions

Term 1. Legal Authority and Effect

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically The EECBG Program Voucher Portal (<https://doerebates.my.site.com/eecbgvouchers/s/>), constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via the EECBG Program Voucher Portal by the Recipient's authorized representative constitutes the Recipient's electronic signature.

Term 2. Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award, as applicable to all subcontractors as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all subcontractors and to require their strict compliance therewith.

Term 3. Compliance with Federal, State, and Municipal Law

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

Term 4. Inconsistency with Federal Law

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

Term 5. Federal Stewardship

SCEP will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

Term 6. NEPA Requirements

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, SCEP has made a

NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Application approved by the Contracting Officer and the DOE NEPA Determination. The Recipient is thereby authorized to use Federal funds for the defined project activities, except where such activity is subject to a restriction set forth elsewhere in this Award.

This authorization is specific to the project activities and locations as described in the Application approved by the Contracting Officer and the DOE NEPA Determination.

If the Recipient later intends to add to or modify the activities or locations as described in the approved Application and the DOE NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

Condition(s):

NEPA Logs if conducting potentially ground disturbing activities.

Term 7. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 8. Reporting Requirements

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

Term 9. Lobbying

By accepting funds under this Award, the Recipient agrees that none of the funds obligated on the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 10. Publications

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of State and Community Energy Programs (SCEP) under the Energy Efficiency and Conservation Block Grant (EECBG) Program Application # XXXXXXXXX”
- *Full Legal Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

Abridged Legal Disclaimer: “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

Term 11. No-Cost Extension

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

Term 12. Property Standards

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

Term 13. Insurance Coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

Term 14. Real Property

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Term 15. Equipment

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as

described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. See also 2 CFR 200.439 Equipment and other capital expenditures.

Term 16. Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Term 17. Property Trust Relationship

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

Term 18. Record Retention

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

Term 19. Audits

A. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference

with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

Term 20. Indemnity

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

Term 21. Foreign National Participation

If the Recipient (including any of its contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE's request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national's participation in the Award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs or personnel.

Term 22. Post-Award Due Diligence Reviews

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

Subpart B. Financial Provisions

Term 23. Maximum Obligation

The maximum obligation of DOE for this Award is the total “Funds Obligated” stated in Block 13 of the Assistance Agreement to this Award.

Term 24. Refund Obligation

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

Term 25. Allowable Costs

SCEP determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subcontractors, and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to SCEP. Such records are subject to audit. Failure to provide SCEP adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

Term 26. Decontamination and/or Decommissioning (D&D) Costs

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient’s facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

Term 27. Use of Program Income

If the Recipient earns program income during the project period as a result of this Award, the

Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

Term 28. Payment Procedures

A. Method of Payment

Payment will be made by reimbursement by CFO through ACH. Equipment rebate voucher applications will be approved for payment by DOE once the equipment has been installed and all required documentation has been provided.

B. Payments

All payments are made by electronic funds transfer to the bank account identified attached to the Recipient's UEI and identified in the Recipient's SAM.gov account.

C. Unauthorized Drawdown of Federal Funds

For each budget period, the Recipient may not spend more than the Federal share authorized to that award, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent in excess of the authorized amount.

A. Supporting Documents for Agency Approval of Payments

DOE may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, proof of installation and other expenditure explanations that justify the payment requests.

Term 29. Budget Changes

A. Budget Changes Generally

The Contracting Officer has reviewed and approved the budget in Attachment 1 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

B. Transfers of Funds Among Direct Cost Categories

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost stated in the budget on the recipient's application.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, stated in the budget on the recipient's application.

Subpart C. Miscellaneous Provisions

Term 30. Environmental, Safety and Health Performance of Work at DOE Facilities

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H requirements.

The Recipient is required apply this provision to its contractors.

Term 31. System for Award Management and Universal Identifier Requirements

A. Requirement for Registration in the System for Award Management (SAM)

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, tThe Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

B. Unique Entity Identifier (UEI)

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information

is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.
- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

C. Definitions

For purposes of this award term:

- i. 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 SAM Internet site (currently at).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:
 1. A Governmental organization, which is a State, local government, or Indian Tribe.
 2. A foreign public entity.
 3. A domestic or foreign nonprofit organization.
 4. A domestic or foreign for-profit organization.
 5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- iv. Subaward:
 1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients*

and Contractors and/or 2 CFR 910.501 Audit requirements, (f) Subrecipients and Contractors).

3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.
- v. Subrecipient means an entity that:
 1. Receives a subaward from the Recipient under this Award; and
 2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 32. Nondisclosure and Confidentiality Agreements Assurances

- A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
 - i. *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*
 - ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity,

other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Term 33. Contractor Change Notification

Except for contractors specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified contract agreements, including naming any To Be Determined contractors. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the service to be provided or the equipment to be purchased.
- An assurance that the process undertaken by the Recipient to solicit the contractor complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected contractor and that the Recipient's written standards of conduct were followed.³
- A completed Environmental Questionnaire, if applicable.
- An assurance that the contractor is not a debarred or suspended entity.
- An assurance that all required award provisions will be flowed down in the resulting contract agreement.

³ It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

The Recipient is responsible for making a final determination to award or modify contractor agreements under this agreement, but the Recipient may not proceed with the contractor agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the contractor documentation stipulated above, the Recipient may proceed to award or modify the proposed contractor agreement.

Term 34. Recipient Integrity and Performance Matters

A. General Reporting Requirement

If the total value of your currently active Financial Assistance awards, grants, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

4. Any other criminal, civil, or administrative proceeding if:
 - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
 - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this term:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—

1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Term 35. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

Term 36. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE’s interim COI Policy.

Term 37. Organizational Conflict of Interest

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to

be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the Federal government.

The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring contractor compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

Term 38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

- (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video

surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

Term 39. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

- 1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
- 2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects>

Term 40. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements

Term 41. Reporting, Tracking and Segregation of Incurred Costs

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

Term 42. Davis-Bacon Requirements

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair, through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts.
- (2) being responsible for compliance by any subcontractor with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, , contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the award starts. The applicant does not have the right to appeal SCEP's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

Term 43. Buy American Requirement for Infrastructure Projects

**NOTE: Buy American Requirements only apply to awards over \$250,000. Please disregard this section if your total EECBG Program award is less than \$250,000.*

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or enginSCEPd wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

(A) all iron and steel used in the project are produced in the United States;

(B) the manufactured products used in the project are produced in the United States; or

(C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy - including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered "public" if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be "utilized primarily for a public purpose" if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;

- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- **Time-limited:** Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- **Targeted:** Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- **Conditional:** The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant

waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

Term 44. Affirmative Action and Pay Transparency Requirements

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients and contractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide⁴ should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

Term 45. Potentially Duplicative Funding Notice

If the Recipient have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Term 46. Transparency of Foreign Connections

⁴ See OFCCP's Technical Assistance Guide at:

<https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8c6fecb6c710ec> Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or contractors:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or contractors that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

Term 47. Foreign Collaboration Considerations

- a. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- b. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published

process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

Authorized Signature

Date

Name:

Title:

Entity Name:



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Revised Public Defense Conflict Counsel PSA - Chris Griffen *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Chris Griffen.

SUMMARY:

Minor revisions to PSA, including reducing the Professional Liability limits and adding a \$1,000 stipend per calendar year to assist with insurance costs, training, or other related expenses. Adding an additional attorney as back-up: Lucas McWethy

From 12/4/23 Agenda Packet:

The City is required to provide public defense services for defendants unable to afford their own representation. To qualify as indigent, the individual must receive an annual income, after taxes, of 125 percent or less of the current federally established poverty level. The Washington State Supreme Court has set minimum standards for indigent defense that the City is required to meet. The City contracts with Feldman & Lee as its primary public defense firm. Situations can arise where the primary firm has a conflict and another firm or attorney must be assigned. The City is also required to provide a back up defender for these situations. The City has not previously negotiated formal contracts with conflict counsel in the past. Instead these were assigned by the Court through a voucher process. In the interests of ensuring the City is fully compliant with state standards, we are formalizing the assignment of conflict counsel with a professional services agreement that incorporates the standards. We also reviewed rates and sought additional attorneys to provide these services. The process resulted in three attorneys proposed for engagement of services - Chris Griffen, Meredith Hutchison and Jamie Kim. These agreements are proposed to run January 1, 2024 through December 31, 2026.

ATTACHMENTS:

[Conflict Counsel PSA_CGriffen_REVFinal_2024.pdf](#)

**CITY OF MARYSVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR INDIGENT DEFENSE SERVICES
(CONFLICT COUNSEL)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of the last signature below, by and between the City of Marysville, a municipal corporation under the laws of the State of Washington, (the “City”) and Chris Griffen, an attorney whose address is 2804 Grand Ave, St 300H, Everett, WA 98201 (the “Conflict Counsel”).

WHEREAS, the City provides indigent defense services to individuals who have been determined to be eligible for representation at public expense for criminal charges before the Marysville Municipal Court; and

WHEREAS, the Supreme Court has by Order dated June 15, 2012, adopted New Standards for Indigent Defense and Certification of Compliance (the “Supreme Court Standards”), which impose certain standards, requirements, and a caseload limit of 400 unweighted misdemeanor cases per attorney for all attorneys providing indigent defense services; and

WHEREAS, the City has adopted Standards for the Delivery of Public Defense Services by Resolution No. 2368 adopted November 24, 2014 (the “City Standards”); and

WHEREAS, the City has contracted with Feldman and Lee, P.S., to handle the majority of cases which require appointment of a public defender but conflicts of interest sometimes require that Feldman and Lee, P.S., refuse appointment or withdraw from representation of certain individuals and it is possible that caseload limitations will require Feldman and Lee, P.S., to refuse appointment from representation of certain individuals; and

WHEREAS, Conflict Counsel represents that Conflict Counsel is willing, qualified, and able to accept appointments by the Municipal Court to represent indigent defense clients whom Feldman and Lee, P.S., may not represent;

NOW, THEREFORE, the City and Conflict Counsel enter into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. **Term.** The term of this Agreement shall be from the January 1, 2024 to December 31, 2026, unless earlier terminated as provided herein.
2. **Scope of Services, Standards, and Warranty.** During the term of the Agreement, Conflict Counsel will accept appointments to represent individuals (“Clients”) who have been charged with criminal offenses in the Marysville Municipal Court (the “Municipal Court”), who are determined to be eligible for representation at public expense, and who the City’s primary

public defender, Feldman and Lee, P.S., may not represent (such representation, the “Services”). The Services may also include representing Clients on appeals to the Snohomish County Superior Court. This Agreement does not guarantee that Conflict Counsel will be appointed any Clients, as appointments are at the discretion of the Municipal Court Judges and their delegates.

Conflict Counsel will provide the Services in accordance with this Agreement, the Supreme Court Standards, and the City Standards. Conflict Counsel warrants that Conflict Counsel has read and is fully familiar with the provisions of the Supreme Court Standards and the City Standards, both of which are attached hereto as Exhibit A and incorporated by this reference. Conflict Counsel warrants that Conflict Counsel has the qualification and experience necessary to accept appointment to misdemeanors, gross misdemeanors, and RALJ appeals and to comply with the Supreme Court Standards and the City Standards. Compliance with the Supreme Court Standards and the City Standards goes to the essence of this Agreement. To that end, and in accordance with court rule, Conflict Counsel shall certify compliance, quarterly, with the Municipal Court on the form established for that purpose by court rule. Conflict Counsel further warrants that the compensation detailed in Section 5 is sufficient to cover the cost of providing the Services, including Conflict Counsel’s infrastructure, support and administrative services, and systems necessary to comply with the Supreme Court Standards and the City Standards. Conflict Counsel shall promptly notify the City if any circumstance, including a change in court rules or law, renders it difficult or impossible to provide the Services in compliance with this Agreement, the Supreme Court Standards, or the City Standards.

3. Client Representation.

3.1. Appointment. During the term of the Agreement, Conflict Counsel will accept appointments from the Municipal Court, provided, however, that in no event is Conflict Counsel required to accept appointment where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel’s existing caseload would preclude adequate representation. Except as otherwise provided in this Agreement and irrespective of the term of this Agreement, Conflict Counsel shall provide representation for each Client appointed during the term of the Agreement until the case is closed by the Municipal Court. Expiration or termination of this Agreement does not affect Conflict Counsel’s obligation to represent Clients until the case is closed by the Municipal Court, except as provided in Section 3.3.

3.2. Course of Representation.

3.2.1. Conflict Counsel shall be available to each Client to ensure that the Client is provided with effective assistance of counsel. Confidential Client access to Conflict Counsel prior to court hearings is paramount. Conflict Counsel shall use best efforts to confer with Clients about cases promptly after appointment and prior to trial or hearings.

3.2.2. Conflict Counsel shall maintain an office that is reasonably available to Clients residing within the corporate limits of the City, but the office is not required to be located within the City. Conflict Counsel shall be available to Clients by phone, email, and postal mail.

3.2.3. Conflict Counsel shall respond to Client inquiries within a reasonable time to ensure the effective assistance of counsel, whether such inquiries are received by letter, telephone, email, or otherwise.

3.2.4. Conflict Counsel shall maintain a case reporting and case management information system and shall track time spent on each Client's case. Conflict Counsel's case reporting and case management information system shall have sufficient capacity to generate the reports required by Section 4.

3.3. Withdrawal.

3.3.1. In no event is Conflict Counsel required to continue representation where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel's existing caseload would preclude adequate representation. In such event, Conflict Counsel shall motion the court to withdraw, alerting the court to the ethical implications of continued representation.

3.3.2. Upon termination for convenience pursuant to Section 6.2 or an agreed termination pursuant to Section 6.3 and unless otherwise agreed upon in writing, Conflict Counsel shall continue representation in all pending Client cases until the case is closed by the Municipal Court. Provided, however, that if the Client fails to appear for a court appearance, Conflict Counsel may motion the court to withdraw.

3.3.3. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall motion the court to withdraw from all pending Client cases immediately, providing adequate notice to all Clients.

4. Reporting. Conflict Counsel shall submit to the City's Public Defense Administrator a copy of each and every Certification of Compliance filed with the Municipal Court pursuant to court rule. In addition, Conflict Counsel shall submit a quarterly report to the City's Public Defense Administrator that includes the name of each Client appointed by the Municipal Court in the preceding quarter, the date of appointment, the case number, the charge(s), the disposition of the charge(s), and the method of disposition (i.e. trial, plea, motion, etc.). In addition, the quarterly report shall contain such information required by the City Standards to allow the City to determine Conflict Counsel's compliance with caseload limits, including information pertaining to Conflict Counsel's other municipal public defense contracts and Conflict Counsel's private practice, if any.

5. Compensation and Payment. Subject to all the provisions of this section, the City shall pay Conflict Counsel up to \$450.00 per case for the Services. In a case in which a trial is held before a jury or a bench trial, Conflict Counsel shall be authorized to bill up to an additional \$450.00. In a case in which a RALJ appeal is filed with the Superior Court and in which a brief of the appellant is filed, Conflict Counsel shall be authorized to bill up to an additional \$450.00. If there are any post-conviction hearings (e.g. failure to comply), Conflict Counsel will be compensated at the rate of \$75.00 per hour for preparing and appearing at such hearings.

In addition to per case payments and payment for case expenses identified below, Conflict Counsel may invoice the City for (1) insurance, (2) continuing legal education, and (3) miscellaneous costs subject to the approval of the Public Defense Administrator. Reimbursement for these costs and expenses is \$1,000.00 per calendar year.

5.1. Conflict Counsel warrants that the payment contemplated covers all infrastructure, overhead, equipment, support and administrative services, routine investigation, and systems necessary to comply with the Supreme Court Standards and the City Standards, except as provided below.

5.2. The City shall pay for the following case expenses in addition to any per case fee when reasonably incurred and approved by the Municipal Court on ex-parte motion:

5.2.1. Investigation expenses;

5.2.2 Medical and psychiatric evaluations;

5.2.3. Expert witness fees and expenses;

5.2.4. Interpreters fees;

5.2.5. Polygraph, forensic, and other scientific tests;

5.2.6. Lay witness fees and mileage incurred in bringing defense witnesses to court, including the cost of service of a subpoena, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

5.2.7. The cost of obtaining medical, school, birth, DMV, and other similar records and 911 and emergency communication recordings and logs to the extent they are not provided through discovery; and

5.2.8. Any other costs or expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

5.3. For post-conviction relief cases, the City shall pay the cost to obtain copies of the court file, the transcript, and original charging documents.

5.4. In the event Conflict Counsel has a conflict of interest that prevents Conflict Counsel from representing a Client, Conflict Counsel shall not be required to compensate any other attorney subsequently appointed.

5.5. Conflict Counsel is not guaranteed any payment under this Agreement as payment is contingent on Conflict Counsel being assigned Clients. In no event will the City be liable to the Contractor for loss of business.

5.6. Invoices. In order to receive payment, Conflict Counsel will submit an invoice to the City's Public Defense Administrator. The invoice shall be on a form approved by the Public Defense Administrator and shall detail the name of the Client, the charge(s), the date of appointment, the case number, and the services provided. Services may be invoiced as follows:

a. Upon appointment, completing a conflicts check, and filing a notice of appearance, Conflict Counsel may invoice for \$450.00.

b. Upon completion of a trial, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee.

c. Upon a final ruling in a RALJ appeal, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee and any trial fee.

d. Upon completing a post-conviction hearing, Conflict Counsel may invoice for hours (or fractions of hours) spent on the matter at a rate of \$75.00 per hour.

5.7. In the event of termination under Section 6.2 or 6.3, Conflict Counsel shall promptly submit invoices for any Services performed, but not yet compensated.

5.8. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall promptly submit invoices to the City for Services performed on each Client's case before the earlier of: (1) the violation of a material term or (2) notice of a contract violation that ultimately led to termination for cause.

6. Termination.

6.1. For Cause. This Agreement may be terminated for cause for violation of any material term. "Material term" shall include any violation indicating a failure to provide representation in accordance with the Supreme Court Standards, the City Standards, the Rules of Professional Conduct, and any applicable court rules; a violation of the provisions of Section 9 relating to insurance; conviction of a criminal charge; or a finding that the license of Conflict Counsel has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of a contract violation

shall be provided to Conflict Counsel and Conflict Counsel shall have ten (10) business days to correct the violation. If Conflict Counsel fails to correct the violation, the City, in its sole discretion, may terminate the Agreement for cause or may agree in writing to alternative corrective measures.

6.2. For Convenience. Either party may terminate this Agreement at any time, without cause, by providing the other party not less than ninety (90) days written notice.

6.3. Agreed. The parties may agree in writing to terminate the Agreement at any time.

7. Nondiscrimination. Neither Conflict Counsel nor any person acting on behalf of Conflict Counsel shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates or in the provision of Services under this Agreement.

8. Indemnification. Conflict Counsel agrees to defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of Conflict Counsel in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes Conflict Counsel's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

9.1. Conflict Counsel shall obtain insurance of the types and coverage described below:

9.1.1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under Conflict Counsel's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

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

9.1.3. Professional Liability insurance appropriate to Conflict Counsel's undertakings. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.2. Conflict Counsel shall maintain the following insurance limits:

9.2.1.

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

9.2.2. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.3. Conflict Counsel's Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Conflict Counsel's insurance and shall not contribute with it.

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

9.5. Conflict Counsel shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Conflict Counsel before commencement of the Services.

9.6. Conflict Counsel shall provide the City with written notice of any policy cancellation within two (2) business days of its receipt of such notice.

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

9.8. If Conflict Counsel maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General, Professional Liability, and Excess or Umbrella liability maintained by Conflict Counsel, irrespective of whether such limits maintained by Conflict Counsel are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Conflict Counsel.

9.9. Conflict Counsel's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Conflict Counsel to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Work Performed by Conflict Counsel. In addition to compliance with the Supreme Court Standards and the City Standards in performing the Services under this Agreement, Conflict Counsel shall comply with all federal, state, and municipal laws, ordinances, rules, and regulations which are applicable to Conflict Counsel's business, equipment, and personnel engaged in performing the Services under this Agreement.

11. Work Performed at Conflict Counsel's Risk. Conflict Counsel shall be responsible for the safety of its employees, agents, and subcontractors in providing the Services, and shall take all protections reasonably necessary for that purpose. All Services shall be done at Conflict Counsel's own risk and Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the Services. Conflict Counsel shall also pay its employees all wages, salaries, and benefits required by law and provide for taxes, withholding, and all other employment related charges, taxes, or fees in accordance with law and IRS regulations.

12. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Supreme Court Standards and City Standards incorporated in this Agreement. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by Conflict Counsel without the express written consent of the City shall be void.

13. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and Conflict Counsel.

14. Entire Agreement. This Agreement contains the entire agreement between the City and Conflict Counsel. The provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

15. Written Notice. All reports, notices, and communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified in writing to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

TO THE CITY:

City of Marysville

Attn.: Chief Administrative Officer

501 Delta Avenue

Marysville, WA 98270

TO CONFLICT COUNSEL:

Chris Griffen

Griffen Law Office

2804 Grand Ave., Ste 300H

Everett, WA 98201

Email: chris@everettdefense.com

Phone: 425-405-0016

16. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding, or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Chief Administrative Officer, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Supreme Court Standards or City Standards or which relate to any manner whatsoever to trial strategy or an ongoing case shall be referred to a Judge of the Municipal Court. Nothing herein shall be construed to obligate, require, or permit the City, its officers, agents, or employees to inquire into any privileged communication between Conflict Counsel and a Client. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

[Signature Page Follows]

CITY OF MARYSVILLE

CONFLICT COUNSEL

Mayor Jon Nehring

Date Signed: _____

Date Signed: _____

ATTEST:

Chari Taber, Deputy City Clerk

APPROVED AS TO FORM:

Jon Walker, City Attorney

EXHIBIT A

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW
STANDARDS FOR INDIGENT DEFENSE AND
CERTIFICATION OF COMPLIANCE

ORDER

NO. 25700-A-1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15th day of June, 2012.

FILED
 SUPREME COURT
 STATE OF WASHINGTON
 12 JUN 15 AM 8:00
 BY RONALD A. CARPENTER
 CLERK

639/7

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IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.
J. M. Johnson
Wiggins, J.

Joe Johnson

Stephens, J.

Gonzalez, J.

STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

Standard 3: Caseload Limits and Types of Cases

- 3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
- 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.
- 3.3 **General Considerations**
Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney’s caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney’s numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

STANDARDS FOR INDIGENT DEFENSE

Definition of case: A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. [*Effective September 1, 2013*]

3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
 - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
 - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,

STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

Standards for Indigent Defense
Page 4

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

STANDARDS FOR INDIGENT DEFENSE

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996)
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-1.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.2 Attorneys' qualifications according to severity or type of case¹:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
 - i. The minimum requirements set forth in Section 1; and
 - ii. At least five years criminal trial experience; and
 - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
 - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
 - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
 - vi. Have completed at least one death penalty defense seminar within the previous two years; and
 - vii. Meet the requirements of SPRC 2.²

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

²SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases – Class B Violent Offense

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)

STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and

³ RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

STANDARDS FOR INDIGENT DEFENSE

- J. Juvenile Status Offenses Cases.** Each attorney representing a client in a “Becca” matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.
- K. Misdemeanor Cases**
Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.
- L. Dependency Cases**
Each attorney representing a client in a dependency matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
 - iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
 - iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.
- M. Civil Commitment Cases**
Each attorney representing a respondent shall meet the following requirements:
- i. The minimum requirements set forth in Section 1; and
 - ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
 - iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor, or
 - b. served one year as a public defender, or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and

STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1. Mental health issues; and
 - 2. Sexual offenses; and
 - 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

STANDARDS FOR INDIGENT DEFENSE

14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
 - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
 - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

STANDARDS FOR INDIGENT DEFENSE

CERTIFICATION OF COMPLIANCE
“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for
--

Certification of Appointed Counsel of
Compliance with Standards Required by
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately _____ % of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigation services as

STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

Defendant's Lawyer, WSBA#

Date

EXHIBIT B

RESOLUTION NO. 2368

**A RESOLUTION OF THE CITY OF MARYSVILLE, WASHINGTON
AMENDING NEW STANDARDS FOR THE DELIVERY OF PUBLIC
DEFENDER SERVICES PURSUANT TO RCW 10.101.030 ADOPTED
BY RESOLUTION 2363**

WHEREAS, RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services, specifies the topics to be addressed in such standards, and urges local legislative bodies to use the standards endorsed by the Washington State Bar Association for indigent defense as guidelines; and

WHEREAS, the City adopted new standards for the delivery of public defender services by Resolution 2363 adopted July 28, 2014; and

WHEREAS, after review, consultation with the City's public defender and further consideration, City Council finds it would promote the public interest to make certain amendments to the standards as set forth in Exhibit A,

NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City of Marysville Standards for the Delivery of Public Defense Services as set forth in Exhibit A to this resolution are hereby adopted and approved, and supersede the Standards of the Delivery of Public Defense Services as adopted by Resolution 2363.

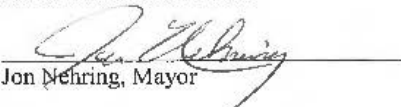
Section 2. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Marysville Municipal Court.

Section 3. **EFFECTIVE DATE.**

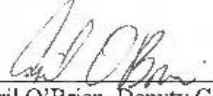
The provisions of this resolution shall be effective upon adoption.

RESOLVED:

CITY OF MARYSVILLE


Jon Nehring, Mayor

ATTEST:



April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:



Grant K. Weed, City Attorney

EXHIBIT A

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of RCW 10.101.030, the rules established by the Washington State Supreme Court, and the requirements of the Sixth Amendment to the U.S. Constitution. The provisions of these standards shall be construed to effectuate their stated purpose, which is to provide standards that afford quality representation in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system meeting all legal requirements for the provision of public defense services. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or decisions of Washington State and federal courts.

1. DUTIES AND RESPONSIBILITIES OF COUNSEL.

1.1 Public defense services ("the Services") shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules and decisions defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Services shall be provided to indigent clients whose eligibility has been determined by the City of Marysville through an established screening process.

1.3 All Public Defenders providing services by contract shall certify their compliance with the standards for indigent defense by filing a Certification of Compliance quarterly, as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Marysville Municipal Court. Copies of each Public Defender's certification shall be provided to the City.

2. QUALIFICATIONS OF ATTORNEYS.

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense" or "Public Defender") or appointed by the Marysville Municipal Court in a particular case shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 In a firm providing public defense services, one attorney shall be designated as the lead attorney. The designated Public Defender or the designated lead attorney in a firm providing public defense services by contract shall have a minimum of five years of experience in a practice emphasizing criminal defense.

shall: 2.3 Attorneys and Rule 9 interns performing services under contract

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

3. TRAINING, SUPERVISION, AND EVALUATION OF ATTORNEYS.

3.1 The designated lead attorney in a firm providing public defender services shall be responsible for training, supervising, and evaluating all attorneys in the firm providing public defender services.

3.2 No attorney in a firm providing public defender services shall be assigned sole or primary responsibility for a case unless the lead attorney determines that attorney has the required training, experience, knowledge and skill.

3.3 All attorneys providing public defense services shall participate in a minimum of seven hours of continuing legal education per year in areas relating to criminal defense law and practice.

3.4 In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the City by the same contract and in the same entity, the contract for services shall provide for in-house training. Proposals made in response to requests for proposals for pursuit of a contract for Public Defense Services shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the Marysville Municipal Court and encourage the

opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

4. COMPENSATION OF COUNSEL.

The City has a constitutional obligation to provide Public Defense Services that ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. Compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

4.1 The Public Defender may move the court to fix additional compensation in the event that a particular case requires an extraordinary amount of time and preparation, or to approve adjustment of the caseload counting for that case pursuant to Standard 7.7.

4.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract.

5. ADMINISTRATIVE EXPENSES AND SUPPORT SERVICES.

5.1 All contracts for Public Defense shall provide sufficient amounts, in addition to reasonable compensation for attorneys, for adequate administrative expenses and supports services to provide for adequate staffing and other costs associated with the day to day management of a law office. Administrative expenses include travel, telephones, law library including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training. Support services include secretaries, word processing staff, paralegals, and access to translators, social work staff, mental health professionals, and immigration law advice, as appropriate,

5.2 Private offices and/or conference rooms shall be available which are convenient to defendants charged in the Marysville Municipal Court and allow the maintenance of confidentiality. Public Defenders shall maintain a telephone system, an email address and postal address to enable convenient communications by clients.

6. RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS ASSOCIATED WITH REPRESENTATION

The expenses of expert witnesses and investigative costs in appropriate cases shall be borne by the City.

6.1 The Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

6.2 The services of expert witnesses will be paid directly by the City when approved by the Court through ex parte motion.

6.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Contracts for Public Defense Services may include investigative services as a part of reimbursed overhead included in the contract compensation for investigators employed by a firm.

7. CASELOAD LIMITS AND TYPES OF CASES.

7.1 The Public Defender shall provide Services to all eligible person charged in the Marysville Municipal Court with violation of the City's ordinances defining misdemeanor and gross misdemeanor crimes for which incarceration is a possible consequence upon conviction, and RALJ appeals of convictions to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

7.2 The caseload of a full time public defender or assigned counsel shall not exceed four hundred cases per year.

7.3 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

7.4 The caseload of a Public Defender who also maintains a private practice shall not exceed the number of cases resulting from multiplying 400 cases by the percentage of his or her time the public defender devotes to providing public defense services under all contracts for public defense services.

7.5 A case credit is a unit of work computed as follows:

7.5.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Prosecutor to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which, after performing a conflicts check, receiving discovery and having

a a confidential conference with the client, the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

7.5.2 Each case assigned to the Public Defender shall only be counted once, irrespective of the number of hearings either prior to disposition or post disposition.

7.5.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

7.5.4 If the Public Defender is required to attend an arraignment or probation review/failure to comply calendar, each hour of such calendar time shall be counted as 0.17 case credit toward the maximum caseload limit. This shall apply regardless of whether the attorney is appointed to represent a client.

7.5.5 A case in which a jury is empaneled shall be counted as three case credits.

7.5.6 A RALJ appeal to which the Public Defender is assigned shall not count as a case credit if dismissed prior to briefing.

7.6 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

7.7 The standards provided herein for caseloads may be adjusted upward depending upon the complexity of a particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards to be increased depending upon the complexity and requirements of the case. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

8. LIMITATIONS ON PRIVATE PRACTICE.

Subject to the provisions of Standard Six on Caseload Limits, there is no prohibition on a public defender engaging in private practice, provided, such private practice does not

interfere with performance of Public Defense Services and complies with all requirements of the Rules of Professional Conduct.

9. REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS.

9.1 Public Defense Services shall maintain a case reporting system and information management system. The Public Defender or firm providing public defense services shall provide monthly reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract.

9.2 The monthly caseload reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and records of the time expended on each case. The monthly caseload report shall also include information relating to calculation of caseload under public defense contracts with other jurisdictions and private practice caseload to permit the City to monitor and evaluate compliance with these Standards. The City may require supplementation of reports if the information provided does not allow evaluation of the Public Defender's compliance with caseload limits.

9.3 The Public Defender shall keep track of the amount of time spent on each case assigned to it. All client consultations, investigations, witness interviews, legal research, and any other time spent on an appointed client will be tracked. An exception to the time tracking rules above is for the amount of time the attorney spends with each individual client while at a pretrial or confirmation hearing. The amount of time an attorney or attorneys spent assisting clients at those hearings maybe calculated as a whole. That time need not be broken down into individual minutes spent per individual case in court. If a motion hearing or trials, hourly time spent will be attributed to the individual client's case.

9.4 Requests for payment shall be made by voucher on a form approved by the City Administrator and supported by the monthly caseload report.

10. DISPOSITION OF CLIENT COMPLAINTS.

10.1 The Chief Administrative Officer shall identify a procedure for complaints regarding the provision of services by the Public Defender.

10.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

10.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Chief Administrative Officer provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Marysville Municipal Court. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy

11. CAUSE FOR TERMINATION OR CONTRACT OR REMOVAL OF ATTORNEY.

11.1 The City may terminate the contract for Public Defense Services either “for cause,” after such notice and opportunity to cure as is warranted in the circumstances, or “for convenience,” on 90 days notice of termination.

11.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

12. SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACTS.

12.1 The contract for Public Defense Services shall not be assignable without the express written consent of the City.

12.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be assigned, either by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

12.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

13. NON-DISCRIMINATION.

Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of nondiscrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Revised Public Defense Council PSA - Jamie Kim *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Jamie Kim.

SUMMARY:

Minor revisions to PSA, including reducing the Professional Liability limits and adding a \$1,000 stipend per calendar year to assist with insurance costs, training, or other related expenses. Adding an additional attorney as back-up: Lucas McWethy

From 12/4/23 Agenda Packet: The City is required to provide public defense services for defendants unable to afford their own representation. To qualify as indigent, the individual must receive an annual income, after taxes, of 125 percent or less of the current federally established poverty level. The Washington State Supreme Court has set minimum standards for indigent defense that the City is required to meet. The City contracts with Feldman & Lee as its primary public defense firm. Situations can arise where the primary firm has a conflict and another firm or attorney must be assigned. The City is also required to provide a back up defender for these situations. The City has not previously negotiated formal contracts with conflict counsel in the past. Instead these were assigned by the Court through a voucher process. In the interests of ensuring the City is fully compliant with state standards, we are formalizing the assignment of conflict counsel with a professional services agreement that incorporates the standards. We also reviewed rates and sought additional attorneys to provide these services. The process resulted in three attorneys proposed for engagement of services - Chris Griffen, Meredith Hutchison and Jamie Kim. These agreements are proposed to run January 1, 2024 through December 31, 2026.

ATTACHMENTS:

[Conflict_Counsel_PSA_JKim_REVFinal_2024.pdf](#)

**CITY OF MARYSVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR INDIGENT DEFENSE SERVICES
(CONFLICT COUNSEL)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a municipal corporation under the laws of the State of Washington, (the “City”) and Jamie Kim, an attorney, whose address is 8490 Mukilteo Speedway Ste 108, Mukilteo, WA 98275 (the “Conflict Counsel”).

WHEREAS, the City provides indigent defense services to individuals who have been determined to be eligible for representation at public expense for criminal charges before the Marysville Municipal Court; and

WHEREAS, the Supreme Court has by Order dated June 15, 2012, adopted New Standards for Indigent Defense and Certification of Compliance (the “Supreme Court Standards”), which impose certain standards, requirements, and a caseload limit of 400 unweighted misdemeanor cases per attorney for all attorneys providing indigent defense services; and

WHEREAS, the City has adopted Standards for the Delivery of Public Defense Services by Resolution No. 2368 adopted November 24, 2014 (the “City Standards”); and

WHEREAS, the City has contracted with Feldman and Lee, P.S., to handle the majority of cases which require appointment of a public defender but conflicts of interest sometimes require that Feldman and Lee, P.S., refuse appointment or withdraw from representation of certain individuals and it is possible that caseload limitations will require Feldman and Lee, P.S., to refuse appointment from representation of certain individuals; and

WHEREAS, Conflict Counsel represents that Conflict Counsel is willing, qualified, and able to accept appointments by the Municipal Court to represent indigent defense clients whom Feldman and Lee, P.S., may not represent;

NOW, THEREFORE, the City and Conflict Counsel enter into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. **Term.** The term of this Agreement shall be from the January 1, 2024 to December 31, 2026, unless earlier terminated as provided herein.
2. **Scope of Services, Standards, and Warranty.** During the term of the Agreement, Conflict Counsel will accept appointments to represent individuals (“Clients”) who have been charged with criminal offenses in the Marysville Municipal Court (the “Municipal Court”), who are determined to be eligible for representation at public expense, and who the City’s primary

public defender, Feldman and Lee, P.S., may not represent (such representation, the “Services”). The Services may also include representing Clients on appeals to the Snohomish County Superior Court. This Agreement does not guarantee that Conflict Counsel will be appointed any Clients, as appointments are at the discretion of the Municipal Court Judges and their delegates.

Conflict Counsel will provide the Services in accordance with this Agreement, the Supreme Court Standards, and the City Standards. Conflict Counsel warrants that Conflict Counsel has read and is fully familiar with the provisions of the Supreme Court Standards and the City Standards, both of which are attached hereto as Exhibit A and incorporated by this reference. Conflict Counsel warrants that Conflict Counsel has the qualification and experience necessary to accept appointment to misdemeanors, gross misdemeanors, and RALJ appeals and to comply with the Supreme Court Standards and the City Standards. Compliance with the Supreme Court Standards and the City Standards goes to the essence of this Agreement. To that end, and in accordance with court rule, Conflict Counsel shall certify compliance, quarterly, with the Municipal Court on the form established for that purpose by court rule. Conflict Counsel further warrants that the compensation detailed in Section 5 is sufficient to cover the cost of providing the Services, including Conflict Counsel’s infrastructure, support and administrative services, and systems necessary to comply with the Supreme Court Standards and the City Standards. Conflict Counsel shall promptly notify the City if any circumstance, including a change in court rules or law, renders it difficult or impossible to provide the Services in compliance with this Agreement, the Supreme Court Standards, or the City Standards.

3. Client Representation.

3.1. Appointment. During the term of the Agreement, Conflict Counsel will accept appointments from the Municipal Court, provided, however, that in no event is Conflict Counsel required to accept appointment where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel’s existing caseload would preclude adequate representation. Except as otherwise provided in this Agreement and irrespective of the term of this Agreement, Conflict Counsel shall provide representation for each Client appointed during the term of the Agreement until the case is closed by the Municipal Court. Expiration or termination of this Agreement does not affect Conflict Counsel’s obligation to represent Clients until the case is closed by the Municipal Court, except as provided in Section 3.3.

3.2. Course of Representation.

3.2.1. Conflict Counsel shall be available to each Client to ensure that the Client is provided with effective assistance of counsel. Confidential Client access to Conflict Counsel prior to court hearings is paramount. Conflict Counsel shall use best efforts to confer with Clients about cases promptly after appointment and prior to trial or hearings.

3.2.2. Conflict Counsel shall maintain an office that is reasonably available to Clients residing within the corporate limits of the City, but the office is not required to be located within the City. Conflict Counsel shall be available to Clients by phone, email, and postal mail.

3.2.3. Conflict Counsel shall respond to Client inquiries within a reasonable time to ensure the effective assistance of counsel, whether such inquiries are received by letter, telephone, email, or otherwise.

3.2.4. Conflict Counsel shall maintain a case reporting and case management information system and shall track time spent on each Client's case. Conflict Counsel's case reporting and case management information system shall have sufficient capacity to generate the reports required by Section 4.

3.3. Withdrawal.

3.3.1. In no event is Conflict Counsel required to continue representation where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel's existing caseload would preclude adequate representation. In such event, Conflict Counsel shall motion the court to withdraw, alerting the court to the ethical implications of continued representation.

3.3.2. Upon termination for convenience pursuant to Section 6.2 or an agreed termination pursuant to Section 6.3 and unless otherwise agreed upon in writing, Conflict Counsel shall continue representation in all pending Client cases until the case is closed by the Municipal Court. Provided, however, that if the Client fails to appear for a court appearance, Conflict Counsel may motion the court to withdraw.

3.3.3. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall motion the court to withdraw from all pending Client cases immediately, providing adequate notice to all Clients.

4. Reporting. Conflict Counsel shall submit to the City's Public Defense Administrator a copy of each and every Certification of Compliance filed with the Municipal Court pursuant to court rule. In addition, Conflict Counsel shall submit a quarterly report to the City's Public Defense Administrator that includes the name of each Client appointed by the Municipal Court in the preceding quarter, the date of appointment, the case number, the charge(s), the disposition of the charge(s), and the method of disposition (i.e. trial, plea, motion, etc.). In addition, the quarterly report shall contain such information required by the City Standards to allow the City to determine Conflict Counsel's compliance with caseload limits, including information pertaining to Conflict Counsel's other municipal public defense contracts and Conflict Counsel's private practice, if any.

5. Compensation and Payment. Subject to all the provisions of this section, the City shall pay Conflict Counsel up to \$450.00 per case for the Services. In a case in which a trial is held before a jury or a bench trial, Conflict Counsel shall be authorized to bill up to an additional \$450.00. In a case in which a RALJ appeal is filed with the Superior Court and in which a brief of the appellant is filed, Conflict Counsel shall be authorized to bill up to an additional \$450.00. If there are any post-conviction hearings (e.g. failure to comply), Conflict Counsel will be compensated at the rate of \$75.00 per hour for preparing and appearing at such hearings.

In addition to per case payments and payment for case expenses identified below, Conflict Counsel may invoice the City for (1) insurance, (2) continuing legal education, and (3) miscellaneous costs subject to the approval of the Public Defense Administrator. Reimbursement for these costs and expenses is \$1,000.00 per calendar year.

5.1. Conflict Counsel warrants that the payment contemplated covers all infrastructure, overhead, equipment, support and administrative services, routine investigation, and systems necessary to comply with the Supreme Court Standards and the City Standards, except as provided below.

5.2. The City shall pay for the following case expenses in addition to any per case fee when reasonably incurred and approved by the Municipal Court on ex-parte motion:

5.2.1. Investigation expenses;

5.2.2 Medical and psychiatric evaluations;

5.2.3. Expert witness fees and expenses;

5.2.4. Interpreters fees;

5.2.5. Polygraph, forensic, and other scientific tests;

5.2.6. Lay witness fees and mileage incurred in bringing defense witnesses to court, including the cost of service of a subpoena, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

5.2.7. The cost of obtaining medical, school, birth, DMV, and other similar records and 911 and emergency communication recordings and logs to the extent they are not provided through discovery; and

5.2.8. Any other costs or expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

5.3. For post-conviction relief cases, the City shall pay the cost to obtain copies of the court file, the transcript, and original charging documents.

5.4. In the event Conflict Counsel has a conflict of interest that prevents Conflict Counsel from representing a Client, Conflict Counsel shall not be required to compensate any other attorney subsequently appointed.

5.5. Conflict Counsel is not guaranteed any payment under this Agreement as payment is contingent on Conflict Counsel being assigned Clients. In no event will the City be liable to the Contractor for loss of business.

5.6. Invoices. In order to receive payment, Conflict Counsel will submit an invoice to the City's Public Defense Administrator. The invoice shall be on a form approved by the Public Defense Administrator and shall detail the name of the Client, the charge(s), the date of appointment, the case number, and the services provided. Services may be invoiced as follows:

a. Upon appointment, completing a conflicts check, and filing a notice of appearance, Conflict Counsel may invoice for \$450.00.

b. Upon completion of a trial, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee.

c. Upon a final ruling in a RALJ appeal, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee and any trial fee.

d. Upon completing a post-conviction hearing, Conflict Counsel may invoice for hours (or fractions of hours) spent on the matter at a rate of \$75.00 per hour.

5.7. In the event of termination under Section 6.2 or 6.3, Conflict Counsel shall promptly submit invoices for any Services performed, but not yet compensated.

5.8. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall promptly submit invoices to the City for Services performed on each Client's case before the earlier of: (1) the violation of a material term or (2) notice of a contract violation that ultimately led to termination for cause.

6. Termination.

6.1. For Cause. This Agreement may be terminated for cause for violation of any material term. "Material term" shall include any violation indicating a failure to provide representation in accordance with the Supreme Court Standards, the City Standards, the Rules of Professional Conduct, and any applicable court rules; a violation of the provisions of Section 9 relating to insurance; conviction of a criminal charge; or a finding that the license of Conflict Counsel has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of a contract violation

shall be provided to Conflict Counsel and Conflict Counsel shall have ten (10) business days to correct the violation. If Conflict Counsel fails to correct the violation, the City, in its sole discretion, may terminate the Agreement for cause or may agree in writing to alternative corrective measures.

6.2. For Convenience. Either party may terminate this Agreement at any time, without cause, by providing the other party not less than ninety (90) days written notice.

6.3. Agreed. The parties may agree in writing to terminate the Agreement at any time.

7. Nondiscrimination. Neither Conflict Counsel nor any person acting on behalf of Conflict Counsel shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates or in the provision of Services under this Agreement.

8. Indemnification. Conflict Counsel agrees to defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of Conflict Counsel in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes Conflict Counsel's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

9.1. Conflict Counsel shall obtain insurance of the types and coverage described below:

9.1.1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under Conflict Counsel's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

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

9.1.3. Professional Liability insurance appropriate to Conflict Counsel's undertakings. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.2. Conflict Counsel shall maintain the following insurance limits:

9.2.1.

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

9.2.2. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.3. Conflict Counsel's Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Conflict Counsel's insurance and shall not contribute with it.

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

9.5. Conflict Counsel shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Conflict Counsel before commencement of the Services.

9.6. Conflict Counsel shall provide the City with written notice of any policy cancellation within two (2) business days of its receipt of such notice.

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

9.8. If Conflict Counsel maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General, Professional Liability, and Excess or Umbrella liability maintained by Conflict Counsel, irrespective of whether such limits maintained by Conflict Counsel are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Conflict Counsel.

9.9. Conflict Counsel's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Conflict Counsel to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Work Performed by Conflict Counsel. In addition to compliance with the Supreme Court Standards and the City Standards in performing the Services under this Agreement, Conflict Counsel shall comply with all federal, state, and municipal laws, ordinances, rules, and regulations which are applicable to Conflict Counsel's business, equipment, and personnel engaged in performing the Services under this Agreement.

11. Work Performed at Conflict Counsel's Risk. Conflict Counsel shall be responsible for the safety of its employees, agents, and subcontractors in providing the Services, and shall take all protections reasonably necessary for that purpose. All Services shall be done at Conflict Counsel's own risk and Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the Services. Conflict Counsel shall also pay its employees all wages, salaries, and benefits required by law and provide for taxes, withholding, and all other employment related charges, taxes, or fees in accordance with law and IRS regulations.

12. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Supreme Court Standards and City Standards incorporated in this Agreement. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by Conflict Counsel without the express written consent of the City shall be void.

13. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and Conflict Counsel.

14. Entire Agreement. This Agreement contains the entire agreement between the City and Conflict Counsel. The provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

15. Written Notice. All reports, notices, and communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified in writing to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

TO THE CITY:

City of Marysville

Attn.: Chief Administrative Officer

501 Delta Avenue

Marysville, WA 98270

TO CONFLICT COUNSEL:

Jamie S. Kim

Law Office of Jamie S. Kim

8490 Mukilteo Speedway Suite 108

Mukilteo, WA 98275

Email: jamie@jamieskimlawoffice.com

Phone: 425-918-2280

16. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding, or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Chief Administrative Officer, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Supreme Court Standards or City Standards or which relate to any manner whatsoever to trial strategy or an ongoing case shall be referred to a Judge of the Municipal Court. Nothing herein shall be construed to obligate, require, or permit the City, its officers, agents, or employees to inquire into any privileged communication between Conflict Counsel and a Client. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

[Signature Page Follows]

CITY OF MARYSVILLE

CONFLICT COUNSEL

Mayor Jon Nehring

Date Signed: _____

Date Signed: _____

ATTEST:

Chari Taber, Deputy City Clerk

APPROVED AS TO FORM:

Jon Walker, City Attorney

EXHIBIT A

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW
STANDARDS FOR INDIGENT DEFENSE AND
CERTIFICATION OF COMPLIANCE

ORDER

NO. 25700-A-1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15th day of June, 2012.

FILED
 SUPREME COURT
 STATE OF WASHINGTON
 12 JUN 15 AM 8:00
 BY RONALD A. CARPENTER
 CLERK

639/4

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IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.
J. M. Johnson
Wiggins, J.

Joe Johnson
Stephens, J.
Gonzalez, J.

STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

Standard 3: Caseload Limits and Types of Cases

- 3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
- 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.
- 3.3 **General Considerations**
Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney’s caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney’s numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

STANDARDS FOR INDIGENT DEFENSE

Definition of case: A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. [*Effective September 1, 2013*]

3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
 - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
 - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,

STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

Standards for Indigent Defense
Page 4

Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

STANDARDS FOR INDIGENT DEFENSE

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996)
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-1.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.2 Attorneys' qualifications according to severity or type of case¹:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
 - i. The minimum requirements set forth in Section 1; and
 - ii. At least five years criminal trial experience; and
 - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
 - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
 - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
 - vi. Have completed at least one death penalty defense seminar within the previous two years; and
 - vii. Meet the requirements of SPRC 2.²

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

²SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases – Class B Violent Offense

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)

STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and

³ RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

STANDARDS FOR INDIGENT DEFENSE

- J. Juvenile Status Offenses Cases.** Each attorney representing a client in a “Becca” matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.
- K. Misdemeanor Cases**
Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.
- L. Dependency Cases**
Each attorney representing a client in a dependency matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
 - iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
 - iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.
- M. Civil Commitment Cases**
Each attorney representing a respondent shall meet the following requirements:
- i. The minimum requirements set forth in Section 1; and
 - ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
 - iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor, or
 - b. served one year as a public defender, or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and

STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1. Mental health issues; and
 - 2. Sexual offenses; and
 - 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

STANDARDS FOR INDIGENT DEFENSE

14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
 - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
 - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

STANDARDS FOR INDIGENT DEFENSE

CERTIFICATION OF COMPLIANCE
“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for
--

Certification of Appointed Counsel of
Compliance with Standards Required by
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately ____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigation services as

STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

Defendant's Lawyer, WSBA#

Date

EXHIBIT B

RESOLUTION NO. 2368

**A RESOLUTION OF THE CITY OF MARYSVILLE, WASHINGTON
AMENDING NEW STANDARDS FOR THE DELIVERY OF PUBLIC
DEFENDER SERVICES PURSUANT TO RCW 10.101.030 ADOPTED
BY RESOLUTION 2363**

WHEREAS, RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services, specifies the topics to be addressed in such standards, and urges local legislative bodies to use the standards endorsed by the Washington State Bar Association for indigent defense as guidelines; and

WHEREAS, the City adopted new standards for the delivery of public defender services by Resolution 2363 adopted July 28, 2014; and

WHEREAS, after review, consultation with the City's public defender and further consideration, City Council finds it would promote the public interest to make certain amendments to the standards as set forth in Exhibit A,

NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City of Marysville Standards for the Delivery of Public Defense Services as set forth in Exhibit A to this resolution are hereby adopted and approved, and supersede the Standards of the Delivery of Public Defense Services as adopted by Resolution 2363.

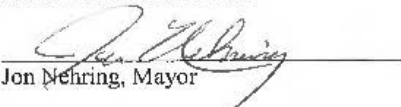
Section 2. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Marysville Municipal Court.

Section 3. **EFFECTIVE DATE.**

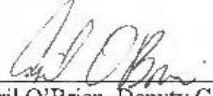
The provisions of this resolution shall be effective upon adoption.

RESOLVED:

CITY OF MARYSVILLE


Jon Nehring, Mayor

ATTEST:



April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:



Grant K. Weed, City Attorney

EXHIBIT A

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of RCW 10.101.030, the rules established by the Washington State Supreme Court, and the requirements of the Sixth Amendment to the U.S. Constitution. The provisions of these standards shall be construed to effectuate their stated purpose, which is to provide standards that afford quality representation in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system meeting all legal requirements for the provision of public defense services. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or decisions of Washington State and federal courts.

1. DUTIES AND RESPONSIBILITIES OF COUNSEL.

1.1 Public defense services ("the Services") shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules and decisions defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Services shall be provided to indigent clients whose eligibility has been determined by the City of Marysville through an established screening process.

1.3 All Public Defenders providing services by contract shall certify their compliance with the standards for indigent defense by filing a Certification of Compliance quarterly, as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Marysville Municipal Court. Copies of each Public Defender's certification shall be provided to the City.

2. QUALIFICATIONS OF ATTORNEYS.

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense" or "Public Defender") or appointed by the Marysville Municipal Court in a particular case shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 In a firm providing public defense services, one attorney shall be designated as the lead attorney. The designated Public Defender or the designated lead attorney in a firm providing public defense services by contract shall have a minimum of five years of experience in a practice emphasizing criminal defense.

shall: 2.3 Attorneys and Rule 9 interns performing services under contract

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

3. TRAINING, SUPERVISION, AND EVALUATION OF ATTORNEYS.

3.1 The designated lead attorney in a firm providing public defender services shall be responsible for training, supervising, and evaluating all attorneys in the firm providing public defender services.

3.2 No attorney in a firm providing public defender services shall be assigned sole or primary responsibility for a case unless the lead attorney determines that attorney has the required training, experience, knowledge and skill.

3.3 All attorneys providing public defense services shall participate in a minimum of seven hours of continuing legal education per year in areas relating to criminal defense law and practice.

3.4 In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the City by the same contract and in the same entity, the contract for services shall provide for in-house training. Proposals made in response to requests for proposals for pursuit of a contract for Public Defense Services shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the Marysville Municipal Court and encourage the

opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

4. COMPENSATION OF COUNSEL.

The City has a constitutional obligation to provide Public Defense Services that ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. Compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

4.1 The Public Defender may move the court to fix additional compensation in the event that a particular case requires an extraordinary amount of time and preparation, or to approve adjustment of the caseload counting for that case pursuant to Standard 7.7.

4.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract.

5. ADMINISTRATIVE EXPENSES AND SUPPORT SERVICES.

5.1 All contracts for Public Defense shall provide sufficient amounts, in addition to reasonable compensation for attorneys, for adequate administrative expenses and supports services to provide for adequate staffing and other costs associated with the day to day management of a law office. Administrative expenses include travel, telephones, law library including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training. Support services include secretaries, word processing staff, paralegals, and access to translators, social work staff, mental health professionals, and immigration law advice, as appropriate,

5.2 Private offices and/or conference rooms shall be available which are convenient to defendants charged in the Marysville Municipal Court and allow the maintenance of confidentiality. Public Defenders shall maintain a telephone system, an email address and postal address to enable convenient communications by clients.

6. RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS ASSOCIATED WITH REPRESENTATION

The expenses of expert witnesses and investigative costs in appropriate cases shall be borne by the City.

6.1 The Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

6.2 The services of expert witnesses will be paid directly by the City when approved by the Court through ex parte motion.

6.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Contracts for Public Defense Services may include investigative services as a part of reimbursed overhead included in the contract compensation for investigators employed by a firm.

7. CASELOAD LIMITS AND TYPES OF CASES.

7.1 The Public Defender shall provide Services to all eligible person charged in the Marysville Municipal Court with violation of the City's ordinances defining misdemeanor and gross misdemeanor crimes for which incarceration is a possible consequence upon conviction, and RALJ appeals of convictions to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

7.2 The caseload of a full time public defender or assigned counsel shall not exceed four hundred cases per year.

7.3 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

7.4 The caseload of a Public Defender who also maintains a private practice shall not exceed the number of cases resulting from multiplying 400 cases by the percentage of his or her time the public defender devotes to providing public defense services under all contracts for public defense services.

7.5 A case credit is a unit of work computed as follows:

7.5.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Prosecutor to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which, after performing a conflicts check, receiving discovery and having

a a confidential conference with the client, the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

7.5.2 Each case assigned to the Public Defender shall only be counted once, irrespective of the number of hearings either prior to disposition or post disposition.

7.5.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

7.5.4 If the Public Defender is required to attend an arraignment or probation review/failure to comply calendar, each hour of such calendar time shall be counted as 0.17 case credit toward the maximum caseload limit. This shall apply regardless of whether the attorney is appointed to represent a client.

7.5.5 A case in which a jury is empaneled shall be counted as three case credits.

7.5.6 A RALJ appeal to which the Public Defender is assigned shall not count as a case credit if dismissed prior to briefing.

7.6 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

7.7 The standards provided herein for caseloads may be adjusted upward depending upon the complexity of a particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards to be increased depending upon the complexity and requirements of the case. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

8. LIMITATIONS ON PRIVATE PRACTICE.

Subject to the provisions of Standard Six on Caseload Limits, there is no prohibition on a public defender engaging in private practice, provided, such private practice does not

interfere with performance of Public Defense Services and complies with all requirements of the Rules of Professional Conduct.

9. REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS.

9.1 Public Defense Services shall maintain a case reporting system and information management system. The Public Defender or firm providing public defense services shall provide monthly reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract.

9.2 The monthly caseload reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and records of the time expended on each case. The monthly caseload report shall also include information relating to calculation of caseload under public defense contracts with other jurisdictions and private practice caseload to permit the City to monitor and evaluate compliance with these Standards. The City may require supplementation of reports if the information provided does not allow evaluation of the Public Defender's compliance with caseload limits.

9.3 The Public Defender shall keep track of the amount of time spent on each case assigned to it. All client consultations, investigations, witness interviews, legal research, and any other time spent on an appointed client will be tracked. An exception to the time tracking rules above is for the amount of time the attorney spends with each individual client while at a pretrial or confirmation hearing. The amount of time an attorney or attorneys spent assisting clients at those hearings maybe calculated as a whole. That time need not be broken down into individual minutes spent per individual case in court. If a motion hearing or trials, hourly time spent will be attributed to the individual client's case.

9.4 Requests for payment shall be made by voucher on a form approved by the City Administrator and supported by the monthly caseload report.

10. DISPOSITION OF CLIENT COMPLAINTS.

10.1 The Chief Administrative Officer shall identify a procedure for complaints regarding the provision of services by the Public Defender.

10.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

10.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Chief Administrative Officer provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Marysville Municipal Court. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy

11. CAUSE FOR TERMINATION OR CONTRACT OR REMOVAL OF ATTORNEY.

11.1 The City may terminate the contract for Public Defense Services either “for cause,” after such notice and opportunity to cure as is warranted in the circumstances, or “for convenience,” on 90 days notice of termination.

11.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

12. SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACTS.

12.1 The contract for Public Defense Services shall not be assignable without the express written consent of the City.

12.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be assigned, either by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

12.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

13. NON-DISCRIMINATION.

Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of nondiscrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Revised Public Defense Counsel PSA - Meredith Hutchison *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign the amended professional services agreement for indigent defense services with Meredith Hutchison.

SUMMARY:

Minor revisions to PSA, including reducing the Professional Liability limits and adding a \$1,000 stipend per calendar year to assist with insurance costs, training, or other related expenses. Adding an additional attorney as back-up: Lucas McWethy

From 12/4/23 Agenda Packet: The City is required to provide public defense services for defendants unable to afford their own representation. To qualify as indigent, the individual must receive an annual income, after taxes, of 125 percent or less of the current federally established poverty level. The Washington State Supreme Court has set minimum standards for indigent defense that the City is required to meet. The City contracts with Feldman & Lee as its primary public defense firm. Situations can arise where the primary firm has a conflict and another firm or attorney must be assigned. The City is also required to provide a back up defender for these situations. The City has not previously negotiated formal contracts with conflict counsel in the past. Instead these were assigned by the Court through a voucher process. In the interests of ensuring the City is fully compliant with state standards, we are formalizing the assignment of conflict counsel with a professional services agreement that incorporates the standards. We also reviewed rates and sought additional attorneys to provide these services. The process resulted in three attorneys proposed for engagement of services - Chris Griffen, Meredith Hutchison and Jamie Kim. These agreements are proposed to run January 1, 2024 through December 31, 2026.

ATTACHMENTS:

[Conflict_Counsel_PSA_MHutchison_REVFinal_2024.pdf](#)

**CITY OF MARYSVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR INDIGENT DEFENSE SERVICES
(CONFLICT COUNSEL)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a municipal corporation under the laws of the State of Washington, (the “City”) and Meredith Hutchison, an attorney whose address is 1818 Westlake Ave. N. Suite 216, Seattle, WA 98109 (the “Conflict Counsel”).

WHEREAS, the City provides indigent defense services to individuals who have been determined to be eligible for representation at public expense for criminal charges before the Marysville Municipal Court; and

WHEREAS, the Supreme Court has by Order dated June 15, 2012, adopted New Standards for Indigent Defense and Certification of Compliance (the “Supreme Court Standards”), which impose certain standards, requirements, and a caseload limit of 400 unweighted misdemeanor cases per attorney for all attorneys providing indigent defense services; and

WHEREAS, the City has adopted Standards for the Delivery of Public Defense Services by Resolution No. 2368 adopted November 24, 2014 (the “City Standards”); and

WHEREAS, the City has contracted with Feldman and Lee, P.S., to handle the majority of cases which require appointment of a public defender but conflicts of interest sometimes require that Feldman and Lee, P.S., refuse appointment or withdraw from representation of certain individuals and it is possible that caseload limitations will require Feldman and Lee, P.S., to refuse appointment from representation of certain individuals; and

WHEREAS, Conflict Counsel represents that Conflict Counsel is willing, qualified, and able to accept appointments by the Municipal Court to represent indigent defense clients whom Feldman and Lee, P.S., may not represent;

NOW, THEREFORE, the City and Conflict Counsel enter into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. **Term.** The term of this Agreement shall be from the January 1, 2024 to December 31, 2026, unless earlier terminated as provided herein.
2. **Scope of Services, Standards, and Warranty.** During the term of the Agreement, Conflict Counsel will accept appointments to represent individuals (“Clients”) who have been charged with criminal offenses in the Marysville Municipal Court (the “Municipal Court”), who are determined to be eligible for representation at public expense, and who the City’s primary

public defender, Feldman and Lee, P.S., may not represent (such representation, the “Services”). The Services may also include representing Clients on appeals to the Snohomish County Superior Court. This Agreement does not guarantee that Conflict Counsel will be appointed any Clients, as appointments are at the discretion of the Municipal Court Judges and their delegates.

Conflict Counsel will provide the Services in accordance with this Agreement, the Supreme Court Standards, and the City Standards. Conflict Counsel warrants that Conflict Counsel has read and is fully familiar with the provisions of the Supreme Court Standards and the City Standards, both of which are attached hereto as Exhibit A and incorporated by this reference. Conflict Counsel warrants that Conflict Counsel has the qualification and experience necessary to accept appointment to misdemeanors, gross misdemeanors, and RALJ appeals and to comply with the Supreme Court Standards and the City Standards. Compliance with the Supreme Court Standards and the City Standards goes to the essence of this Agreement. To that end, and in accordance with court rule, Conflict Counsel shall certify compliance, quarterly, with the Municipal Court on the form established for that purpose by court rule. Conflict Counsel further warrants that the compensation detailed in Section 5 is sufficient to cover the cost of providing the Services, including Conflict Counsel’s infrastructure, support and administrative services, and systems necessary to comply with the Supreme Court Standards and the City Standards. Conflict Counsel shall promptly notify the City if any circumstance, including a change in court rules or law, renders it difficult or impossible to provide the Services in compliance with this Agreement, the Supreme Court Standards, or the City Standards.

3. Client Representation.

3.1. Appointment. During the term of the Agreement, Conflict Counsel will accept appointments from the Municipal Court, provided, however, that in no event is Conflict Counsel required to accept appointment where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel’s existing caseload would preclude adequate representation. Except as otherwise provided in this Agreement and irrespective of the term of this Agreement, Conflict Counsel shall provide representation for each Client appointed during the term of the Agreement until the case is closed by the Municipal Court. Expiration or termination of this Agreement does not affect Conflict Counsel’s obligation to represent Clients until the case is closed by the Municipal Court, except as provided in Section 3.3.

3.2. Course of Representation.

3.2.1. Conflict Counsel shall be available to each Client to ensure that the Client is provided with effective assistance of counsel. Confidential Client access to Conflict Counsel prior to court hearings is paramount. Conflict Counsel shall use best efforts to confer with Clients about cases promptly after appointment and prior to trial or hearings.

3.2.2. Conflict Counsel shall maintain an office that is reasonably available to Clients residing within the corporate limits of the City, but the office is not required to be located within the City. Conflict Counsel shall be available to Clients by phone, email, and postal mail.

3.2.3. Conflict Counsel shall respond to Client inquiries within a reasonable time to ensure the effective assistance of counsel, whether such inquiries are received by letter, telephone, email, or otherwise.

3.2.4. Conflict Counsel shall maintain a case reporting and case management information system and shall track time spent on each Client's case. Conflict Counsel's case reporting and case management information system shall have sufficient capacity to generate the reports required by Section 4.

3.3. Withdrawal.

3.3.1. In no event is Conflict Counsel required to continue representation where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel's existing caseload would preclude adequate representation. In such event, Conflict Counsel shall motion the court to withdraw, alerting the court to the ethical implications of continued representation.

3.3.2. Upon termination for convenience pursuant to Section 6.2 or an agreed termination pursuant to Section 6.3 and unless otherwise agreed upon in writing, Conflict Counsel shall continue representation in all pending Client cases until the case is closed by the Municipal Court. Provided, however, that if the Client fails to appear for a court appearance, Conflict Counsel may motion the court to withdraw.

3.3.3. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall motion the court to withdraw from all pending Client cases immediately, providing adequate notice to all Clients.

4. Reporting. Conflict Counsel shall submit to the City's Public Defense Administrator a copy of each and every Certification of Compliance filed with the Municipal Court pursuant to court rule. In addition, Conflict Counsel shall submit a quarterly report to the City's Public Defense Administrator that includes the name of each Client appointed by the Municipal Court in the preceding quarter, the date of appointment, the case number, the charge(s), the disposition of the charge(s), and the method of disposition (i.e. trial, plea, motion, etc.). In addition, the quarterly report shall contain such information required by the City Standards to allow the City to determine Conflict Counsel's compliance with caseload limits, including information pertaining to Conflict Counsel's other municipal public defense contracts and Conflict Counsel's private practice, if any.

5. Compensation and Payment. Subject to all the provisions of this section, the City shall pay Conflict Counsel up to \$450.00 per case for the Services. In a case in which a trial is held before a jury or a bench trial, Conflict Counsel shall be authorized to bill up to an additional \$450.00. In a case in which a RALJ appeal is filed with the Superior Court and in which a brief of the appellant is filed, Conflict Counsel shall be authorized to bill up to an additional \$450.00. If there are any post-conviction hearings (e.g. failure to comply), Conflict Counsel will be compensated at the rate of \$75.00 per hour for preparing and appearing at such hearings.

In addition to per case payments and payment for case expenses identified below, Conflict Counsel may invoice the City for (1) insurance, (2) continuing legal education, and (3) miscellaneous costs subject to the approval of the Public Defense Administrator. Reimbursement for these costs and expenses is \$1,000.00 per calendar year.

5.1. Conflict Counsel warrants that the payment contemplated covers all infrastructure, overhead, equipment, support and administrative services, routine investigation, and systems necessary to comply with the Supreme Court Standards and the City Standards, except as provided below.

5.2. The City shall pay for the following case expenses in addition to any per case fee when reasonably incurred and approved by the Municipal Court on ex-parte motion:

5.2.1. Investigation expenses;

5.2.2 Medical and psychiatric evaluations;

5.2.3. Expert witness fees and expenses;

5.2.4. Interpreters fees;

5.2.5. Polygraph, forensic, and other scientific tests;

5.2.6. Lay witness fees and mileage incurred in bringing defense witnesses to court, including the cost of service of a subpoena, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

5.2.7. The cost of obtaining medical, school, birth, DMV, and other similar records and 911 and emergency communication recordings and logs to the extent they are not provided through discovery; and

5.2.8. Any other costs or expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

5.3. For post-conviction relief cases, the City shall pay the cost to obtain copies of the court file, the transcript, and original charging documents.

5.4. In the event Conflict Counsel has a conflict of interest that prevents Conflict Counsel from representing a Client, Conflict Counsel shall not be required to compensate any other attorney subsequently appointed.

5.5. Conflict Counsel is not guaranteed any payment under this Agreement as payment is contingent on Conflict Counsel being assigned Clients. In no event will the City be liable to the Contractor for loss of business.

5.6. Invoices. In order to receive payment, Conflict Counsel will submit an invoice to the City's Public Defense Administrator. The invoice shall be on a form approved by the Public Defense Administrator and shall detail the name of the Client, the charge(s), the date of appointment, the case number, and the services provided. Services may be invoiced as follows:

a. Upon appointment, completing a conflicts check, and filing a notice of appearance, Conflict Counsel may invoice for \$450.00.

b. Upon completion of a trial, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee.

c. Upon a final ruling in a RALJ appeal, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee and any trial fee.

d. Upon completing a post-conviction hearing, Conflict Counsel may invoice for hours (or fractions of hours) spent on the matter at a rate of \$75.00 per hour.

5.7. In the event of termination under Section 6.2 or 6.3, Conflict Counsel shall promptly submit invoices for any Services performed, but not yet compensated.

5.8. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall promptly submit invoices to the City for Services performed on each Client's case before the earlier of: (1) the violation of a material term or (2) notice of a contract violation that ultimately led to termination for cause.

6. Termination.

6.1. For Cause. This Agreement may be terminated for cause for violation of any material term. "Material term" shall include any violation indicating a failure to provide representation in accordance with the Supreme Court Standards, the City Standards, the Rules of Professional Conduct, and any applicable court rules; a violation of the provisions of Section 9 relating to insurance; conviction of a criminal charge; or a finding that the license of Conflict Counsel has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of a contract violation

shall be provided to Conflict Counsel and Conflict Counsel shall have ten (10) business days to correct the violation. If Conflict Counsel fails to correct the violation, the City, in its sole discretion, may terminate the Agreement for cause or may agree in writing to alternative corrective measures.

6.2. For Convenience. Either party may terminate this Agreement at any time, without cause, by providing the other party not less than ninety (90) days written notice.

6.3. Agreed. The parties may agree in writing to terminate the Agreement at any time.

7. Nondiscrimination. Neither Conflict Counsel nor any person acting on behalf of Conflict Counsel shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates or in the provision of Services under this Agreement.

8. Indemnification. Conflict Counsel agrees to defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of Conflict Counsel in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes Conflict Counsel's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

9.1. Conflict Counsel shall obtain insurance of the types and coverage described below:

9.1.1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under Conflict Counsel's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

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

9.1.3. Professional Liability insurance appropriate to Conflict Counsel's undertakings. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.2. Conflict Counsel shall maintain the following insurance limits:

9.2.1.

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

9.2.2. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.3. Conflict Counsel's Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Conflict Counsel's insurance and shall not contribute with it.

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

9.5. Conflict Counsel shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Conflict Counsel before commencement of the Services.

9.6. Conflict Counsel shall provide the City with written notice of any policy cancellation within two (2) business days of its receipt of such notice.

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

9.8. If Conflict Counsel maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General, Professional Liability, and Excess or Umbrella liability maintained by Conflict Counsel, irrespective of whether such limits maintained by Conflict Counsel are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Conflict Counsel.

9.9. Conflict Counsel's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Conflict Counsel to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Work Performed by Conflict Counsel. In addition to compliance with the Supreme Court Standards and the City Standards in performing the Services under this Agreement, Conflict Counsel shall comply with all federal, state, and municipal laws, ordinances, rules, and regulations which are applicable to Conflict Counsel's business, equipment, and personnel engaged in performing the Services under this Agreement.

11. Work Performed at Conflict Counsel's Risk. Conflict Counsel shall be responsible for the safety of its employees, agents, and subcontractors in providing the Services, and shall take all protections reasonably necessary for that purpose. All Services shall be done at Conflict Counsel's own risk and Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the Services. Conflict Counsel shall also pay its employees all wages, salaries, and benefits required by law and provide for taxes, withholding, and all other employment related charges, taxes, or fees in accordance with law and IRS regulations.

12. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Supreme Court Standards and City Standards incorporated in this Agreement. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by Conflict Counsel without the express written consent of the City shall be void.

13. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and Conflict Counsel.

14. Entire Agreement. This Agreement contains the entire agreement between the City and Conflict Counsel. The provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

15. Written Notice. All reports, notices, and communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified in writing to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

TO THE CITY:

City of Marysville
Attn.: Chief Administrative Officer
501 Delta Avenue
Marysville, WA 98270

TO CONFLICT COUNSEL:

Meredith Hutchison
1818 Westlake Ave. N. Suite 216
Seattle, WA 98109
Email: meredith@hutchisonlawoffice.com
Phone: 206-582-4259

16. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding, or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Chief Administrative Officer, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Supreme Court Standards or City Standards or which relate to any manner whatsoever to trial strategy or an ongoing case shall be referred to a Judge of the Municipal Court. Nothing herein shall be construed to obligate, require, or permit the City, its officers, agents, or employees to inquire into any privileged communication between Conflict Counsel and a Client. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

[Signature Page Follows]

CITY OF MARYSVILLE

CONFLICT COUNSEL

Mayor Jon Nehring

Date Signed: _____

Date Signed: _____

ATTEST:

Chari Taber, Deputy City Clerk

APPROVED AS TO FORM:

Jon Walker, City Attorney

EXHIBIT A

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW
STANDARDS FOR INDIGENT DEFENSE AND
CERTIFICATION OF COMPLIANCE

ORDER

NO. 25700-A-1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15th day of June, 2012.

FILED
 SUPREME COURT
 STATE OF WASHINGTON
 12 JUN 15 AM 8:00
 BY RONALD A. CARPENTER
 CLERK

639/7

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IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.
J. M. Johnson
Wiggins, J.

Joe Johnson
Stephens, J.
Gonzalez, J.

STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

Standard 3: Caseload Limits and Types of Cases

- 3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
- 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.
- 3.3 **General Considerations**
Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney’s caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney’s numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

STANDARDS FOR INDIGENT DEFENSE

Definition of case: A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. [*Effective September 1, 2013*]

3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
 - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
 - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,

STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

Standards for Indigent Defense
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Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

STANDARDS FOR INDIGENT DEFENSE

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996)
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.2 Attorneys' qualifications according to severity or type of case¹:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
 - i. The minimum requirements set forth in Section 1; and
 - ii. At least five years criminal trial experience; and
 - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
 - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
 - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
 - vi. Have completed at least one death penalty defense seminar within the previous two years; and
 - vii. Meet the requirements of SPRC 2.²

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

²SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases – Class B Violent Offense

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)

STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and

³ RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

STANDARDS FOR INDIGENT DEFENSE

- J. Juvenile Status Offenses Cases.** Each attorney representing a client in a “Becca” matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.
- K. Misdemeanor Cases**
Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.
- L. Dependency Cases**
Each attorney representing a client in a dependency matter shall meet the following requirements:
- i. The minimum requirements as outlined in Section 1; and
 - ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
 - iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
 - iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.
- M. Civil Commitment Cases**
Each attorney representing a respondent shall meet the following requirements:
- i. The minimum requirements set forth in Section 1; and
 - ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
 - iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor, or
 - b. served one year as a public defender, or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and

STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1. Mental health issues; and
 - 2. Sexual offenses; and
 - 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

STANDARDS FOR INDIGENT DEFENSE

14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
 - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
 - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

STANDARDS FOR INDIGENT DEFENSE

CERTIFICATION OF COMPLIANCE
“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for
--

Certification of Appointed Counsel of
Compliance with Standards Required by
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately ____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigation services as

STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

Defendant's Lawyer, WSBA#

Date

EXHIBIT B

RESOLUTION NO. 2368

**A RESOLUTION OF THE CITY OF MARYSVILLE, WASHINGTON
AMENDING NEW STANDARDS FOR THE DELIVERY OF PUBLIC
DEFENDER SERVICES PURSUANT TO RCW 10.101.030 ADOPTED
BY RESOLUTION 2363**

WHEREAS, RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services, specifies the topics to be addressed in such standards, and urges local legislative bodies to use the standards endorsed by the Washington State Bar Association for indigent defense as guidelines; and

WHEREAS, the City adopted new standards for the delivery of public defender services by Resolution 2363 adopted July 28, 2014; and

WHEREAS, after review, consultation with the City's public defender and further consideration, City Council finds it would promote the public interest to make certain amendments to the standards as set forth in Exhibit A,

NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City of Marysville Standards for the Delivery of Public Defense Services as set forth in Exhibit A to this resolution are hereby adopted and approved, and supersede the Standards of the Delivery of Public Defense Services as adopted by Resolution 2363.

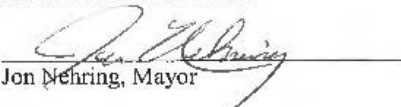
Section 2. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Marysville Municipal Court.

Section 3. **EFFECTIVE DATE.**

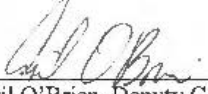
The provisions of this resolution shall be effective upon adoption.

RESOLVED:

CITY OF MARYSVILLE


Jon Nehring, Mayor

ATTEST:



April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:



Grant K. Weed, City Attorney

EXHIBIT A

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of RCW 10.101.030, the rules established by the Washington State Supreme Court, and the requirements of the Sixth Amendment to the U.S. Constitution. The provisions of these standards shall be construed to effectuate their stated purpose, which is to provide standards that afford quality representation in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system meeting all legal requirements for the provision of public defense services. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or decisions of Washington State and federal courts.

1. DUTIES AND RESPONSIBILITIES OF COUNSEL.

1.1 Public defense services ("the Services") shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules and decisions defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Services shall be provided to indigent clients whose eligibility has been determined by the City of Marysville through an established screening process.

1.3 All Public Defenders providing services by contract shall certify their compliance with the standards for indigent defense by filing a Certification of Compliance quarterly, as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Marysville Municipal Court. Copies of each Public Defender's certification shall be provided to the City.

2. QUALIFICATIONS OF ATTORNEYS.

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense" or "Public Defender") or appointed by the Marysville Municipal Court in a particular case shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 In a firm providing public defense services, one attorney shall be designated as the lead attorney. The designated Public Defender or the designated lead attorney in a firm providing public defense services by contract shall have a minimum of five years of experience in a practice emphasizing criminal defense.

shall: 2.3 Attorneys and Rule 9 interns performing services under contract

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

3. TRAINING, SUPERVISION, AND EVALUATION OF ATTORNEYS.

3.1 The designated lead attorney in a firm providing public defender services shall be responsible for training, supervising, and evaluating all attorneys in the firm providing public defender services.

3.2 No attorney in a firm providing public defender services shall be assigned sole or primary responsibility for a case unless the lead attorney determines that attorney has the required training, experience, knowledge and skill.

3.3 All attorneys providing public defense services shall participate in a minimum of seven hours of continuing legal education per year in areas relating to criminal defense law and practice.

3.4 In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the City by the same contract and in the same entity, the contract for services shall provide for in-house training. Proposals made in response to requests for proposals for pursuit of a contract for Public Defense Services shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the Marysville Municipal Court and encourage the

opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

4. COMPENSATION OF COUNSEL.

The City has a constitutional obligation to provide Public Defense Services that ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. Compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

4.1 The Public Defender may move the court to fix additional compensation in the event that a particular case requires an extraordinary amount of time and preparation, or to approve adjustment of the caseload counting for that case pursuant to Standard 7.7.

4.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract.

5. ADMINISTRATIVE EXPENSES AND SUPPORT SERVICES.

5.1 All contracts for Public Defense shall provide sufficient amounts, in addition to reasonable compensation for attorneys, for adequate administrative expenses and supports services to provide for adequate staffing and other costs associated with the day to day management of a law office. Administrative expenses include travel, telephones, law library including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training. Support services include secretaries, word processing staff, paralegals, and access to translators, social work staff, mental health professionals, and immigration law advice, as appropriate,

5.2 Private offices and/or conference rooms shall be available which are convenient to defendants charged in the Marysville Municipal Court and allow the maintenance of confidentiality. Public Defenders shall maintain a telephone system, an email address and postal address to enable convenient communications by clients.

6. RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS ASSOCIATED WITH REPRESENTATION

The expenses of expert witnesses and investigative costs in appropriate cases shall be borne by the City.

6.1 The Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

6.2 The services of expert witnesses will be paid directly by the City when approved by the Court through ex parte motion.

6.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Contracts for Public Defense Services may include investigative services as a part of reimbursed overhead included in the contract compensation for investigators employed by a firm.

7. CASELOAD LIMITS AND TYPES OF CASES.

7.1 The Public Defender shall provide Services to all eligible person charged in the Marysville Municipal Court with violation of the City's ordinances defining misdemeanor and gross misdemeanor crimes for which incarceration is a possible consequence upon conviction, and RALJ appeals of convictions to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

7.2 The caseload of a full time public defender or assigned counsel shall not exceed four hundred cases per year.

7.3 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

7.4 The caseload of a Public Defender who also maintains a private practice shall not exceed the number of cases resulting from multiplying 400 cases by the percentage of his or her time the public defender devotes to providing public defense services under all contracts for public defense services.

7.5 A case credit is a unit of work computed as follows:

7.5.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Prosecutor to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which, after performing a conflicts check, receiving discovery and having

a a confidential conference with the client, the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

7.5.2 Each case assigned to the Public Defender shall only be counted once, irrespective of the number of hearings either prior to disposition or post disposition.

7.5.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

7.5.4 If the Public Defender is required to attend an arraignment or probation review/failure to comply calendar, each hour of such calendar time shall be counted as 0.17 case credit toward the maximum caseload limit. This shall apply regardless of whether the attorney is appointed to represent a client.

7.5.5 A case in which a jury is empaneled shall be counted as three case credits.

7.5.6 A RALJ appeal to which the Public Defender is assigned shall not count as a case credit if dismissed prior to briefing.

7.6 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

7.7 The standards provided herein for caseloads may be adjusted upward depending upon the complexity of a particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards to be increased depending upon the complexity and requirements of the case. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

8. LIMITATIONS ON PRIVATE PRACTICE.

Subject to the provisions of Standard Six on Caseload Limits, there is no prohibition on a public defender engaging in private practice, provided, such private practice does not

interfere with performance of Public Defense Services and complies with all requirements of the Rules of Professional Conduct.

9. REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS.

9.1 Public Defense Services shall maintain a case reporting system and information management system. The Public Defender or firm providing public defense services shall provide monthly reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract.

9.2 The monthly caseload reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and records of the time expended on each case. The monthly caseload report shall also include information relating to calculation of caseload under public defense contracts with other jurisdictions and private practice caseload to permit the City to monitor and evaluate compliance with these Standards. The City may require supplementation of reports if the information provided does not allow evaluation of the Public Defender's compliance with caseload limits.

9.3 The Public Defender shall keep track of the amount of time spent on each case assigned to it. All client consultations, investigations, witness interviews, legal research, and any other time spent on an appointed client will be tracked. An exception to the time tracking rules above is for the amount of time the attorney spends with each individual client while at a pretrial or confirmation hearing. The amount of time an attorney or attorneys spent assisting clients at those hearings maybe calculated as a whole. That time need not be broken down into individual minutes spent per individual case in court. If a motion hearing or trials, hourly time spent will be attributed to the individual client's case.

9.4 Requests for payment shall be made by voucher on a form approved by the City Administrator and supported by the monthly caseload report.

10. DISPOSITION OF CLIENT COMPLAINTS.

10.1 The Chief Administrative Officer shall identify a procedure for complaints regarding the provision of services by the Public Defender.

10.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

10.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Chief Administrative Officer provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Marysville Municipal Court. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy

11. CAUSE FOR TERMINATION OR CONTRACT OR REMOVAL OF ATTORNEY.

11.1 The City may terminate the contract for Public Defense Services either “for cause,” after such notice and opportunity to cure as is warranted in the circumstances, or “for convenience,” on 90 days notice of termination.

11.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

12. SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACTS.

12.1 The contract for Public Defense Services shall not be assignable without the express written consent of the City.

12.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be assigned, either by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

12.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

13. NON-DISCRIMINATION.

Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of nondiscrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Revised Public Defense Conflict Counsel PSA - Lucas McWethy *

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign the professional services agreement for indigent defense services with Lucas McWethy.

SUMMARY:

Minor revisions to PSA, including reducing the Professional Liability limits and adding a \$1,000 stipend per calendar year to assist with insurance costs, training, or other related expenses. Adding an additional attorney as back-up: Lucas McWethy

From 12/4/23 Agenda Packet: The City is required to provide public defense services for defendants unable to afford their own representation. To qualify as indigent, the individual must receive an annual income, after taxes, of 125 percent or less of the current federally established poverty level. The Washington State Supreme Court has set minimum standards for indigent defense that the City is required to meet. The City contracts with Feldman & Lee as its primary public defense firm. Situations can arise where the primary firm has a conflict and another firm or attorney must be assigned. The City is also required to provide a back up defender for these situations. The City has not previously negotiated formal contracts with conflict counsel in the past. Instead these were assigned by the Court through a voucher process. In the interests of ensuring the City is fully compliant with state standards, we are formalizing the assignment of conflict counsel with a professional services agreement that incorporates the standards. We also reviewed rates and sought additional attorneys to provide these services. The process resulted in three attorneys proposed for engagement of services - Chris Griffen, Meredith Hutchison and Jamie Kim. These agreements are proposed to run January 1, 2024 through December 31, 2026

ATTACHMENTS:

[Conflict_Counsel_PSA_LMcWethy_Final_2024.pdf](#)

**CITY OF MARYSVILLE
PROFESSIONAL SERVICES AGREEMENT
FOR INDIGENT DEFENSE SERVICES
(CONFLICT COUNSEL)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of the date of the last signature below, by and between the City of Marysville, a municipal corporation under the laws of the State of Washington, (the “City”) and Lucas McWethy, an attorney whose address is 3500 188th St SW Ste 205, Lynnwood, WA 98037 (the “Conflict Counsel”).

WHEREAS, the City provides indigent defense services to individuals who have been determined to be eligible for representation at public expense for criminal charges before the Marysville Municipal Court; and

WHEREAS, the Supreme Court has by Order dated June 15, 2012, adopted New Standards for Indigent Defense and Certification of Compliance (the “Supreme Court Standards”), which impose certain standards, requirements, and a caseload limit of 400 unweighted misdemeanor cases per attorney for all attorneys providing indigent defense services; and

WHEREAS, the City has adopted Standards for the Delivery of Public Defense Services by Resolution No. 2368 adopted November 24, 2014 (the “City Standards”); and

WHEREAS, the City has contracted with Feldman and Lee, P.S., to handle the majority of cases which require appointment of a public defender but conflicts of interest sometimes require that Feldman and Lee, P.S., refuse appointment or withdraw from representation of certain individuals and it is possible that caseload limitations will require Feldman and Lee, P.S., to refuse appointment from representation of certain individuals; and

WHEREAS, Conflict Counsel represents that Conflict Counsel is willing, qualified, and able to accept appointments by the Municipal Court to represent indigent defense clients whom Feldman and Lee, P.S., may not represent;

NOW, THEREFORE, the City and Conflict Counsel enter into this Agreement in consideration of the mutual benefits to be derived and the mutual promises contained herein:

1. **Term.** The term of this Agreement shall be from the January 1, 2024 to December 31, 2026, unless earlier terminated as provided herein.
2. **Scope of Services, Standards, and Warranty.** During the term of the Agreement, Conflict Counsel will accept appointments to represent individuals (“Clients”) who have been charged with criminal offenses in the Marysville Municipal Court (the “Municipal Court”), who are determined to be eligible for representation at public expense, and who the City’s primary

public defender, Feldman and Lee, P.S., may not represent (such representation, the “Services”). The Services may also include representing Clients on appeals to the Snohomish County Superior Court. This Agreement does not guarantee that Conflict Counsel will be appointed any Clients, as appointments are at the discretion of the Municipal Court Judges and their delegates.

Conflict Counsel will provide the Services in accordance with this Agreement, the Supreme Court Standards, and the City Standards. Conflict Counsel warrants that Conflict Counsel has read and is fully familiar with the provisions of the Supreme Court Standards and the City Standards, both of which are attached hereto as Exhibit A and incorporated by this reference. Conflict Counsel warrants that Conflict Counsel has the qualification and experience necessary to accept appointment to misdemeanors, gross misdemeanors, and RALJ appeals and to comply with the Supreme Court Standards and the City Standards. Compliance with the Supreme Court Standards and the City Standards goes to the essence of this Agreement. To that end, and in accordance with court rule, Conflict Counsel shall certify compliance, quarterly, with the Municipal Court on the form established for that purpose by court rule. Conflict Counsel further warrants that the compensation detailed in Section 5 is sufficient to cover the cost of providing the Services, including Conflict Counsel’s infrastructure, support and administrative services, and systems necessary to comply with the Supreme Court Standards and the City Standards. Conflict Counsel shall promptly notify the City if any circumstance, including a change in court rules or law, renders it difficult or impossible to provide the Services in compliance with this Agreement, the Supreme Court Standards, or the City Standards.

3. Client Representation.

3.1. Appointment. During the term of the Agreement, Conflict Counsel will accept appointments from the Municipal Court, provided, however, that in no event is Conflict Counsel required to accept appointment where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel’s existing caseload would preclude adequate representation. Except as otherwise provided in this Agreement and irrespective of the term of this Agreement, Conflict Counsel shall provide representation for each Client appointed during the term of the Agreement until the case is closed by the Municipal Court. Expiration or termination of this Agreement does not affect Conflict Counsel’s obligation to represent Clients until the case is closed by the Municipal Court, except as provided in Section 3.3.

3.2. Course of Representation.

3.2.1. Conflict Counsel shall be available to each Client to ensure that the Client is provided with effective assistance of counsel. Confidential Client access to Conflict Counsel prior to court hearings is paramount. Conflict Counsel shall use best efforts to confer with Clients about cases promptly after appointment and prior to trial or hearings.

3.2.2. Conflict Counsel shall maintain an office that is reasonably available to Clients residing within the corporate limits of the City, but the office is not required to be located within the City. Conflict Counsel shall be available to Clients by phone, email, and postal mail.

3.2.3. Conflict Counsel shall respond to Client inquiries within a reasonable time to ensure the effective assistance of counsel, whether such inquiries are received by letter, telephone, email, or otherwise.

3.2.4. Conflict Counsel shall maintain a case reporting and case management information system and shall track time spent on each Client's case. Conflict Counsel's case reporting and case management information system shall have sufficient capacity to generate the reports required by Section 4.

3.3. Withdrawal.

3.3.1. In no event is Conflict Counsel required to continue representation where it would cause non-compliance with the Supreme Court Standards, the City Standards, or the Rules of Professional Conduct or if the Conflict Counsel's existing caseload would preclude adequate representation. In such event, Conflict Counsel shall motion the court to withdraw, alerting the court to the ethical implications of continued representation.

3.3.2. Upon termination for convenience pursuant to Section 6.2 or an agreed termination pursuant to Section 6.3 and unless otherwise agreed upon in writing, Conflict Counsel shall continue representation in all pending Client cases until the case is closed by the Municipal Court. Provided, however, that if the Client fails to appear for a court appearance, Conflict Counsel may motion the court to withdraw.

3.3.3. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall motion the court to withdraw from all pending Client cases immediately, providing adequate notice to all Clients.

4. Reporting. Conflict Counsel shall submit to the City's Public Defense Administrator a copy of each and every Certification of Compliance filed with the Municipal Court pursuant to court rule. In addition, Conflict Counsel shall submit a quarterly report to the City's Public Defense Administrator that includes the name of each Client appointed by the Municipal Court in the preceding quarter, the date of appointment, the case number, the charge(s), the disposition of the charge(s), and the method of disposition (i.e. trial, plea, motion, etc.). In addition, the quarterly report shall contain such information required by the City Standards to allow the City to determine Conflict Counsel's compliance with caseload limits, including information pertaining to Conflict Counsel's other municipal public defense contracts and Conflict Counsel's private practice, if any.

5. Compensation and Payment. Subject to all the provisions of this section, the City shall pay Conflict Counsel up to \$450.00 per case for the Services. In a case in which a trial is held before a jury or a bench trial, Conflict Counsel shall be authorized to bill up to an additional \$450.00. In a case in which a RALJ appeal is filed with the Superior Court and in which a brief of the appellant is filed, Conflict Counsel shall be authorized to bill up to an additional \$450.00. If there are any post-conviction hearings (e.g. failure to comply), Conflict Counsel will be compensated at the rate of \$75.00 per hour for preparing and appearing at such hearings.

In addition to per case payments and payment for case expenses identified below, Conflict Counsel may invoice the City for (1) insurance, (2) continuing legal education, and (3) miscellaneous costs subject to the approval of the Public Defense Administrator. Reimbursement for these costs and expenses is \$1,000.00 per calendar year.

5.1. Conflict Counsel warrants that the payment contemplated covers all infrastructure, overhead, equipment, support and administrative services, routine investigation, and systems necessary to comply with the Supreme Court Standards and the City Standards, except as provided below.

5.2. The City shall pay for the following case expenses in addition to any per case fee when reasonably incurred and approved by the Municipal Court on ex-parte motion:

5.2.1. Investigation expenses;

5.2.2 Medical and psychiatric evaluations;

5.2.3. Expert witness fees and expenses;

5.2.4. Interpreters fees;

5.2.5. Polygraph, forensic, and other scientific tests;

5.2.6. Lay witness fees and mileage incurred in bringing defense witnesses to court, including the cost of service of a subpoena, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

5.2.7. The cost of obtaining medical, school, birth, DMV, and other similar records and 911 and emergency communication recordings and logs to the extent they are not provided through discovery; and

5.2.8. Any other costs or expenses the Municipal Court finds necessary and proper for the investigation, preparation, and presentation of a case.

5.3. For post-conviction relief cases, the City shall pay the cost to obtain copies of the court file, the transcript, and original charging documents.

5.4. In the event Conflict Counsel has a conflict of interest that prevents Conflict Counsel from representing a Client, Conflict Counsel shall not be required to compensate any other attorney subsequently appointed.

5.5. Conflict Counsel is not guaranteed any payment under this Agreement as payment is contingent on Conflict Counsel being assigned Clients. In no event will the City be liable to the Contractor for loss of business.

5.6. Invoices. In order to receive payment, Conflict Counsel will submit an invoice to the City's Public Defense Administrator. The invoice shall be on a form approved by the Public Defense Administrator and shall detail the name of the Client, the charge(s), the date of appointment, the case number, and the services provided. Services may be invoiced as follows:

a. Upon appointment, completing a conflicts check, and filing a notice of appearance, Conflict Counsel may invoice for \$450.00.

b. Upon completion of a trial, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee.

c. Upon a final ruling in a RALJ appeal, Conflict Counsel may invoice for \$450.00 in addition to the standard case fee and any trial fee.

d. Upon completing a post-conviction hearing, Conflict Counsel may invoice for hours (or fractions of hours) spent on the matter at a rate of \$75.00 per hour.

5.7. In the event of termination under Section 6.2 or 6.3, Conflict Counsel shall promptly submit invoices for any Services performed, but not yet compensated.

5.8. Upon termination for cause pursuant to Section 6.1, Conflict Counsel shall promptly submit invoices to the City for Services performed on each Client's case before the earlier of: (1) the violation of a material term or (2) notice of a contract violation that ultimately led to termination for cause.

6. Termination.

6.1. For Cause. This Agreement may be terminated for cause for violation of any material term. "Material term" shall include any violation indicating a failure to provide representation in accordance with the Supreme Court Standards, the City Standards, the Rules of Professional Conduct, and any applicable court rules; a violation of the provisions of Section 9 relating to insurance; conviction of a criminal charge; or a finding that the license of Conflict Counsel has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of a contract violation

shall be provided to Conflict Counsel and Conflict Counsel shall have ten (10) business days to correct the violation. If Conflict Counsel fails to correct the violation, the City, in its sole discretion, may terminate the Agreement for cause or may agree in writing to alternative corrective measures.

6.2. For Convenience. Either party may terminate this Agreement at any time, without cause, by providing the other party not less than ninety (90) days written notice.

6.3. Agreed. The parties may agree in writing to terminate the Agreement at any time.

7. Nondiscrimination. Neither Conflict Counsel nor any person acting on behalf of Conflict Counsel shall, by reason of race, creed, color, national origin, sex, sexual orientation, honorably discharged doctrine or military status, or the presence of any sensory, mental, or physical disability or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates or in the provision of Services under this Agreement.

8. Indemnification. Conflict Counsel agrees to defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors, or omissions of Conflict Counsel in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes Conflict Counsel's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

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

9.1. Conflict Counsel shall obtain insurance of the types and coverage described below:

9.1.1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors, and personal injury and advertising injury. The City shall be named as an additional insured under Conflict Counsel's Commercial General Liability insurance policy with respect to the Services performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

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

9.1.3. Professional Liability insurance appropriate to Conflict Counsel's undertakings. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.2. Conflict Counsel shall maintain the following insurance limits:

9.2.1.

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

9.2.2. Professional Liability insurance shall be written with limits no less than \$500,000 per claim and \$1,000,000 policy aggregate limit. The policy shall not contain an exclusion for loss or liability relating to a claim of ineffective assistance of counsel.

9.3. Conflict Counsel's Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Conflict Counsel's insurance and shall not contribute with it.

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

9.5. Conflict Counsel shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Conflict Counsel before commencement of the Services.

9.6. Conflict Counsel shall provide the City with written notice of any policy cancellation within two (2) business days of its receipt of such notice.

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

9.8. If Conflict Counsel maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General, Professional Liability, and Excess or Umbrella liability maintained by Conflict Counsel, irrespective of whether such limits maintained by Conflict Counsel are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Conflict Counsel.

9.9. Conflict Counsel's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Conflict Counsel to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10. Work Performed by Conflict Counsel. In addition to compliance with the Supreme Court Standards and the City Standards in performing the Services under this Agreement, Conflict Counsel shall comply with all federal, state, and municipal laws, ordinances, rules, and regulations which are applicable to Conflict Counsel's business, equipment, and personnel engaged in performing the Services under this Agreement.

11. Work Performed at Conflict Counsel's Risk. Conflict Counsel shall be responsible for the safety of its employees, agents, and subcontractors in providing the Services, and shall take all protections reasonably necessary for that purpose. All Services shall be done at Conflict Counsel's own risk and Conflict Counsel shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the Services. Conflict Counsel shall also pay its employees all wages, salaries, and benefits required by law and provide for taxes, withholding, and all other employment related charges, taxes, or fees in accordance with law and IRS regulations.

12. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of Conflict Counsel's particular skills, qualifications, experience, and ability to meet the Supreme Court Standards and City Standards incorporated in this Agreement. This Agreement shall not be subcontracted without the express written consent of the City and refusal to subcontract may be withheld at the City's sole discretion. Any assignment of this Agreement by Conflict Counsel without the express written consent of the City shall be void.

13. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the City and Conflict Counsel.

14. Entire Agreement. This Agreement contains the entire agreement between the City and Conflict Counsel. The provisions of this Agreement shall supersede all prior verbal statements of any officer or other representative of the City, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

15. Written Notice. All reports, notices, and communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified in writing to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

TO THE CITY:

City of Marysville

Attn.: Chief Administrative Officer

501 Delta Avenue

Marysville, WA 98270

TO CONFLICT COUNSEL:

Lucas D. McWethy

The Law Firm of Lucas D. McWethy

3500 188th St SW Ste 205

Lynnwood, WA 98037-4757

Email: lucas@dui2day.com

Phone: (206) 427-4901

16. Nonwaiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

17. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding, or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Chief Administrative Officer, whose decision shall be final. Provided, however, that any complaint regarding any violation of the Supreme Court Standards or City Standards or which relate to any manner whatsoever to trial strategy or an ongoing case shall be referred to a Judge of the Municipal Court. Nothing herein shall be construed to obligate, require, or permit the City, its officers, agents, or employees to inquire into any privileged communication between Conflict Counsel and a Client. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Snohomish County Superior Court.

[Signature Page Follows]

CITY OF MARYSVILLE

CONFLICT COUNSEL

Mayor Jon Nehring

Date Signed: _____

Date Signed: _____

ATTEST:

Chari Taber, Deputy City Clerk

APPROVED AS TO FORM:

Jon Walker, City Attorney

EXHIBIT A

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF THE ADOPTION OF NEW
STANDARDS FOR INDIGENT DEFENSE AND
CERTIFICATION OF COMPLIANCE

ORDER

NO. 25700-A-1004

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the standards and certificate as attached hereto are adopted.
- (b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15th day of June, 2012.

FILED
 SUPREME COURT
 STATE OF WASHINGTON
 12 JUN 15 AM 8:00
 BY RONALD A. CARPENTER
 CLERK

639/7

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IN THE MATTER OF THE ADOPTION OF NEW STANDARDS FOR INDIGENT DEFENSE
AND CERTIFICATION OF COMPLIANCE

Madsen, C. J.

Chambers, J.
J. M. Johnson
Wiggins, J.

Joe Johnson
Stephens, J.
Gonzalez, J.

STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

Standard 3: Caseload Limits and Types of Cases

- 3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.
- 3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.
- 3.3 **General Considerations**
Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney’s caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney’s numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

STANDARDS FOR INDIGENT DEFENSE

Definition of case: A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. *[Effective September 1, 2013]*

3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;
- B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

STANDARDS FOR INDIGENT DEFENSE

- C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and
- D. be periodically reviewed and updated to reflect current workloads; and
- E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

- A. **Case Weighting Upwards:** Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.
- B. **Case Weighting Downward:** Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.
 - i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).
 - ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions,

STANDARDS FOR INDIGENT DEFENSE

representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

- iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.
- iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.
- v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [\[Link\]](#)

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [\[Link\]](#)

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [\[Link\]](#)

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [\[Link\]](#)

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [\[Link\]](#)

Standards for Indigent Defense
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Washington State Bar Association
1325 Fourth Ave - Suite 600
Seattle, WA 98101-2539

STANDARDS FOR INDIGENT DEFENSE

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996)
American Bar Association, Chicago, IL.

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-1.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [\[Link\]](#)

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [\[Link\]](#)

City of Seattle Ordinance Number: 121501 (2004). [\[Link\]](#)

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation* (2009). [\[Link\]](#)

Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [\[Link\]](#)

5.2 Administrative Costs

- A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.
- B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

STANDARDS FOR INDIGENT DEFENSE

- B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. Be familiar with the Washington Rules of Professional Conduct; and
- D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and
- E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.2 Attorneys' qualifications according to severity or type of case¹:

- A. **Death Penalty Representation.** Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:
 - i. The minimum requirements set forth in Section 1; and
 - ii. At least five years criminal trial experience; and
 - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
 - iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
 - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
 - vi. Have completed at least one death penalty defense seminar within the previous two years; and
 - vii. Meet the requirements of SPRC 2.²

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

²SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

STANDARDS FOR INDIGENT DEFENSE

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases – Class B Violent Offense

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)

STANDARDS FOR INDIGENT DEFENSE

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation

Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation

Each attorney acting as lead counsel in a “two-strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and

³ RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.”

STANDARDS FOR INDIGENT DEFENSE

2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
3. Expert witnesses; and
4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

STANDARDS FOR INDIGENT DEFENSE

J. Juvenile Status Offenses Cases. Each attorney representing a client in a “Becca” matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

K. Misdemeanor Cases

Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

L. Dependency Cases

Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

M. Civil Commitment Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
- iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor, or
 - b. served one year as a public defender, or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and

STANDARDS FOR INDIGENT DEFENSE

- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1. Mental health issues; and
 - 2. Sexual offenses; and
 - 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

STANDARDS FOR INDIGENT DEFENSE

14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:
 - i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
 - ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

14.4 Legal Interns

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

STANDARDS FOR INDIGENT DEFENSE

CERTIFICATION OF COMPLIANCE
“Applicable Standards” required by CrR3.1/ CrRLJ 3.1 / JuCR9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for
--

Certification of Appointed Counsel of
Compliance with Standards Required by
CrR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately ____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigation services as

STANDARDS FOR INDIGENT DEFENSE

appropriate, in compliance with Standard 6.1.

- d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases.
[Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

Defendant's Lawyer, WSBA#

Date

EXHIBIT B

RESOLUTION NO. 2368

**A RESOLUTION OF THE CITY OF MARYSVILLE, WASHINGTON
AMENDING NEW STANDARDS FOR THE DELIVERY OF PUBLIC
DEFENDER SERVICES PURSUANT TO RCW 10.101.030 ADOPTED
BY RESOLUTION 2363**

WHEREAS, RCW 10.101.030 requires the City of Marysville ("City") to adopt standards for the delivery of public defense services, specifies the topics to be addressed in such standards, and urges local legislative bodies to use the standards endorsed by the Washington State Bar Association for indigent defense as guidelines; and

WHEREAS, the City adopted new standards for the delivery of public defender services by Resolution 2363 adopted July 28, 2014; and

WHEREAS, after review, consultation with the City's public defender and further consideration, City Council finds it would promote the public interest to make certain amendments to the standards as set forth in Exhibit A,

NOW, THEREFORE

THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City of Marysville Standards for the Delivery of Public Defense Services as set forth in Exhibit A to this resolution are hereby adopted and approved, and supersede the Standards of the Delivery of Public Defense Services as adopted by Resolution 2363.

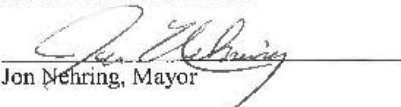
Section 2. The City Clerk is directed to provide a certified copy of the Standards to the Presiding Judge of the Marysville Municipal Court.

Section 3. **EFFECTIVE DATE.**

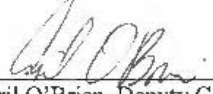
The provisions of this resolution shall be effective upon adoption.

RESOLVED:

CITY OF MARYSVILLE


Jon Nehring, Mayor

ATTEST:



April O'Brien, Deputy City Clerk

APPROVED AS TO FORM:



Grant K. Weed, City Attorney

EXHIBIT A

STATEMENT OF INTENT AND INTERPRETATION: These standards are adopted in order to comply with the requirements of RCW 10.101.030, the rules established by the Washington State Supreme Court, and the requirements of the Sixth Amendment to the U.S. Constitution. The provisions of these standards shall be construed to effectuate their stated purpose, which is to provide standards that afford quality representation in the provision of public defense to indigent criminal defendants. "Quality representation" describes the minimum level of attention, care, and skill that Washington citizens would expect of their State's criminal justice system meeting all legal requirements for the provision of public defense services. These standards may be amended from time to time to reflect changes in the rules established by the Washington State Supreme Court, guidance offered by the Washington State Bar Association, or decisions of Washington State and federal courts.

1. DUTIES AND RESPONSIBILITIES OF COUNSEL.

1.1 Public defense services ("the Services") shall be provided to all clients in a professional, skilled manner consistent with the minimum standards set forth by the American Bar Association, the Washington State Bar Association, the Rules of Professional Conduct, case law and applicable court rules and decisions defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the interests of the client.

1.2 Services shall be provided to indigent clients whose eligibility has been determined by the City of Marysville through an established screening process.

1.3 All Public Defenders providing services by contract shall certify their compliance with the standards for indigent defense by filing a Certification of Compliance quarterly, as required by CrR 3.1, CrRLJ 3.1, and JuCR 9.2. Such forms shall be filed with the Marysville Municipal Court. Copies of each Public Defender's certification shall be provided to the City.

2. QUALIFICATIONS OF ATTORNEYS.

2.1 Every Public Defender performing services under contract with the City (herein "Public Defense" or "Public Defender") or appointed by the Marysville Municipal Court in a particular case shall satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court and possess a license to practice law in the State. Interns may assist in the provision of services so long as such interns comply with APR 9, and are trained and supervised by contract Public Defenders.

2.2 In a firm providing public defense services, one attorney shall be designated as the lead attorney. The designated Public Defender or the designated lead attorney in a firm providing public defense services by contract shall have a minimum of five years of experience in a practice emphasizing criminal defense.

shall: 2.3 Attorneys and Rule 9 interns performing services under contract

2.2.1 be familiar with the statutes, court rules, constitutional provisions, and case law relevant to the practice area;

2.2.2 be familiar with the Washington Rules of Professional Conduct (WRPC);

2.2.3 be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association;

2.2.4 be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based upon a criminal conviction; and

2.2.5 be familiar with mental health issues and be able to identify the need to obtain expert services; and

2.3 The City Attorney, City Prosecutor, Chief of Police and law enforcement personnel shall not participate in the selection and evaluation process leading to the recommendation of a contract for Public Defense Services. Nothing herein shall be interpreted to prohibit the City Attorney, City Prosecutor or Chief of Police from performing the normal functions of his/her office, including by way of illustration, the drafting of contracts, ordinances and resolutions.

3. TRAINING, SUPERVISION, AND EVALUATION OF ATTORNEYS.

3.1 The designated lead attorney in a firm providing public defender services shall be responsible for training, supervising, and evaluating all attorneys in the firm providing public defender services.

3.2 No attorney in a firm providing public defender services shall be assigned sole or primary responsibility for a case unless the lead attorney determines that attorney has the required training, experience, knowledge and skill.

3.3 All attorneys providing public defense services shall participate in a minimum of seven hours of continuing legal education per year in areas relating to criminal defense law and practice.

3.4 In addition to required continuing legal education (CLE) training, in the event that seven (7) or more attorneys perform services to the City by the same contract and in the same entity, the contract for services shall provide for in-house training. Proposals made in response to requests for proposals for pursuit of a contract for Public Defense Services shall provide information regarding in-house training, the development of manuals to inform new attorneys of the rules and procedures of the Marysville Municipal Court and encourage the

opportunity to attend courses that foster trial advocacy skills. The Public Defender is encouraged to obtain and review professional publications and other media relating to criminal defense.

4. COMPENSATION OF COUNSEL.

The City has a constitutional obligation to provide Public Defense Services that ensure that public defense attorneys and staff are compensated at a rate commensurate with their training and experience. For conflict and other assigned counsel, reasonable compensation shall also be provided. Compensation shall reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the assigned caseload. Contracted and assigned counsel shall be compensated for reasonable out of pocket expenses.

4.1 The Public Defender may move the court to fix additional compensation in the event that a particular case requires an extraordinary amount of time and preparation, or to approve adjustment of the caseload counting for that case pursuant to Standard 7.7.

4.2 Attorneys with a conflict of interest shall not be required to compensate the new, substituted attorney under the contract.

5. ADMINISTRATIVE EXPENSES AND SUPPORT SERVICES.

5.1 All contracts for Public Defense shall provide sufficient amounts, in addition to reasonable compensation for attorneys, for adequate administrative expenses and supports services to provide for adequate staffing and other costs associated with the day to day management of a law office. Administrative expenses include travel, telephones, law library including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training. Support services include secretaries, word processing staff, paralegals, and access to translators, social work staff, mental health professionals, and immigration law advice, as appropriate,

5.2 Private offices and/or conference rooms shall be available which are convenient to defendants charged in the Marysville Municipal Court and allow the maintenance of confidentiality. Public Defenders shall maintain a telephone system, an email address and postal address to enable convenient communications by clients.

6. RESPONSIBILITY FOR EXPERT WITNESS FEES AND OTHER COSTS ASSOCIATED WITH REPRESENTATION

The expenses of expert witnesses and investigative costs in appropriate cases shall be borne by the City.

6.1 The Public Defense Contract shall provide reasonable compensation for an expert of the Public Defender's choosing. No appointment shall be from a pre-approved list designated by the City Attorney, the City Prosecutor, or other City officials.

6.2 The services of expert witnesses will be paid directly by the City when approved by the Court through ex parte motion.

6.3 Investigative services shall be employed as appropriate. The investigator shall have appropriate training and experience in the area of criminal defense and investigations relating to criminal matters. Contracts for Public Defense Services may include investigative services as a part of reimbursed overhead included in the contract compensation for investigators employed by a firm.

7. CASELOAD LIMITS AND TYPES OF CASES.

7.1 The Public Defender shall provide Services to all eligible person charged in the Marysville Municipal Court with violation of the City's ordinances defining misdemeanor and gross misdemeanor crimes for which incarceration is a possible consequence upon conviction, and RALJ appeals of convictions to Superior Court. A case is defined as the filing of a document with the Court naming a person as a defendant or respondent, to which an attorney is appointed in order to provide representation.

7.2 The caseload of a full time public defender or assigned counsel shall not exceed four hundred cases per year.

7.3 If a Public Defender or assigned counsel is carrying a caseload consisting of cases performed under contract with the City, as well as other criminal cases from other jurisdictions, including a mixed caseload of felonies and misdemeanors, these standards shall be adjusted proportionally to determine a full caseload. If the contract or assigned counsel also maintains a private law practice, the caseload shall be based upon the percentage of time that the lawyer devotes to public defense with the City.

7.4 The caseload of a Public Defender who also maintains a private practice shall not exceed the number of cases resulting from multiplying 400 cases by the percentage of his or her time the public defender devotes to providing public defense services under all contracts for public defense services.

7.5 A case credit is a unit of work computed as follows:

7.5.1 The Public Defender will receive no credit for a misdemeanor case when the court dismisses the case upon the motion of the prosecuting attorney before any legal service has been performed. Any case in which the Public Defender's duty is limited to explaining to the individual defendant the implication of any action by the City Prosecutor to reduce a criminal matter to a civil infraction, bail forfeiture or dismissal, shall not be counted as a case assignment to the Public Defender's office. The Public Defender shall receive no work for credit on cases which are substantively identified as conflicts, with the exception of cases in which, after performing a conflicts check, receiving discovery and having

a a confidential conference with the client, the client obtains a new attorney at his own expense or through a request to the court, or for other extraordinary circumstances approved by the City, including but not limited to, information or evidence which the Public Defender could not have reasonably known or discovered at the time of the initial conflicts check.

7.5.2 Each case assigned to the Public Defender shall only be counted once, irrespective of the number of hearings either prior to disposition or post disposition.

7.5.3 A criminal matter shall be defined as one (1) case for billing purposes no matter how many charges are filed against the individual, so long as all the charges arise out of the same incident. Any additional charges filed against the same defendant, arising out of a separate incident, shall be counted by the Public Defender as a new case.

7.5.4 If the Public Defender is required to attend an arraignment or probation review/failure to comply calendar, each hour of such calendar time shall be counted as 0.17 case credit toward the maximum caseload limit. This shall apply regardless of whether the attorney is appointed to represent a client.

7.5.5 A case in which a jury is empaneled shall be counted as three case credits.

7.5.6 A RALJ appeal to which the Public Defender is assigned shall not count as a case credit if dismissed prior to briefing.

7.6 The request for qualifications process for selection of a Public Defender and Public Defender Counsel shall strive to obtain a Public Defender whose experience and training is sufficient to comport with the caseload assumptions and credits assigned. Attorneys assigned to RALJ appeals shall have a minimum of one year's experience in RALJ appeals or in the event multiple attorneys perform services in the contract, a minimum of one attorney assigned to or supervising RALJ appeals shall have such experience.

7.7 The standards provided herein for caseloads may be adjusted upward depending upon the complexity of a particular case. A Public Defender may request to have the weighting for an unusually complex case not addressed adequately by these standards to be increased depending upon the complexity and requirements of the case. The maximum caseload for a particular attorney shall be adjusted downward when the mix of case assignments becomes weighted toward an unanticipated number of more serious offenses or case types that demand more investigation, legal research and writing, use of experts, and/or social workers or other expenditure of time and resources.

8. LIMITATIONS ON PRIVATE PRACTICE.

Subject to the provisions of Standard Six on Caseload Limits, there is no prohibition on a public defender engaging in private practice, provided, such private practice does not

interfere with performance of Public Defense Services and complies with all requirements of the Rules of Professional Conduct.

9. REPORTS OF ATTORNEY ACTIVITY AND VOUCHERS.

9.1 Public Defense Services shall maintain a case reporting system and information management system. The Public Defender or firm providing public defense services shall provide monthly reports to the City regarding the caseloads generated under the contract for each attorney and intern providing services under the contract.

9.2 The monthly caseload reports to be provided by the Public Defender shall identify the number of cases assigned, the case count year-to-date, and records of the time expended on each case. The monthly caseload report shall also include information relating to calculation of caseload under public defense contracts with other jurisdictions and private practice caseload to permit the City to monitor and evaluate compliance with these Standards. The City may require supplementation of reports if the information provided does not allow evaluation of the Public Defender's compliance with caseload limits.

9.3 The Public Defender shall keep track of the amount of time spent on each case assigned to it. All client consultations, investigations, witness interviews, legal research, and any other time spent on an appointed client will be tracked. An exception to the time tracking rules above is for the amount of time the attorney spends with each individual client while at a pretrial or confirmation hearing. The amount of time an attorney or attorneys spent assisting clients at those hearings maybe calculated as a whole. That time need not be broken down into individual minutes spent per individual case in court. If a motion hearing or trials, hourly time spent will be attributed to the individual client's case.

9.4 Requests for payment shall be made by voucher on a form approved by the City Administrator and supported by the monthly caseload report.

10. DISPOSITION OF CLIENT COMPLAINTS.

10.1 The Chief Administrative Officer shall identify a procedure for complaints regarding the provision of services by the Public Defender.

10.2 Public Defender Service Providers shall first be afforded an opportunity to resolve any complaint.

10.3 Complaints regarding the provision of services under the contract, or regarding a violation of any of these standards shall be investigated by the Chief Administrative Officer provided, however, that any complaint regarding trial strategy or any other matter which could breach confidentiality shall be referred to the Washington State Bar Association or the presiding judge of the Marysville Municipal Court. Nothing in this section or in these standards should be interpreted to require the Public Defender or any indigent defendant to breach any duty of confidentiality, including, but not limited to trial strategy

11. CAUSE FOR TERMINATION OR CONTRACT OR REMOVAL OF ATTORNEY.

11.1 The City may terminate the contract for Public Defense Services either “for cause,” after such notice and opportunity to cure as is warranted in the circumstances, or “for convenience,” on 90 days notice of termination.

11.2 Removal by the Court of counsel from representation normally should not occur over the objection of the attorney and the client.

12. SUBSTITUTION OF ATTORNEYS OR ASSIGNMENT OF CONTRACTS.

12.1 The contract for Public Defense Services shall not be assignable without the express written consent of the City.

12.2 In the event of conflict or removal of the Public Defender, Conflict Counsel shall be assigned, either by separate contract with Conflict Counsel or by court appointment. In the event that alternative or Conflict Counsel is required to be assigned, the Public Defender shall bear no part of the costs associated with the appointment of an alternative or Conflict Counsel. The contract should address the procedures for continuing representation of clients upon conclusion of the agreement.

12.3 Conflict Counsel shall adhere to the standards established by this resolution, including but not limited to, an evaluation of the overall case count annually by Conflict Counsel under the procedures set forth in this agreement.

13. NON-DISCRIMINATION.

Non-Discrimination. The Public Defender shall comply with all federal, state and local non-discrimination laws or ordinances. The duty of nondiscrimination relates not only to the provision of services by the Public Defender to the clients, but also with respect to the hiring and employment practices of the Public Defender Contractor.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Engineering Coordinator Laurie Barbosa, Community Development

ITEM TYPE: Real Estate

AGENDA SECTION: New Business

SUBJECT: City of Marysville Non-Exclusive Ingress/Egress and Utility Easement with MAINVUE WA, LLC.

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the City of Marysville Non-Exclusive Ingress/Egress and Utility Easement with MAINVUE WA, LLC.

SUMMARY: This is a non-exclusive ingress/egress and utility easement made between MAINVUE WA, LLC, grantor, and CITY OF MARYSVILLE, grantee. Location of this easement is just north of E. Sunnyside School Road between 87th Ave NE and SR9. This easement is to provide emergency access for the fire district to the 87th Ave NE Assemblage subdivision to the north. This easement will also allow for the water main to be installed under the proposed access easement. See map for geographical reference.

ATTACHMENTS:
[Easement](#)
[Map Mainvue Easement.pdf](#)

Return recorded document to:
Land Pro Group, Inc.
Attn: Amanda McMullen
10515 20th St SE, STE 202
Lake Stevens, WA 98258

NON-EXCLUSIVE INGRESS/EGRESS AND UTILITY EASEMENT

Grantor: MAINVUE WA, LLC, Delaware limited liability company
Grantee: CITY OF MARYSVILLE, a Municipal Corporation
Abbreviated Legal: Ptn. SE-SW 36-30N-5E WM
Tax Parcel Numbers: 00590700015003 and 00590700015002

THIS NON-EXCLUSIVE INGRESS/EGRESS AND UTILITY EASEMENT ("Easement") is made this 1st day of February, 2024 by MAINVUE WA, LLC, a Delaware limited liability company ("Grantor") and CITY OF MARYSVILLE, a Municipal Corporation state of Washington ("Grantee").

RECITALS

A. Grantor is the owner of certain real property located in City of Marysville, Snohomish County, Washington, which is legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Grantor's Property").

B. Grantee is desirous of acquiring certain rights and privileges across, under, through, in and upon said lands and premises of Grantor.

NOW THEREFORE, Grantor, for valuable consideration, the adequacy and receipt of which is hereby acknowledged, hereby conveys and grants to the Grantee, its successors and assigns and its contractors, agents, permittees and licensees, the perpetual right, privilege and authority for ingress and egress, to construct, alter, improve, repair, operate and maintain driving surface, storm drainage lines, and/or sanitary sewer lines, and/or water lines, pipes and appurtenances across, over, under, through, in and upon the described lands and premises situated in the County of Snohomish, State of Washington, to-wit:

1. **Non-Exclusive Ingress/Egress and Utility Easement.** Grantor hereby grants unto Grantee, for the benefit of the Grantee, an ingress/egress and utility easement across Grantor's Property, to be used by Grantee for the purpose of allowing the use as ingress/egress and utility

Page 1 of 7

easement access located on the Grantor's Property. Together with the right of ingress to and egress from said lands across adjacent lands of the Grantor, as well as for the purpose of constructing, reconstructing, repairing, renewing, altering, changing, patrolling, and operating said lines, and the right at any time to remove said lines and appurtenances from said lands. The ingress/egress and utility easement are legally described on **Exhibit B** and depicted on **Exhibit C**, both of which are attached hereto and incorporated herein by this reference.

2. **Easement Runs with the Land.** The grant of the foregoing Easement shall run with the land, shall bind the Grantor's Property as the subservient tenement and shall benefit the Grantee as the dominant tenement and shall inure to the benefit and be binding upon the successors and assigns of Grantee and Grantor, respectively, until such Easement is terminated.

3. **Termination.** Grantor and Grantee both acknowledge that this Easement shall be extinguished at the time of recording of the Final Plat currently known as Nordstrom (PA21-024).

4. **Attorneys' Fees.** In any litigation or proceedings to enforce any term of this easement or to determine the rights and obligations of the parties under this easement, the substantially prevailing party shall be entitled to recover from the other party all reasonable costs and attorney's fees incurred therein.

5. **Specific Performance.** If any party shall default in its obligations under this Easement, the parties each acknowledge that it would be extremely difficult to measure the resulting damages. Accordingly, any non-defaulting party, in addition to any other rights or remedies, shall be entitled to restraint by injunction of a violation, or attempted or threatened violation, of any obligation or provision of this Easement, or to a decree specifically compelling performance of any such obligation or provision without the requirement of posting a bond. In such event, all parties hereto each expressly waive any defense that a remedy in damages or at law would be adequate.

6. **Indemnification.** Grantee shall defend, indemnify, save and hold the Grantor free and harmless from and against any and all claims, demands, losses, expenses (including court costs, penalties and attorney's fees) or causes of action of whatever nature, which are caused by or arise in any manner out of Grantee's activities on the Grantor's Property, provided, however, that the negligence of the Grantor, or their agents, contractors or invitees, has not contributed to or caused the same.

7. **Liens.** Grantee shall keep the Grantor's property free from any liens arising out of any work performed, materials furnished, or obligations incurred by Grantee. Grantee covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Grantor's Property, and that it will save and hold the Grantor harmless from all loss, cost or expense based on or arising out of asserted claims or liens against Grantor's Property.

8. **Law.** This Easement shall be governed by and construed in accordance with the laws of the State of Washington. Venue shall be deemed proper in Snohomish County, Washington.

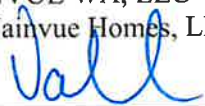
IN WITNESS WHEREOF, the parties have caused this Easement to be duly signed as of the day and year first above written.

GRANTOR:

GRANTEE:

MAINVUE WA, LLC
By: Mainvue Homes, LLC, Member

CITY OF MARYSVILLE



By: *Vanessa Normandin*
President

By:

STATE OF Washington)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Vanessa Normandin is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Mainvue Wa, LLC, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

WITNESS MY HAND and official seal the day and year in this certificate first above written.



Monique M. Ryan
Print Name: Monique M. Ryan
Notary Public in and for the
State of Washington, residing at
Kirkland
Expiration Date: February 17, 2028

EXHIBIT A

Legal Description of Grantor's Property

LOTS 1 AND 2, SNOHOMISH COUNTY SHORT PLAT NO. PFN 03103294-SP RECORDED UNDER RECORDING NO. 200601265001 BEING A PORTION OF LOT 150 AND A PORTION OF LOTS 149 AND 163, SUNNY SIDE FIVE ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGE 19, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

TOGETHER WITH AN UNDIVIDED EQUAL INTEREST IN TRACTS 998 AND 999 OF SAID SHORT PLAT.

EXCEPTING THEREFROM THE MOBILE HOME IMPROVEMENTS, IF ANY, LOCATED WITHIN SAID LANDS.

SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON.

EXHIBIT B

Legal Description of Non-Exclusive Ingress/Egress and Utility Easement Area

A STRIP OF LAND, 50.00 FEET IN WIDTH, OVER THAT PORTION OF LOTS 1, 2 AND TRACT 999 OF SNOHOMISH COUNTY SHORT PLAT NO. PFN 03103294-SP RECORDED UNDER 200601265001, LYING 25.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT AND THE WESTERLY RIGHT OF WAY MARGIN OF STATE ROUTE NINE NORTHEAST;
THENCE N89°17'38"W, ALONG THE SOUTH LINE OF SAID TRACT, 256.54 FEET TO THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED CENTERLINE;
THENCE N01°01'38"E 218.58 FEET TO A POINT OF TANGENCY WITH A 165.00-FOOT RADIUS CURVE TO THE LEFT;
THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°05'22", A DISTANCE OF 34.81 FEET TO A POINT OF TANGENCY;
THENCE N11°03'44"W 35.82 FEET TO A POINT OF TANGENCY WITH A 165.00-FOOT RADIUS CURVE TO THE RIGHT;
THENCE NORTHERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°08'13", A DISTANCE OF 32.07 FEET TO A POINT OF TANGENCY;
THENCE N00°04'29"E 7.03 FEET TO THE NORTHERLY LINE OF SAID TRACT AND THE TERMINUS OF SAID CENTERLINE;

THE SIDELINES OF THE ABOVE DESCRIBED CENTERLINE SHALL BE LENGTHENED OR SHORTENED AS NECESSARY TO INTERSECT AT THE NORTH AND SOUTH LINE OF SAID LOTS AND TRACT.

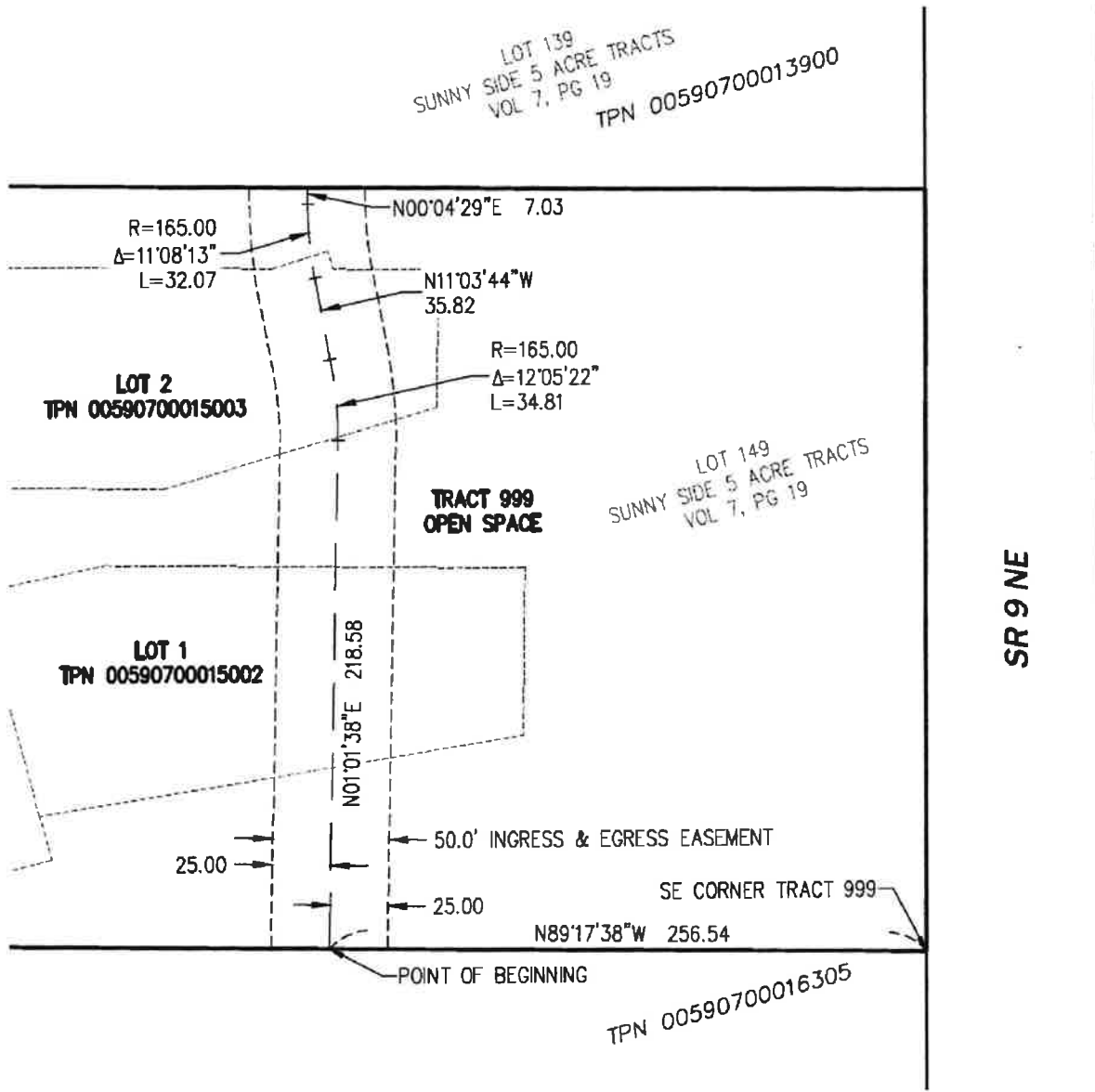
CONTAINS 16,416± SQUARE FEET (0.379± ACRES)

10/20/2023



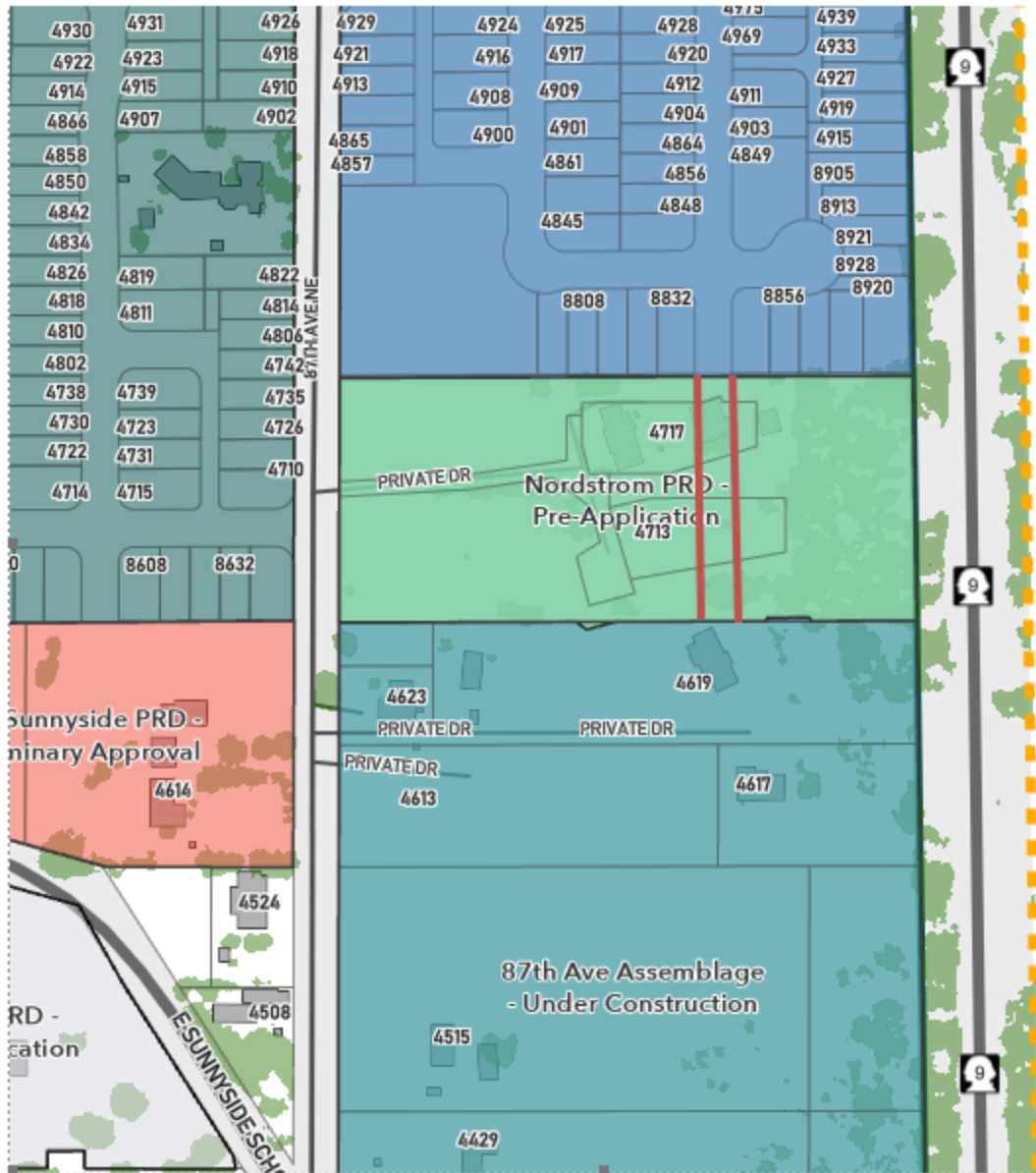
EXHIBIT D

Depiction of Easement Area



10/20/2023







Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Agreement

AGENDA SECTION: New Business

SUBJECT: Everett Gospel Mission Agreement - MESH

SUGGESTED ACTION: Recommended Motion: I move to authorize the Mayor to sign and execute the amended Everett Gospel Mission Agreement for MESH housing in Marysville.

SUMMARY: The amended MESH agreement with Everett Gospel Mission adds Exhibit A: Management Plan in accordance with CLFR Loan Agreement HCS-22-AR-2106-200 to be eligible for reimbursement from the County.

ATTACHMENTS:
[Everett Gospel Mission Agreement - MESH 1-11-24 \(1\).pdf](#)

**AGREEMENT BETWEEN THE CITY OF MARYSVILLE
AND THE EVERETT GOSPEL MISSION REGARDING
MARYSVILLE EXTENDED SHELTER HOME
("MESH") SERVICES**

This Agreement between the City of Marysville ("City"), a Washington municipal corporation and the Everett Gospel Mission ("Mission") a Washington non-profit corporation is entered into on the date last set forth below.

WHEREAS, it is a high level priority for the City in its Community Development Block Grant 2020-2024 Consolidated Plan to provide transitional and permanent housing for homeless individuals, particularly chronically homeless individuals; and

WHEREAS, the residence at 1095 Alder was purchased with a loan from Snohomish County utilizing ARPA/CLFR funds to provide affordable housing; and

WHEREAS, the Mission in a non-profit organization providing services, housing, and life recovery programs to poor and homeless persons in Snohomish County for over fifty years; and

WHEREAS, the Mission currently offers long term recovery programs including services such as life skills classes (anger management, parenting, employment preparation, substance abuse and financial management), intensive case management, resource referral, and work therapy to poor and homeless persons; and

WHEREAS, a critical component of the Mission's long term recovery program is transitioning participants in the program to long-term housing; and

WHEREAS, provision long-term housing is a vital bridge for many individuals who have successfully participated in the Mission's recovery program as such persons may not be able to afford initial deposits and rent and thus be unable to take their first steps toward an independent and productive life; and

WHEREAS, these persons are Snohomish County residents; and

WHEREAS, providing extended shelter to persons who have successfully participated in the Mission's recovery program and thereby transitioning homeless persons into stable housing situations promotes public health, safety, and welfare; and

WHEREAS, the City owns a Residences that is suitable for the Mission's goal of providing extended shelter; and

WHEREAS, the Mission has successfully operated extended shelter houses in the City at different locations; and

WHEREAS, the City has an embedded social worker who works in tandem with a dedicated police officer to identify and assist individuals in need of services; and

WHEREAS, the parties intend that the Mission work closely with the embedded social worker to identify individuals in need of extended shelter; and

WHEREAS, the Parties to this Agreement believe the use of this Residences to provide extended shelter would promote the goals of both Parties.

NOW, THEREFORE, the Parties agree as follows:

The City owns residences located at 5626 61st Street, NE, (Tax Parcel No. 30052700306000), 6032 47th Ave, NE (Tax Parcel No. 00551201001602), 1926 4th St (Tax Parcel No. 00551201000300), and 1095 Alder St (Tax Parcel No. 30052800214700) in Marysville, Washington (“Residences”). The Mission wishes to utilize these Residences to provide extended shelter home services in Marysville (MESH services) to persons who have successfully participated in the Mission’s recovery program.

The City agrees to permit the Mission to utilize the Residences for the purpose of providing MESH services to persons who have successfully participated in the Mission’s recovery program in accordance with the terms and conditions of this Agreement.

1. PERMITTED USE. The Mission and the City will work cooperatively to identify appropriate individuals to reside at the Residences. The Mission may use the Residences to provide residential housing to persons who have successfully participated in the Mission’s recovery program. The Mission shall not provide housing to persons who have not successfully participated in the recovery program unless the individual is referred by the City. The Mission may provide housing for one adult per bedroom, except that the triplex Residence at 1926 4th Street may be used to house families, if appropriate. The Mission may not use the Residences for any other purpose. Only persons or families whose income is at or below 65% of the Area Median Income (AMI) for Snohomish County are eligible to reside in the Residences. The City will provide the Mission with the specific income qualification requirements on an annual basis and the Mission will verify that a person’s or household’s income is at or below 65% of the AMI prior to them taking up residence in any of the Residences.

2. MISSION’S RESPONSIBILITIES. During the term of this Agreement, the Mission is solely responsible for the use of the Residences, maintenance of the Residences, and safety of persons using the Residences.

The Mission shall comply with all applicable laws and ordinances in its use of the Residences.

The Mission is responsible for all utilities to the Residences.

The Mission shall perform ordinary maintenance and cleaning of the Residences and yards, such as replacing light bulbs and filters, cleaning, interior painting, and landscape maintenance. The Mission is also responsible for repairs necessitated by tenant negligence or damage caused by the Mission's employees or agents.

The Mission shall make an annual report to the City Council summarizing the activities of the MESH program, including the number of persons served and each person's length of stay in a MESH house, as well as the sex, family status, financial status of persons served, a basic accounting of any charges or fees, and identifying trends and program challenges and opportunities. The annual report will include anticipated needs for capital improvements or fixture replacement. The Mission will also notify the City when it knows of conditions that may require renovation, replacement, or repair of structural elements, major systems, or fixtures.

1095 Alder location: In addition to the responsibilities set forth in this section, the Mission will operate the location in conformance with the Management Plan attached as Exhibit A. The Mission will provide information to the City so that the City can fulfill its reporting requirements under the CLFR Loan Agreement by and between Snohomish County, Washington and City Of Marysville for Micro Enterprise Supported Housing (MESH) Project.

The Mission shall return the Residences to the City in substantially the same condition as the Residences was in at the time of the execution of this Agreement, normal wear and tear excepted.

3. CITY NOT A LANDLORD. The City will have no relationship with and is not in privity with any person to whom the Mission provides housing utilizing the Residences. To the extent that chapter 59.18 RCW, the Residential Landlord-Tenant Act, applies to any person utilizing the Residences, the Mission shall be solely responsible for compliance with the Act or any other similar law or regulation and shall indemnify the City in accordance with the indemnification clause in this Agreement.

4. INDEMNIFICATION. The Mission shall defend, indemnify and hold harmless the City, its officials, employees and volunteers from and against any and all claims, suits, actions or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the use of the Residences and from any activity, work or thing done, permitted, or suffered by the Mission in or about the Residences, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

5. CONDITION OF RESIDENCES. The Residences are accepted in an as is/where is condition. The City is not obligated to make any repairs or alterations to the Residences, except that the City is responsible for the structure, major systems, and fixtures and will maintain those elements to keep the Residences in a habitable condition. The Mission acknowledges that it has had an opportunity to inspect the premises prior to execution of this Agreement. The Mission may

perform ordinary maintenance on the Residences and install appliances in the Residences, but shall not make any alterations, additions or improvements to the Residences without the prior written consent of the City.

6. INSURANCE.

A. Insurance Term. The Mission shall procure and maintain for the duration of the use or rental period insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use of the facilities and the activities of the Mission and its clients, guests, representatives, volunteers and employees.

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

C. Required Insurance. The Mission's required insurance shall be as follows:

General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover premises and contractual liability. The City shall be named as an additional insured on the Mission's General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or an endorsement providing at least as broad coverage. The General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate for each Residence.

The insurance policy shall contain, or be endorsed to contain that the Mission's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Mission's insurance and shall not contribute with it.

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

E. Certificate of Insurance and Acceptability of Insurers. The Mission shall provide a certificate of insurance evidencing the required insurance before using the Premises.

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

7. **TERM.** This Agreement commences on the date that all parties have signed the Agreement and will run to December 31, 2027, unless sooner terminated in accordance with section 8 of this Agreement. At the end of the term, this Agreement may be renewed for two one year terms if either party notifies the other in writing that it wishes to renew the Agreement 30 days prior to the expiration of the then current term. No further action by either party's governing board is required to execute the one year extensions. The City's agreement to permit use of the Residences does not create any future expectancy on the part of the Mission or any person the Mission permits to reside in the Residences.

8. **TERMINATION.** Either party may terminate this Agreement on 90 days written notice to the other party. If the Mission terminates this Agreement, it will ensure that the Residences are vacant prior to the date of termination.

9. **CONSIDERATION.** There is no monetary consideration required by this Agreement. The use of the Residences by the Mission and the fulfillment of the City's Consolidated Plan priorities are good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

10. **SEVERABILITY.**

- A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

11. **INTEGRATION AND SUPERSESSION.** This Agreement sets forth all of the terms, conditions, and Agreements of the parties relative to the Project, and supersedes any and all such former Agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as provided herein, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

12. **NON-WAIVER.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to

insist upon strict performance of any Agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such Agreement, covenant, condition or right.

13. SURVIVAL. Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

14. AGREEMENT REPRESENTATIVES AND NOTICES. This Agreement shall be administered for the City by the City's Agreement Representative, and shall be administered for the Mission by the Mission's Agreement Representative. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City: Chief Administrative Officer
City of Marysville
1049 State Avenue
Marysville, WA 98270

To Mission: Sylvia Anderson
Chief Executive Officer
PO Box 423
Everett, WA 98206

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

15. THIRD PARTIES. The City and the Mission are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

17. VENUE. The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Snohomish County, Washington.

18. AUTHORITY. The person executing this Agreement on behalf of the Mission represents and warrants that he or she has been fully authorized by the Mission to execute this Agreement on its behalf and to legally bind the Mission to all the terms, performances and provisions of this Agreement. The person executing this Agreement on behalf of the City represents and warrants that he or she has been fully authorized by the City to execute this

Agreement on its behalf and to legally bind the City to all the terms, performances and provisions of this Agreement.

19. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the last date below.

CITY OF MARYSVILLE

EVERETT GOSPEL MISSION

By _____
Jon Nehring, Mayor

By _____
Sylvia Anderson, Everett Gospel Mission

Date: _____, 2024

Date: _____, 2024

ATTEST/AUTHENTICATED:

Chari Taber, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

EXHIBIT A

Management Plan

CLFR Loan Agreement

HCS-22-AR-2106-200

1095 Alder Street, Marysville WA 98270

The City intends to contract with Everett Gospel Mission (“EGM”) to Washington non-profit corporation to manage the occupancy of 1095 Alder Street, Marysville WA 98270.

EGM is located within Everett, WA within Snohomish County. They provide services, housing, and life recovery programs to poor and homeless person in Snohomish County. They will provide equal access to all persons in any category protected by federal, state, or local laws governing discrimination, and without regard to any arbitrary factor.

Resident Selection Procedures and Management Plan.

EGM shall rent housing units at the 1095 Alder location to eligible residents in accordance with the following management plan:

1. EGM works with residents at its Everett shelter locations and will provide opportunities for those residents who have completed or no longer require participation in the Mission’s recovery program to relocate to the city of Marysville’s MESH (“Marysville Extended Shelter Homes”). EGM will ensure equal access to all persons in any category protected by federal, state, or local law, and without regard to any arbitrary factor. To this end, EGM will take the following steps to affirmatively market and rent 1095 Alder in a manner that ensures equal access in accordance with the following:

2. **Resident eligibility.** Only persons or families whose income is at or below 65% of the Area Median Income (AMI) for Snohomish County are eligible to reside in the Residences. The City will provide the Mission with the specific income qualification requirements on an annual basis and the Mission will verify that a person's or household's income is at or below 65% of the AMI prior to them taking up residence in any of the Residences.

Market to earned income and wage progression, so that they may progress out to private or other housing following the maximum occupancy limits.

Other criteria for resident selection: Earned income and wage progression, so that they have the ability to progress to private or other publicly subsidized housing within the occupancy term.

Occupancy Standards. 1095 Alder Street is a single family dwelling unit with 2 bedrooms. Resident occupancy will generally be 1 adult per bedroom, however families may occupy the unit, in which case more than one adult or child may be located in each bedroom.

Resident Selection. Residents will be selected from applications and waiting list maintained by EGM, by order of application. Residents must be able to live independently within the dwelling unit and demonstrate ability to share living space with other residents. Maximum term of occupancy is three

years within the dwelling unit. Applicants will be notified of eligibility when the unit is available. Applicants who are not selected for the dwelling unit will be notified in writing of the reason for their ineligibility.

If an applicant is not eligible, EGM will notify the applicant in writing of the reasons for their ineligibility and the following process for appealing the determination that they are ineligible:

e.g. An applicant who is determined to be ineligible may appeal this determination by submitting a written appeal to EGM's Executive Director at 2222 52nd Street SE, Everett, WA 98203. The appeal must address each reason for ineligibility that was contained in the determination of ineligibility provided to the applicant. The Executive Director will review the appeal and may request additional information from the applicant. The Executive Director will decide the appeal within 30 days of receiving the appeal.

Applicants who are determined to be eligible will be maintained on a waiting list for future openings at 1095 Alder.

No Discrimination. EGM does not discriminate against prospective residents or applicants based on race, religion, ethnic or national origin, gender, sexual orientation, age, disability, marital status, familial status, or any other arbitrary factor that is prohibited to be considered by federal, state, or local law governing discrimination in rental housing.

Amendments. EGM acknowledges that any amendment to this management plan must be provided to Snohomish County with the annual report.



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Executive Services Coordinator Sarah Calvin, Executive

ITEM TYPE: Appointment

AGENDA SECTION: **Mayor's Business**

SUBJECT: Appointment of Marysville Representatives for SNO911 Caucus

SUGGESTED ACTION: Reappoint myself, Mayor Nehring, and Assistant Chief Lawless.

SUMMARY: Appointment to SNO911 Caucus. The caucus will in turn choose its primary and alternate SNO911 Board members for the next two years: 4/2024 - 4/2026. Only representatives authorized by the legislative body (the City) may vote in their assigned caucus.

ATTACHMENTS:
[Caucus Letter to Member Agencies-April 2024.pdf](#)



MEMORANDUM

To: Member Agencies
From: SNO911 Board Secretary Terry Peterson
Re: Snohomish County 911 Caucus - Legislative Appointment Updates Needed
Date: January 30, 2024

Snohomish County 911 (SNO911) Board Members and Alternate Board Members are elected every two (2) years in April. The next caucus process will be held prior to the April 18, 2024 board meeting for the next two-year term, and individual calendar appointments for each caucus will be forthcoming. **Legislative Bodies do not appoint directly to the SNO911 Board**, rather, they select members to serve on a caucus, who in turn choose their primary and alternate SNO911 Board members.

Only representatives authorized by your legislative body may vote in their assigned caucus. A list of current representatives is attached. If you wish to make any updates, please submit changes to the caucus appointment(s) by emailing Sharon Brendle sbrendle@sno911.org no later than March 20, 2024. A sample letter is attached.

Qualifications to Serve as a Caucus Member

Caucus appointments must be eligible to serve as a Board Member and therefore must be: an elected official; chief administrative officer; chief law enforcement officer or fire chief from a Principal, or a person directly-reporting to the chief law enforcement officer or fire chief; or in the case of Snohomish County, the Snohomish County Executive or a person reporting directly to the Snohomish County Executive.

If you have any questions ahead of the upcoming caucus meetings, please feel free to reach out to me.

Terry Peterson
Deputy Director
tpeterson@sno911.org
425-407-3905

Attached:
Current Agency Representatives to SNO911 Caucus
Sample Letter Naming Caucus Representatives



Agenda Bill

CITY COUNCIL AGENDA ITEM REPORT

DATE: February 12, 2024

SUBMITTED BY: Teri Lester, Human Resources

ITEM TYPE: Mayor's Business

AGENDA SECTION: **Mayor's Business**

SUBJECT: Marysville Civil Service Commission Reappointment: Brad Thompson

SUGGESTED ACTION: Mayor Nehring recommends the reappointment of Brad Thompson to the Civil Service Commission, serving until March 10, 2030.

SUMMARY:

ATTACHMENTS:
[Brad Thompson - Civil Service Commission.doc](#)



Office of the Mayor
Jon Nehring
501 Delta Ave
Marysville, WA 98270
Phone: 360-363-8000
Fax: 360-651-5033
marysvillewa.gov

APPOINTMENT

I, JON NEHRING, duly elected and acting Mayor of the City of Marysville, do hereby re-appoint BRAD THOMPSON as a member of the CIVIL SERVICE COMMISSION of the City of Marysville, pursuant to the Marysville Municipal Code 2.16.020 dated this 12th day of February, 2024.

MAYOR

I do swear and affirm I will perform the duties assigned to me as a member of the Civil Service Commission of the City of Marysville in the manner required by law.

Dated this 12th day of February, 2024

BRAD THOMPSON

This term of appointment expires the 10th day of March, 2030.