

Marysville City Council Meeting

March 2, 2020

7:00 p.m.

City Hall

Call to Order

Invocation

Pledge of Allegiance

Roll Call

Approval of the Agenda

Committee Reports

Presentations

- A. Custody Officer Swearing-in
- B. Cedarcrest Golf Course Annual Report

Audience Participation

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

- 1. Approval of the January 27, 2020 City Council Meeting Minutes
- 2. Approval of the February 3, 2020 City Council Work Session Minutes
- 3. Approval of the February 10, 2020 City Council Meeting Minutes

Consent

- 4. Approval of the February 26, 2020 Claims in the Amount of 1,283,926.93 Paid by EFT Transactions and Check Numbers 138374 through 138578 with No Check Numbers Voided

Review Bids

Public Hearings

New Business

- 5. Consider Approving the Renewal Agreement with Jeffrey and Karen Pickard as Caretakers for the Deering Wildflower Acres Park

Marysville City Council Meeting

March 2, 2020

7:00 p.m.

City Hall

6. Consider Approving the 2019 Citywide Roadway Re-Striping Project with Stripe-Rite, Inc., and Starting the 45-Day Lien Filing Period for Project Closeout
7. Consider Approving Two Contracts with Wave Business Solutions for Fiber to the Sunnyside Treatment Plant and Opera House
8. Consider Approving the Disaster Assistance Grant Amendment with State of Washington Military Department in the Amount of \$547,334.00
9. Consider Approving the Public Assistance Grant with Washington State Employment Security Department and Washington Service Corps
10. Consider Approving the Arlington Municipal Airport Use Agreement

Legal

Mayor's Business

Staff Business

Call on Councilmembers

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.

Index #1

City Council



**1049 State Avenue
Marysville, WA 98270**

**Regular Meeting
Minutes
January 27, 2020**

Call to Order

The meeting was called to order by Council President Norton at 7:00 p.m.

Invocation

Pastor Aaron Herbert sang the invocation.

Pledge of Allegiance

Council President Norton led the Pledge of Allegiance.

Roll Call

CAO Hirashima called the roll.

Present:

City Council: Council President Kamille Norton, Councilmember Jeff Vaughan, Councilmember Tom King, Councilmember Michael Stevens, Councilmember Kelly Richards, Councilmember Steve Muller, Councilmember Mark James

Staff: Finance Director Sandy Langdon, City Attorney Jon Walker, CAO Gloria Hirashima, Public Works Director Kevin Nielsen, Parks & Recreation Director Tara Mizell, Community Development Director Jeffrey Thomas, Fire Chief Martin McFalls, Information Svc. Analyst Mike Davis, Recording Secretary Laurie Hugdahl

Approval of the Agenda

Motion to Approve the agenda moved by Councilmember Kelly Richards seconded by Councilmember Steve Muller.

AYES: ALL

Committee Reports

Councilmember King reported on the recent LEOFF 1 Board meeting where they approved two claims. The next meeting will be in March.

Councilmember Richards reported that he attended the Affordable Housing Committee and the Snohomish County Tomorrow meeting and is still learning the ropes.

Presentations

A. Police Custody Officer Swearing-in

Chief Goldman introduced Bryce Lether who was sworn in by Council President Norton.

Audience Participation

Peter Cowley, PO Box 191, Marysville, WA 98270, expressed frustration about increased taxes in Marysville due to the RFA and the timing of the election. He then discussed the proposed negative impact of this on the upcoming school levy election.

Council President Norton thanked Mr. Cowley for his comments. She explained that the City Council actually lowered its levy rate in response to the RFA passing. Chief McFalls also responded to the comments. He concurred that the City lowered the amount it is collecting to offset the amount collected for the RFA. He noted that the regular levy rate did increase, but it hadn't increased since 2007. He stressed that the Fire Department has responsibly handled the taxes so a levy increase has not been taken for 11 years, and they believe this increase was justified.

Mr. Cowley replied that his concern is related to the increase in assessments. He is a landlord, and cannot continue to absorb the costs.

Approval of Minutes

1. Approval of the January 6, 2020 City Council Work Session Minutes

Councilmember Stevens commented that on page 1 of 7 under Approval of the Agenda the following sentence should be corrected:

Mayor Nehring requested that Council allow action on some items . . . and election of council ~~vice~~ president be switched.

Motion to Approve the January 6, 2020 City Council Session Minutes as revised. moved by Councilmember Michael Stevens seconded by Councilmember Kelly Richards.

AYES: ALL

Consent

2. Approval of the December 27, 2019 Claims in the Amount of \$1,568,460.42 Paid by EFT Transactions and Check Numbers 137447 through 137626 with Check Numbers 137291, 137447, and 137448 Voided
3. Approval of the December 28, 2019 Claims in the Amount of \$370,989.17 Paid by EFT Transactions and Check Numbers 137627 through 137675 with Check Numbers 137458, 137478, 137507, and 137570 Voided
4. Approval of the January 3, 2020 Payroll in the Amount of \$1,479,361.51, Paid by EFT Transactions and Check Numbers 32854 through 32882
5. Approval of the January 8, 2020 Claims in the Amount of \$201,228.79 Paid by EFT Transactions and Check Numbers 137397 through 137446 with No Check Numbers Voided
6. Approval of the January 15, 2020 Claims in the Amount of \$104,534.14 Paid by EFT Transactions and Check Numbers 137676 through 137715 with No Check Numbers Voided
7. Approval of the January 17, 2020 Payroll in the Amount of \$1,368,675.52, Paid by EFT Transactions and Check Numbers 32883 through 32906

Motion to Approve Consent Agenda items 2-7 moved by Councilmember Jeff Vaughan seconded by Councilmember Tom King.

AYES: ALL

Review Bids

Public Hearings

New Business

8. Consider Approving Supplemental Agreement No. 4 with HDR, Inc. for the State Avenue Corridor Improvement Project, Amending the Scope of Work, Increasing the Contract Total to \$2,825.554.81, and Extending the Term to December 30, 2021

Director Nielsen reviewed this item. This is for design services with HDR through construction. An update on the schedule will be coming to Council soon.

Motion to Approve Supplemental Agreement No. 4 with HDR, Inc. for the State Avenue Corridor Improvement Project, Amending the Scope of Work, Increasing the Contract Total to \$2,825.554.81, and Extending the Term to December 30, 2021 moved by Councilmember Steve Muller seconded by Councilmember Mark James.

AYES: ALL

- 9. Consider Approving the Targeted Urban Area Tax Exemption Agreement with Web Industries, Inc

Director Thomas reviewed this item.

Motion to Approve the Targeted Urban Area Tax Exemption Agreement with Web Industries, Inc moved by Councilmember Steve Muller seconded by Councilmember Kelly Richards.

AYES: ALL

- 10. Consider Approving the Interlocal Agreement for Jail Services with the City of Arlington

Chief Goldman reviewed this extension to the Interlocal Agreement for jail services with Arlington.

Motion to Approve the Interlocal Agreement for jail services with the City of Arlington moved by Councilmember Tom King seconded by Councilmember Michael Stevens.

AYES: ALL

Legal

Mayor’s Business

Staff Business

Director Thomas commented that an RFP will be coming forward related to the Department of Commerce Planning grant that Council approved a few weeks ago.

Chief McFalls had no further comments.

Director Mizell:

- She reported on a busy weekend with basketball. The Opera House was busy with a wedding show and Casper Babypants.
- The Father-Daughter Dance is coming up and is almost sold out.

Director Nielsen reported that Marysville has been shortlisted by the Department of Ecology for grant funding for Cedar from 1st up to 528 and 2nd Street from State Avenue to 47th. This is great news.

Chief Goldman had no comments.

Sandy Langdon had no comments.

Jon Walker had no comments.

Gloria Hirashima had no comments.

Call on Councilmembers

Jeff Vaughan had no comments.

Mark James:

- The Mayor's State of the City on Wednesday was very well-attended.
- On Friday he attended the new Grace Academy ribbon cutting.

Tom King stated he also attended the State of the City. He appreciated the awards that went out to the employees.

Michael Stevens commented that he is looking forward to the Father-Daughter Dance.

Kelly Richards commented that he had an interesting time in Olympia.

Steve Muller:

- It's good to have officers sworn in who are from Marysville.
- He asked about a couple parked under the 4th Street overpass. Chief Goldman replied that the City is working with Tulalip and the County to resolve this matter.

Council President Norton:

- Council went to Olympia to meet with all the legislators for Marysville. The message was that it is a challenging environment this year. It was encouraging to hear how much they appreciate the City of Marysville being prepared and professional.
- Mayor Nehring will be doing the State of the City at the Chamber this Friday.

Adjournment

Motion to Adjourn moved by Councilmember Mark James seconded by Councilmember Kelly Richards.

AYES: ALL

The meeting was adjourned at 7:40 p.m.

Approved this _____ day of _____, 2020.

Mayor
Jon Nehring

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Index #2

City Council



**1049 State Avenue
Marysville, WA 98270**

**Work Session
Minutes
February 3, 2020**

Call to Order

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

Pledge of Allegiance

Mayor Nehring led the Pledge of Allegiance.

Roll Call

Present:

Mayor: Jon Nehring

Council: Council President Kamille Norton, Councilmember Jeff Vaughan, Councilmember Kelly Richards, Councilmember Mark James, Councilmember Steve Muller, Councilmember Tom King

Absent: Councilmember Michael Stevens (excused)

Staff: Finance Director Sandy Langdon, Interim Police Chief Goldman, City Attorney Jon Walker, CAO Gloria Hirashima, Parks & Recreation Director Tara Mizell, Fire Chief Martin McFalls, Community Development Director Jeffrey Thomas, Human Resources Manager Teri Lester, Public Relations Admin. Connie Mennie, Public Works Director Kevin Nielsen, Recording Secretary Laurie Hugdahl

Motion to Approve the absence of Councilmember Stevens moved by Council President Kamille Norton seconded by Councilmember Steve Muller.

VOTE: Motion carried 6 - 0

Mayor Nehring thanked Council President Norton for chairing the Council Meeting last week.

Approval of the Agenda

Committee Reports

Presentations

Discussion Items

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

1. Approval of the January 13, 2020 City Council Meeting Minutes

Consent

2. Approval of the January 22, 2020 Claims in the Amount of \$37,171.67 Paid by EFT Transactions and Check Numbers 137716 through 137735 with Check Numbers 136125 & 137641 Voided

Review Bids

Public Hearings

New Business

3. Consider the Supplemental Agreement Number 1 with Botesch, Nash & Hall Architects for the Civic Center Project, Increasing the Contract Amount to \$3,054,156.00 and Extending the Term to September 1, 2022

CAO Hirashima reviewed this item. This would add \$200,000 and extend the contract through September 1, 2022.

4. Consider the Communications Site Sublease/License with King County

City Attorney Walker reviewed this item which would extend the contract out to the end of 2022 with a slight increase in the rate.

5. Consider the GMB 1117 Maintenance Agreement with Washington State Department of Transportation

Director Nielsen reviewed this item. There were no comments or questions.

6. Consider the Interlocal Agreement with Snohomish County for the City's Contribution of Two Percent of Liquor Taxes to Support a Substance Use Disorder Program Operated by Snohomish County

Director Langdon reviewed the Interlocal Agreement.

7. Consider an Ordinance to Continue to Impose a Sales and Use Tax as a Credit Against State Sales and Use Tax Certifying the Costs to Provide Municipal Services to the Central Marysville Annexation Area and Setting a New Threshold Amount for Fiscal Year 2020 Relating to Annexations

Finance Director Langdon reviewed this item. There were no comments or questions.

8. Consider an Ordinance to Amend the Shoreline Master Program as well as Marysville Municipal Code Chapter 22A.020 – Definitions and Chapter 22E.050 – Shoreline Management Master Program

Community Development Director Thomas reviewed the closeout of the update to the Shoreline Master Program and amendments to the MMC Chapter 22A.020. Upon approval it would go back to Department of Ecology for approval.

9. Consider a Resolution Adopting Revised Green Fees for Cedarcrest Golf Course

Parks and Recreation Director Mizell reviewed the proposed revised greens fees for Cedarcrest Golf Course.

Council President Norton asked staff about the anticipated increase in revenue as a result of the fees. Director Mizell indicated she would get that information for Council.

Legal

Mayor's Business

10. Consider the Reappointment of Kay Smith and Kelly Huestis to the Parks, Culture, and Recreation Advisory Board

Mayor Nehring reviewed the proposed reappointments of Kay Smith and Kelly Huestis.

Mayor's Business:

- Mayor Nehring, Council President Norton and Councilmember Vaughan attended the AWC Conference last week. He discussed some of the happenings down there. It was clear that transportation funding was not going to happen this session because of the uncertainty related to I-976.
- The Mayors' Task Force on Growth Management had its first meeting today, and it went really well. Councilmembers James, Muller and Stevens will be participating. Thanks to Director Thomas and his team for putting together a nice presentation.
- He and Council President Norton have been working on the retreat agenda. Staff will be putting presentations together.

Staff Business

Director Langdon had no comments.

Teri Lester had no comments.

Director Thomas agreed it was a good meeting today.

Chief Goldman reported on the matter brought up by Council regarding the folks under I-5 on 4th Street. They are gone for now, but police are monitoring this diligently.

Chief McFalls commended Mayor Nehring for his State of the City speech at the Chamber last Friday.

Director Mizell had no comments.

Director Nielsen gave a reminder about the Public Works Committee meeting this Friday at 2:00.

Connie Mennie commented that she is preparing a proclamation that staff will be bringing forward for Black History Month next week.

City Attorney Walker had no comments.

CAO Hirashima had no comments.

Call on Councilmembers

Councilmember Muller had no comments.

Councilmember Richards reported on a high school basketball game he attended last week which was a lot of fun to watch.

Councilmember Vaughan shared some highlights from the AWC Conference and Council's time in Olympia. He reported on the legislative agenda for the Washington Association of Sheriffs and Police Chiefs where they talked about the issues associated with the wait time of getting people into the police academy and other matters.

Councilmember King:

- He attended the Technical Advisory Committee meeting last week where they scored Community Development Block Grants.
- He also commended Mayor Nehring for the State of the City address.
- He attended the Snohomish-Island County Fire Commissioners banquet.

Mark James:

- It was a great State of the City address.
- The Task Force on Growth Management was very interesting and exciting.
- He asked Councilmember Vaughan for a copy of the police academy information.

Council President Norton:

- She agreed it was an interesting session in Olympia.
- She and the Mayor are finalizing the retreat agenda. Their hope is that it will be a good opportunity to share thoughts and ideas.

Adjournment

Motion to Adjourn the meeting moved by Councilmember Jeff Vaughan seconded by Councilmember Kelly Richards.

VOTE: Motion carried 6 – 0

The meeting was adjourned at 7:21 p.m.

Approved this _____ day of _____, 2020.

Mayor
Jon Nehring

Index #3

City Council



**1049 State Avenue
Marysville, WA 98270**

**Regular Meeting
Minutes
February 10, 2020**

Call to Order

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

Invocation

Pastor Greg Kanehen gave the invocation.

Pledge of Allegiance

Mayor Nehring led the Pledge of Allegiance.

Roll Call

Present:

Mayor: Jon Nehring

Council: Councilmember Jeff Vaughan, Councilmember Kelly Richards, Councilmember Mark James, Councilmember Michael Stevens, Councilmember Steve Muller, Councilmember Tom King,

Staff: Finance Director Sandy Langdon, Community Development Director Jeffrey Thomas, Interim Police Chief Goldman, Information Svc. Analyst Mike Davis, Public Works Director Kevin Nielsen, Police Commander Mark Thomas, Parks & Recreation Director Tara Mizell, CAO Gloria Hirashima, City Attorney Jon Walker

Excused: Council President Kamille Norton

Motion to Approve absence of Council President Norton moved by Councilmember Kelly Richards seconded by Councilmember Mark James.

AYES: ALL

Approval of the Agenda

Motion to Approve the Agenda moved by Councilmember Kelly Richards seconded by Councilmember Michael Stevens.

AYES: ALL

Committee Reports

Steve Muller reported on Friday's Public Works Committee meeting. They welcomed new member Council President Norton to the Committee. They also discussed quiet zones and wayside horns for the rail corridor, Whiskey Ridge sewer capacity, and State Avenue corridor improvements.

Tom King reported on the recent Fire Board Meeting where they discussed personnel policies, an update on negotiations between the Fire District and the Firefighters Local. The group will begin a series of tours of all the fire stations in the district to assess the conditions.

Presentations

A. Declaring February 2020 as Black History Month

Mayor Nehring read the Proclamation into the record proclaiming February 2020 as Black History Month in the City of Marysville and encouraging all residents of Marysville to recognize the significant and lasting contributions that African Americans bring to the success of our community.

B. Police Officer Swearing-in

Chief Goldman introduced new officers Andrew Sale and Katie Wilson. The officers were sworn in by Mayor Nehring.

C. Strawberry Festival Royalty Candidates

The following Strawberry Festival Royalty Candidates introduced themselves and made candidate speeches:

- Aaron Able
- Elizabeth Card
- Ismarie Cuiriz
- Abigail Jeskey
- Grace Kyser
- Katelyn Leary
- Zinead Morales
- Victoria Wilde
- Jimena Yanez

Audience Participation

Mayor Nehring solicited public comments; there were none.

Approval of Minutes

1. Approval of the January 13, 2020 City Council Meeting Minutes

Motion to Approve the January 13, 2020 City Council Meeting Minutes moved by Councilmember Tom King seconded by Councilmember Kelly Richards.

AYES: ALL

Consent

2. Approval of the January 22, 2020 Claims in the Amount of \$37,171.67 Paid by EFT Transactions and Check Number's 137716 through 137735 with Check Numbers 136125 & 137641 Voided
11. Approval of the January 29, 2020 Claims in the Amount of \$2,266,880.74 Paid by EFT Transactions and Check Number's 137736 through 137991 with No Check Numbers Voided
12. Approval of the February 5, 2020 Payroll in the Amount of \$1,547,259.72 Paid by EFT Transactions and Check Numbers 32907 through 32941
3. Consider Approving the Supplemental Agreement Number 1 with Botesch, Nash & Hall Architects for the Civic Center Project, Increasing the Contract Amount to \$3,054,156.00 and Extending the Term to September 1, 2022
4. Consider the Communications Site Sublease/License with King County
5. Consider Approving the GMB 1117 Maintenance Agreement with Washington State Department of Transportation
6. Consider Approving the Interlocal Agreement with Snohomish County for the City's Contribution of Two Percent of Liquor Taxes to Support a Substance Use Disorder Program Operated by Snohomish County

Motion to Approve Consent Agenda items 2, 11, 12, 3, 4, 5, and 6 moved by Councilmember Mark James seconded by Councilmember Tom King.

AYES: ALL

Review Bids

Public Hearings

New Business

7. Consider Approving an Ordinance to Continue to Impose a Sales and Use Tax as a Credit against State Sales and Use Tax Certifying the Costs to Provide Municipal Services to the Central Marysville Annexation Area and Setting a New Threshold Amount for Fiscal Year 2020 Relating to Annexations

Motion to Approve Ordinance 3145 moved by Councilmember Michael Stevens seconded by Councilmember Steve Muller.

AYES: ALL

8. Consider Approving an Ordinance to Amend the Shoreline Master Program as well as Marysville Municipal Code Chapter 22A.020 - Definitions and Chapter 22E.050 - Shoreline Management Master Program

Director Thomas reviewed minor amendments made since the workshop. There were no comments or questions.

Motion to Approve Ordinance No. 3146 moved by Councilmember Steve Muller seconded by Councilmember Michael Stevens.

AYES: ALL

9. Consider Approving a Resolution Adopting Revised Green Fees for Cedarcrest Golf Course

Director Mizell reviewed information requested by Council President Norton at the work session.

Motion to Approve Resolution 2483 moved by Councilmember Jeff Vaughan seconded by Councilmember Tom King.

AYES: ALL

Legal

Mayor's Business

10. Consider Approval of the Reappointment of Kay Smith and Kelly Huestis to the Parks, Culture, and Recreation Advisory Board

Motion to Approve the Reappointment of Kay Smith and Kelly Huestis to the Parks, Culture, and Recreation Advisory Board moved by Councilmember Tom King seconded by Councilmember Kelly Richards.

AYES: ALL

13. Consider Approval of the Reappointment of Patricia Dalrymple to the Civil Service Commission

Motion to Approve the Reappointment of Patricia Dalrymple to the Civil Service Commission moved by Councilmember Kelly Richards seconded by Councilmember Steve Muller.

AYES: ALL

Mayor Nehring had the following comments:

- He attended the WhistleStop grand opening of their new event room.
- The coffee klatch this morning was well attended with lots of good questions.
- The public State of the City address is Tuesday, February 25.

Staff Business

Chief Goldman confirmed the Public Safety Committee meeting this week on Thursday at 4:30.

Director Langdon had no comments.

Director Thomas gave a monthly permitting and business update.

Director Mizell had no additional comments.

Director Nielsen reported on the recent rain event. He commended the vector and surface water department for the regular maintenance they do which makes a huge difference during the heavy rains.

City Attorney Walker had no additional comments.

CAO Hirashima had no additional comments.

Call on Councilmembers

Jeff Vaughan had no comments.

Mark James congratulated new police officers.

Tom King:

- He congratulated the new police officers.
- Thanks to Parks for the Father-Daughter dance.
- The Strawberry Festival candidates were inspiring.

Michael Stevens:

- The Father-Daughter dance was wonderful.
- He agreed that the candidates were great.

Kelly Richards:

- Congratulations to the new police officers.

- He commended the YMCA for providing the weekly free showers.

Steve Muller commented that the YMCA is looking for partner groups.

Adjournment

The meeting was adjourned at 7:47 p.m.

Approved this _____ day of _____, 2020.

Mayor
Jon Nehring

Index #4

CITY OF MARYSVILLE

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 2, 2020

AGENDA ITEM: Claims	AGENDA SECTION:	
PREPARED BY: Sandy Langdon, Finance Director	AGENDA NUMBER:	
ATTACHMENTS: Claims Listings	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

Please see attached.

RECOMMENDED ACTION:

The Finance and Executive Departments recommend City Council approve the February 26, 2020 claims in the amount of \$1,283,926.92 paid by EFT transactions and Check No.'s 138374 through 138578 with no Check No.'s voided.

COUNCIL ACTION:

BLANKET CERTIFICATION
CLAIMS
FOR
PERIOD-2

I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE **CLAIMS** IN THE AMOUNT OF **\$1,283,926.92 PAID BY EFT TRANSACTIONS AND CHECK NO.'S 138374 THROUGH 138578 WITH NO CHECK NO. VOIDED** THE CITY OF MARYSVILLE, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND TO CERTIFY SAID CLAIMS.

AUDITING OFFICER

DATE

MAYOR

DATE

WE, THE UNDERSIGNED COUNCIL MEMBERS OF MARYSVILLE, WASHINGTON DO HEREBY APPROVE FOR PAYMENT THE ABOVE MENTIONED **CLAIMS** ON THIS **2nd DAY OF MARCH 2020.**

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

COUNCIL MEMBER

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/20/2020 TO 2/26/2020

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
138374	RAPID FINANCIAL SOL	JURY COSTS	COURTS	388.31
138375	REVENUE, DEPT OF	TAXES-JAN 2020	COMMUNITY	1.34
	REVENUE, DEPT OF		RECREATION SERVICES	8.85
	REVENUE, DEPT OF		GENERAL FUND	20.84
	REVENUE, DEPT OF		POLICE ADMINISTRATION	27.99
	REVENUE, DEPT OF		WATER/SEWER OPERATION	50.74
	REVENUE, DEPT OF		GOLF ADMINISTRATION	140.48
	REVENUE, DEPT OF		GOLF COURSE	2,776.26
	REVENUE, DEPT OF		STORM DRAINAGE	5,442.40
	REVENUE, DEPT OF		SOLID WASTE OPERATIONS	22,452.16
	REVENUE, DEPT OF		UTIL ADMIN	56,800.78
138376	LICENSING, DEPT OF	CPL BATCH 2/24/20	INTERGOVERNMENTAL	642.00
138377	PREMERA BLUE CROSS	CLAIMS PAID 2/16-2/20	MEDICAL CLAIMS	31,470.24
138378	ACLARA TECHNOLOGIES	MTU'S	WATER SERVICES	3,787.25
138379	ALL BATTERY SALES &	BATTERY W/CORE CHARGE	EQUIPMENT RENTAL	264.46
138380	AMERICAN CLEANERS	DRY CLEANING	POLICE INVESTIGATION	12.95
	AMERICAN CLEANERS		YOUTH SERVICES	13.12
	AMERICAN CLEANERS		POLICE ADMINISTRATION	31.14
	AMERICAN CLEANERS		DETENTION & CORRECTION	110.76
	AMERICAN CLEANERS		POLICE PATROL	135.57
138381	ANGELL, JIM	REFUND SPECIAL EVENT FEES	PARKS-RECREATION	4.00
138382	ARAMARK UNIFORM	UNIFORM SERVICE	SMALL ENGINE SHOP	6.56
	ARAMARK UNIFORM		EQUIPMENT RENTAL	58.04
	ARAMARK UNIFORM	LINEN SERVICE	OPERA HOUSE	173.15
138383	ARLINGTON HARDWARE	PIPES	ROADWAY MAINTENANCE	35.56
138384	AVEY, JAMES	UTILITY TAX REBATE	NON-DEPARTMENTAL	23.65
138385	BANK OF AMERICA	TRAINING EXPENSE	COMMUNITY	350.00
138386	BANK OF AMERICA	EMBEDDED SOCIAL WORKER PROGRAM	EMBEDDED SOCIAL WORKER	373.70
138387	BANK OF AMERICA	TRAVEL/REGISTRATION/CONF EXPENSE	PARK & RECREATION FAC	56.57
	BANK OF AMERICA		POLICE ADMINISTRATION	56.57
	BANK OF AMERICA		FINANCE-GENL	56.57
	BANK OF AMERICA		COMMUNITY	56.57
	BANK OF AMERICA		UTIL ADMIN	56.57
	BANK OF AMERICA		EXECUTIVE ADMIN	188.15
	BANK OF AMERICA		CITY COUNCIL	1,244.68
	BANK OF AMERICA		CITY COUNCIL	1,546.00
138388	BANK OF AMERICA	CAMERAS AND TRAINING EXPENSE	POLICE TRAINING-FIREARMS	890.00
	BANK OF AMERICA		POLICE TRAINING-FIREARMS	1,125.00
	BANK OF AMERICA		POLICE INVESTIGATION	4,162.06
138389	BARTLETT, JEANNE	REFUND CLASS FEES	PARKS-RECREATION	20.00
138390	BAYLINSON, WARREN		PARKS-RECREATION	20.00
	BAYLINSON, WARREN		PARKS-RECREATION	20.00
138391	BHC CONSULTANTS	PROFESSIONAL SERVICES	WASTE WATER TREATMENT	8,666.16
138392	BICKFORD FORD	REPAIR #V023	EQUIPMENT RENTAL	329.53
	BICKFORD FORD	REPAIR #P179	EQUIPMENT RENTAL	480.27
	BICKFORD FORD	COIL, BRAKE ROTORS AND BRAKE PADS	EQUIPMENT RENTAL	810.37
138393	BOB BARKER COMPANY	JAIL SUPPLIES	DETENTION & CORRECTION	72.30
	BOB BARKER COMPANY		DETENTION & CORRECTION	169.66
138394	BOWER, DAVID	UTILITY TAX REBATE	NON-DEPARTMENTAL	44.96
138395	BURKHOLDER, JEFF	REIMBURSE MILEAGE	MUNICIPAL COURTS	56.58
138396	CADMAN MATERIALS INC	ASPHALT	ROADWAY MAINTENANCE	235.62
138397	CAPTAIN DIZZYS EXXON	CAR WASHES	POLICE PATROL	130.00
138398	CARPENTER, CATHY	REFUND CLASS FEES	PARKS-RECREATION	40.00
138399	CASCADE COLUMBIA	ALUMINUM CHLORIDE	WASTE WATER TREATMENT	13,767.87
138400	CASCADE SECURITY	SECURITY SERVICES	PROBATION	1,013.25
	CASCADE SECURITY		MUNICIPAL COURTS	3,039.75

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/20/2020 TO 2/26/2020

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
138401	CENTRAL WELDING SUPP	DUCT TAPE AND GLOVES	ER&R	188.27
	CENTRAL WELDING SUPP	EAR PLUGS, GLOVES AND RESPIRATORS	ER&R	392.38
	CENTRAL WELDING SUPP	RAIN GEAR	ER&R	1,169.51
	CENTRAL WELDING SUPP		ER&R	1,808.94
138402	CLASSIQUE DESIGNS	SPECIAL EVENT BALLOONS	RECREATION SERVICES	367.25
138403	COASTAL FARM & HOME	JACKET-WESSEL	UTIL ADMIN	48.69
	COASTAL FARM & HOME	JEANS AND RUBBER BOOTS-STAIR	UTIL ADMIN	231.67
	COASTAL FARM & HOME	BOOTS/JEANS/JACKET/BIBS-AKAU	PARK & RECREATION FAC	498.33
	COASTAL FARM & HOME	BOOTS/JEANS /GLOVES-PHELPS	PARK & RECREATION FAC	563.90
138404	COLWELL, DEE DEE	REFUND CLASS FEES	PARKS-RECREATION	80.00
138405	COMCAST	ACCT #8498310020341322	COMPUTER SERVICES	286.24
138406	COMCAST	CABLE SERVICE-KBCC	COMMUNITY CENTER	46.03
138407	CORE & MAIN LP	HYDRANT AND RESTRAINERS	WATER CAPITAL PROJECTS	2,250.81
	CORE & MAIN LP	HYDRANT, STORZ AND RESTRAINERS	WATER CAPITAL PROJECTS	2,429.15
	CORE & MAIN LP	PROCODERS	WATER SERVICE INSTALL	4,168.04
	CORE & MAIN LP	PROCODER METERS AND ANTENNAS	WATER SERVICE INSTALL	12,941.33
138408	CRAIG, JEANETTE	REFUND CLASS FEES	PARKS-RECREATION	40.00
138409	CUMMINS NORTHWEST	GENERATOR REPAIR	SEWER LIFT STATION	1,952.34
138410	DAVEY TREE SURGERY	TREE REMOVAL	FORESTRY MAINTENANCE	3,453.88
138411	DAVIS INSTRUMENTS	CONNECTORS	STORM DRAINAGE	170.00
138412	DEXTER, SARA ANN	UTILITY TAX REBATE	UTIL ADMIN	42.44
	DEXTER, SARA ANN		NON-DEPARTMENTAL	47.23
	DEXTER, SARA ANN		UTIL ADMIN	158.22
138413	DICKS TOWING	TOWING EXPENSE	POLICE PATROL	71.74
	DICKS TOWING		POLICE PATROL	71.74
138414	DIGITAL DOLPHIN SUPP	TONER	POLICE ADMINISTRATION	196.64
138415	DK SYSTEMS, INC.	HVAC MAINTENANCE	SOURCE OF SUPPLY	109.85
	DK SYSTEMS, INC.		SUNNYSIDE FILTRATION	261.23
	DK SYSTEMS, INC.	INSPECTION FEES	PUBLIC SAFETY BLDG	284.18
	DK SYSTEMS, INC.	HVAC MAINTENANCE	OPERA HOUSE	288.01
	DK SYSTEMS, INC.	INSPECT AND REPAIR AT PRO SHOP	MAINTENANCE	319.70
	DK SYSTEMS, INC.	HVAC MAINTENANCE	COMMUNITY CENTER	321.34
	DK SYSTEMS, INC.	REPLACED SENSOR	UTIL ADMIN	345.08
	DK SYSTEMS, INC.	REPAIR FREEZER	PUBLIC SAFETY BLDG	435.51
	DK SYSTEMS, INC.	HVAC MAINTENANCE	WATER FILTRATION PLANT	625.20
	DK SYSTEMS, INC.		MAINT OF GENL PLANT	668.92
	DK SYSTEMS, INC.		COURT FACILITIES	807.18
	DK SYSTEMS, INC.		CITY HALL	998.46
	DK SYSTEMS, INC.		PARK & RECREATION FAC	1,025.23
	DK SYSTEMS, INC.		UTIL ADMIN	1,152.00
	DK SYSTEMS, INC.		WASTE WATER TREATMENT	1,365.16
	DK SYSTEMS, INC.		PUBLIC SAFETY BLDG	1,505.61
138416	E&E LUMBER	HARDWARE	WASTE WATER TREATMENT	9.74
	E&E LUMBER		UTIL ADMIN	17.08
	E&E LUMBER	CORNER BRACES	PUBLIC SAFETY BLDG	18.87
	E&E LUMBER	MARKERS AND FASTENERS	PARK & RECREATION FAC	22.32
	E&E LUMBER	CONCRETE WASH, TAPE AND DRAIN	PARK & RECREATION FAC	26.52
	E&E LUMBER	SEALANT, BRUSHES AND PUTTY KNIFE	UTIL ADMIN	27.43
	E&E LUMBER	PADLOCKS	POLICE PATROL	28.32
	E&E LUMBER	PAINT	PARK & RECREATION FAC	41.96
	E&E LUMBER	PRIMER AND FASTENERS	PARK & RECREATION FAC	52.19
	E&E LUMBER	PAINT SUPPLIES	PARK & RECREATION FAC	56.68
	E&E LUMBER	LUMBER	FACILITY MAINTENANCE	57.71
	E&E LUMBER	CATCH BASIN, PIPE, GRATE AND PLUG	ROADSIDE VEGETATION	69.72
	E&E LUMBER	PAINT SUPPLIES	PARK & RECREATION FAC	111.16
	E&E LUMBER	POWER STRIPS AND EXT CORDS	PARK & RECREATION FAC	116.40

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138436	FRONTIER COMMUNICATI	ACCT #36065774950927115	STREET LIGHTING	54.38
	FRONTIER COMMUNICATI	ACCT #36065836350725085	UTIL ADMIN	60.09
	FRONTIER COMMUNICATI		COMMUNITY	60.09
	FRONTIER COMMUNICATI	ACCT #36019703390831185	SEWER LIFT STATION	61.61
	FRONTIER COMMUNICATI	ACCT #36065831360617105	MUNICIPAL COURTS	73.52
	FRONTIER COMMUNICATI	ACCT #36065962121015935	MAINT OF GENL PLANT	73.52
	FRONTIER COMMUNICATI	ACCT #36065150871007945	PARK & RECREATION FAC	86.06
	FRONTIER COMMUNICATI	ACCT #36065827660617105	MUNICIPAL COURTS	87.58
	FRONTIER COMMUNICATI	ACCT #36065976670111075	OFFICE OPERATIONS	87.58
	FRONTIER COMMUNICATI	ACCT #36065191230801065	WATER FILTRATION PLANT	106.78
138437	GANGE, SUSAN	REFUND CLASS FEES	PARKS-RECREATION	10.00
138438	GENUINE AUTO GLASS	REPLACE WINDSHIELD #A007	EQUIPMENT RENTAL	245.93
	GENUINE AUTO GLASS		EQUIPMENT RENTAL	311.51
138439	GEORGE, ESTERLITA	REFUND CLASS FEES	PARKS-RECREATION	40.00
138440	GEOTEST SERVICES INC	INSPECTION SERVICES	GMA - STREET	2,114.90
138441	GOOD, DIANA	UTILITY TAX REBATE	NON-DEPARTMENTAL	31.38
	GOOD, DIANA		UTIL ADMIN	42.44
	GOOD, DIANA		UTIL ADMIN	158.22
138442	GRAINGER	HEAT GUN	SEWER MAIN COLLECTION	29.29
	GRAINGER		SOURCE OF SUPPLY	29.30
	GRAINGER	MAGNETS	SOLID WASTE OPERATIONS	45.93
	GRAINGER	BINDERS	WASTE WATER TREATMENT	52.61
	GRAINGER	PROPANE TORCH KITS	ER&R	117.48
	GRAINGER	KNOCK OUT PUNCH SET	SOURCE OF SUPPLY	124.34
	GRAINGER		SEWER MAIN COLLECTION	124.34
	GRAINGER	VACUUM	SOURCE OF SUPPLY	144.67
	GRAINGER		SEWER MAIN COLLECTION	144.68
	GRAINGER	GLOVES, WIPES, GRABBERS AND SCRAPERS	ER&R	493.13
	GRAINGER	RACK STARTER AND STEEL DECKING	PARK & RECREATION FAC	552.10
138443	GRANICH ENGINEERED	MISC RINGS	SUNNYSIDE FILTRATION	1,125.04
138444	GRAY AND OSBORNE	PROFESSIONAL SERVICES	STORM DRAINAGE	456.48
138445	GREEN RIVER CC	WOW REGISTRATION-PRIMM	UTIL ADMIN	350.00
138446	GREENSHIELDS	HOSE AND SWIVEL	SOLID WASTE OPERATIONS	52.35
	GREENSHIELDS	TOW STRAPS, PLUGS AND CAPS	EQUIPMENT RENTAL	74.03
	GREENSHIELDS	FITTINGS	ER&R	292.27
138447	HACH COMPANY	TREATMENT PLANT SUPPLIES	WATER FILTRATION PLANT	850.25
	HACH COMPANY		PUMPING PLANT	850.26
138448	HAHN, JULIA	REFUND RENTAL FEES	PARKS-RECREATION	70.00
138449	HARBOR FREIGHT TOOLS	MISC TOOLS #V047	WATER DIST MAINS	164.94
138450	HD FOWLER COMPANY	PVC PARTS, BUSHINGS AND VALVE	WASTE WATER TREATMENT	131.07
	HD FOWLER COMPANY	LOCATE MARKING PAINT	ER&R	449.95
	HD FOWLER COMPANY	METER WRENCHES, KEYS AND PROBES	ER&R	1,006.16
	HD FOWLER COMPANY	BRASS PARTS	WATER/SEWER OPERATION	3,340.04
138451	HINKSON, VIOLA	UTILITY TAX REBATE	NON-DEPARTMENTAL	54.37
138452	HOME DEPOT USA	TRASH BAGS	ER&R	425.78
138453	HOME DEPOT USA	DETERGENT	SOLID WASTE OPERATIONS	91.05
138454	HONLE UV AMERICA	SENSOR HOUSING	WATER/SEWER OPERATION	-51.15
	HONLE UV AMERICA		PUMPING PLANT	601.15
138455	HUSBY, BONNIE	UTILITY TAX REBATE	NON-DEPARTMENTAL	33.64
138456	HYLARIDES, LETTIE	INTERPRETER SERVICES	COURTS	112.50
138457	INTERSTATE BATTERY	BATTERY	ER&R	175.92
138458	INTL ASSOC CHIEFS	IACP DUES-WADE	POLICE ADMINISTRATION	190.00
138459	JEFFERSON, BRENDA	UTILITY TAX REBATE	NON-DEPARTMENTAL	80.83
138460	JOHNSON, AARON	INSTRUCTOR SERVICES	RECREATION SERVICES	468.00
138461	JOHNSON, MCKENZIE	ENTERTAINMENT 3/10/20	OPERA HOUSE	100.00
138462	JONES, BONICE	UTILITY TAX REBATE	NON-DEPARTMENTAL	25.14

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138462	JONES, BONICE	UTILITY TAX REBATE	UTIL ADMIN	158.22
138463	KAISER PERMANENTE KAISER PERMANENTE	PRE-EMPLOYMENT SCREENING	POLICE PATROL	247.00
138464	KINNAMON, KRISTIN	REFUND CLASS FEES	POLICE ADMINISTRATION	624.00
138465	LAKEWOOD SCHOOL DIST	FACILITY RENTAL	PARKS-RECREATION	40.00
138466	LAMPTON, KATHLEEN	UTILITY TAX REBATE	RECREATION SERVICES	540.00
138467	LES SCHWAB TIRE CTR LES SCHWAB TIRE CTR	TIRE TUBES TIRES	NON-DEPARTMENTAL	49.61
138468	LESTER, TERI	REIMBURSE MEETING/TRAINING SUPPLIES	EQUIPMENT RENTAL	198.90
138469	LOWES HIW INC LOWES HIW INC LOWES HIW INC	FILES SHARPIES AND PLANNER LUMBER	EQUIPMENT RENTAL	1,796.68
138470	LUMSDEN, LORI	REFUND CLASS FEES	PERSONNEL ADMINISTRATION	82.88
138471	LYDIG CONSTRUCTION	PAY ESTIMATE #1	WATER FILTRATION PLANT	26.92
138472	MACLEOD RECKORD, PLLC	PROFESSIONAL SERVICES	GENERAL	54.53
138473	MARYSVILLE AWARDS	PLAQUE	FACILITY MAINTENANCE	126.78
138474	MARYSVILLE PAINT	PAINT AND SUPPLIES	PARKS-RECREATION	20.00
138475	MARYSVILLE ROTARY	ROTARY DUES	CAPITAL EXPENDITURES	374,002.74
138476	MARYSVILLE, CITY OF MARYSVILLE, CITY OF	UTILITY SERVICE-15224 SMOKEY PT BLVD UTILITY SERVICE-1635 GROVE ST	GMA-PARKS	3,584.45
138477	MATCO TOOLS MATCO TOOLS	CANISTER AND CRIMPER CRIMPERS	POLICE PATROL	143.07
138478	MAURER, LOUISE	UTILITY TAX REBATE	PARK & RECREATION FAC	211.94
138479	MC CLURE & SONS INC	PAY ESTIMATE #8	POLICE ADMINISTRATION	525.00
138480	MCLOUGHLIN & EARDLEY MCLOUGHLIN & EARDLEY	SPOT LIGHTS AND INSTALL KITS	PUBLIC SAFETY BLDG	197.35
138481	MILLER, PENNY MILLER, PENNY MILLER, PENNY	UTILITY TAX REBATE	PUBLIC SAFETY BLDG	3,219.82
138482	MOHAMED, NASHUA	INSTRUCTOR SERVICES	EQUIPMENT RENTAL	131.64
138483	MORGAN SOUND	FIBER INSTALLATION	EQUIPMENT RENTAL	141.87
138484	MOTOR TRUCKS	COOLANT	NON-DEPARTMENTAL	41.31
138485	MOUNTAIN MIST MOUNTAIN MIST MOUNTAIN MIST MOUNTAIN MIST MOUNTAIN MIST MOUNTAIN MIST	COOLER RENTAL AND WATER	SEWER CAPITAL PROJECTS	142,866.03
138486	NATIONAL BARRICADE NATIONAL BARRICADE NATIONAL BARRICADE NATIONAL BARRICADE	MESSAGE BOARD RENTAL	ER&R	618.61
138487	NEFF, LILLIAN	UTILITY TAX REBATE	ER&R	618.61
138488	NELSON PETROLEUM	BULK OIL/TRANS FLUID	UTIL ADMIN	42.44
138489	NESS & CAMPBELL CRAN	CRANE RENTAL	NON-DEPARTMENTAL	81.81
138490	NORTH COAST ELECTRIC	FRAME	UTIL ADMIN	158.22
138491	NORTHWEST HANDLING NORTHWEST HANDLING	MUFFLER, PIPE AND HARDWARE MUFFLER AND CLAMPS	COMMUNITY CENTER	90.00
138492	NORTHWEST PLAYGROUND	PLAYGROUND REPAIR PARTS	SUNNYSIDE FILTRATION	486.39
138493	NORTHWEST POLYGRAPH	SEMINAR-KING	ER&R	237.66
138494	OFFICE DEPOT OFFICE DEPOT OFFICE DEPOT	OFFICE SUPPLIES	SEWER MAIN COLLECTION	3.71
138495	OREILLY AUTO PARTS OREILLY AUTO PARTS OREILLY AUTO PARTS	CORE CREDIT PS HOSE BRAKE HOSES	WASTE WATER TREATMENT	3.72
			SOLID WASTE OPERATIONS	3.72
			SEWER MAIN COLLECTION	17.92
			WASTE WATER TREATMENT	17.93
			SOLID WASTE OPERATIONS	17.93
			TRAFFIC CONTROL DEVICES	937.40
			TRAFFIC CONTROL DEVICES	937.40
			TRAFFIC CONTROL DEVICES	937.40
			TRAFFIC CONTROL DEVICES	1,406.10
			NON-DEPARTMENTAL	86.44
			ER&R	2,377.16
			WASTE WATER TREATMENT	2,043.91
			SOURCE OF SUPPLY	44.76
			EQUIPMENT RENTAL	114.36
			EQUIPMENT RENTAL	161.52
			PARK & RECREATION FAC	2,587.95
			POLICE PATROL	300.00
			POLICE INVESTIGATION	32.78
			POLICE INVESTIGATION	54.64
			POLICE PATROL	252.38
			EQUIPMENT RENTAL	-102.74
			EQUIPMENT RENTAL	26.17
			EQUIPMENT RENTAL	59.44

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138495	OREILLY AUTO PARTS	LOWER CONTROL ARM	EQUIPMENT RENTAL	120.03
	OREILLY AUTO PARTS	CALIPERS W/CORE CHARGE	EQUIPMENT RENTAL	253.18
138496	OWEN EQUIPMENT	REPAIR #H003	EQUIPMENT RENTAL	6,140.36
	OWEN EQUIPMENT		WATER DIST MAINS	6,140.36
138497	PACIFIC GOLF & TURF	BRAKE CALIPERS AND BRAKE CABLES	SMALL ENGINE SHOP	553.80
138498	PACIFIC POWER BATTER	BATTERY	UTIL ADMIN	17.90
	PACIFIC POWER BATTER		MAINT OF GENL PLANT	19.24
138499	PALUMBO, SUSAN	REFUND CLASS FEES	PARKS-RECREATION	10.00
138500	PARTS STORE, THE	CORE REFUND	EQUIPMENT RENTAL	-263.41
	PARTS STORE, THE	FILTER	EQUIPMENT RENTAL	7.85
	PARTS STORE, THE	SPARK PLUGS	EQUIPMENT RENTAL	9.97
	PARTS STORE, THE	AIR FILTER	EQUIPMENT RENTAL	12.37
	PARTS STORE, THE	TIPS	SMALL ENGINE SHOP	12.72
	PARTS STORE, THE	PINION SEAL	EQUIPMENT RENTAL	13.99
	PARTS STORE, THE	TIE ROD END	EQUIPMENT RENTAL	26.56
	PARTS STORE, THE	OIL FILTER	EQUIPMENT RENTAL	28.91
	PARTS STORE, THE	FILTER	EQUIPMENT RENTAL	34.35
	PARTS STORE, THE	COOLANT AND OIL	SMALL ENGINE SHOP	46.04
	PARTS STORE, THE	BRAKE FLUID	ER&R	87.09
	PARTS STORE, THE	MISC FILTERS, OIL AND COUPLER	SMALL ENGINE SHOP	89.35
	PARTS STORE, THE	MISC FILTERS	SMALL ENGINE SHOP	104.38
	PARTS STORE, THE	AXLE SEAL DRIVER	EQUIPMENT RENTAL	117.83
	PARTS STORE, THE	EXHAUST FLUID	STREET CLEANING	153.59
	PARTS STORE, THE	SPARK PLUGS	EQUIPMENT RENTAL	185.70
	PARTS STORE, THE	BALL JOINT AND SEALS	EQUIPMENT RENTAL	195.81
	PARTS STORE, THE	MISC FILTERS AND WIPER BLADES	ER&R	243.86
	PARTS STORE, THE	GREASE GUN	SMALL ENGINE SHOP	295.45
	PARTS STORE, THE	MISC FILTERS	ER&R	302.33
	PARTS STORE, THE	BRAKE PADS AND ROTORS W/CORE CHARGE	EQUIPMENT RENTAL	389.08
	PARTS STORE, THE	EXHAUST FLUID	SOLID WASTE OPERATIONS	511.96
	PARTS STORE, THE		SOLID WASTE OPERATIONS	511.96
	PARTS STORE, THE	OZZY JUICE	EQUIPMENT RENTAL	654.09
138501	PARTSMASTER	LED LIGHTS	TRANSPORTATION	123.20
	PARTSMASTER	SHRINK HOSE KIT	TRANSPORTATION	155.47
	PARTSMASTER	HEAT SHRINK AND CABLE CRIMPER	EQUIPMENT RENTAL	435.21
138502	PEARL DJANGO, LLC	ENTERTAINMENT 3/8/20	OPERA HOUSE	1,700.00
138503	PETROCARD SYSTEMS	FUEL CONSUMED	ENGR-GENL	36.71
	PETROCARD SYSTEMS		FACILITY MAINTENANCE	46.22
	PETROCARD SYSTEMS		STORM DRAINAGE	65.05
	PETROCARD SYSTEMS		EQUIPMENT RENTAL	107.92
	PETROCARD SYSTEMS		COMMUNITY	322.57
	PETROCARD SYSTEMS		PARK & RECREATION FAC	869.61
	PETROCARD SYSTEMS		GENERAL	2,657.20
	PETROCARD SYSTEMS		MAINT OF EQUIPMENT	4,292.48
	PETROCARD SYSTEMS		SOLID WASTE OPERATIONS	4,367.59
	PETROCARD SYSTEMS		POLICE PATROL	7,603.12
138504	PGC INTERBAY LLC	GOLF COURSE PAYROLL	PRO-SHOP	6,444.76
	PGC INTERBAY LLC		MAINTENANCE	11,357.98
138505	PILCHUCK RENTALS	GENERATOR REPAIR	ROADSIDE VEGETATION	119.12
	PILCHUCK RENTALS	DIAMOND BLADE AND NUT	SIDEWALKS CONSTRUCTION	308.81
138506	PLATT ELECTRIC	CONNECTORS	SOURCE OF SUPPLY	18.31
	PLATT ELECTRIC	BALLEST	WASTE WATER TREATMENT	39.09
	PLATT ELECTRIC	CONNECTORS	SOURCE OF SUPPLY	54.60
	PLATT ELECTRIC		SOURCE OF SUPPLY	73.52
	PLATT ELECTRIC		SOURCE OF SUPPLY	75.07
	PLATT ELECTRIC		SOURCE OF SUPPLY	81.52

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138506	PLATT ELECTRIC	POLE BREAKERS	SEWER MAIN COLLECTION	94.29
	PLATT ELECTRIC	LABEL MAKER	SEWER MAIN COLLECTION	117.65
	PLATT ELECTRIC		SOURCE OF SUPPLY	117.66
	PLATT ELECTRIC	DRILL BITS AND TAPE	SOURCE OF SUPPLY	125.48
	PLATT ELECTRIC	CONNECTORS	SOURCE OF SUPPLY	135.09
	PLATT ELECTRIC	HARDWARE	WATER FILTRATION PLANT	253.61
	PLATT ELECTRIC	CONNECTORS AND WEDGES	SOURCE OF SUPPLY	282.64
	PLATT ELECTRIC	CONNECTORS	SOURCE OF SUPPLY	475.07
	PLATT ELECTRIC	ROTARY HANDLES	PUMPING PLANT	514.15
138507	PLITMAN, VLADISLAV	INTERPRETER SERVICES	COURTS	125.00
138508	POLICE & SHERIFFS PR	ID CARD	GENERAL FUND	-1.63
	POLICE & SHERIFFS PR		DETENTION & CORRECTION	19.18
138509	POLLARDWATER	METER HAND PUMPS, SCOPES AND GAUGES	WATER DIST MAINS	399.61
138510	POTTER, BRENT	REIMBURSE MEALS	WATER RESERVOIRS	84.48
138511	PUBLIC SAFETY TESTIN	TESTING FEES	DETENTION & CORRECTION	30.00
	PUBLIC SAFETY TESTIN		POLICE PATROL	320.00
138512	PUD	ANNUAL POLE RENTAL #40001209	METER READING	839.40
138513	PUD	ACCT #205136245	SEWER LIFT STATION	17.49
	PUD	ACCT #202461026	MAINT OF GENL PLANT	17.58
	PUD	ACCT #202461034	UTIL ADMIN	17.82
	PUD	ACCT #205195373	PARK & RECREATION FAC	18.14
	PUD	ACCT #202031134	PUMPING PLANT	18.32
	PUD	ACCT #202011813	PUMPING PLANT	19.19
	PUD	ACCT #200973956	SEWER LIFT STATION	23.65
	PUD	ACCT #203569751	STORM DRAINAGE	28.08
	PUD	ACCT #202794657	TRANSPORTATION	39.85
	PUD	ACCT #200448801	TRANSPORTATION	42.54
	PUD	ACCT #203199732	TRANSPORTATION	52.49
	PUD	ACCT #203430897	STREET LIGHTING	54.35
	PUD	ACCT #202175956	TRAFFIC CONTROL DEVICES	65.74
	PUD	ACCT #202368544	TRANSPORTATION	66.83
	PUD	ACCT #202288585	TRANSPORTATION	74.78
	PUD	ACCT #202303301	SEWER LIFT STATION	76.13
	PUD	ACCT #220681340	STORM DRAINAGE	83.99
	PUD	ACCT #221115934	MAINT OF GENL PLANT	95.57
	PUD	ACCT #202524690	PUMPING PLANT	128.15
	PUD	ACCT #205237738	TRAFFIC CONTROL DEVICES	150.37
	PUD	ACCT #205239270	TRAFFIC CONTROL DEVICES	173.82
	PUD	ACCT #202426482	PUBLIC SAFETY BLDG	183.17
	PUD	ACCT #202000329	PARK & RECREATION FAC	200.84
	PUD	ACCT #200223857	PARK & RECREATION FAC	204.39
	PUD	ACCT #201628880	WASTE WATER TREATMENT	235.41
	PUD	ACCT #222025900	PUMPING PLANT	248.61
	PUD	ACCT #205419765	PUBLIC SAFETY BLDG	251.82
	PUD	ACCT #201147253	PUMPING PLANT	278.31
	PUD	ACCT #204821227	TRAFFIC CONTROL DEVICES	288.83
	PUD	ACCT #221192545	PUBLIC SAFETY BLDG	352.98
	PUD	ACCT #201247699	STREET LIGHTING	368.56
	PUD	ACCT #201675634	WASTE WATER TREATMENT	444.87
	PUD	ACCT #201021607	PARK & RECREATION FAC	501.55
	PUD	ACCT #220824148	WASTE WATER TREATMENT	529.91
	PUD	ACCT #200303477	WATER FILTRATION PLANT	838.91
	PUD	ACCT #202177333	MAINT OF GENL PLANT	877.72
	PUD	ACCT #201587284	WASTE WATER TREATMENT	908.09
	PUD	ACCT #200824548	MAINT OF GENL PLANT	1,317.29
	PUD	ACCT #201639689	MAINT OF GENL PLANT	1,738.74

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138513	PUD	ACCT #201463031	PUBLIC SAFETY BLDG	3,169.23
	PUD	ACCT #221320088	SUNNYSIDE FILTRATION	3,987.84
	PUD	ACCT #201577921	PUMPING PLANT	4,268.68
	PUD	ACCT #202075008	WASTE WATER TREATMENT	8,006.96
	PUD	ACCT #201420635	WASTE WATER TREATMENT	16,140.34
	PUD	ACCT #201721180	WASTE WATER TREATMENT	21,123.47
138514	PUGET SOUND BUSINESS	ADVERTISING-OH	OPERA HOUSE	1,000.00
138515	PUGET SOUND SECURITY	KEYS MADE	EQUIPMENT RENTAL	11.97
	PUGET SOUND SECURITY		POLICE PATROL	66.62
138516	QUINLAN, RACHEL	DEPOSIT AND RENTAL FEE REFUND	PARKS-RENTS & ROYALTIES	75.00
	QUINLAN, RACHEL		GENERAL FUND	500.00
138517	RAINES, LIN	REFUND CLASS FEES	PARKS-RECREATION	40.00
138518	RAY ALLEN MANUFACTUR	K-9 SUPPLIES	GENERAL FUND	-4.84
	RAY ALLEN MANUFACTUR		K9 PROGRAM	56.83
	RAY ALLEN MANUFACTUR		K9 PROGRAM	1,394.28
138519	REGEL, RONALD	UTILITY TAX REBATE	NON-DEPARTMENTAL	48.33
138520	RIDEN, JUDY		NON-DEPARTMENTAL	55.74
138521	RIEGER, JACQUELINE	REFUND CLASS FEES	PARKS-RECREATION	10.00
138522	RJM PRECISION INSTRU	TRANSMITTER AND RECEIVER KITS	TRANSPORTATION	1,358.60
138523	ROACH, RICHARD	UTILITY TAX REBATE	NON-DEPARTMENTAL	50.54
138524	ROTH, ALLAN		NON-DEPARTMENTAL	37.59
138525	ROY ROBINSON	AQUA CHEM TREATMENT	ER&R	144.17
	ROY ROBINSON	REPAIR #P161	EQUIPMENT RENTAL	146.76
138526	SAFEWAY INC.	CIVIC CENTER EXPENSE	EXECUTIVE ADMIN	3.99
138527	SAFEWAY INC.	SPECIAL EVENT SUPPLIES	OPERA HOUSE	21.82
	SAFEWAY INC.		RECREATION SERVICES	177.75
138528	SAFEWAY INC.	CEREMONY/INMATE/MEETING SUPPLIES	POLICE ADMINISTRATION	20.89
	SAFEWAY INC.		PERSONNEL ADMINISTRATION	23.95
	SAFEWAY INC.		DETENTION & CORRECTION	1,580.19
138529	SALINS-MYERS, AMY	REFUND CLASS FEES	PARKS-RECREATION	42.00
138530	SCORE	INMATE MEDICAL	DETENTION & CORRECTION	593.79
138531	SCOTT, ELAINE	UTILITY TAX REBATE	NON-DEPARTMENTAL	30.40
138532	SENYITKO, ELSIE		NON-DEPARTMENTAL	90.72
138533	SEVERSON, KELLY		NON-DEPARTMENTAL	46.66
138534	SHAMBAUGH, JOHN	REFUND CLASS FEES	PARKS-RECREATION	20.00
	SHAMBAUGH, JOHN		PARKS-RECREATION	20.00
138535	SHAY, CIERRA	RENTAL DEPOSIT REFUND	GENERAL FUND	500.00
138536	SHEFLO, VERONICA	REFUND CLASS FEES	PARKS-RECREATION	20.00
138537	SHRED-IT US	MONTHLY SHREDDING SERVICE	OFFICE OPERATIONS	114.00
138538	SNO CO PUBLIC WORKS	ROAD BOND DEBT SSC.25.20.030	STORM DRAINAGE	13,000.18
138539	SNYDER, SUSAN	REFUND CLASS FEES	PARKS-RECREATION	20.00
138540	SONICSOLUTIONS ALGAE	ALGAE CONTROL SUPPLIES	WASTE WATER TREATMENT	29,370.00
138541	SONITROL	MONITORING FEES	NON-DEPARTMENTAL	134.00
	SONITROL		STORM DRAINAGE	143.00
	SONITROL		UTIL ADMIN	144.56
	SONITROL		COMMUNITY CENTER	154.96
	SONITROL		PUBLIC SAFETY BLDG	177.72
	SONITROL		SUNNYSIDE FILTRATION	239.00
	SONITROL	MONITORING FEES-OH	OPERA HOUSE	240.27
	SONITROL	MONITORING FEES	PARK & RECREATION FAC	287.04
	SONITROL		WATER QUAL TREATMENT	315.12
	SONITROL		CITY HALL	361.92
	SONITROL		WASTE WATER TREATMENT	576.04
	SONITROL	ALARM SYSTEM INSTALLATION	OPERA HOUSE	4,134.82
138542	SONSRAY MACHINERY	REPAIR #M008	EQUIPMENT RENTAL	3,208.35
138543	SOUND PUBLISHING	LEGAL ADS	CITY CLERK	44.62

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/20/2020 TO 2/26/2020

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
138544	SOUND PUBLISHING	LEGAL ADS	COMMUNITY	571.16
138545	SOUND PUBLISHING	EMPLOYMENT ADS	POLICE ADMINISTRATION	299.00
	SOUND PUBLISHING		SOLID WASTE OPERATIONS	299.00
	SOUND PUBLISHING		CUSTODIAL SERVICES	299.00
138546	SOUND SAFETY	JEANS-DESI	PARK & RECREATION FAC	152.26
	SOUND SAFETY	BOOTS AND JEANS-BUELL	UTIL ADMIN	322.13
	SOUND SAFETY	BOOTS/JEANS/VEST/GLOVES-CHRISMAN	PARK & RECREATION FAC	332.07
138547	SPRINGBROOK NURSERY	BLACK MULCH	ROADSIDE VEGETATION	29.64
138548	STANWOOD CAMANO NEWS	ADVERTISING	OPERA HOUSE	335.00
138549	STAPLES	WATER	MUNICIPAL COURTS	15.13
	STAPLES	OFFICE SUPPLIES	PERSONNEL ADMINISTRATION	50.76
	STAPLES		MUNICIPAL COURTS	240.94
138550	STONEWAY ELECTRIC	PUMP UPGRADE PARTS	SOURCE OF SUPPLY	183.65
	STONEWAY ELECTRIC	ENCLOSURE	SEWER LIFT STATION	343.29
138551	STURGIS, BRENDA	PROFESSIONAL SERVICES	GMA - STREET	16,458.80
138552	SUBURBAN PROPANE	PROPANE CHARGES	PARK & RECREATION FAC	967.88
138553	SWAIN, CECELIA	UTILITY TAX REBATE	NON-DEPARTMENTAL	86.48
138554	SYLVESTER, BARBARA	REFUND BUSINESS LICENSE FEES	GENL FUND BUS LIC &	65.00
138555	TACOMA SCREW PRODUCT	HARDWARE	EQUIPMENT RENTAL	70.41
	TACOMA SCREW PRODUCT		WATER DIST MAINS	160.37
138556	TACOS EL BAJO LLC	REFUND BUSINESS LICENSE FEES	GENL FUND BUS LIC &	65.00
138557	TAITINGFONG, SUZANNE	REFUND CLASS FEES	PARKS-RECREATION	40.00
	TAITINGFONG, SUZANNE		PARKS-RECREATION	80.00
138558	THORLEIFSON, JOANNE	UTILITY TAX REBATE	NON-DEPARTMENTAL	43.05
138559	TIERNEY, HELEN		NON-DEPARTMENTAL	73.33
138560	VAN SOEST, JOHN		NON-DEPARTMENTAL	71.40
138561	VANDEGRAAF, INGRID	REFUND CLASS FEES	PARKS-RECREATION	20.00
138562	VERBON, RUSSELL	UTILITY TAX REBATE	NON-DEPARTMENTAL	64.83
138563	VERIZON	WIRELESS CHARGES	CRIME PREVENTION	23.99
	VERIZON		PURCHASING/CENTRAL	23.99
	VERIZON		SEWER MAIN COLLECTION	40.01
	VERIZON		UTILITY BILLING	47.98
	VERIZON		PERSONNEL ADMINISTRATION	52.29
	VERIZON		PROPERTY TASK FORCE	56.76
	VERIZON		SEWER LIFT STATION	80.02
	VERIZON		EQUIPMENT RENTAL	104.74
	VERIZON		FACILITY MAINTENANCE	113.52
	VERIZON		FINANCE-GENL	123.66
	VERIZON		LEGAL-GENL	123.66
	VERIZON		OFFICE OPERATIONS	170.28
	VERIZON		COMMUNITY SERVICES UNIT	170.28
	VERIZON		PARK & RECREATION FAC	185.56
	VERIZON		TRANSPORTATION	200.07
	VERIZON		RECREATION SERVICES	209.55
	VERIZON		LEGAL - PROSECUTION	237.04
	VERIZON		MUNICIPAL COURTS	250.51
	VERIZON		YOUTH SERVICES	284.60
	VERIZON		SOLID WASTE CUSTOMER	312.68
	VERIZON		WATER QUAL TREATMENT	314.30
	VERIZON		WATER SUPPLY MAINS	320.21
	VERIZON		DETENTION & CORRECTION	364.55
	VERIZON		POLICE INVESTIGATION	397.32
	VERIZON		EXECUTIVE ADMIN	400.59
	VERIZON		COMPUTER SERVICES	549.65
	VERIZON		WASTE WATER TREATMENT	577.54
	VERIZON		COMMUNITY	633.56

**CITY OF MARYSVILLE
 INVOICE LIST**

FOR INVOICES FROM 2/20/2020 TO 2/26/2020

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
138563	VERIZON	WIRELESS CHARGES	STORM DRAINAGE	650.24
	VERIZON		GENERAL	730.18
	VERIZON		POLICE ADMINISTRATION	818.70
	VERIZON		ENGR-GENL	945.14
	VERIZON		UTIL ADMIN	2,091.39
	VERIZON		POLICE PATROL	2,765.02
138564	VERMEULEN, MARY	REFUND CLASS FEES	PARKS-RECREATION	20.00
	VERMEULEN, MARY		PARKS-RECREATION	20.00
138565	WA REC & PARK ASSN	WRPA CONFERENCE/TRADESHOW (2)	RECREATION SERVICES	310.00
	WA REC & PARK ASSN		COMMUNITY CENTER	310.00
138566	WASTE MANAGEMENT	MEDICAL WASTE DISPOSAL FEES	STORM DRAINAGE	166.54
138567	WATCH SYSTEMS	RSO NOTIFICATION	POLICE INVESTIGATION	38.26
138568	WELWEST CONSTRUCTION	PAY ESTIMATE #1	GMA-STREET	-3,237.09
	WELWEST CONSTRUCTION		GMA - STREET	64,741.75
138569	WESTERN SYSTEMS	WELDMENT CREDIT-DEFECTIVE	EQUIPMENT RENTAL	-228.44
	WESTERN SYSTEMS	ARM WELDMENT AND BEARING ASSEMBLY	EQUIPMENT RENTAL	228.44
	WESTERN SYSTEMS	SCOUT JET CAMERA NOZZLE	STORM DRAINAGE	3,350.38
	WESTERN SYSTEMS		SEWER MAIN COLLECTION	3,350.39
138570	WESTERN TRUCK	CORE REFUND	ER&R	-36.48
	WESTERN TRUCK	HYDRAULIC CYLINDER	EQUIPMENT RENTAL	924.58
	WESTERN TRUCK	EXHAUST BLANKETS AND GASKETS	ER&R	2,978.01
138571	WHATCOM COUNTY	MINI-CHAIN 4TH QTR 2019	DETENTION & CORRECTION	7,123.00
138572	WHITE, WILLIAM	UTILITY TAX REBATE	NON-DEPARTMENTAL	59.21
138573	WOODEN, GIOCONDA	REFUND CLASS FEES	PARKS-RECREATION	10.00
138574	WORK TRUCK DIRECT	AIR CLEANER ASSEMBLY	EQUIPMENT RENTAL	341.99
138575	WSP USA INC	PROFESSIONAL SERVICES	GMA - STREET	1,314.91
138576	YAKIMA COUNTY DOC	INMATE HOUSING	DETENTION & CORRECTION	10,755.63
138577	ZIMBELMAN, ERVIN	UTILITY TAX REBATE	UTIL ADMIN	42.44
	ZIMBELMAN, ERVIN		NON-DEPARTMENTAL	57.78
	ZIMBELMAN, ERVIN		UTIL ADMIN	158.22
138578	ZWIERS, ANNA		NON-DEPARTMENTAL	73.54

WARRANT TOTAL: 1,283,926.92

REASON FOR VOIDS:

- INITIATOR ERROR
- CHECK LOST/DAMAGED
- UNCLAIMED PROPERTY

Index #5

**CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION**

CITY COUNCIL MEETING DATE: 3/2/2020

AGENDA ITEM: Deering Wildflower Acres Park Caretaker and Lease Agreement Renewal	
PREPARED BY: Tara Mizell DEPARTMENT: Parks, Culture and Recreation	DIRECTOR APPROVAL:
ATTACHMENTS: Caretaker and Lease Agreement	
BUDGET CODE:	AMOUNT:

SUMMARY:

Staff is recommending the renewal of the Deering Wildflower Acres Park Caretaker Agreement with Jeffrey and Karen Pickard. The Pickard’s have served the community well as Caretakers of the Deering Wildflower Acres Park for over fourteen years. They have maintained the facilities and grounds as required within the scope of work and have demonstrated exemplary stewardship on this unique facility within the park system.

The renewal agreement established a term of April 1, 2020 through March 2025.

<p>RECOMMENDED ACTION: Staff recommends that Council Authorize the Mayor to sign the Renewal Caretaker Agreement with Jeffrey and Karen Pickard as Caretakers for the Deering Wildflower Acres Park with a term of five years concluding in March of 2025.</p>

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between the CITY OF MARYSVILLE, a municipal corporation existing under the laws of the State of Washington, hereinafter referred to as "Landlord", and JEFFREY AND KAREN PICKARD, hereinafter referred to as "Tenant".

WITNESSETH:

Landlord does by these presents lease and demise unto Tenant the following described real estate and premises situate in the City of Marysville, County of Snohomish, State of Washington, to wit:

The mobile home residence, carport and fenced yard adjacent to the mobile home, located at 4708 - 79th Avenue NE, Marysville, WA 98270, situated upon the property commonly known as Deering Wildflower Acres.

PROVIDED, that this lease shall be limited to the mobile home residence, carport and adjacent fenced yard. The remaining property and all other structures situated upon the property are specifically NOT included as part of the lease premises, and may be used for whatever purposes Landlord elects, including, but not limited to, use by the public for park purposes. Landlord shall have access to the yard at all times.

The parties hereto mutually agree on the following terms and conditions governing said lease:

1. The term for said lease shall be for a maximum of five (5) years, commencing on April 1, 2020 and ending on March 31, 2025.
2. The market value of the leasehold interest is agreed to be NINE HUNDRED FIFTY AND NO/100THS DOLLARS (\$950.00) per month. Tenant shall pay leasehold excise tax to Landlord in the amount of 12.84% of the market value of the leasehold excise tax, for a monthly total of \$124.98 per month. Payment of the leasehold excise tax is the consideration for this lease. In the event that there is any change in the amount, manner, or method in which leasehold excise tax is determined or paid, Tenant shall pay the leasehold excise tax, as so changed, revised or recalculated.
3. The Landlord shall be compensated for this value in the following manner:

The Tenant shall perform all regular and necessary duties as an independent contractor pursuant to the terms of a separate Contract for Caretaker Services between the CITY OF MARYSVILLE and Tenant, attached hereto as **EXHIBIT B**. It is understood and agreed that the Tenant will not be obligated to pay the City the monthly rental for the premises in

question for any month during which the Tenant has fully performed pursuant to the terms of the **EXHIBIT B** Contract for Caretaker Services and complied with all terms of this agreement.

4. All interior maintenance of the premises shall be performed by the Tenant. Landlord shall provide all exterior maintenance to structures and repairs to the physical plant and roof systems of the premises. Landlord shall provide yard pruning services at least once every three months during the growing season. Tenant shall provide all other grounds maintenance including lawn mowing and watering the lawn and shrubbery as needed.
5. Landlord and Landlord's agents and employees shall have the right to access to the premises for the purposes of:
 - (a) Inspection;
 - (b) Maintenance, yard work, repairs, alterations or improvements;
 - (c) Display of the premises to prospective or actual workers or contractors.

Whenever practical, Landlord shall give Tenant advance notice of Landlord's intent to enter the property. Landlord shall not alter the property or home in any way so as to make the home uninhabitable by Tenant.

6. Tenant agrees that the mobile home will be used as the residence for Tenant only. Tenant agrees not to let or sublet the whole or any part of the premises nor assign this lease, or any interest therein. Tenant agrees not to operate any retail or service-oriented business within the residence or property described.
7. Tenant shall not maintain any pets or animals upon the premises without the prior written consent of Landlord. Landlord has consented to Tenant maintaining two (2) dogs upon the premises. Tenant shall not maintain any additional or different dogs upon the premises without Landlord's prior written approval. Tenant shall not permit the dogs to be outside the fenced yard except when leashed. Tenant acknowledges that dogs are prohibited within Deering Wildflower Acres, and Tenant agrees to strictly comply with this rule. When leashed the dogs shall be limited to the driveway and the lawn area immediately surrounding the mobile home. The dogs are permitted within the mobile home; provided, Tenant shall be fully responsible for all damages caused by Tenant's pets, including replacement of any soiled carpets, whether or not the Tenant believes the carpets might be cleaned. Tenant agrees to pay the Landlord in full for any damages caused by Tenant's pets. Tenant represents to Landlord that none of Tenant's pets has ever threatened to attack or attacked and/or bitten another domestic animal or a human being and Tenant's pets are not dangerous to human beings or other domestic animals.
8. Tenant agrees that all personal property kept at the lease premises by Tenant shall be at the risk of Tenant. Tenant further agrees not to hold Landlord liable in any manner or on account of any loss or damage sustained by action of fire, water, elements, theft or any third party.

- 9. Tenant shall maintain casualty insurance coverage for Tenant's personal property located at the premises and shall maintain public liability insurance for injuries to persons or property in at least the amount of \$500,000.00. Landlord shall provide hazard insurance for the improvements situated on the lease premises and shall also provide public liability insurance.

Landlord shall pay the real estate taxes for the lease premises.

Tenant shall pay all charges for utilities supplied to the residence including, but not limited to, electricity and garbage. The Landlord maintains telephone service to the residence. The Tenant will pay for all long distance telephone calls. The Landlord will invoice the Tenant for all charges each month. The Tenant is expected to make payments for all utilities billed within 30 days of the invoice date.

- 10. The carport portion of the lease premises was built prior to 1978 and is therefore subject to lead-based paint disclosure regulations issued by the federal Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). A "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards" is **ATTACHMENT 1** to this agreement.
- 11. It is agreed that if default should occur on any of the conditions herein contained, or in the Contract for Caretaker Services, then it shall be the option of Landlord to declare this lease terminated. Upon termination of the lease on account of Tenant's default, Landlord shall have the right to re-enter the premises and remove all persons and property therefrom.
- 12. Either party may terminate this Agreement by giving thirty (30) days' written notice to the other party. This lease shall automatically terminate in the event the Tenant ceases to occupy the subject premises for any reason for a period of thirty (30) consecutive days. Upon the expiration or early termination of this lease, the Tenant will quit and surrender the premises in as good state and condition as they were at the commencement of the lease term (ordinary wear and damage by the elements or fire excepted).
- 13. In the event of any litigation involving the rights or obligations of the Landlord or Tenant hereunder, the prevailing party in such litigation shall be entitled to receive from the other such reasonable attorney's fees and all costs as the court may award.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 20__.

CITY OF MARYSVILLE

Tenant

By _____
Jon Nehring, Mayor

By 
Jeffrey Pickard

By Karen Pickard
Karen Pickard

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk

Approved as to form:

Jon Walker, City Attorney

ATTACHMENT 1

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
 - (i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

 - (ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the lessor (check (i) or (ii) below):
 - (i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

 - (ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

- (c) _____ Lessee has received copies of all information listed above.
- (d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

- (e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor	Date	Lessor <i>Karen Pickard</i>	Date <i>2-9-2020</i>
Lessee <i>[Signature]</i>	Date <i>2-9-2020</i>	Lessee	Date
Agent <i>[Signature]</i>	Date	Agent	Date

EXHIBIT B

CONTRACT FOR CARETAKER SERVICES

The CITY OF MARYSVILLE, a municipal corporation, hereinafter designated "City," and JEFF and KAREN PICKARD, hereinafter designated "Caretaker," hereby contract and agree as follows:

1. **Property/Consideration:** In consideration for the lease which is **EXHIBIT A** to this agreement, Caretaker agrees to perform certain caretaker duties more particularly described below, pertaining to the following described property:

Deering Wildflower Acres.

Situated in the County of Snohomish, State of Washington.

Street address: 4708 79th Avenue NE, Marysville, WA 98270

TOGETHER WITH the adjacent nature park acreage.

2. **Caretaker Contract Term:** This caretaker contract shall be for the term of the **EXHIBIT A** lease. Upon termination of said lease for any reason, this contract shall terminate.
3. **Reporting Relationship:** Caretaker shall report to the Director of Parks and Recreation, and Parks Maintenance Manager.
4. **Scope of Work:** Caretaker shall:
 - (a) Inspect facilities daily and advise Parks and Recreation Director or his/her designee of any repairs needed to facilities.
 - (b) Open and secure facilities daily on a schedule determined by the Park and Recreation Advisory Board. Caretaker shall open gates and lock gates at determined hours if gates are installed upon the premises. Caretaker shall be on site during scheduled activities when possible.
 - (c) Empty trash/refuse receptacles into the dumpster provided by City.
 - (d) Inspect and maintain portable restroom supplies. City is responsible for all holding tank cleaning requirements.
 - (e) Protect the park from vandal damage by reporting activities to law enforcement and public safety agencies.
 - (f) Coordinate site schedules with Parks and Recreation Department, admit scheduled tours to the Park, or provide a qualified representative.

5. General Requirements and Qualifications: Caretaker must possess:
 - (a) Physical abilities to perform all duties.
 - (b) Ability to read and speak English.
 - (c) Valid Washington State driver's license.
6. Special Requirements and Compensation:
 - (a) Caretaker shall live on the park property in housing leased from the City of Marysville.
 - (b) The housing provided to Caretaker is in lieu of monetary compensation for services rendered.
 - (c) Caretaker shall contact the Director of Parks and Recreation to arrange for any short term or extended leave of absence from residence and/or duties. Caretaker is responsible for providing substitute caretaker during absence.
 - (d) Equipment/Tools: From time to time the City may provide the use of certain tools and/or equipment, supplies and materials for Contractor's use. It shall be the sole responsibility of the Contractor to maintain and protect from damage or theft any equipment, supplies or materials provided by the City or third parties.
 - (e) Employment of Third Parties: The City is contracting for the special services of the Contractor, and as such, the Contractor shall not subcontract or employ other persons to perform the caretaker services, without the specific written authorization of the City.
7. Independent Contractor
 - (a) This Service Agreement is not intended in any fashion to create the relationship of employer-employee with respect to the City and Contractor. Neither Contractor nor any person residing with Contractor is to be considered at any time an employee of the City. Neither party to this Service Agreement is the agent of the other, and neither party shall have the right to bind the other by contract or otherwise, except as herein specifically provided.
8. Employee Benefits/Withholding
 - (a) Contractor agrees to pay any and all withholding taxes, Employment Security taxes, Social Security or FICA taxes, Labor & Industry premiums or fees, and otherwise shall pay all other government-imposed fees or charges with respect to the business of Contractor. Contractor shall be solely responsible for all of his own benefits

including, but not limited to vacation, sick leave, pension, life insurance, medical insurance, paid leave, and such other benefits as he may wish to acquire for himself.

9. Litigation:

- (a) In the event of any litigation involving the rights or obligations of the City or Contractor hereunder, the prevailing party in such litigation shall be entitled to receive from the other such reasonable attorney's fees and all costs as the court may award.

10. Interpretation:

- (a) This agreement shall be governed by the laws of the State of Washington. There are no other or further agreements between the parties hereto except as set forth herein, or as specifically attached to this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date herein above first written.

CITY OF MARYSVILLE

Tenant

By _____
Jon Nehring, Mayor

By 
Jeffrey Pickard

By 
Karen Pickard

ATTEST/AUTHENTICATED:

_____, Deputy City Clerk


Approved as to form:

Jon Walker, City Attorney

Index #6

CITY OF MARYSVILLE AGENDA BILL
EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 2, 2020

AGENDA ITEM:	
Project Acceptance - 2019 Citywide Roadway Re-Striping	
PREPARED BY:	DIRECTOR APPROVAL:
Jesse Perrault	
DEPARTMENT:	
Public Works	
ATTACHMENTS:	
Notice of Physical Completion letter	
BUDGET CODE:	AMOUNT:
10110130.541000	\$179,435.67
SUMMARY:	

The 2019 Citywide Roadway Re-striping Project is an annual contract to re-stripe City streets for traffic control that includes approximately 1,239,160 lineal feet of 4 and 6-inch white and yellow pavement markings.

The City Council awarded the contract to Stripe-Rite, Inc. on July 17th, 2019 in the amount of \$179,435.67, and the project was completed for that cost.

Work performed under this contract was inspected by City staff, and determined to be physically complete in accordance with the approved plans and specifications.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to accept the 2019 Citywide Roadway Re-striping Project, and starting the 45-day lien filing period for project closeout.

RECOMMENDED MOTION:

I move to authorize the Mayor accept the 2019 Citywide Roadway Re-striping Project, and start the 45-day lien filing period for project closeout.



PUBLIC WORKS
Kevin Nielsen, *Director*

80 Columbia Avenue
Marysville, Washington 98270
Phone (360) 363-8100
Fax (360) 363-8284

October 3, 2019

Stripe-Rite, Inc.
Atten: Justin King
1813 137th Ave. E
Sumner, WA 98309

Subject: 2019 Citywide Roadway Re-striping Project - PHYSICAL COMPLETION

Dear Justin,

In accordance with Section 1-08.5 of the Standard Specifications, this project was considered physically complete as of Friday, September 27, 2019.

This notification does not constitute final acceptance. Recommendation for final acceptance will be sent to the City Council for approval at the first available council meeting and after the following items have been completed:

1. Affidavit of Wages Paid
2. Submit and process a final pay request

Upon obtaining all of the above documentation and acceptance by Council, a notice of completion of public works project will be sent to 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

It has been a pleasure working with Totem Electric on this project. The City looks forward to working with you on future projects.

Sincerely,

CITY OF MARYSVILLE

Jesse Perrault
Street Division Supervisor
Public Works Department

Index #7

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: March 2, 2020

AGENDA ITEM:	
Contract for purchase of two - 10 year IRUs (indefeasible right of use) with four - 5 year optional extensions for fiber to the Sunnyside Treatment Plant and Opera House from Wave Business Solutions LLC.	
PREPARED BY:	DIRECTOR APPROVAL:
Sandy Langdon, Finance Director Worth Norton, IS Manager	
DEPARTMENT:	
Finance / Information Services	
ATTACHMENTS:	
Sole Source Justification Dark Fiber IRU Agreement – Opera House Dark Fiber IRU Agreement – Sunnyside Treatment Plant	
BUDGET CODE:	AMOUNT:
10800080 549000 1715	\$ 38,255
10800080 549000 1513	\$ 49,185
00106020 542000 (maintenance charge over 10 years)	\$ 13,116
40141680 542000 (maintenance charge over 10 years)	\$ 13,116
Opera House FiOS Internet Savings	\$(9,838)
SUMMARY:	

The Opera House connection will extend the City's network for additional computers and security cameras. The Sunnyside Treatment Plant connection will terminate at the Waste Water Treatment Plant. This will provide a redundant diverse path connection for the City's emergency operations center (EOC). The current Sunnyside connection goes through Fire Station 66 using Comcast I-Net fiber that will need to be replaced in the next five years by the Fire department.

The City did a formal RFP in 2016 to expand the City's fiber network. The RFP bids were rejected. The RFP revealed that it would be less expensive for the City to purchase dark fiber IRUs (indefeasible right of use) than it was to build out City owned fiber. New technologies are still being examined, but at this time, IRUs are still the most cost effective dark fiber option. Of the three communications companies with fiber infrastructure within Marysville, only Wave Business Solutions offers point to point dark fiber.

The IRU purchase is being funded by I-Net and the ongoing maintenance will be paid for by Parks and Water Utilities.

RECOMMENDED ACTION:

I move to approve the contract for Point to Point Dark Fiber in the amount of \$113,672 as a legitimate sole source of supply for this service/product.

City staff recommends that the City Council authorize the Mayor to sign the attached Wave Business Solutions LLC IRU agreements.



SOLE SOURCE JUSTIFICATION

Department Head: Sandy Langdon Department: Finance/I.S.

Sole Source for the Purchase of: Point to Point Dark Fiber

Supplier: Wave Business Solutions LLC Cost Estimate: \$113,672

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:

Point to point dark fiber between city buildings purchased using an IRU (indefeasible right of use). The locations being connected are the Sunnyside Treatment Plant and the Opera House. Dark fiber is required for the City's data and security needs for wide area network connectivity.

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.

The City did a formal RFP in 2016 to expand the City’s fiber network. The RFP bids were rejected. The RFP revealed that it would be less expensive for the City to purchase dark fiber IRUs (indefeasible right of use) then it was to build out City owned fiber.

Three companies have fiber infrastructure within Marysville; Comcast, Frontier and Wave. Currently only Wave Business Solutions LLC has a point to point dark fiber option available for purchase, IRU, lease or rent. New technologies are still being examined, but at this time, IRUs are still the most cost effective dark fiber option.

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).

Fontier, Dina Baker, 360-202-0175, Dina.Baker@ftr.com, not availble

Comcast, Stephanie Shannon, 425-505-5061, Stephanie_Shannon@comcast.com, not available

Other vendors that were contacted (please list phone numbers and names, and explain why these were not suitable).

DNA

*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

Department Head

_____/_____
Signature Date

_____/_____
Signature Date

City Attorney

_____/_____
Jon Walker Date

Routing Instructions:

1. Route completed form and any supporting documents to City Attorney for review.
2. If service/product exceeds \$75,000 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.”

DARK FIBER IRU AGREEMENT
Opera House

This DARK FIBER IRU AGREEMENT: Opera House (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2020 (the “**Execution Date**”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, for itself and as agent for its Affiliates (“**Wave**”), and the CITY OF MARYSVILLE, a Washington municipal corporation (“**Customer**”). Each of Wave and the Customer may be referred to in this Agreement as a “**Party**,” and collectively as the “**Parties**.” With respect to either Party, the term “**Affiliate**” shall mean any person who directly or indirectly controls, is controlled by, or is under common control with that Party.

Background

- A.** Wave and its Affiliates own and operate a fiber optic communications network (the “**Wave Network**”) used by Wave to provide telecommunications, data transport, Internet access, dark fiber, video, telephone and related services to its residential, business and wholesale customers. A portion of the Wave Network is located in the northwest region of Washington.
- B.** Customer desires to obtain from Wave the exclusive, irrevocable right to use certain strands of single mode dark fiber belonging to Wave, for an initial period of ten (10) years, with four (4) options to extend the term, all as more fully described in this Agreement.
- C.** Wave is willing to grant Customer an irrevocable right of use in and to the IRU Fiber for the IRU Term on the terms and conditions set forth in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wave and the Customer agree as follows:

ARTICLE 1: THE IRU FIBER

- 1.1 Description of IRU Fibers. This Agreement involves the following segment of dark fiber (the “**Segment**”):

Fiber Route Identifier	Location A End Point	Location Z End Point	Description of Fiber	Maximum Loss Budget
Opera House	Public Safety Bldg. 1635 Grove Street Marysville, WA 98270	Opera House 1225 3 rd Street Marysville, WA 98270	1 strand single mode dark fiber	5 dB @ 1310 nm

The one (1) strand of fiber contained in Segment 1 that Customer shall receive the right to use under this Agreement may be referred to as the “**IRU Fiber**.”

- 1.2 Illustrative Maps. A map depicting the approximate locations and route of Segment 1 is attached to this Agreement as Exhibit A. The routes depicted in Exhibit A is for illustrative purposes only, for the convenience of the Parties. In the event of any conflict between Exhibit A and the specific terms and conditions of the main body of this Agreement, the specific terms and conditions of the main body of this Agreement shall control.

1.3 Wave's Control Over Segment Route. Notwithstanding the route depicted on Exhibit A, Wave shall at all times have full and complete control and responsibility for determining any routing configurations of the Segments, and may route the fiber optic cable or cables (each, a "**Cable**") containing the IRU Fiber through any Wave facility in its reasonable discretion, so long as (i) the End Points of each Segment are located as described in Section 1.1 above, and (ii) the "**Maximum Loss Budget**" for the Segment does not exceed that set forth in Section 1.1 above.

ARTICLE 2: EQUIPMENT

2.1 Equipment. "**Equipment**" means network components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables, and associated software.

2.2 Customer Equipment. Any Equipment provided by the Customer in connection with the IRU Fiber shall be referred to as the "**Customer Equipment**." Except as expressly provided to the contrary elsewhere in this Agreement, throughout the IRU Term (as that term is defined in Article 6 below), the Customer Equipment shall remain the property of the Customer and the Customer shall be responsible for all maintenance and repair of the Customer Equipment. Neither Wave nor any third party acting under Wave's authority will relocate, modify, tamper with, attempt to repair or otherwise interfere with the Customer Equipment.

2.3 Wave Equipment. Any Equipment provided by Wave in connection with the IRU Fiber shall be referred to as the "**Wave Equipment**." Except as expressly provided to the contrary elsewhere in this Agreement, throughout the IRU Term (as that term is defined in Article 6 below), the Wave Equipment shall remain the property of Wave and Wave shall be responsible for all maintenance and repair of the Wave Equipment. Neither the Customer nor any third party acting under the Customer's authority will relocate, modify, tamper with, attempt to repair or otherwise interfere with the Wave Equipment.

ARTICLE 3: INSTALLATION, TESTING AND ACCEPTANCE OF IRU FIBER

3.1 Construction. Wave anticipates that construction of Segment 1 will be completed within approximately twenty (20) weeks of the Execution Date of this Agreement.

3.2 Connecting the IRU Fiber. Upon Wave's completion of construction of the Segment, the Customer shall provide appropriate connecting Equipment and facilities, including all cross-connect facilities, at each End Point, and Wave shall interconnect the Customer's communications system with the IRU Fiber at the applicable End Points. All interconnections of the IRU Fiber and all other work with respect to the Wave Network shall be performed by Wave and in accordance with Wave's applicable specifications and operating procedures. It is the responsibility of the Customer to obtain all governmental and other approvals and consents necessary with respect to the Customer's placement of the Customer Equipment at the End Points.

3.3 Joint Testing. When Wave has completed the installation and configuration of a Segment, the Parties shall jointly test (the "**Joint Testing**") the applicable dark fibers in the Segment to verify that they are performing consistent with the specifications set forth on Exhibit B (the "**Fiber Specifications**"). Wave shall provide the Customer with at least three (3) business days' advance notice of the date and time on which Wave intends to perform the Joint Testing of the Segment (the "**Joint Testing Notice**"). If the Customer informs Wave within said time period that the Customer desires to participate in the Joint Testing, the Parties shall agree on a mutually convenient date and time for same. If the Customer fails to timely respond to Wave's Joint Testing Notice, the Customer shall be deemed to have elected not to participate in Joint Testing of the Segment at issue and Wave may proceed with testing the Segment by itself.

3.4 Service Commencement Date. If the Customer participates in Joint Testing and the Joint Testing demonstrates that the applicable dark fibers in the Segment at issue are properly installed and operating in accordance with the Fiber Specifications, then the “**Service Commencement Date**” for that Segment shall be the first calendar day following the day on which the Joint Testing was successfully completed. If the Customer elects not to participate in Joint Testing, either by affirmatively foregoing said opportunity or by failing to timely respond to Wave’s Joint Testing Notice, and Wave’s unilateral testing demonstrates that the applicable dark fibers in the Segment are properly installed and operating in accordance with the Fiber Specifications, then the Service Commencement Date for Segment 1 shall be the first calendar day after Wave’s successful completion of its unilateral testing. If either Joint Testing or Wave’s unilateral testing reveals problems with Segment 1, Wave shall correct same and deliver another Joint Testing Notice to the Customer once the problems have been corrected. In such event, the Parties shall repeat the process described in Section 3.3 above.

3.5 Acceptance of Segment; Revision to Service Commencement Date. The Customer shall have a period of five (5) business days after the Service Commencement Date for the Segment in which the Customer may notify Wave that the IRU Fiber is not functioning properly. If the Customer notifies Wave of problems with the Segment pursuant to this Section 3.5, Wave shall investigate same. If Wave determines there are problems with the IRU Fiber, Wave shall correct same and the Service Commencement Date for the Segment shall be revised to be the first calendar day after the date on which Wave has corrected the problems. Unless the Customer delivers notification of problems to Wave within the time period set forth above, the Customer shall be deemed to have accepted the applicable dark fibers in the Segment at issue and to have confirmed that the Segment has been installed and is functioning in accordance with the Fiber Specifications as of the Service Commencement Date.

ARTICLE 4: GRANT OF IRU

4.1 Grant of IRU. Wave hereby grants, transfers and conveys to the Customer, and the Customer receives and accepts from Wave, an exclusive, unrestricted, irrevocable and indefeasible right of use in the IRU Fiber, together with the right to access the IRU Fiber at the End Points of each Segment. The Customer’s rights in the IRU Fiber granted pursuant to this Section 4.1 shall be referred to as the “**IRU.**” The IRU is granted to the Customer subject to the terms and conditions set forth in this Agreement. The IRU shall take effect upon the IRU Effective Date (as that term is defined in Article 6 below).

4.2 Effect of IRU. To the fullest extent permitted by law, the Parties intend that the IRU shall grant, transfer and convey to the Customer all beneficial right, title and interest in the IRU Fiber and that the Customer shall have exclusive possession, use and control over and shall be for all purposes the equitable owner of the IRU Fiber during the Term; provided, however, the IRU does not convey legal title or legal ownership of the IRU Fiber. For the sake of clarity, the IRU is intended by the parties to be a beneficial property interest (as distinguished from a mere contractual interest) and the grant, transfer and conveyance of the IRU effected by this Agreement is intended by the parties to be fully completed and effective, with all conditions precedent deemed to have been satisfied in all respects immediately on the IRU Effective Date (as that term is defined in Article 6 below). For the further sake of clarity, this Agreement is not intended by the Parties to be a revocable license, a lease or executory contract, but rather to effect the sale and purchase of the IRU by Wave to the Customer for the IRU Term (as that term is defined in Article 6 below).

4.3 No Revocation. Notwithstanding the occurrence of a breach or violation by the Customer of any legal duty or obligation imposed by any contract, including this Agreement, by the law of torts (including simple or gross negligence, strict liability or willful misconduct), or by any federal, state or local laws, rules, regulations, orders, standards, judicial decrees or ordinances, during the IRU Term (as that term is defined in Article 6 below), Wave shall have no right to revoke or restrict the IRU in any manner or to any degree whatsoever, through injunctive relief or otherwise. The Parties mutually understand and agree that any breach by the Customer shall be compensable, if at all, by a remedy at law for monetary damages and not at equity. Conversely, and in recognition

that the IRU cannot be readily obtained in the open market and that the Customer will be irreparably injured if this Agreement cannot be specifically enforced, the Customer shall be entitled, in addition to bringing suit at law or equity for monetary or other damages, to obtain specific performance to order implementation of the IRU contemplated by this Agreement. In any action to enforce the provisions of this Agreement, Wave hereby irrevocably and forever waives the defense that there is an adequate remedy at law and hereby irrevocably agrees that the Customer shall have the right to obtain specific performance of the IRU contemplated by this Agreement.

4.4 Limitations. The IRU shall not include: (i) the right to own, control, maintain, modify, relocate or repair the Cables in which each Segment of the IRU Fiber is located, any Wave Equipment, or any other portion of Wave's network facilities; (ii) except for the right to access the Segments of the IRU Fiber at its respective End Points, the right to physically access the Cables or any other portion of Wave's network facilities; (iii) the right to encumber the Cables or any other portion of Wave's network facilities in any manner; or (iv) the right to use the Cables or any other portion of Wave's network facilities except as expressly set forth herein. The Customer expressly acknowledges and agrees that the Customer shall receive no rights to use any of the Wave Equipment in connection with the IRU. Wave is not supplying nor is Wave obligated to supply to the Customer any optronics or electronics or optical or electrical equipment or other facilities, all of which are solely the responsibility of the Customer, nor is Wave responsible for performing any work in connection with the IRU Fiber other than as specified in this Agreement. The Customer shall keep the Cables, the IRU Fiber, the Wave Equipment and all other portions of Wave's network facilities, free from any liens, rights or claims of any third party attributable to the Customer.

4.5 Network Configuration. Each Party shall have full and complete control and responsibility for determining its own network and service configurations or designs, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of that Party's fiber contained in each of the Cables; provided that such control and responsibility by the Customer shall not adversely affect the use by Wave or any other authorized user (each, an "**Authorized User**") of the Cables, of Wave's network facilities and/or of any Equipment used by Wave or an Authorized User in connection therewith.

ARTICLE 5: CONSIDERATION FOR IRU

5.1 IRU Fee. In consideration of receiving the IRU, Customer shall pay to Wave a non-recurring "**IRU Fee**" fee in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00). Fifty percent (50%) of the IRU Fee shall be due and payable to Wave within ten (10) days after the Execution Date of this Agreement and the other fifty percent (50%) within ten (10) days after the Acceptance Date. The Customer will be responsible for all charges associated with (i) any cross connects requested by the Customer, and (ii) any changes or additions to the IRU Fiber that are requested by the Customer and agreed to by Wave.

5.2 Scheduled Maintenance Fees. Beginning on the IRU Effective Date (as that term is defined in Article 6 below), Customer shall pay to Wave monthly "**Scheduled Maintenance Fees**" with respect to the IRU Fiber, in the amount of One Hundred and No/100 Dollars (\$100.00) per month.

5.3 CPI Adjustment of Scheduled Maintenance Fees. The term "**CPI**" shall mean the Consumer Price Index for the Seattle, WA area, for All Urban Consumers, All Items, compiled by the United States Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is no longer published, the parties shall mutually agree on a replacement indicator most nearly equivalent to the CPI. Scheduled Maintenance Fees shall be adjusted on the first (1st) day of each Extended IRU Term (if any). To obtain the new amount of Scheduled Maintenance Fees, the Scheduled Maintenance Fees for the current year shall be multiplied by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "**Current Index Number**" shall be the CPI figure for the most recent month available as of the first (1st) day of the applicable Extended IRU Term. The "**Base Index Number**" shall be the CPI figure for the month in which the IRU Effective Date occurred.

5.4 Unscheduled Maintenance Costs. Customer shall be responsible for paying its Proportionate Share of Unscheduled Maintenance Costs, as those terms are defined in Article 7 below.

5.5 Invoicing and Payment for Maintenance Costs. Wave shall invoice the Customer for Scheduled Maintenance Fees and Unscheduled Maintenance Costs. Customer shall pay all undisputed invoices within sixty (60) days of receipt. If the Customer in good faith disputes any portion of a Wave invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Wave regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a “**Fee Dispute Notice**”). A Fee Dispute Notice must be submitted to Wave within ninety (90) days from the date the invoice at issue is received by the Customer. Wave shall respond to a Fee Dispute Notices within thirty (30) days of receiving same. The Parties shall negotiate in good faith to attempt to resolve any such disputes within forty five (45) days after the Customer’s delivery of the applicable Fee Dispute Notice. If, after participating in good faith negotiations to resolve a fee dispute, the Parties are unable to resolve any fee dispute within sixty (60) days after the Wave received the Fee Dispute Notice, then the fee dispute shall be resolved by the mediation and arbitration procedures set forth in Sections 18.2 and 18.3 below.

ARTICLE 6: TERM OF IRU

6.1 IRU Effective Date. The IRU shall become effective on the Service Commencement Date for Segment 1 (the “**IRU Effective Date**”).

6.2 Initial IRU Term. Unless earlier terminated pursuant to this Agreement, the initial term of the IRU shall be for ten (10) years (the “**Initial IRU Term**”), commencing on the IRU Effective Date, and expiring on the date that is one day prior to the tenth (10th) anniversary of the IRU Effective Date (the “**Initial IRU Term Expiration Date**”).

6.3 Customer’s Extension Options.

(a) Grant of Extension Options. Customer shall have four (4) options to extend the term of the IRU (respectively, the “**First Extension Option**,” the “**Second Extension Option**,” the “**Third Extension Option**,” and the “**Fourth Extension Option**,” and, together, the “**Extension Options**”). Each of the Extension Options shall be for a period of five (5) years (respectively, the “**First Extended IRU Term**,” the “**Second Extended IRU Term**,” the “**Third Extended IRU Term**,” and the “**Fourth Extended IRU Term**,” and, together, the “**Extended IRU Terms**”). The Extended IRU Terms (if any) and the Initial IRU Term shall together be referred to as the “**IRU Term**.” The date on which the IRU Term expires shall be referred to as the “**IRU Expiration Date**.”

(b) Exercise of First Extension Option. To exercise the First Extension Option, Customer must deliver written notice to Wave that Customer is exercising the First Extension Option at least ninety (90) days but no more than one hundred eighty days (180) prior to the Initial IRU Term Expiration Date. If Customer exercises its First Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the First Extended IRU Term.

(c) Exercise of Second Extension Option. The Second Extension Option shall only be available to Customer if the First Extension Option has been properly exercised. In such event, to exercise the Second Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Second Extension Option at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the First Extended IRU Term. If Customer exercises its Second Extension Option, the amount of the Scheduled Maintenance

Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Second Extended IRU Term.

(d) Exercise of Third Extension Option. The Third Extension Option shall only be available to Customer if the First Extension Option and the Second Extension Option have both been properly exercised. In such event, to exercise the Third Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Third Extension Option at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the Second Extended IRU Term. If Customer exercises its Third Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Third Extended IRU Term.

(e) Exercise of Fourth Extension Option. The Fourth Extension Option shall only be available to Customer if the First Extension Option, the Second Extension Option and the Third Extension Option have all been properly exercised. In such event, to exercise the Fourth Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Fourth Extension Option at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the Third Extended IRU Term. If Customer exercises its Fourth Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Fourth Extended IRU Term.

6.4 Effect of Expiration. Upon the expiration of the IRU Term, all rights to the use of the IRU Fiber shall revert to Wave without reimbursement of any of the IRU Fee or other amounts previously paid, or required to be paid, by Customer hereunder, and Customer shall have no further right hereunder to use the IRU Fiber.

ARTICLE 7: AVAILABILITY, MAINTENANCE AND REPAIR

7.1 Availability. During the Term, Wave shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the IRU Fiber is available to the Customer twenty-four (24) hours per day, seven (7) days per week consistent with the service level agreement (the “SLA”) contained in Exhibit C to this Agreement. It is possible, however, that there will be interruptions in the availability of the IRU Fiber. The Customer understands and agrees that the IRU Fiber, or certain portions or components of the IRU Fiber, may be unavailable from time to time either for scheduled or unscheduled maintenance, due to fiber cuts or other reasons beyond Wave’s reasonable control. Temporary interruptions in the availability of the IRU Fiber for such reasons, as well as interruptions or outages caused by the Customer, its agents and employees, or by Force Majeure Events, will not constitute failures by Wave to perform its obligations under this Agreement. Instead, the Customer’s sole remedy for any such failures in the IRU Fiber shall be as set forth in the SLA.

7.2 Regular Maintenance. At all times during the IRU Term, Wave shall be responsible for performing regular maintenance and repair activities with respect to the IRU Fiber as described in Exhibit C to this Agreement. Customer agrees to pay Wave for maintenance in accordance with Section 5.2 and Section 5.3 above. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Wave’s obligation to provide maintenance services in accordance with this Article 7 is contingent upon Customer’s timely payment of (i) the Scheduled Maintenance Fee, and (ii) Customer’s Proportionate Share of any Unscheduled Maintenance Costs. Should, at any time during the IRU Term, Customer be in Default (as that term is defined in Article 16 below) for failure to pay Scheduled Maintenance Fees and/or Customer’s Proportionate Share of Unscheduled Maintenance Costs, Wave’s obligation to perform maintenance under this Agreement shall cease until such time as the Default is remedied and Customer’s account is current.

7.3 Unscheduled Maintenance. At all times during the IRU Term, Wave shall be responsible for performing any necessary unscheduled maintenance with respect to the IRU Fibers as described in Exhibit C. Except for the costs of unscheduled maintenance necessitated due to the negligence or intentional misconduct of Customer, for which Customer shall be solely responsible, the costs of performing Unscheduled Maintenance (the “**Unscheduled Maintenance Costs**”) will be allocated among Wave, Customer and other authorized users of the affected portion of the Cable at issue. For purposes of this Agreement, Customer’s “**Proportionate Share**” of any costs related to a Cable shall be determined by the ratio to which the number of fiber optic strands comprising the IRU Fiber in that Cable bears to the total number of fiber optic strands in said Cable that are currently in use (whether by Wave, Customer or other Authorized Users). If this fraction varies over portions of the Cable, then the Proportionate Share shall be equal to the weighted average (weighted by length as set forth in Wave’ as-built drawings) of such relevant portions. For example, if the fraction for 100 feet of the affected segment is 0.1 and the fraction for the remaining 50 feet of the affected segment is 0.07, the weighted average for the entire Cable would be 0.09. Wave shall invoice Customer for Customer’s Proportionate Share of any Unscheduled Maintenance Costs, and Customer shall pay same within thirty (30) days of the invoice date.

7.4 Customer’s Maintenance. Except to the extent otherwise expressly provided in the Agreement, Customer will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Customer in connection with the operation of the IRU Fiber, none of which is included in the maintenance services to be provided by Wave hereunder.

ARTICLE 8: TAXES, FEES AND OTHER IMPOSITIONS

8.1 Definition of Impositions. As used in this Agreement, the term “**Impositions**” shall mean all taxes, fees, assessment levies, imposts, duties, charges or withholdings of any nature (including, without limitation, ad valorem, real property, gross receipts, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Cable, or any part thereof, by any federal, state or local government or other public taxing authority, including “**Access Fees.**” The term “**Access Fees**” shall mean all fees charged or assessed by any governmental authority in respect of those portions of the Cable located on or crossing or passing through lands owned or administered by such governmental authority including, without limitation, such as are calculated or otherwise based on the number of crossings, the aggregate distance of crossings, land value or the revenue, projected revenue, receipts, income, profits or other amounts calculated in a similar manner.

8.2 Minimization and Equitable Distribution of Impositions. The Parties acknowledge and agree that it is their mutual objective and intent to (i) minimize the aggregate Impositions payable with respect to the Cables, and (ii) share such Impositions according to their respective interests in the Cables. The Parties agree to cooperate with one another and coordinate their efforts to achieve such objectives in accordance with the provisions of this Article 8.

8.3 Payment of Impositions Prior to IRU Effective Date. Prior to the IRU Effective Date, Wave shall be responsible for and shall timely pay any and all Impositions with respect to the operation or physical location of the Cables.

8.4 Payment of Impositions During the IRU Term. Beginning on the IRU Effective Date and continuing through the IRU Expiration Date, Customer shall be responsible for and shall pay: (i) all Impositions imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Customer with respect to its use of the IRU Fiber; and (ii) all Impositions which have been separately assessed, allocated to, or imposed on the IRU Fiber. If the IRU Fiber constitutes the only fibers located in a Cable from the point where the Cable leaves the Wave Network right-of-way to a Customer POP, Customer shall be solely

responsible for any and all Impositions imposed on or with respect to such portion of the Cable. To the extent such Impositions are not separately assessed, allocated to or imposed on the IRU Fiber, Wave will pay, or request proportionate payment by Wave and Customer of, all such Impositions. Wave shall notify Customer of such Imposition, and Customer shall promptly reimburse Wave for (or pay directly) Customer's share of all such Impositions, which shall be determined as follows:

- (a) to the extent that such Impositions are calculated based on the revenue, projected revenue, receipts, income or profits of Customer or its Affiliates, Customer will be responsible for the portion of the amount of such Impositions as is calculated based on the revenue, projected revenue, receipts, income or profits of Customer or its Affiliates;
- (b) to the extent that such Impositions are calculated based on the revenue, projected revenue, receipts, income or profits of Wave or its Affiliates, Wave will be responsible for the portion of the amount of such Impositions as is calculated based on the revenue, projected revenue, receipts, income or profits of Wave or its Affiliates; and
- (c) otherwise, Customer will be responsible for its Proportionate Share of the Impositions and Wave, and any other Authorized Users of the Cable, will be responsible for their respective Proportionate Shares of the Impositions.

8.5 Right to Contest. Wave shall have the right to contest in good faith any Imposition (including by nonpayment of such Imposition) and Customer shall have the sole and exclusive right to contest any Imposition applicable only to Customer or the Customer Equipment. The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Wave in any such contest shall be shared by Wave and Customer in the same proportion as to which the parties would have shared in such Impositions as they were assessed. Any refunds or credits resulting from a contest brought pursuant to this Section 8.5 shall be divided between Wave and Customer in the same proportion as originally assessed.

8.6 Preparation of Returns and Reports. Wave and Customer agree to cooperate fully with one another in the preparation of any returns or reports relating to the Impositions.

ARTICLE 9: PERMITS; UNDERLYING RIGHTS; RELOCATION

9.1 Underlying Rights. Subject to the terms and provisions of this Agreement, Wave shall use commercially reasonable efforts to obtain and maintain during the IRU Term, all rights-of-way use and other use or access permits or agreements which are necessary for the installation, location, maintenance and use of the Cables in accordance with this Agreement (the "**Underlying Rights**"). The IRU is subject to the terms of the Underlying Rights, and subject to the terms under which the applicable rights-of-way are owned or held by the grantor of the Underlying Rights.

9.2 Relocation. After the IRU Effective Date, Wave may relocate all or any portion of any one or more of the Cables, including any one or more of the Segments of the IRU Fiber and/or any of the facilities used or required in providing any of the Segments of the IRU Fiber to the Customer, under any of the following circumstances: (i) Wave is required to relocate by a third party with legal authority to so require (including, without limitation, the grantor of an Underlying Right); (ii) in Wave's good faith business judgment, it is commercially reasonable for Wave to relocate; or (iii) the Customer agrees to the relocation. Should any of the foregoing occur, Wave shall proceed with such relocation, including without limitation, the right, in good faith, to reasonably determine the extent of, the timing of, and methods to be used for such relocation; provided that any such relocation shall incorporate fibers meeting or exceeding the specifications of the IRU Fiber. In the event of any such relocation, Wave shall use commercially reasonable efforts to minimize any service interruptions to the Customer. In the event of a relocation

pursuant to either Sections 9.2(i) or (iii) above, Customer shall be responsible for its Proportionate Share of the costs of the relocation, which will be invoiced to Customer by Wave. Any relocation pursuant to Section 9.2(ii) shall be at Wave's sole cost and expense.

ARTICLE 10: OPERATION AND USE OF THE IRU FIBER

10.1 Compliance with Underlying Rights Requirements. The requirements, restrictions, and/or limitations on the Customer's right to use the IRU Fiber contained in this Agreement, all applicable government codes, ordinances, laws, rules and regulations, and safety, operational and other rules and regulations imposed in connection with the Underlying Rights are referred to collectively as the "**Underlying Rights Requirements.**" The Customer represents, warrants and covenants to Wave that it will use the IRU Fiber in compliance with and subject to the Underlying Rights Requirements.

10.2 Permits and Approvals. Customer shall secure, prior to the IRU Effective Date, any franchises, licenses or similar approvals from governmental authorities (other than the Underlying Rights to be obtained by Wave) which are necessary for the Customer's use and operation of the IRU Fiber.

10.3 Use Limitations. The IRU and the IRU Fiber are for the sole benefit of Customer or other government agency that works directly with the Customer (including but not limited to Snohomish County, SNOPAC, SERS, City of Arlington, and the Marysville Fire District). Customer shall not grant to any third party the right to use the IRU Fiber, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, indefeasible right of use, or any other form. Nor shall Customer use the IRU Fiber for commercial purposes that are competitive with Wave's business (e.g., use the IRU Fiber to provide Internet access service, data transport service, VoIP services, etc. to third parties within Wave's service area). Customer may use the IRU Fiber for any other lawful purpose. Customer agrees and acknowledges that it has no right to use any of the fibers that are part of the Cables or any other portion of the Wave Network facilities other than the IRU Fiber.

10.4 Cooperation. Each of the Customer and Wave agree to promptly notify the other Party of any matters pertaining to, or the occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of any one or more of the Cables, or traffic thereon, that becomes known to such Party. The Customer and Wave each agrees to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations under this Agreement.

10.5 Non-Interference. The Customer shall not use its telecommunications systems in a way that physically interferes in any way with or otherwise adversely affects the use of the other fibers in the Cables by Wave or any other Authorized User of the Cables and/or other portions of Wave's network. The Customer acknowledges that the Cables and the locations at which the Cables are installed include other participants, including Wave, other Authorized Users, and other owners and users of telecommunication systems.

ARTICLE 11: THIRD – PARTY INDEMNIFICATION

11.1 Third-Party Indemnification by Wave. Wave hereby agrees to indemnify, defend and hold harmless Customer, its employees, officers and directors (the "**Customer Indemnified Persons**"), from and against any and all third-party suits, actions, damages or claims of any character suffered by the Customer Indemnified Persons due to or arising out of: (i) any injuries or damage to persons or property to the extent the same are caused by the negligent acts or omissions of Wave in the performance of its obligations under this Agreement; or (ii) any Default by Wave under this Agreement.

11.2 Third-Party Indemnification by the Customer. Customer hereby agrees to indemnify, defend and hold harmless Wave, its Affiliates, and their employees, agents, officers and directors (the "**Wave Indemnified Persons**"),

from and against any and all third-party suits, actions, damages or claims of any character suffered by the Wave Indemnified Persons due to or arising out of: (i) any injuries or damage to persons or property to the extent the same are caused by the negligent acts or omissions of the Customer in the performance of its obligations under this Agreement; (ii) Customer's use of the IRU Fiber; or (iii) any Default by Customer under this Agreement.

11.3 Procedure. Wave and the Customer each agree to promptly provide the other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed.

11.4 Survival. The indemnification obligations contained in this Article shall survive the expiration or termination of this Agreement for a period of two (2) years.

ARTICLE 12: LIMITATION OF LIABILITY

12.1 No Special Damages. EXCEPT FOR THE OBLIGATIONS OF THE PARTIES CONTAINED IN ARTICLE 11 (INDEMNIFICATION) AND ARTICLE 15 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, INCLUDING LOST PROFITS OR REVENUES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, CLAIMS OF LESSEES OR CUSTOMERS, CLAIMS FOR WHICH DAMAGES ARE HEREBY SPECIFICALLY WAIVED; AND PROVIDED FURTHER THAT THIS LIMITATION SHALL NOT RESTRICT EITHER PARTY'S RIGHT TO PROCEED FOR INJUNCTIVE RELIEF. NOTHING CONTAINED HEREIN SHALL OPERATE AS A LIMITATION ON THE RIGHT OF EITHER PARTY TO BRING AN ACTION FOR DAMAGES AGAINST ANY THIRD PARTY, INCLUDING CLAIMS FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, BASED ON ANY ACTS OR OMISSIONS OF SUCH THIRD PARTY.

12.2 Disclaimer of Warranties. EXCEPT FOR AND EXCLUDING COVENANTS, REPRESENTATIONS OR WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND/OR ANY EXHIBIT(S) ATTACHED HERETO, WAVE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE IRU FIBERS, THE WAVE EQUIPMENT OR ANY OTHER PORTION OF THE WAVE NETWORK, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 13: INSURANCE

13.1 Required Insurance. Beginning on the IRU Effective Date, and continuing through the expiration of the IRU Term, each Party shall procure and maintain in force, at its own expense, insurance coverage in amounts that a reasonably prudent business person would maintain considering the obligations of the Parties hereunder, but in no event less than coverage of the following types and limits:

- (a) Workers' compensation as required by applicable law(s);
- (b) Employer's liability with minimum limits of \$1,000,000 each accident;
- (c) Commercial General Liability including coverage for (i) premises/operations, (ii) independent contractors, (iii) products/completed operations, (iv) personal injury, (v) contractual liability, and (vi) explosion, collapse and underground hazards, with combined single limit of not less than \$1,000,000 each occurrence or its equivalent;
- (d) Automobile liability with minimum limits of \$1,000,000 each accident; and

- (e) Excess or Umbrella Liability, applicable to items (b), (c) and (d), with minimum limits of \$5,000,000, per occurrence.

13.2 Insurance Providers. Each Party shall maintain the required insurance coverage with insurers licensed to conduct business in the applicable jurisdiction(s) and having an AM Best Rating of A – /VII, or equivalent from another recognized rating agency, and each Party shall, upon request, provide the other Party with an insurance certificate confirming compliance with the requirements of this Article.

13.3 Failure to Carry. In the event either Party fails to maintain the required insurance coverage and, a claim is made or suffered, such Party shall defend, indemnify and hold harmless the other Party from any and all claims for which the required insurance would have provided coverage.

ARTICLE 14: NOTICES

Notices under this Agreement shall be in writing and delivered by overnight courier (e.g., Federal Express, UPS) or certified mail, return receipt requested, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt or refusal by the receiving Party:

If to Wave:

Wave Business Solutions, LLC
3700 Monte Villa Parkway
Bothell, WA 98021
ATTN: David Lampkin
Email: dlampkin@wavebroadband.com

If to Customer:

City of Marysville
1049 State Avenue
Marysville, WA 98270
ATTN: Worth Norton
Email: ISPurchasing@marysvillewa.gov

With a Copy to:

Wave Business Solutions, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
ATTN: Legal Department

With a Copy to:

City of Marysville
1049 State Avenue
Marysville, WA 98270
ATTN: Legal Department

A Party may change its address and point of contact by notifying the other Party in writing in accordance with this Article.

ARTICLE 15: CONFIDENTIALITY

The Parties understand and acknowledge that Customer is a governmental entity, and that Washington law limits the ability of Customer to shield from public disclosure any information given to Customer. Accordingly, the Parties agree to work together to avoid disclosures to Customer by Provider of confidential information which would result in economic loss or damage to Provider if such information were to be disclosed to third persons by Customer pursuant to a request submitted under the Public Records Act, chapter 42.56 RCW, or other similar public disclosure law. In the event that Customer receives a request pursuant to the Public Records Act (or other similar law) to disclose information identified by Wave in writing as confidential, Customer's sole obligations to Provider shall be: (i) to promptly notify Wave; and (ii) to refrain from disclosing such records for a period of up to ten (10) business days to allow Wave an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. Customer will not be required to withhold requested records beyond the ten (10) business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act, or unless Customer is ordered to withhold disclosure by the order of a court having competent jurisdiction. Customer may, but shall not be required, to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that Wave initiates legal proceedings, or Customer initiates legal proceedings or

withholds requested records at Wave's request, Wave shall indemnify and hold Customer harmless from and against all costs, attorneys' fees, expenses, liabilities, damages or other liabilities Customer may incur due to the legal proceedings initiated at and/or Customer's withholding of records at Wave's request. Customer shall not be liable to Wave for any loss, cost or expense relating to the disclosure of requested records if Wave fails to obtain legal protection against disclosure and Customer releases the records in good faith.

ARTICLE 16: DEFAULT

16.1 Definition. A "**Default**" shall be deemed to have occurred under this Agreement under the following circumstances:

- (a) in the case of a failure to pay any amount when due under this Agreement, a Party fails to pay such amount within fifteen (15) days after written notice from the other Party specifying such breach; or
- (b) in the case of any other material breach of this Agreement, a Party fails to cure such breach within thirty (30) days after written notice from the other Party specifying such breach, provided that if the breach is of a nature that cannot reasonably be cured within said thirty (30) day time period, a Default shall not have occurred so long as the breaching Party has commenced cure within said thirty (30) day time period and thereafter diligently pursues cure to completion.

16.2 Remedies. In the event of any Default hereunder, the non-Defaulting Party may do any one or more of the following: (i) take such actions as it deems reasonably necessary to correct the Default; (ii) pursue any other remedies available to it under this Agreement; and/or (iii) initiate the dispute resolution process contained in Article 18. The Parties intend for a Party's good faith participation in the dispute resolution process described in Article 18 to constitute a necessary pre-requisite to the commencement by such Party of any legal action regarding this Agreement.

16.3 No Waiver. A waiver by either Party at any time of any of its rights regarding a particular breach or Default of the other Party under this Agreement shall not be deemed a permanent waiver of such rights, nor shall any such waiver be deemed a waiver of any subsequent breach or Default.

ARTICLE 17: FORCE MAJEURE

Neither Party will have any claim or right against the other for any failure of or delay in performance by the other Party if the failure or delay is caused by or the result of any act of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, vandalism, cable cut or other similar catastrophe, any law, order, regulation, direction or action of any governmental, civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, strike, lockout or other similar occurrence beyond the control and without the fault or negligence of the affected party (each, a "**Force Majeure Event**"). Notwithstanding the foregoing, if the force majeure delay exceeds thirty (30) days, either Party may terminate this Agreement on written notice without incurring any liability hereunder.

ARTICLE 18: DISPUTE RESOLUTION

18.1 General Provisions. Except for actions seeking a temporary restraining order or injunction, or suits to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth in this Article 18 with respect to any controversy or claim (each, a "**Dispute**") arising out of or relating to this Agreement. All discussions occurring and documents exchanged pursuant to Sections 18.2 and 18.3 below are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence

that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation process.

18.2 Negotiations. Should any Dispute arise, either Party may give the other Party written notice of the Dispute (each, a “**Dispute Notice**”). The Parties shall use good faith efforts to resolve the Dispute through negotiation within thirty (30) days of the date on which the Dispute Notice is delivered. With respect to fee disputes arising under Section 5.5, compliance with the negotiation procedures described in Section 5.5 shall be in lieu of the provisions of this Section 18.2. If the Parties do not resolve the Dispute within such thirty (30) day period, either of the Parties may submit the matter to non-binding mediation through a professional mediation service.

18.3 Mediation. If a Dispute is submitted to mediation, the Parties will cooperate in selecting a qualified mediator from a panel of neutral mediators having experience in the telecommunications and broadband internet industry. The Parties shall share equally in the costs of mediation. Any Dispute that cannot be resolved through mediation within sixty (60) days of submitting the Dispute to mediation shall be resolved by binding arbitration as provided in Section 18.4 below.

18.4 Binding Arbitration. Any arbitration hearing shall be before a single neutral arbitrator and shall be held in the Seattle, Washington offices of Judicial Arbitration & Mediation Services, Inc., or a similar professional dispute resolution organization. The arbitration shall be administered pursuant to the rules and procedures of the American Arbitration Association. The parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes.

18.4 Governing Law. This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of Washington. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of Washington in and for King County, or in the Federal District Court for the Western District of Washington, as applicable. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. ***Each Party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

ARTICLE 19: ASSIGNMENT

Neither Party shall assign its rights under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, delayed or conditioned; provided, however, that either Party may, without obtaining the consent of the other Party, assign its interest in and to this Agreement to: (i) any entity acquiring such Party, whether through merger or through purchase of substantially all the assets of said Party; or (ii) an Affiliate of such Party.

ARTICLE 20: MISCELLANEOUS

20.1 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she has been duly authorized to execute this Agreement on behalf of the Party for whom he or she purports to sign this Agreement, and that this Agreement is binding on such Party in accordance with its terms.

20.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the Party against whom such modification is sought to be enforced.

20.3 Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according

to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

20.4 Survival. Those provisions of this Agreement that by their nature and import must survive the expiration or earlier termination of this Agreement in order to be given their full force and effect shall so survive.

20.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

20.6 Attorneys' Fees. If any proceeding is brought by a Party to enforce or interpret any term or provision of the Agreement, the substantially prevailing Party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that Party's reasonable attorneys' and experts' fees and expenses.

20.7 No Joint Venture. The relationship between Customer and Wave shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes.

20.8 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of Customer and Wave. No third party shall be deemed to have any rights under this Agreement; there are no third party beneficiaries to this Agreement.

20.9 Standard of Performance. All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

20.10 Compliance with Law. Each Party shall exercise its rights and perform its obligations under this Agreement in full compliance with all applicable laws, rules and regulations of any governmental authority having proper jurisdiction.

20.11 Exhibits. The following Schedules are attached to this Agreement and incorporated herein by this reference:

EXHIBIT A	-	Map Depicting Segment 1
EXHIBIT B	-	Fiber Specifications
EXHIBIT C	-	Service Level Agreement for Maintenance, Repair and Availability

20.12 Execution in Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document.

[Signatures on following page.]

IN WITNESS WHEREOF, Wave and Customer, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

WAVE:

Wave Business Solutions, LLC, a Washington limited liability company

By _____

Name: _____

Title: _____

CUSTOMER:

City of Marysville, a Washington municipal corporation

By _____

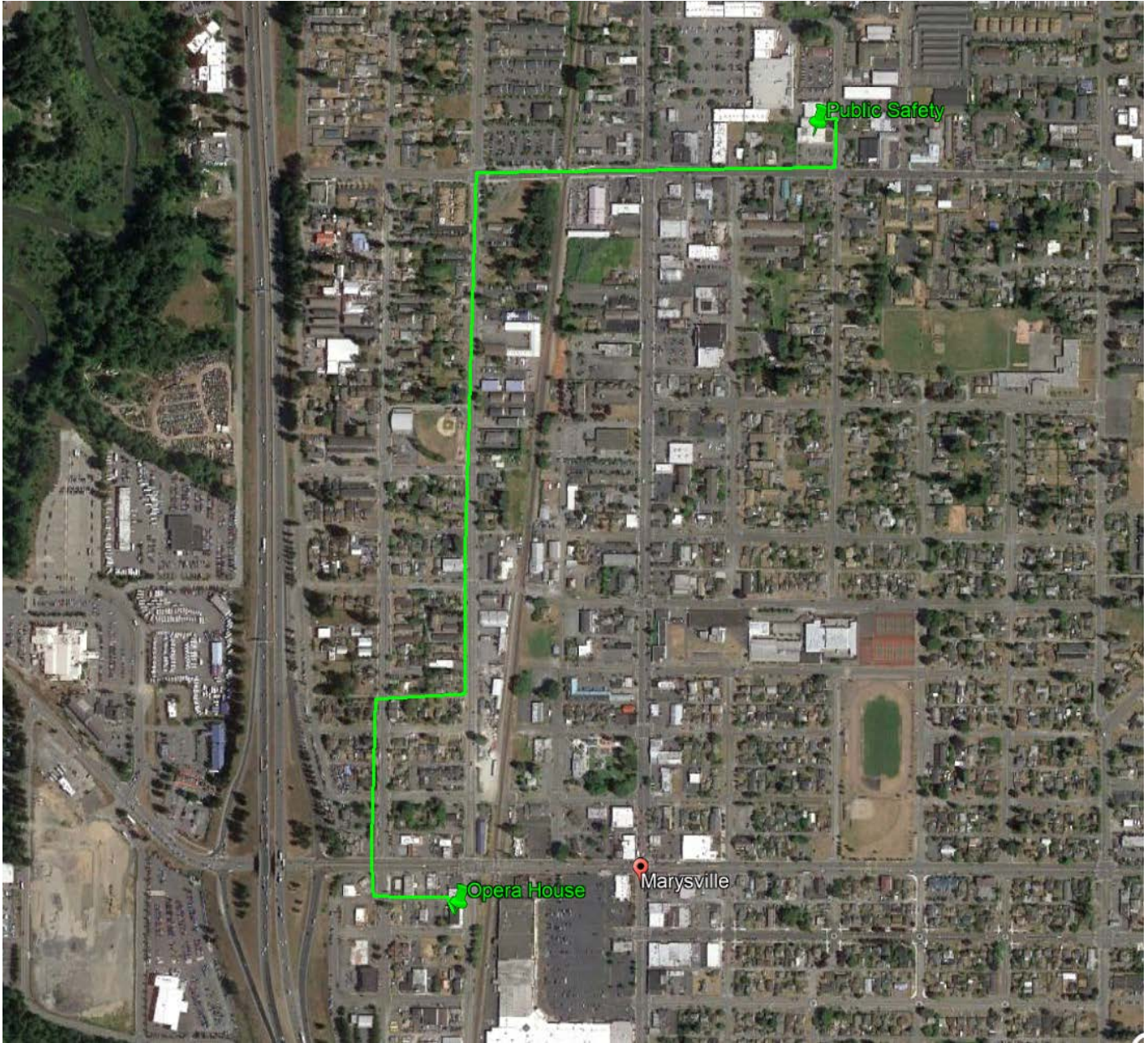
Name: _____

Title: _____

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**EXHIBIT A
to
Dark Fiber IRU Agreement**

Map Depicting Marysville Opera House



Approximate distance of Fiber Route: 7,500 feet

EXHIBIT B
to
Dark Fiber IRU Agreement

Fiber Specifications

OTDR traces will be taken in both directions at 1310 nm and 1550 nm for all circuits less than 50 Km. For circuits over 50 Km we take OTDR traces at 1550 nm. All circuits will be shot with a launch cable with a minimum length of .5 Km or the length agreed to in the customer's MSA. These traces will be reviewed before the circuit is handed off. For a circuit to be handed off it must comply with the specifications for splice, reflectance and span attenuation.

Splice Loss Specifications

Pig Tail - < .5 per connector or 1.0 per jumper

For values greater than this, the splice will be broken and re-spliced until an acceptable loss value is achieved. If, after three attempts is not able to produce a loss value less than 0.50 dB, the splice will be marked as Out-of-Spec ("OOS") on the OTDR report.

Splice Point - Bi-directional average loss of 0.15 dB or less.

The objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable. If, after two additional attempts, a value of less than 0.25 dB is not achievable, then the splice will be marked as OOS

Splice Point - Uni-directional OTDR testing, the objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable.

Connector Reflectance

Reflectance at jumper – Will be less than -40dB, we will work to achieve less than -40dB by cleaning & polishing fiber tips and/or fiber jumpers or provide alternative fiber strands that achieve results less than -40dB. If we are unable to do so after 3 attempts, the port will be marked as OOS.

Total loss for a circuit

Attenuation due to distance

At 1310nm: $(0.40 \text{ dB/km} \times \text{km of cable})$

At 1550nm: $(0.30 \text{ dB/km} \times \text{km of cable})$

Average Splice Loss per circuit

The standard for each fiber within a span shall be an average bi-directional loss of 0.10 dB or less for each splice. For example, if a given span has 10 splices, each flow shall have total bi-directional loss (due to the 10 splices) of 1.0 dB or less. Each individual splice may have a bi-directional loss of 0.15 dB or less, but the average bi-directional splice loss across the span must be 0.10 dB or less.

Acceptable Total loss per circuit will be calculated with the following formula:

At 1310nm: $(0.40 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$.

At 1550nm: $(0.30 \text{ dB/km} \times \text{km of cable}) + (\text{number of connectors} \times 0.5 \text{ dB}) + (0.10 \text{ dB} \times \text{number of splices})$.

Mass Fusion Splicing**Ribbon Fiber Bi-directional Splice Loss Standards**

Fiber Type	Splicing Method	Splice Loss (dB)
Standard Single Mode	Mass fusion splicing	0.20 dB
Non-zero Dispersion-shifted	Mass fusion splicing	0.25 dB

In the event that the splice loss values listed cannot be achieved by at least 66% (8 out of the 12) of the fibers in the ribbon, the ribbon containing the OOS fiber(s) will be broken and re-spliced. The re-splice procedure and acceptable values are listed in the table below. Ribbons containing any splices above a 1.0 dB loss will be broken and re-spliced.

Mass Fusion Re-splice Acceptance

Ribbon Fiber	Standard Single Mode	Non-zero Dispersion Shifted
Acceptance Criteria	0.20 dB	0.25 dB
After 3 attempts	0.30 dB	0.35 dB
After 2 additional attempts	0.40 dB	0.50 dB

Note:

Five (5) attempts are to be performed and all non-successful splices will be recorded and marked as OSS.

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EXHIBIT C
to
Dark Fiber IRU Agreement

Service Level Agreement for Maintenance, Repair and Availability

1. DEFINITIONS

For purposes of this Exhibit C the following terms shall have the meanings set forth below.

“Availability” means the IRU Fibers are available to and accessible by Customer at the End Points, are capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. Wave does not monitor the use or availability of dark fiber services, thus any Outage must be reported to the Wave NOC by Customer.

“Credit” means a credit towards the amount of the monthly Scheduled Maintenance Fee that would otherwise be due and payable by Customer to Wave under this Agreement.

“Excused Outage” means any disruption to or unavailability of the IRU Fiber caused by or due to (i) Scheduled Maintenance, or (ii) circumstances beyond Wave’s reasonable control, such as, by way of example only, Force Majeure, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by Wave, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for Wave’s delivery of the IRU Fiber to Customer.

“Force Majeure” means causes beyond Wave reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar natural disaster, terrorist acts, insurrection, riot, national emergency, war or other catastrophe, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority.

“Mean Time to Restore” or “MTTR” means the average time required to restore the IRU Fiber to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes Wave to repair all service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the Wave NOC until the time the IRU Fiber is again Available. The cumulative length of service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the IRU Fiber making the IRU Fiber completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related Credits, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Wave. Unavailability does not include periods of service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the Wave Network to which Customer’s router is connected that is performed during a standard maintenance window (12:00AM – 6:00AM Pacific Time). Customer

will be notified via email at least ten (10) business days in advance of any scheduled maintenance that is likely to affect the IRU Fibers.

“Trouble Ticket” means a trouble ticket generated through the Wave NOC upon notification of a service-related problem. In order for Customer to be eligible for Credits under this SLA, Customer must contact the Wave NOC and open a Trouble Ticket regarding the problem.

“WAVE Network” means all equipment, facilities and infrastructure that Wave uses to provide services to Customer, and includes Customer’s access port. The “Wave Network” does not include Customer owned or leased equipment (unless leased from Wave), or any portion of Customer’s local area network after the demarcation point for the Services provided by Wave.

“WAVE’s Network Operations Center” or “WAVE’s NOC” means WAVE’s network operations center which is staffed 24x7x365 and can be reached at: 888-317-0488.

2. ROUTINE MAINTENANCE

Routine maintenance and repair of the IRU Fibers described in this Section shall be performed by or under the direction of Wave, at Wave’s reasonable discretion or at Customer’s reasonable request. Routine maintenance shall commence upon the IRU Effective Date. All common systems within facilities along the Cable for the IRU Fiber shall be maintained in accordance with manufacturer’s specifications, to include battery plants, generators, and HVAC units. Wave shall perform appropriate and routine testing on the Cable in which the IRU Fiber is located in accordance with Wave’s then current preventative maintenance procedures as agreed to by Customer, which shall not substantially deviate from standard industry practice. By way of example only, routine maintenance may include the following types of activities:

- (a) Patrol of IRU Fiber route on a regularly scheduled basis, which will be weekly unless hyrail access is necessary, in which case, it will be quarterly;
- (b) Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates;
- (c) Maintenance of sign posts along the IRU Fiber route right-of-way with the number of the local “Call-Before-You-Dig” organization;
- (d) Assignment of fiber maintenance employees to locations along the IRU Fiber route at intervals dependent upon terrain, accessibility, locate ticket volume, etc. Wave shall decide the staffing of fiber maintenance employees for the IRU Fiber;
- (e) Wave shall have qualified representatives on site any time Wave has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise excavating within five (5) feet of the IRU Fiber; and
- (f) At Customer’s request, perform and provide Customer with results of annual quality test showing the IRU Fiber meets the Fiber Specifications in Exhibit B.

Routine maintenance may include Scheduled Maintenance, for which Customer will receive advance notice as described in Section 1 of this Exhibit C.

3. EMERGENCY MAINTENANCE

“**Emergency Maintenance**” means Wave’s efforts to correct conditions on the Wave Network that are likely to cause a material disruption to or outage in services provided by Wave and which require immediate action. Emergency Maintenance may degrade the quality of the services provided to Customer, including possible outages. Wave may undertake Emergency Maintenance at any time Wave deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances. Emergency Maintenance and repair of the IRU Fiber shall be performed by or under the direction of Wave. Wave’s obligation to perform any necessary Emergency Maintenance shall commence upon the IRU Effective Date. Emergency Maintenance may be commenced in response to any of the following: (i) an alarm identification by Wave’s NOC; (ii) notification by Customer; or (iii) notification by any third party of any failure, interruption or impairment in the operation of the Cable in which the IRU Fiber is located, or any event imminently likely to cause the failure, interruption or impairment in the operation of the IRU Fiber.

Customer shall immediately report the need for Emergency Maintenance to Wave in accordance with procedures promulgated by Wave from time to time. Wave will log the time of Customer’s report, verify the problem and dispatch personnel immediately to take corrective action. Wave shall communicate with Customer during Emergency Maintenance in order to provide regular status updates during the restoration process.

4. NETWORK OPERATIONS CENTER

Wave shall operate and maintain the Wave NOC, capable of receiving alarms twenty-four (24) hours a day, seven (7) days a week. Wave’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Wave shall have its first maintenance employee at the site requiring Emergency Maintenance activity within four (4) hours after the time Wave becomes aware of an event requiring Emergency Maintenance, unless delayed by circumstances beyond the reasonable control of Wave. Wave shall maintain a toll-free telephone number to contact personnel at the NOC. Wave’s NOC personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the IRU Fiber.

5. SERVICE LEVEL AGREEMENT

This Section 5 constitutes Wave’s “**Service Level Agreement**” or “**SLA**” with respect to the IRU Fiber.

5.1 Availability SLA

Wave’s dark fiber paths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to the IRU Fibers in a given calendar month, Customer will be entitled to a Credit in the amount set forth below, which must be claimed as described in this SLA.

Duration of Unavailability	Customer Credit as % of Scheduled Maintenance Fee
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

5.2 Mean Time to Restore (“MTTR”) SLA

In the event of Outages in the IRU Fibers, Wave’s NOC is designed to provide a MTTR of **no greater than 4 hours**. If the target MTTR is not met for the IRU Fibers in a given calendar month, then Customer shall be entitled to Credit set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of Scheduled Maintenance Fee
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

5.3 Claiming Credits

(a) Requesting SLA Credits. To be eligible for any SLA-related Credit, Customer must be in good standing with Wave and current in its financial obligations to Wave. Credits are exclusive of any applicable taxes charged to Customer or collected by Wave. To claim SLA-related Credits, Customer must do the following:

- (i) Open a Trouble Ticket with the Wave NOC within twenty-four (24) hours of the occurrence giving rise to the claimed Credit(s);
- (ii) Submit a written request for the Credit(s) to WAVE’s customer service department within fifteen (15) days after the end of the calendar month in which the incident giving rise to the Credit(s) occurred; and
- (iii) Provide the following documentation when requesting the Credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.

If Customer fails to timely submit, pursuant to the procedure described in this Section 5.3(a), a request for any SLA-related Credit for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such Credit. The Credits provided by this SLA are Customer’s sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of the IRU Fibers.

(b) Wave’s Evaluation of Claims. All claims for SLA-related Credits are subject to evaluation and verification by Wave. Upon receiving a claim for SLA-related Credit, Wave will evaluate the claim and respond to Customer within thirty (30) days. If Wave requires additional information in order to evaluate Customer’s claim, Wave will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Wave’s request for additional information in which to provide the requested information to Wave. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Wave will promptly notify Customer of Wave’s resolution of each Customer claim. If Customer’s claim for an SLA-related Credit is rejected, the notification will specify the basis for the rejection. If Customer’s claim for a Credit is approved, Wave will issue the credit to Customer’s account, to appear on the next monthly invoice. Wave’s good faith determination regarding whether or not an SLA has been violated shall be final.

(c) Limits and Exclusions. Total Credits for any given calendar month shall not exceed 100% of the monthly Scheduled Maintenance Fee for the IRU Fiber. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable Credit amount. This SLA will not apply and Customer will not be entitled to any Credit under this SLA for any impairment of the IRU Fiber that is caused by or due to any of the following: (i) The acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the IRU Fibers or the equipment used to provide the IRU Fiber, including Customer's use of the IRU Fiber in an unauthorized or unlawful manner; (ii) The failure of or refusal by Customer to reasonably cooperate with Wave in diagnosing and troubleshooting problems with the IRU Fiber, including the unavailability of required Customer personnel due to Customer's failure to keep Wave provided with current and accurate contact information for such personnel; (iii) Scheduled alteration, maintenance or implementation; (iv) The failure or malfunction of network equipment or facilities not owned or controlled by Wave or Wave's Affiliates; (v) Force Majeure events; (vi) Wave's inability (due to no fault of Wave) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the IRU Fiber; or (ix) Improper or inaccurate network specifications provided by Customer.

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DARK FIBER IRU AGREEMENT
Sunnyside Treatment Plant

This DARK FIBER IRU AGREEMENT: Sunnyside Lift Station (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2020 (the “**Execution Date**”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, for itself and as agent for its Affiliates (“**Wave**”), and the CITY OF MARYSVILLE, a Washington municipal corporation (“**Customer**”). Each of Wave and the Customer may be referred to in this Agreement as a “**Party**,” and collectively as the “**Parties**.” With respect to either Party, the term “**Affiliate**” shall mean any person who directly or indirectly controls, is controlled by, or is under common control with that Party.

Background

- A.** Wave and its Affiliates own and operate a fiber optic communications network (the “**Wave Network**”) used by Wave to provide telecommunications, data transport, Internet access, dark fiber, video, telephone and related services to its residential, business and wholesale customers. A portion of the Wave Network is located in the northwest region of Washington.
- B.** Customer desires to obtain from Wave the exclusive, irrevocable right to use certain strands of single mode dark fiber belonging to Wave, for an initial period of ten (10) years, with four (4) options to extend the term, all as more fully described in this Agreement.
- C.** Wave is willing to grant Customer an irrevocable right of use in and to the IRU Fiber for the IRU Term on the terms and conditions set forth in this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Wave and the Customer agree as follows:

ARTICLE 1: THE IRU FIBER

- 1.1 Description of IRU Fibers. This Agreement involves the following segment of dark fiber (the “**Segment**”):

Fiber Route Identifier	Location A End Point	Location Z End Point	Description of Fiber	Maximum Loss Budget
Sunnyside Treatment Plant	Columbia Reservoir 20 Columbia Avenue Marysville, WA 98270	Sunnyside Treatment Plant 4123 71 st Ave NE Marysville, WA 98270	1 strand single mode dark fiber	7.75 dB @ 1310 nm

The one (1) strand of fiber contained in Segment 1 that Customer shall receive the right to use under this Agreement may be referred to as the “**IRU Fiber**.”

- 1.2 Illustrative Maps. A map depicting the approximate locations and route of Segment 1 is attached to this Agreement as Exhibit A. The routes depicted in Exhibit A is for illustrative purposes only, for the convenience of the

Parties. In the event of any conflict between Exhibit A and the specific terms and conditions of the main body of this Agreement, the specific terms and conditions of the main body of this Agreement shall control.

1.3 Wave's Control Over Segment Route. Notwithstanding the route depicted on Exhibit A, Wave shall at all times have full and complete control and responsibility for determining any routing configurations of the Segments, and may route the fiber optic cable or cables (each, a "**Cable**") containing the IRU Fiber through any Wave facility in its reasonable discretion, so long as (i) the End Points of each Segment are located as described in Section 1.1 above, and (ii) the "**Maximum Loss Budget**" for the Segment does not exceed that set forth in Section 1.1 above.

ARTICLE 2: EQUIPMENT

2.1 Equipment. "**Equipment**" means network components including, but not limited to, any gateway or edge electronic device, antenna, node, concentrator, bridge, receiver, transmitter, transceiver, router, switch, hub or communications lines/cables, and associated software.

2.2 Customer Equipment. Any Equipment provided by the Customer in connection with the IRU Fiber shall be referred to as the "**Customer Equipment**." Except as expressly provided to the contrary elsewhere in this Agreement, throughout the IRU Term (as that term is defined in Article 6 below), the Customer Equipment shall remain the property of the Customer and the Customer shall be responsible for all maintenance and repair of the Customer Equipment. Neither Wave nor any third party acting under Wave's authority will relocate, modify, tamper with, attempt to repair or otherwise interfere with the Customer Equipment.

2.3 Wave Equipment. Any Equipment provided by Wave in connection with the IRU Fiber shall be referred to as the "**Wave Equipment**." Except as expressly provided to the contrary elsewhere in this Agreement, throughout the IRU Term (as that term is defined in Article 6 below), the Wave Equipment shall remain the property of Wave and Wave shall be responsible for all maintenance and repair of the Wave Equipment. Neither the Customer nor any third party acting under the Customer's authority will relocate, modify, tamper with, attempt to repair or otherwise interfere with the Wave Equipment.

ARTICLE 3: INSTALLATION, TESTING AND ACCEPTANCE OF IRU FIBER

3.1 Construction. Wave anticipates that construction of Segment 1 will be completed within approximately twenty (20) weeks of the Execution Date of this Agreement.

3.2 Connecting the IRU Fiber. Upon Wave's completion of construction of the Segment, the Customer shall provide appropriate connecting Equipment and facilities, including all cross-connect facilities, at each End Point, and Wave shall interconnect the Customer's communications system with the IRU Fiber at the applicable End Points. All interconnections of the IRU Fiber and all other work with respect to the Wave Network shall be performed by Wave and in accordance with Wave's applicable specifications and operating procedures. It is the responsibility of the Customer to obtain all governmental and other approvals and consents necessary with respect to the Customer's placement of the Customer Equipment at the End Points.

3.3 Joint Testing. When Wave has completed the installation and configuration of a Segment, the Parties shall jointly test (the "**Joint Testing**") the applicable dark fibers in the Segment to verify that they are performing consistent with the specifications set forth on Exhibit B (the "**Fiber Specifications**"). Wave shall provide the Customer with at least three (3) business days' advance notice of the date and time on which Wave intends to perform the Joint Testing of the Segment (the "**Joint Testing Notice**"). If the Customer informs Wave within said time period that the Customer desires to participate in the Joint Testing, the Parties shall agree on a mutually convenient date and time for same. If the Customer fails to timely respond to Wave's Joint Testing Notice, the

Customer shall be deemed to have elected not to participate in Joint Testing of the Segment at issue and Wave may proceed with testing the Segment by itself.

3.4 Service Commencement Date. If the Customer participates in Joint Testing and the Joint Testing demonstrates that the applicable dark fibers in the Segment at issue are properly installed and operating in accordance with the Fiber Specifications, then the “**Service Commencement Date**” for that Segment shall be the first calendar day following the day on which the Joint Testing was successfully completed. If the Customer elects not to participate in Joint Testing, either by affirmatively foregoing said opportunity or by failing to timely respond to Wave’s Joint Testing Notice, and Wave’s unilateral testing demonstrates that the applicable dark fibers in the Segment are properly installed and operating in accordance with the Fiber Specifications, then the Service Commencement Date for Segment 1 shall be the first calendar day after Wave’s successful completion of its unilateral testing. If either Joint Testing or Wave’s unilateral testing reveals problems with Segment 1, Wave shall correct same and deliver another Joint Testing Notice to the Customer once the problems have been corrected. In such event, the Parties shall repeat the process described in Section 3.3 above.

3.5 Acceptance of Segment; Revision to Service Commencement Date. The Customer shall have a period of five (5) business days after the Service Commencement Date for the Segment in which the Customer may notify Wave that the IRU Fiber is not functioning properly. If the Customer notifies Wave of problems with the Segment pursuant to this Section 3.5, Wave shall investigate same. If Wave determines there are problems with the IRU Fiber, Wave shall correct same and the Service Commencement Date for the Segment shall be revised to be the first calendar day after the date on which Wave has corrected the problems. Unless the Customer delivers notification of problems to Wave within the time period set forth above, the Customer shall be deemed to have accepted the applicable dark fibers in the Segment at issue and to have confirmed that the Segment has been installed and is functioning in accordance with the Fiber Specifications as of the Service Commencement Date.

ARTICLE 4: GRANT OF IRU

4.1 Grant of IRU. Wave hereby grants, transfers and conveys to the Customer, and the Customer receives and accepts from Wave, an exclusive, unrestricted, irrevocable and indefeasible right of use in the IRU Fiber, together with the right to access the IRU Fiber at the End Points of each Segment. The Customer’s rights in the IRU Fiber granted pursuant to this Section 4.1 shall be referred to as the “**IRU.**” The IRU is granted to the Customer subject to the terms and conditions set forth in this Agreement. The IRU shall take effect upon the IRU Effective Date (as that term is defined in Article 6 below).

4.2 Effect of IRU. To the fullest extent permitted by law, the Parties intend that the IRU shall grant, transfer and convey to the Customer all beneficial right, title and interest in the IRU Fiber and that the Customer shall have exclusive possession, use and control over and shall be for all purposes the equitable owner of the IRU Fiber during the Term; provided, however, the IRU does not convey legal title or legal ownership of the IRU Fiber. For the sake of clarity, the IRU is intended by the parties to be a beneficial property interest (as distinguished from a mere contractual interest) and the grant, transfer and conveyance of the IRU effected by this Agreement is intended by the parties to be fully completed and effective, with all conditions precedent deemed to have been satisfied in all respects immediately on the IRU Effective Date (as that term is defined in Article 6 below). For the further sake of clarity, this Agreement is not intended by the Parties to be a revocable license, a lease or executory contract, but rather to effect the sale and purchase of the IRU by Wave to the Customer for the IRU Term (as that term is defined in Article 6 below).

4.3 No Revocation. Notwithstanding the occurrence of a breach or violation by the Customer of any legal duty or obligation imposed by any contract, including this Agreement, by the law of torts (including simple or gross negligence, strict liability or willful misconduct), or by any federal, state or local laws, rules, regulations, orders, standards, judicial decrees or ordinances, during the IRU Term (as that term is defined in Article 6 below), Wave

shall have no right to revoke or restrict the IRU in any manner or to any degree whatsoever, through injunctive relief or otherwise. The Parties mutually understand and agree that any breach by the Customer shall be compensable, if at all, by a remedy at law for monetary damages and not at equity. Conversely, and in recognition that the IRU cannot be readily obtained in the open market and that the Customer will be irreparably injured if this Agreement cannot be specifically enforced, the Customer shall be entitled, in addition to bringing suit at law or equity for monetary or other damages, to obtain specific performance to order implementation of the IRU contemplated by this Agreement. In any action to enforce the provisions of this Agreement, Wave hereby irrevocably and forever waives the defense that there is an adequate remedy at law and hereby irrevocably agrees that the Customer shall have the right to obtain specific performance of the IRU contemplated by this Agreement.

4.4 Limitations. The IRU shall not include: (i) the right to own, control, maintain, modify, relocate or repair the Cables in which each Segment of the IRU Fiber is located, any Wave Equipment, or any other portion of Wave's network facilities; (ii) except for the right to access the Segments of the IRU Fiber at its respective End Points, the right to physically access the Cables or any other portion of Wave's network facilities; (iii) the right to encumber the Cables or any other portion of Wave's network facilities in any manner; or (iv) the right to use the Cables or any other portion of Wave's network facilities except as expressly set forth herein. The Customer expressly acknowledges and agrees that the Customer shall receive no rights to use any of the Wave Equipment in connection with the IRU. Wave is not supplying nor is Wave obligated to supply to the Customer any optronics or electronics or optical or electrical equipment or other facilities, all of which are solely the responsibility of the Customer, nor is Wave responsible for performing any work in connection with the IRU Fiber other than as specified in this Agreement. The Customer shall keep the Cables, the IRU Fiber, the Wave Equipment and all other portions of Wave's network facilities, free from any liens, rights or claims of any third party attributable to the Customer.

4.5 Network Configuration. Each Party shall have full and complete control and responsibility for determining its own network and service configurations or designs, regrooming, rearrangement or consolidation of channels or circuits and all related functions with regard to the use of that Party's fiber contained in each of the Cables; provided that such control and responsibility by the Customer shall not adversely affect the use by Wave or any other authorized user (each, an "**Authorized User**") of the Cables, of Wave's network facilities and/or of any Equipment used by Wave or an Authorized User in connection therewith.

ARTICLE 5: CONSIDERATION FOR IRU

5.1 IRU Fee. In consideration of receiving the IRU, Customer shall pay to Wave a non-recurring "**IRU Fee**" fee in the amount of Forty-Five Thousand and No/100 Dollars (\$45,000.00). Fifty percent (50%) of the IRU Fee shall be due and payable to Wave within ten (10) days after the Execution Date of this Agreement and the other fifty percent (50%) within ten (10) days after the Acceptance Date. The Customer will be responsible for all charges associated with (i) any cross connects requested by the Customer, and (ii) any changes or additions to the IRU Fiber that are requested by the Customer and agreed to by Wave.

5.2 Scheduled Maintenance Fees. Beginning on the IRU Effective Date (as that term is defined in Article 6 below), Customer shall pay to Wave monthly "**Scheduled Maintenance Fees**" with respect to the IRU Fiber, in the amount of One Hundred and No/100 Dollars (\$100.00) per month.

5.3 CPI Adjustment of Scheduled Maintenance Fees. The term "**CPI**" shall mean the Consumer Price Index for the Seattle, WA area, for All Urban Consumers, All Items, compiled by the United States Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is no longer published, the parties shall mutually agree on a replacement indicator most nearly equivalent to the CPI. Scheduled Maintenance Fees shall be adjusted on the first (1st) day of each Extended IRU Term (if any). To obtain the new amount of Scheduled Maintenance Fees, the Scheduled Maintenance Fees for the current year shall be multiplied by a fraction, the numerator of which is the

Current Index Number and the denominator of which is the Base Index Number. The “**Current Index Number**” shall be the CPI figure for the most recent month available as of the first (1st) day of the applicable Extended IRU Term. The “**Base Index Number**” shall be the CPI figure for the month in which the IRU Effective Date occurred.

5.4 Unscheduled Maintenance Costs. Customer shall be responsible for paying its Proportionate Share of Unscheduled Maintenance Costs, as those terms are defined in Article 7 below.

5.5 Invoicing and Payment for Maintenance Costs. Wave shall invoice the Customer for Scheduled Maintenance Fees and Unscheduled Maintenance Costs. Customer shall pay all undisputed invoices within sixty (60) days of receipt. If the Customer in good faith disputes any portion of a Wave invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Wave regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a “**Fee Dispute Notice**”). A Fee Dispute Notice must be submitted to Wave within ninety (90) days from the date the invoice at issue is received by the Customer. Wave shall respond to a Fee Dispute Notices within thirty (30) days of receiving same. The Parties shall negotiate in good faith to attempt to resolve any such disputes within forty five (45) days after the Customer’s delivery of the applicable Fee Dispute Notice. If, after participating in good faith negotiations to resolve a fee dispute, the Parties are unable to resolve any fee dispute within sixty (60) days after the Wave received the Fee Dispute Notice, then the fee dispute shall be resolved by the mediation and arbitration procedures set forth in Sections 18.2 and 18.3 below.

ARTICLE 6: TERM OF IRU

6.1 IRU Effective Date. The IRU shall become effective on the Service Commencement Date for Segment 1 (the “**IRU Effective Date**”).

6.2 Initial IRU Term. Unless earlier terminated pursuant to this Agreement, the initial term of the IRU shall be for ten (10) years (the “**Initial IRU Term**”), commencing on the IRU Effective Date, and expiring on the date that is one day prior to the tenth (10th) anniversary of the IRU Effective Date (the “**Initial IRU Term Expiration Date**”).

6.3 Customer’s Extension Options.

(a) Grant of Extension Options. Customer shall have four (4) options to extend the term of the IRU (respectively, the “**First Extension Option**,” the “**Second Extension Option**,” the “**Third Extension Option**,” and the “**Fourth Extension Option**,” and, together, the “**Extension Options**”). Each of the Extension Options shall be for a period of five (5) years (respectively, the “**First Extended IRU Term**,” the “**Second Extended IRU Term**,” the “**Third Extended IRU Term**,” and the “**Fourth Extended IRU Term**,” and, together, the “**Extended IRU Terms**”). The Extended IRU Terms (if any) and the Initial IRU Term shall together be referred to as the “**IRU Term**.” The date on which the IRU Term expires shall be referred to as the “**IRU Expiration Date**.”

(b) Exercise of First Extension Option. To exercise the First Extension Option, Customer must deliver written notice to Wave that Customer is exercising the First Extension Option at least ninety (90) days but no more than one hundred eighty days (180) prior to the Initial IRU Term Expiration Date. If Customer exercises its First Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the First Extended IRU Term.

(c) Exercise of Second Extension Option. The Second Extension Option shall only be available to Customer if the First Extension Option has been properly exercised. In such event, to exercise the Second Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Second Extension Option at

least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the First Extended IRU Term. If Customer exercises its Second Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Second Extended IRU Term.

(d) Exercise of Third Extension Option. The Third Extension Option shall only be available to Customer if the First Extension Option and the Second Extension Option have both been properly exercised. In such event, to exercise the Third Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Third Extension Option at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the Second Extended IRU Term. If Customer exercises its Third Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Third Extended IRU Term.

(e) Exercise of Fourth Extension Option. The Fourth Extension Option shall only be available to Customer if the First Extension Option, the Second Extension Option and the Third Extension Option have all been properly exercised. In such event, to exercise the Fourth Extension Option, Customer must deliver written notice to Wave that Customer is exercising the Fourth Extension Option at least ninety (90) days but no more than one hundred eighty (180) days prior to the expiration date of the Third Extended IRU Term. If Customer exercises its Fourth Extension Option, the amount of the Scheduled Maintenance Fees shall be adjusted using the CPI method described in Section 5.3 above, with the adjusted amount of Scheduled Maintenance Fees to take effect beginning on the first (1st) day of the Fourth Extended IRU Term.

6.4 Effect of Expiration. Upon the expiration of the IRU Term, all rights to the use of the IRU Fiber shall revert to Wave without reimbursement of any of the IRU Fee or other amounts previously paid, or required to be paid, by Customer hereunder, and Customer shall have no further right hereunder to use the IRU Fiber.

ARTICLE 7: AVAILABILITY, MAINTENANCE AND REPAIR

7.1 Availability. During the Term, Wave shall use commercially reasonable efforts in keeping with normal industry standards to ensure that the IRU Fiber is available to the Customer twenty-four (24) hours per day, seven (7) days per week consistent with the service level agreement (the “SLA”) contained in Exhibit C to this Agreement. It is possible, however, that there will be interruptions in the availability of the IRU Fiber. The Customer understands and agrees that the IRU Fiber, or certain portions or components of the IRU Fiber, may be unavailable from time to time either for scheduled or unscheduled maintenance, due to fiber cuts or other reasons beyond Wave’s reasonable control. Temporary interruptions in the availability of the IRU Fiber for such reasons, as well as interruptions or outages caused by the Customer, its agents and employees, or by Force Majeure Events, will not constitute failures by Wave to perform its obligations under this Agreement. Instead, the Customer’s sole remedy for any such failures in the IRU Fiber shall be as set forth in the SLA.

7.2 Regular Maintenance. At all times during the IRU Term, Wave shall be responsible for performing regular maintenance and repair activities with respect to the IRU Fiber as described in Exhibit C to this Agreement. Customer agrees to pay Wave for maintenance in accordance with Section 5.2 and Section 5.3 above. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Wave’s obligation to provide maintenance services in accordance with this Article 7 is contingent upon Customer’s timely payment of (i) the Scheduled Maintenance Fee, and (ii) Customer’s Proportionate Share of any Unscheduled Maintenance Costs. Should, at any time during the IRU Term, Customer be in Default (as that term is defined in Article 16 below) for failure to pay Scheduled Maintenance Fees and/or Customer’s Proportionate Share of Unscheduled Maintenance

Costs, Wave's obligation to perform maintenance under this Agreement shall cease until such time as the Default is remedied and Customer's account is current.

7.3 Unscheduled Maintenance. At all times during the IRU Term, Wave shall be responsible for performing any necessary unscheduled maintenance with respect to the IRU Fibers as described in Exhibit C. Except for the costs of unscheduled maintenance necessitated due to the negligence or intentional misconduct of Customer, for which Customer shall be solely responsible, the costs of performing Unscheduled Maintenance (the "**Unscheduled Maintenance Costs**") will be allocated among Wave, Customer and other authorized users of the affected portion of the Cable at issue. For purposes of this Agreement, Customer's "**Proportionate Share**" of any costs related to a Cable shall be determined by the ratio to which the number of fiber optic strands comprising the IRU Fiber in that Cable bears to the total number of fiber optic strands in said Cable that are currently in use (whether by Wave, Customer or other Authorized Users). If this fraction varies over portions of the Cable, then the Proportionate Share shall be equal to the weighted average (weighted by length as set forth in Wave' as-built drawings) of such relevant portions. For example, if the fraction for 100 feet of the affected segment is 0.1 and the fraction for the remaining 50 feet of the affected segment is 0.07, the weighted average for the entire Cable would be 0.09. Wave shall invoice Customer for Customer's Proportionate Share of any Unscheduled Maintenance Costs, and Customer shall pay same within thirty (30) days of the invoice date.

7.4 Customer's Maintenance. Except to the extent otherwise expressly provided in the Agreement, Customer will be solely responsible for providing and paying for any and all maintenance of all electronic, optronic and other equipment, materials and facilities used by Customer in connection with the operation of the IRU Fiber, none of which is included in the maintenance services to be provided by Wave hereunder.

ARTICLE 8: TAXES, FEES AND OTHER IMPOSITIONS

8.1 Definition of Impositions. As used in this Agreement, the term "**Impositions**" shall mean all taxes, fees, assessment levies, imposts, duties, charges or withholdings of any nature (including, without limitation, ad valorem, real property, gross receipts, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Agreement and/or imposed upon the Cable, or any part thereof, by any federal, state or local government or other public taxing authority, including "Access Fees." The term "**Access Fees**" shall mean all fees charged or assessed by any governmental authority in respect of those portions of the Cable located on or crossing or passing through lands owned or administered by such governmental authority including, without limitation, such as are calculated or otherwise based on the number of crossings, the aggregate distance of crossings, land value or the revenue, projected revenue, receipts, income, profits or other amounts calculated in a similar manner.

8.2 Minimization and Equitable Distribution of Impositions. The Parties acknowledge and agree that it is their mutual objective and intent to (i) minimize the aggregate Impositions payable with respect to the Cables, and (ii) share such Impositions according to their respective interests in the Cables. The Parties agree to cooperate with one another and coordinate their efforts to achieve such objectives in accordance with the provisions of this Article 8.

8.3 Payment of Impositions Prior to IRU Effective Date. Prior to the IRU Effective Date, Wave shall be responsible for and shall timely pay any and all Impositions with respect to the operation or physical location of the Cables.

8.4 Payment of Impositions During the IRU Term. Beginning on the IRU Effective Date and continuing through the IRU Expiration Date, Customer shall be responsible for and shall pay: (i) all Impositions imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to

Customer with respect to its use of the IRU Fiber; and (ii) all Impositions which have been separately assessed, allocated to, or imposed on the IRU Fiber. If the IRU Fiber constitutes the only fibers located in a Cable from the point where the Cable leaves the Wave Network right-of-way to a Customer POP, Customer shall be solely responsible for any and all Impositions imposed on or with respect to such portion of the Cable. To the extent such Impositions are not separately assessed, allocated to or imposed on the IRU Fiber, Wave will pay, or request proportionate payment by Wave and Customer of, all such Impositions. Wave shall notify Customer of such Imposition, and Customer shall promptly reimburse Wave for (or pay directly) Customer's share of all such Impositions, which shall be determined as follows:

- (a) to the extent that such Impositions are calculated based on the revenue, projected revenue, receipts, income or profits of Customer or its Affiliates, Customer will be responsible for the portion of the amount of such Impositions as is calculated based on the revenue, projected revenue, receipts, income or profits of Customer or its Affiliates;
- (b) to the extent that such Impositions are calculated based on the revenue, projected revenue, receipts, income or profits of Wave or its Affiliates, Wave will be responsible for the portion of the amount of such Impositions as is calculated based on the revenue, projected revenue, receipts, income or profits of Wave or its Affiliates; and
- (c) otherwise, Customer will be responsible for its Proportionate Share of the Impositions and Wave, and any other Authorized Users of the Cable, will be responsible for their respective Proportionate Shares of the Impositions.

8.5 Right to Contest. Wave shall have the right to contest in good faith any Imposition (including by nonpayment of such Imposition) and Customer shall have the sole and exclusive right to contest any Imposition applicable only to Customer or the Customer Equipment. The out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by Wave in any such contest shall be shared by Wave and Customer in the same proportion as to which the parties would have shared in such Impositions as they were assessed. Any refunds or credits resulting from a contest brought pursuant to this Section 8.5 shall be divided between Wave and Customer in the same proportion as originally assessed.

8.6 Preparation of Returns and Reports. Wave and Customer agree to cooperate fully with one another in the preparation of any returns or reports relating to the Impositions.

ARTICLE 9: PERMITS; UNDERLYING RIGHTS; RELOCATION

9.1 Underlying Rights. Subject to the terms and provisions of this Agreement, Wave shall use commercially reasonable efforts to obtain and maintain during the IRU Term, all rights-of-way use and other use or access permits or agreements which are necessary for the installation, location, maintenance and use of the Cables in accordance with this Agreement (the "**Underlying Rights**"). The IRU is subject to the terms of the Underlying Rights, and subject to the terms under which the applicable rights-of-way are owned or held by the grantor of the Underlying Rights.

9.2 Relocation. After the IRU Effective Date, Wave may relocate all or any portion of any one or more of the Cables, including any one or more of the Segments of the IRU Fiber and/or any of the facilities used or required in providing any of the Segments of the IRU Fiber to the Customer, under any of the following circumstances: (i) Wave is required to relocate by a third party with legal authority to so require (including, without limitation, the grantor of an Underlying Right); (ii) in Wave's good faith business judgment, it is commercially reasonable for Wave to relocate; or (iii) the Customer agrees to the relocation. Should any of the foregoing occur, Wave shall proceed with such relocation, including without limitation, the right, in good faith, to reasonably determine the extent of, the

timing of, and methods to be used for such relocation; provided that any such relocation shall incorporate fibers meeting or exceeding the specifications of the IRU Fiber. In the event of any such relocation, Wave shall use commercially reasonable efforts to minimize any service interruptions to the Customer. In the event of a relocation pursuant to either Sections 9.2(i) or (iii) above, Customer shall be responsible for its Proportionate Share of the costs of the relocation, which will be invoiced to Customer by Wave. Any relocation pursuant to Section 9.2(ii) shall be at Wave's sole cost and expense.

ARTICLE 10: OPERATION AND USE OF THE IRU FIBER

10.1 Compliance with Underlying Rights Requirements. The requirements, restrictions, and/or limitations on the Customer's right to use the IRU Fiber contained in this Agreement, all applicable government codes, ordinances, laws, rules and regulations, and safety, operational and other rules and regulations imposed in connection with the Underlying Rights are referred to collectively as the "**Underlying Rights Requirements.**" The Customer represents, warrants and covenants to Wave that it will use the IRU Fiber in compliance with and subject to the Underlying Rights Requirements.

10.2 Permits and Approvals. Customer shall secure, prior to the IRU Effective Date, any franchises, licenses or similar approvals from governmental authorities (other than the Underlying Rights to be obtained by Wave) which are necessary for the Customer's use and operation of the IRU Fiber.

10.3 Use Limitations. The IRU and the IRU Fiber are for the sole benefit of Customer or other government agency that works directly with the Customer (including but not limited to Snohomish County, SNOPAC, SERS, City of Arlington, and the Marysville Fire District). Customer shall not grant to any third party the right to use the IRU Fiber, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, indefeasible right of use, or any other form. Nor shall Customer use the IRU Fiber for commercial purposes that are competitive with Wave's business (e.g., use the IRU Fiber to provide Internet access service, data transport service, VoIP services, etc. to third parties within Wave's service area). Customer may use the IRU Fiber for any other lawful purpose. Customer agrees and acknowledges that it has no right to use any of the fibers that are part of the Cables or any other portion of the Wave Network facilities other than the IRU Fiber.

10.4 Cooperation. Each of the Customer and Wave agree to promptly notify the other Party of any matters pertaining to, or the occurrence (or impending occurrence) of, any event which would be reasonably likely to give rise to any damage or impending damage to or loss of any one or more of the Cables, or traffic thereon, that becomes known to such Party. The Customer and Wave each agrees to cooperate with and support the other in complying with any requirements applicable to their respective rights and obligations under this Agreement.

10.5 Non-Interference. The Customer shall not use its telecommunications systems in a way that physically interferes in any way with or otherwise adversely affects the use of the other fibers in the Cables by Wave or any other Authorized User of the Cables and/or other portions of Wave's network. The Customer acknowledges that the Cables and the locations at which the Cables are installed include other participants, including Wave, other Authorized Users, and other owners and users of telecommunication systems.

ARTICLE 11: THIRD – PARTY INDEMNIFICATION

11.1 Third-Party Indemnification by Wave. Wave hereby agrees to indemnify, defend and hold harmless Customer, its employees, officers and directors (the "**Customer Indemnified Persons**"), from and against any and all third-party suits, actions, damages or claims of any character suffered by the Customer Indemnified Persons due to or arising out of: (i) any injuries or damage to persons or property to the extent the same are caused by the negligent acts or omissions of Wave in the performance of its obligations under this Agreement; or (ii) any Default by Wave under this Agreement.

11.2 Third-Party Indemnification by the Customer. Customer hereby agrees to indemnify, defend and hold harmless Wave, its Affiliates, and their employees, agents, officers and directors (the “**Wave Indemnified Persons**”), from and against any and all third-party suits, actions, damages or claims of any character suffered by the Wave Indemnified Persons due to or arising out of: (i) any injuries or damage to persons or property to the extent the same are caused by the negligent acts or omissions of the Customer in the performance of its obligations under this Agreement; (ii) Customer’s use of the IRU Fiber; or (iii) any Default by Customer under this Agreement.

11.3 Procedure. Wave and the Customer each agree to promptly provide the other with notice of any claim which may result in an indemnification obligation hereunder. The indemnifying party may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed.

11.4 Survival. The indemnification obligations contained in this Article shall survive the expiration or termination of this Agreement for a period of two (2) years.

ARTICLE 12: LIMITATION OF LIABILITY

12.1 No Special Damages. EXCEPT FOR THE OBLIGATIONS OF THE PARTIES CONTAINED IN ARTICLE 11 (INDEMNIFICATION) AND ARTICLE 15 (CONFIDENTIALITY), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, INCLUDING LOST PROFITS OR REVENUES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY’S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, CLAIMS OF LESSEES OR CUSTOMERS, CLAIMS FOR WHICH DAMAGES ARE HEREBY SPECIFICALLY WAIVED; AND PROVIDED FURTHER THAT THIS LIMITATION SHALL NOT RESTRICT EITHER PARTY’S RIGHT TO PROCEED FOR INJUNCTIVE RELIEF. NOTHING CONTAINED HEREIN SHALL OPERATE AS A LIMITATION ON THE RIGHT OF EITHER PARTY TO BRING AN ACTION FOR DAMAGES AGAINST ANY THIRD PARTY, INCLUDING CLAIMS FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, BASED ON ANY ACTS OR OMISSIONS OF SUCH THIRD PARTY.

12.2 Disclaimer of Warranties. EXCEPT FOR AND EXCLUDING COVENANTS, REPRESENTATIONS OR WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND/OR ANY EXHIBIT(S) ATTACHED HERETO, WAVE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE IRU FIBERS, THE WAVE EQUIPMENT OR ANY OTHER PORTION OF THE WAVE NETWORK, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 13: INSURANCE

13.1 Required Insurance. Beginning on the IRU Effective Date, and continuing through the expiration of the IRU Term, each Party shall procure and maintain in force, at its own expense, insurance coverage in amounts that a reasonably prudent business person would maintain considering the obligations of the Parties hereunder, but in no event less than coverage of the following types and limits:

- (a) Workers’ compensation as required by applicable law(s);
- (b) Employer’s liability with minimum limits of \$1,000,000 each accident;
- (c) Commercial General Liability including coverage for (i) premises/operations, (ii) independent contractors, (iii) products/completed operations, (iv) personal injury, (v) contractual liability, and (vi) explosion, collapse and underground hazards, with combined single limit of not less than \$1,000,000 each occurrence or its equivalent;

- (d) Automobile liability with minimum limits of \$1,000,000 each accident; and
- (e) Excess or Umbrella Liability, applicable to items (b), (c) and (d), with minimum limits of \$5,000,000, per occurrence.

13.2 Insurance Providers. Each Party shall maintain the required insurance coverage with insurers licensed to conduct business in the applicable jurisdiction(s) and having an AM Best Rating of A – /VII, or equivalent from another recognized rating agency, and each Party shall, upon request, provide the other Party with an insurance certificate confirming compliance with the requirements of this Article.

13.3 Failure to Carry. In the event either Party fails to maintain the required insurance coverage and, a claim is made or suffered, such Party shall defend, indemnify and hold harmless the other Party from any and all claims for which the required insurance would have provided coverage.

ARTICLE 14: NOTICES

Notices under this Agreement shall be in writing and delivered by overnight courier (e.g., Federal Express, UPS) or certified mail, return receipt requested, to the persons whose names and business addresses appear below and such notice shall be effective on the date of receipt or refusal by the receiving Party:

If to Wave:

Wave Business Solutions, LLC
3700 Monte Villa Parkway
Bothell, WA 98021
ATTN: David Lampkin
Email: dlampkin@wavebroadband.com

If to Customer:

City of Marysville
1049 State Avenue
Marysville, WA 98270
ATTN: Worth Norton
Email: ISPurchasing@marysvillewa.gov

With a Copy to:

Wave Business Solutions, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
ATTN: Legal Department

With a Copy to:

City of Marysville
1049 State Avenue
Marysville, WA 98270
ATTN: Legal Department

A Party may change its address and point of contact by notifying the other Party in writing in accordance with this Article.

ARTICLE 15: CONFIDENTIALITY

The Parties understand and acknowledge that Customer is a governmental entity, and that Washington law limits the ability of Customer to shield from public disclosure any information given to Customer. Accordingly, the Parties agree to work together to avoid disclosures to Customer by Provider of confidential information which would result in economic loss or damage to Provider if such information were to be disclosed to third persons by Customer pursuant to a request submitted under the Public Records Act, chapter 42.56 RCW, or other similar public disclosure law. In the event that Customer receives a request pursuant to the Public Records Act (or other similar law) to disclose information identified by Wave in writing as confidential, Customer's sole obligations to Provider shall be: (i) to promptly notify Wave; and (ii) to refrain from disclosing such records for a period of up to ten (10) business days to allow Wave an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. Customer will not be required to withhold requested records beyond the ten (10) business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act, or unless

Customer is ordered to withhold disclosure by the order of a court having competent jurisdiction. Customer may, but shall not be required, to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that Wave initiates legal proceedings, or Customer initiates legal proceedings or withholds requested records at Wave's request, Wave shall indemnify and hold Customer harmless from and against all costs, attorneys' fees, expenses, liabilities, damages or other liabilities Customer may incur due to the legal proceedings initiated at and/or Customer's withholding of records at Wave's request. Customer shall not be liable to Wave for any loss, cost or expense relating to the disclosure of requested records if Wave fails to obtain legal protection against disclosure and Customer releases the records in good faith.

ARTICLE 16: DEFAULT

16.1 Definition. A "**Default**" shall be deemed to have occurred under this Agreement under the following circumstances:

- (a) in the case of a failure to pay any amount when due under this Agreement, a Party fails to pay such amount within fifteen (15) days after written notice from the other Party specifying such breach; or
- (b) in the case of any other material breach of this Agreement, a Party fails to cure such breach within thirty (30) days after written notice from the other Party specifying such breach, provided that if the breach is of a nature that cannot reasonably be cured within said thirty (30) day time period, a Default shall not have occurred so long as the breaching Party has commenced cure within said thirty (30) day time period and thereafter diligently pursues cure to completion.

16.2 Remedies. In the event of any Default hereunder, the non-Defaulting Party may do any one or more of the following: (i) take such actions as it deems reasonably necessary to correct the Default; (ii) pursue any other remedies available to it under this Agreement; and/or (iii) initiate the dispute resolution process contained in Article 18. The Parties intend for a Party's good faith participation in the dispute resolution process described in Article 18 to constitute a necessary pre-requisite to the commencement by such Party of any legal action regarding this Agreement.

16.3 No Waiver. A waiver by either Party at any time of any of its rights regarding a particular breach or Default of the other Party under this Agreement shall not be deemed a permanent waiver of such rights, nor shall any such waiver be deemed a waiver of any subsequent breach or Default.

ARTICLE 17: FORCE MAJEURE

Neither Party will have any claim or right against the other for any failure of or delay in performance by the other Party if the failure or delay is caused by or the result of any act of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, vandalism, cable cut or other similar catastrophe, any law, order, regulation, direction or action of any governmental, civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, strike, lockout or other similar occurrence beyond the control and without the fault or negligence of the affected party (each, a "**Force Majeure Event**"). Notwithstanding the foregoing, if the force majeure delay exceeds thirty (30) days, either Party may terminate this Agreement on written notice without incurring any liability hereunder.

ARTICLE 18: DISPUTE RESOLUTION

18.1 General Provisions. Except for actions seeking a temporary restraining order or injunction, or suits to compel compliance with this dispute resolution process, the Parties agree to use the dispute resolution procedures set forth in this Article 18 with respect to any controversy or claim (each, a "**Dispute**") arising out of or relating to

this Agreement. All discussions occurring and documents exchanged pursuant to Sections 18.2 and 18.3 below are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or mediation process.

18.2 Negotiations. Should any Dispute arise, either Party may give the other Party written notice of the Dispute (each, a “**Dispute Notice**”). The Parties shall use good faith efforts to resolve the Dispute through negotiation within thirty (30) days of the date on which the Dispute Notice is delivered. With respect to fee disputes arising under Section 5.5, compliance with the negotiation procedures described in Section 5.5 shall be in lieu of the provisions of this Section 18.2. If the Parties do not resolve the Dispute within such thirty (30) day period, either of the Parties may submit the matter to non-binding mediation through a professional mediation service.

18.3 Mediation. If a Dispute is submitted to mediation, the Parties will cooperate in selecting a qualified mediator from a panel of neutral mediators having experience in the telecommunications and broadband internet industry. The Parties shall share equally in the costs of mediation. Any Dispute that cannot be resolved through mediation within sixty (60) days of submitting the Dispute to mediation shall be resolved by binding arbitration as provided in Section 18.4 below.

18.4 Binding Arbitration. Any arbitration hearing shall be before a single neutral arbitrator and shall be held in the Seattle, Washington offices of Judicial Arbitration & Mediation Services, Inc., or a similar professional dispute resolution organization. The arbitration shall be administered pursuant to the rules and procedures of the American Arbitration Association. The parties shall equally share the fees of the arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-15, not state law, shall govern the arbitrability of all disputes.

18.4 Governing Law. This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of Washington. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of Washington in and for King County, or in the Federal District Court for the Western District of Washington, as applicable. Customer waives all defenses of lack of personal jurisdiction and forum non conveniens. ***Each Party waives, to the fullest extent permitted by law, trial by jury of any disputes, claims or issues arising under the Agreement.***

ARTICLE 19: ASSIGNMENT

Neither Party shall assign its rights under this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld, delayed or conditioned; provided, however, that either Party may, without obtaining the consent of the other Party, assign its interest in and to this Agreement to: (i) any entity acquiring such Party, whether through merger or through purchase of substantially all the assets of said Party; or (ii) an Affiliate of such Party.

ARTICLE 20: MISCELLANEOUS

20.1 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she has been duly authorized to execute this Agreement on behalf of the Party for whom he or she purports to sign this Agreement, and that this Agreement is binding on such Party in accordance with its terms.

20.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the Party against whom such modification is sought to be enforced.

20.3 Interpretation. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

20.4 Survival. Those provisions of this Agreement that by their nature and import must survive the expiration or earlier termination of this Agreement in order to be given their full force and effect shall so survive.

20.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

20.6 Attorneys' Fees. If any proceeding is brought by a Party to enforce or interpret any term or provision of the Agreement, the substantially prevailing Party in such proceeding will be entitled to recover, in addition to all other relief as set forth in the Agreement, that Party's reasonable attorneys' and experts' fees and expenses.

20.7 No Joint Venture. The relationship between Customer and Wave shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to federal income tax purposes.

20.8 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of Customer and Wave. No third party shall be deemed to have any rights under this Agreement; there are no third party beneficiaries to this Agreement.

20.9 Standard of Performance. All actions, activities, consents, approvals and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

20.10 Compliance with Law. Each Party shall exercise its rights and perform its obligations under this Agreement in full compliance with all applicable laws, rules and regulations of any governmental authority having proper jurisdiction.

20.11 Exhibits. The following Schedules are attached to this Agreement and incorporated herein by this reference:

EXHIBIT A	-	Map Depicting Segment 1
EXHIBIT B	-	Fiber Specifications
EXHIBIT C	-	Service Level Agreement for Maintenance, Repair and Availability

20.12 Execution in Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document.

[Signatures on following page.]

IN WITNESS WHEREOF, Wave and Customer, intending to be legally bound hereby, have duly executed this Agreement as of the date first above written.

WAVE:

Wave Business Solutions, LLC, a Washington limited liability company

By _____

Name: _____

Title: _____

CUSTOMER:

City of Marysville, a Washington municipal corporation

By _____

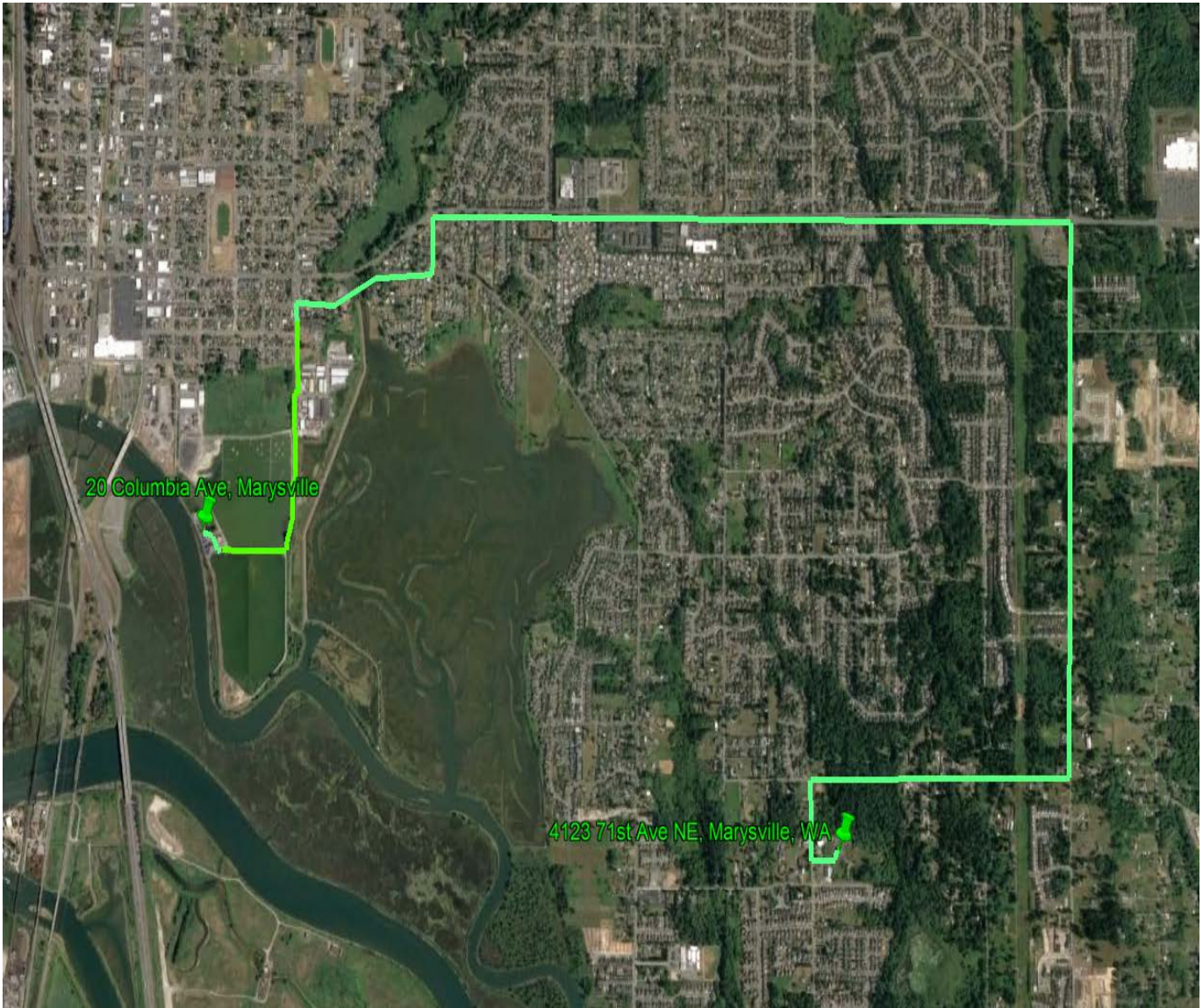
Name: _____

Title: _____

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**EXHIBIT A
to
Dark Fiber IRU Agreement**

Map Depicting Sunnyside Treatment Plant



Approximate distance of Fiber Route: 9,500 feet

EXHIBIT B
to
Dark Fiber IRU Agreement

Fiber Specifications

OTDR traces will be taken in both directions at 1310 nm and 1550 nm for all circuits less than 50 Km. For circuits over 50 Km we take OTDR traces at 1550 nm. All circuits will be shot with a launch cable with a minimum length of .5 Km or the length agreed to in the customer's MSA. These traces will be reviewed before the circuit is handed off. For a circuit to be handed off it must comply with the specifications for splice, reflectance and span attenuation.

Splice Loss Specifications

Pig Tail - < .5 per connector or 1.0 per jumper

For values greater than this, the splice will be broken and re-spliced until an acceptable loss value is achieved. If, after three attempts is not able to produce a loss value less than 0.50 dB, the splice will be marked as Out-of-Spec ("OOS") on the OTDR report.

Splice Point - Bi-directional average loss of 0.15 dB or less.

The objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable. If, after two additional attempts, a value of less than 0.25 dB is not achievable, then the splice will be marked as OOS

Splice Point - Uni-directional OTDR testing, the objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable.

Connector Reflectance

Reflectance at jumper – Will be less than -40dB, we will work to achieve less than -40dB by cleaning & polishing fiber tips and/or fiber jumpers or provide alternative fiber strands that achieve results less than -40dB. If we are unable to do so after 3 attempts, the port will be marked as OOS.

Total loss for a circuit

Attenuation due to distance

At 1310nm: (0.40 dB/km x km of cable)

At 1550nm: (0.30 dB/km x km of cable)

Average Splice Loss per circuit

The standard for each fiber within a span shall be an average bi-directional loss of 0.10 dB or less for each splice. For example, if a given span has 10 splices, each flow shall have total bi-directional loss (due to the 10 splices) of 1.0 dB or less. Each individual splice may have a bi-directional loss of 0.15 dB or less, but the average bi-directional splice loss across the span must be 0.10 dB or less.

Acceptable Total loss per circuit will be calculated with the following formula:

At 1310nm: (0.40 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).

At 1550nm: (0.30 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).

Mass Fusion Splicing**Ribbon Fiber Bi-directional Splice Loss Standards**

Fiber Type	Splicing Method	Splice Loss (dB)
Standard Single Mode	Mass fusion splicing	0.20 dB
Non-zero Dispersion-shifted	Mass fusion splicing	0.25 dB

In the event that the splice loss values listed cannot be achieved by at least 66% (8 out of the 12) of the fibers in the ribbon, the ribbon containing the OOS fiber(s) will be broken and re-spliced. The re-splice procedure and acceptable values are listed in the table below. Ribbons containing any splices above a 1.0 dB loss will be broken and re-spliced.

Mass Fusion Re-splice Acceptance

Ribbon Fiber	Standard Single Mode	Non-zero Dispersion Shifted
Acceptance Criteria	0.20 dB	0.25 dB
After 3 attempts	0.30 dB	0.35 dB
After 2 additional attempts	0.40 dB	0.50 dB

Note:

Five (5) attempts are to be performed and all non-successful splices will be recorded and marked as OSS.

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EXHIBIT C
to
Dark Fiber IRU Agreement

Service Level Agreement for Maintenance, Repair and Availability

1. DEFINITIONS

For purposes of this Exhibit C the following terms shall have the meanings set forth below.

“Availability” means the IRU Fibers are available to and accessible by Customer at the End Points, are capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. Wave does not monitor the use or availability of dark fiber services, thus any Outage must be reported to the Wave NOC by Customer.

“Credit” means a credit towards the amount of the monthly Scheduled Maintenance Fee that would otherwise be due and payable by Customer to Wave under this Agreement.

“Excused Outage” means any disruption to or unavailability of the IRU Fiber caused by or due to (i) Scheduled Maintenance, or (ii) circumstances beyond Wave’s reasonable control, such as, by way of example only, Force Majeure, acts or omissions of Customer or Customer’s agents, licensees or end users, electrical outages not caused by Wave, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for Wave’s delivery of the IRU Fiber to Customer.

“Force Majeure” means causes beyond Wave reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut, flood, storm, or other similar natural disaster, terrorist acts, insurrection, riot, national emergency, war or other catastrophe, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority.

“Mean Time to Restore” or “MTTR” means the average time required to restore the IRU Fiber to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes Wave to repair all service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the Wave NOC until the time the IRU Fiber is again Available. The cumulative length of service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

“Outage” means a disruption in the IRU Fiber making the IRU Fiber completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related Credits, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Wave. Unavailability does not include periods of service degradation, such as slow data transmission.

“Scheduled Maintenance” means any maintenance of the portion of the Wave Network to which Customer’s router is connected that is performed during a standard maintenance window (12:00AM – 6:00AM Pacific Time). Customer

will be notified via email at least ten (10) business days in advance of any scheduled maintenance that is likely to affect the IRU Fibers.

“Trouble Ticket” means a trouble ticket generated through the Wave NOC upon notification of a service-related problem. In order for Customer to be eligible for Credits under this SLA, Customer must contact the Wave NOC and open a Trouble Ticket regarding the problem.

“WAVE Network” means all equipment, facilities and infrastructure that Wave uses to provide services to Customer, and includes Customer’s access port. The “Wave Network” does not include Customer owned or leased equipment (unless leased from Wave), or any portion of Customer’s local area network after the demarcation point for the Services provided by Wave.

“WAVE’s Network Operations Center” or “WAVE’s NOC” means WAVE’s network operations center which is staffed 24x7x365 and can be reached at: 888-317-0488.

2. ROUTINE MAINTENANCE

Routine maintenance and repair of the IRU Fibers described in this Section shall be performed by or under the direction of Wave, at Wave’s reasonable discretion or at Customer’s reasonable request. Routine maintenance shall commence upon the IRU Effective Date. All common systems within facilities along the Cable for the IRU Fiber shall be maintained in accordance with manufacturer’s specifications, to include battery plants, generators, and HVAC units. Wave shall perform appropriate and routine testing on the Cable in which the IRU Fiber is located in accordance with Wave’s then current preventative maintenance procedures as agreed to by Customer, which shall not substantially deviate from standard industry practice. By way of example only, routine maintenance may include the following types of activities:

- (a) Patrol of IRU Fiber route on a regularly scheduled basis, which will be weekly unless hyrail access is necessary, in which case, it will be quarterly;
- (b) Maintenance of a “Call-Before-You-Dig” program and all required and related cable locates;
- (c) Maintenance of sign posts along the IRU Fiber route right-of-way with the number of the local “Call-Before-You-Dig” organization;
- (d) Assignment of fiber maintenance employees to locations along the IRU Fiber route at intervals dependent upon terrain, accessibility, locate ticket volume, etc. Wave shall decide the staffing of fiber maintenance employees for the IRU Fiber;
- (e) Wave shall have qualified representatives on site any time Wave has reasonable advance knowledge that another person or entity is engaging in construction activities or otherwise excavating within five (5) feet of the IRU Fiber; and
- (f) At Customer’s request, perform and provide Customer with results of annual quality test showing the IRU Fiber meets the Fiber Specifications in Exhibit B.

Routine maintenance may include Scheduled Maintenance, for which Customer will receive advance notice as described in Section 1 of this Exhibit C.

3. EMERGENCY MAINTENANCE

“**Emergency Maintenance**” means Wave’s efforts to correct conditions on the Wave Network that are likely to cause a material disruption to or outage in services provided by Wave and which require immediate action. Emergency Maintenance may degrade the quality of the services provided to Customer, including possible outages. Wave may undertake Emergency Maintenance at any time Wave deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances. Emergency Maintenance and repair of the IRU Fiber shall be performed by or under the direction of Wave. Wave’s obligation to perform any necessary Emergency Maintenance shall commence upon the IRU Effective Date. Emergency Maintenance may be commenced in response to any of the following: (i) an alarm identification by Wave’s NOC; (ii) notification by Customer; or (iii) notification by any third party of any failure, interruption or impairment in the operation of the Cable in which the IRU Fiber is located, or any event imminently likely to cause the failure, interruption or impairment in the operation of the IRU Fiber.

Customer shall immediately report the need for Emergency Maintenance to Wave in accordance with procedures promulgated by Wave from time to time. Wave will log the time of Customer’s report, verify the problem and dispatch personnel immediately to take corrective action. Wave shall communicate with Customer during Emergency Maintenance in order to provide regular status updates during the restoration process.

4. NETWORK OPERATIONS CENTER

Wave shall operate and maintain the Wave NOC, capable of receiving alarms twenty-four (24) hours a day, seven (7) days a week. Wave’s maintenance employees shall be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Wave shall have its first maintenance employee at the site requiring Emergency Maintenance activity within four (4) hours after the time Wave becomes aware of an event requiring Emergency Maintenance, unless delayed by circumstances beyond the reasonable control of Wave. Wave shall maintain a toll-free telephone number to contact personnel at the NOC. Wave’s NOC personnel shall dispatch maintenance and repair personnel to handle and repair problems detected in the IRU Fiber.

5. SERVICE LEVEL AGREEMENT

This Section 5 constitutes Wave’s “**Service Level Agreement**” or “**SLA**” with respect to the IRU Fiber.

5.1 Availability SLA

Wave’s dark fiber paths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to the IRU Fibers in a given calendar month, Customer will be entitled to a Credit in the amount set forth below, which must be claimed as described in this SLA.

Duration of Unavailability	Customer Credit as % of Scheduled Maintenance Fee
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

5.2 Mean Time to Restore (“MTTR”) SLA

In the event of Outages in the IRU Fibers, Wave’s NOC is designed to provide a MTTR of **no greater than 4 hours**. If the target MTTR is not met for the IRU Fibers in a given calendar month, then Customer shall be entitled to Credit set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of Scheduled Maintenance Fee
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

5.3 Claiming Credits

(a) Requesting SLA Credits. To be eligible for any SLA-related Credit, Customer must be in good standing with Wave and current in its financial obligations to Wave. Credits are exclusive of any applicable taxes charged to Customer or collected by Wave. To claim SLA-related Credits, Customer must do the following:

- (i) Open a Trouble Ticket with the Wave NOC within twenty-four (24) hours of the occurrence giving rise to the claimed Credit(s);
- (ii) Submit a written request for the Credit(s) to WAVE’s customer service department within fifteen (15) days after the end of the calendar month in which the incident giving rise to the Credit(s) occurred; and
- (iii) Provide the following documentation when requesting the Credit(s):
 - Customer name and contact information;
 - Trouble Ticket number(s);
 - Date and beginning/end time of the claimed Outage or failed SLA metric;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Outage or failed SLA metric.

If Customer fails to timely submit, pursuant to the procedure described in this Section 5.3(a), a request for any SLA-related Credit for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such Credit. The Credits provided by this SLA are Customer’s sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of the IRU Fibers.

(b) Wave’s Evaluation of Claims. All claims for SLA-related Credits are subject to evaluation and verification by Wave. Upon receiving a claim for SLA-related Credit, Wave will evaluate the claim and respond to Customer within thirty (30) days. If Wave requires additional information in order to evaluate Customer’s claim, Wave will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Wave’s request for additional information in which to provide the requested information to Wave. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Wave will promptly notify Customer of Wave’s resolution of each Customer claim. If Customer’s claim for an SLA-related Credit is rejected, the notification will specify the basis for the rejection. If Customer’s claim for a Credit is approved, Wave will issue the credit to Customer’s account, to appear on the next monthly invoice. Wave’s good faith determination regarding whether or not an SLA has been violated shall be final.

(c) Limits and Exclusions. Total Credits for any given calendar month shall not exceed 100% of the monthly Scheduled Maintenance Fee for the IRU Fiber. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable Credit amount. This SLA will not apply and Customer will not be entitled to any Credit under this SLA for any impairment of the IRU Fiber that is caused by or due to any of the following: (i) The acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the IRU Fibers or the equipment used to provide the IRU Fiber, including Customer's use of the IRU Fiber in an unauthorized or unlawful manner; (ii) The failure of or refusal by Customer to reasonably cooperate with Wave in diagnosing and troubleshooting problems with the IRU Fiber, including the unavailability of required Customer personnel due to Customer's failure to keep Wave provided with current and accurate contact information for such personnel; (iii) Scheduled alteration, maintenance or implementation; (iv) The failure or malfunction of network equipment or facilities not owned or controlled by Wave or Wave's Affiliates; (v) Force Majeure events; (vi) Wave's inability (due to no fault of Wave) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the IRU Fiber; or (ix) Improper or inaccurate network specifications provided by Customer.

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Index #8

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 3-2-2020

AGENDA ITEM:	
Military Department Emergency Management Division Disaster Assistance Grant Amendment	
PREPARED BY:	DIRECTOR APPROVAL:
Diana Rose	
DEPARTMENT:	
Executive	
ATTACHMENTS:	
Military Department Emergency Management Division Public Assistance Grant and Amendment	
BUDGET CODE:	AMOUNT:
	\$547,344.00
SUMMARY: This is a Disaster Assistance grant amendment. The original grant agreement was approved by Council on July 8, 2019. This is from the December 2018 Windstorm 4418-DR-WA that resulted in the loss of six (6) city owned boathouses.	

RECOMMENDED ACTION:

Council considers authorizing the Mayor to sign and execute this Disaster Assistance grant amendment and any associated amendments that do not alter the underlying purpose of the original grant.

RECOMMENDED MOTION:

I move to authorize the Mayor to sign and execute this Disaster Assistance grant amendment and any associated amendments that do not alter the underlying purpose of the grant.



STATE OF WASHINGTON
MILITARY DEPARTMENT
EMERGENCY MANAGEMENT DIVISION

*MS: TA-20, Building 20B
Camp Murray, Washington 98430-5122*

January 31, 2020

Ms. Diana Rose
Risk/Emergency Manager
City of Marysville
1049 State Avenue
Marysville WA 98270

RE: State No. D19-112
Disaster No. 4418-DR-WA
FEMA No. 061-43955-00
PW No. 65

Dear Ms. Rose:

Here is your copy of Amendment No. 62 for the above referenced application, which has been approved in the amount of \$ 547,334.00.

Federal Share of this amendment is:	\$ 410,500.50
State Share of this amendment is:	\$ 68,416.75
CityShare of this amendment is:	<u>\$ 68,415.75</u>
Total:	\$ 547,334.00

The Federal Emergency Management Agency (FEMA) will reimburse 75 percent (PAAP) PA Alternative Procedures – Permanent Work Alternate Project of the eligible costs associated with your approved projects. City of Marysville will pay 12.5 percent and the state will pay 12.5 percent of the eligible non-federal share. The 2018 State Legislature has approved a state share for the non-federal share of the eligible costs covered under the Project Worksheets for the 4418-DR-WA December 2018, Severe Winter Storms, Straight-Line Winds, Flooding, Landslides, Mudslides, and a Tornado

Note: This version is only to establish baseline costs. Alternate project proposal forthcoming. No construction activities approved with this version.

Please note the required conditions on the attached Project Worksheet (PW) that have been highlighted. In addition, please note the established mandatory work completion date.

If you do not agree with the determinations that have been made regarding project eligibility, time limits, funding, or any other determination made about the Project Worksheet, an appeal procedure requires the City to make a written request for appeal directly to this office. The appeal shall contain documented justification supporting the City's position, specifying the monetary figure in dispute and the provisions in federal law, regulation, or policy with which the

Ms. Diana Rose
January 31, 2020
Page Two

City believes the initial action was inconsistent. Two copies of any related documentation supporting the appeal must be attached to the letter of appeal. This request for an appeal must be made within sixty days of the date of receipt of this amendment.

Enclosed please find blank A-19 Invoice Vouchers for your use in requesting progress payments on the large project in this amendment, Project Worksheet No. 65, Six Damaged Boathouses & Docking System. In addition, a Statement of Documentation and Final Inspection Report form is enclosed. This form is to be completed and returned to this office within sixty days of completion of the project. Upon receipt, a final inspection and review of the City's financial records on this project will be scheduled.

When requesting a progress payment, please **return the original invoice voucher with a letter of request and supporting documentation of expenditures, which has been dated and signed by you as the applicant agent or the alternate applicant agent to:**

Mr. Gerard Urbas
Public Assistance Program
Washington State Military Department
Building 20-B / MS: TA-20
Camp Murray, WA 98430-5122

Please retain this letter and your copy of the Project Worksheet for your records.

Please contact Diane Woodard, Program Delivery Manager, at (253) 512-7406 or diane.woodard@mil.wa.gov, should you have any questions regarding the approved Project Worksheet.

Sincerely,

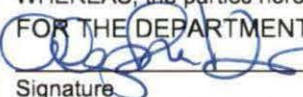
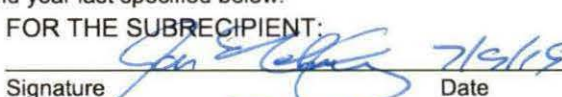



Gerard Urbas
Deputy State Coordinating Officer
Public Assistance

GU:dm

Enclosure

**Washington State Military Department
PUBLIC ASSISTANCE GRANT AGREEMENT FACE SHEET**

1. SUBRECIPIENT Name and Address: City of Marysville 1049 State Avenue Marysville, WA 98270		2. Grant Agreement Amount: To be determined, based upon approved project worksheets		3. Grant Number: D19-112	
4. SUBRECIPIENT, phone/email: 360-363-8096/drose@marysvillewa.gov		5. Grant Agreement Start Date: December 10, 2018		6. Grant Agreement End Date: March 3, 2023	
7. DEPARTMENT Program Manager, phone/email: Gerard Urbas, (253) 512-7402 Gary.urbas@mil.wa.gov		8. Data Universal Numbering System (DUNS): 076658673		9. UBI # (state revenue): 314-000-001	
10. Funding Authority: Washington State Military Department (the "DEPARTMENT"), and Federal Emergency Management Agency (FEMA)					
11. Funding Source Agreement #: FEMA-4418-DR-WA		12. Program Index # 774RC (Federal) / 772RE (State) / 774RD (Admin)		13. Catalog of Federal Domestic Asst. (CFDA) # & Title: 97.036, Public Assistance	
14. N/A		15. Total Federal Award Amount: N/A		16. Federal Award Date: N/A	
17. Service Districts: (BY LEGISLATIVE DISTRICT): 38, 39, 44th (BY CONGRESSIONAL DISTRICT): 2		18. Service Area by County(ies): Snohomish		19. Women/Minority-Owned, State Certified?: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO <input type="checkbox"/> YES, OMWBE # _____	
20. Contract Classification: <input type="checkbox"/> Personal Services <input type="checkbox"/> Client Services <input checked="" type="checkbox"/> Public/Local Gov't <input type="checkbox"/> Research/Development <input type="checkbox"/> A/E <input type="checkbox"/> Other _____			21. Contract Type (check all that apply): <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Grant <input checked="" type="checkbox"/> Agreement <input type="checkbox"/> Intergovernmental (RCW 39.34) <input type="checkbox"/> Interagency		
22. Contractor Selection Process: <input checked="" type="checkbox"/> "To all who apply & qualify" <input type="checkbox"/> Competitive Bidding <input type="checkbox"/> Sole Source <input type="checkbox"/> A/E RCW <input type="checkbox"/> N/A <input type="checkbox"/> Filed w/OFM? <input type="checkbox"/> Advertised? <input type="checkbox"/> YES <input type="checkbox"/> NO _____			23. Contractor Type (check all that apply): <input type="checkbox"/> Private Organization/Individual <input type="checkbox"/> For-Profit <input checked="" type="checkbox"/> Public Organization/Jurisdiction <input checked="" type="checkbox"/> Non-Profit <input type="checkbox"/> VENDOR <input type="checkbox"/> SUBRECIPIENT <input checked="" type="checkbox"/> OTHER		
24. BRIEF DESCRIPTION: Presidential Disaster Declaration # FEMA-4418-DR-WA Washington Severe Winter Storms, Straight-line Winds, Flooding, Landslides, Mudslides, and a Tornado. To provide funds to the SUBRECIPIENT for the repair or restoration of damaged public facilities as approved by FEMA in project worksheets describing eligible scopes of work and associated funding. The DEPARTMENT is the Recipient and Pass-through Entity of the Presidential Disaster Declaration # FEMA-4418-DR-WA Washington Severe Winter Storms, Straight-line Winds, Flooding, Landslides, Mudslides, and a Tornado, and FEMA State Agreement, which are incorporated by reference, and makes a subaward of Federal award funds to the SUBRECIPIENT pursuant to this Agreement. The SUBRECIPIENT is accountable to the DEPARTMENT for use of Federal award funds provided under this Agreement and the associated matching funds.					
IN WITNESS WHEREOF, the DEPARTMENT and SUBRECIPIENT acknowledge and accept the terms of this Agreement, references and attachments hereto and have executed this Agreement as of the date and year written below. This Agreement Face Sheet, Special Terms and Conditions (Attachment 1), General Terms and Conditions (Attachment 2), Project Worksheet Sample (Attachment 3), Washington State Public Assistance Applicant Manual dated March 4, 2019 (Attachment 4), and all other documents, exhibits and attachments expressly referenced and incorporated herein contain all the terms and conditions agreed upon by the parties and govern the rights and obligations of the parties to this Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties.					
In the event of an inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:					
1. Applicable Federal and State Statutes and Regulations		5. Special Terms and Conditions		6. General Terms and Conditions, and,	
2. DHS Standard Terms and Conditions		3. Presidential Declaration, FEMA State Agreement, and other Documents		7. Other provisions of the contract incorporated by reference.	
4. Statement of Work and/or Project Description as outlined in FEMA approved Project Worksheet(s)					
WHEREAS, the parties hereto have executed this Agreement on the day and year last specified below.					
FOR THE DEPARTMENT:  _____ Signature _____ Date 9/10/19 Alysha Kaplan, Unit Manager Washington State Military Department			FOR THE SUBRECIPIENT:  _____ Signature _____ Date 7/9/19 print or type name: Jan Nehring		
BOILERPLATE APPROVED AS TO FORM: Brian E. Buchholz (signature on file) 4/11/2019 Assistant Attorney General			APPROVED AS TO FORM:  _____ SUBRECIPIENT's Attorney Date 6-24-19		

**Washington State Military Department
SPECIAL TERMS AND CONDITIONS**

ARTICLE I – KEY PERSONNEL

The individuals listed below shall be considered key personnel and point of contact. Any substitution by either party must be submitted in writing.

SUBRECIPIENT		MILITARY DEPARTMENT	
Name	Diana Rose	Name	Gerard Urbas
Title	Risk/Emergency Manager	Title	Deputy State Coordinating Officer Public Assistance
E-Mail	drose@marysvillewa.gov	E-Mail	gary.urbas@mil.wa.gov
Phone	(360) 363-8096	Phone	(253) 512-7402

ARTICLE II - ADMINISTRATIVE REQUIREMENTS

The SUBRECIPIENT shall comply with all applicable state and federal laws, rules, regulations, requirements and program guidance identified or referenced in this Agreement and the informational documents published by FEMA applicable to the Presidential Declaration including, but not limited to, all criteria, restrictions, and requirements of the "FEMA State Agreement" published by FEMA and the federal regulations commonly applicable to FEMA grants, all of which are incorporated herein by reference. The Presidential Declaration and the FEMA State Agreement are incorporated in this Agreement by reference.

The SUBRECIPIENT shall comply with the Washington State Public Assistance Applicant Manual dated March 4, 2019 incorporated in this Agreement as **Attachment 4**. The DHS Standard Terms and Conditions are incorporated by reference in this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated March 4, 2019.

The SUBRECIPIENT acknowledges that since this Agreement involves federal award funding, the period of performance described herein may begin prior to the availability of appropriated federal funds. The SUBRECIPIENT agrees that it will not hold the DEPARTMENT, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this Agreement prior to distribution of appropriated federal funds, or if federal funds are not appropriated or in a particular amount.

Federal funding is provided by FEMA and is administered by the DEPARTMENT. Under the authority of Presidential Disaster Declaration number FEMA-4418-DR-WA, the DEPARTMENT is reimbursing the SUBRECIPIENT for those approved eligible costs and activities necessary under the Public Assistance Grant Program during the incident period beginning December 10, 2018 to December 24, 2018. Eligible costs and activities will be identified in Project Worksheets approved by FEMA and a Project Worksheet Sample is incorporated as **Attachment 3**. The DEPARTMENT is also providing Advance Payments to the SUBRECIPIENT where provided by FEMA and required and allowed by law. Any interest earned on advance payments (except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450)) shall be promptly, but at least quarterly, remitted to the DEPARTMENT to be paid to FEMA. The SUBRECIPIENT may keep interest amounts up to \$100 per year for administrative expenses.

A. STATE AND FEDERAL REQUIREMENTS FOR PUBLIC ASSISTANCE GRANTS:

The following requirements apply to all DHS/FEMA Presidential Disasters administered by the DEPARTMENT.

1. FUNDING

The DEPARTMENT will administer the Public Assistance Grant Program (PA), provide Advance payments, and reimburse approved eligible Public Assistance costs to the SUBRECIPIENT that are identified under the auspices of Presidential Disaster Declaration Number FEMA-4418-DR-WA and authorized by and consistent with the Stafford Act (P.L. 93-288, as amended) and applicable regulations.

It is understood that no final dollar figure is committed to at the time that this Agreement is executed,¹⁰⁷ but that financial commitments will be made by amendments to the project application as Project Worksheets are completed in the field and projects are authorized by state and federal officials.

Pursuant to the FEMA-STATE AGREEMENT, FEMA will contribute not less than 75 percent of the eligible costs for any eligible project and 100 percent of the federal PA Management Costs, up to 5 percent of the total award amount for each Subrecipient, as provided for in subsection 3.E. of Article II of this Public Assistance Agreement. The SUBRECIPIENT commits to providing the remaining 25 percent non-federal match to any eligible project that has been identified under the Presidential Disaster Declaration number FEMA-4418-DR-WA, subject to the following exceptions:

DEPARTMENT Match: The Washington State Legislature may authorize the DEPARTMENT to provide a match to the SUBRECIPIENT's non-federal share of eligible projects. Provision of a match by the DEPARTMENT, if authorized by the Washington State Legislature, shall not require amendment of this Agreement. If DEPARTMENT match funds are committed to the non-federal share by the DEPARTMENT pursuant to legislative authorization, the DEPARTMENT will formally notify the SUBRECIPIENT of the match in writing which will include information identifying any related reduction in the SUBRECIPIENT's percentage commitment.

Donated Resources: FEMA will credit the SUBRECIPIENT for the value of donated resources (non-cash contributions of property or services) related to eligible Emergency Work to offset the non-Federal cost share of its eligible Emergency Work project worksheets – categories A and B, and for the value of donated resources related to eligible work on a Permanent Work project to offset the non-Federal cost share of that specific Permanent Work project worksheet for which the resources were donated – categories C through G. The Donated Resources are recognized by FEMA in a Project Worksheet. Donated Resources offset the non-federal share of the eligible emergency work approved in Project Worksheets or specific permanent work approved in Project Worksheets. For non-state agency SUBRECIPIENTS, the donated resource value will first be applied to the SUBRECIPIENT's non-federal share, and, if a DEPARTMENT match is authorized, any remaining donated resource value will be applied to the DEPARTMENT's share. The value of the Donated Resources is calculated as described in FP 104-009-2 Public Assistance Program and Policy Guide (PAPPG) and the Public Assistance Donated Resources Recovery Policy, and is capped at the non-Federal share of approved eligible emergency work costs or capped at the non-Federal share of the specific approved eligible permanent work costs, as applicable. The Federal share of the Donated Resources will not exceed the non-federal share of eligible emergency work costs or of specific permanent work costs approved in Project Worksheets. Any excess credit for eligible emergency work costs can be credited only to other eligible emergency work costs, for the same SUBRECIPIENT in the same disaster. The value of excess donated resources cannot be credited toward or transferred to another eligible SUBRECIPIENT, or toward other State obligations. The DEPARTMENT does not match a FEMA donated resource credit.

The Project Worksheet, sample provided in Attachment 3, is required to be completed by FEMA or State Project Specialists.

2. GRANT AGREEMENT PERIOD

- a. Activities payable under this Agreement and to be performed by the SUBRECIPIENT under this Agreement shall be those activities which occurred during or subsequent to the incident period defined in the FEMA State Agreement, and shall terminate upon completion of the project(s) approved by federal and state officials, including completion of close-out and audit. This period shall be referred to as the "Grant Agreement Period."
- b. The Grant Agreement Period shall only be extended by (1) written notification of FEMA approval of the Grant Agreement Period followed up with a mutually agreed written amendment, or (2) written notification from the DEPARTMENT to the SUBRECIPIENT issued by the DEPARTMENT to address extensions of its underlying federal grant performance period or to provide additional time for completion of the SUBRECIPIENT's project(s).

3. PAYMENTS

The DEPARTMENT, using funds granted for the purposes of the Presidential Disaster Declaration from FEMA, shall issue payments to the SUBRECIPIENT in compliance with the Washington State Public Assistance Applicant Manual dated March 4, 2019 (**Attachment 4**) procedures as follows:

- a. **Small Project Payments:** Payments are made for all small projects to the SUBRECIPIENT¹⁰⁸ upon submission and approval of an A19-1A State of Washington Invoice Voucher to the DEPARTMENT, after FEMA has approved funding through approval of Project Worksheets.
- b. **Progress Payments:** Progress payment of funds for costs already incurred on large projects minus 10 percent retainage may be made to the SUBRECIPIENT upon submission by the SUBRECIPIENT of an A19-1A State of Washington Invoice Voucher, a letter of request, and a spreadsheet identifying the claimed costs supporting the payment request and approval by the DEPARTMENT.
- c. **Improved Projects:** Payments on improved projects (capped project) will be pro-rated based upon the percentage of the project that is funded under this disaster grant to the overall project cost. This percentage will be identified when the first payment on the improved project is made. Progress payments will be made as outlined above in Section B.
- d. **Final Payment:** Final Payment on a large project will be made following submission by the SUBRECIPIENT of a certification of completion on the STATEMENT OF DOCUMENTATION / FINAL INSPECTION REPORT form upon completion of project(s), completion of all final inspections by the DEPARTMENT, and final approval by FEMA. Final payment on a large project will include any retainage withheld during progress payments. Final payments may also be conditional upon financial review, if determined necessary by the DEPARTMENT or FEMA. Adjustments to the final payment may be made following any audits conducted by the Washington State Auditor's Office, the United States Inspector General or other federal or state agency.
- e. The SUBRECIPIENT is eligible to receive federal PA Management Costs up to 5 percent of the total award amount for each Subrecipient at the time of its request. PA Management Costs includes any of the following when associated with the PA portion of a major disaster or emergency: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project. Documentation is required to substantiate the eligibility of management activities and associated costs in accordance with PA Management Costs Interim Policy – Standard Operating Procedures.
- f. All payment requests shall be made on an A19-1A form, State of Washington, Invoice Voucher. Payments will be made by electronic fund transfer to the SUBRECIPIENT's account.
- g. Federal funding shall not exceed the total federal contribution eligible for Public Assistance costs under Presidential Disaster Declaration number FEMA-4418-DR-WA.
- h. For state agencies, the DEPARTMENT will, through interagency reimbursement procedures, transfer payment to the SUBRECIPIENT. Payment will be transferred by journal voucher to Agency No. _____, Accounting Fund No. _____.
- i. Within the total Grant Agreement Amount, travel, sub-contracts, salaries, benefits, printing, equipment, and other goods and services will be reimbursed on an actual cost basis unless otherwise provided in this Agreement.
- j. For travel costs, SUBRECIPIENTs shall comply with 2 CFR 200.474 and should consult their internal policies, state rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended, and federal maximum rates set forth at <http://www.gsa.gov>, and follow the most restrictive.
- k. If travel costs exceed set state or federal limits, travel costs shall not be reimbursed without written approval by DEPARTMENT Key Personnel.
- l. Receipts and/or backup documentation for any approved items that are authorized under this Agreement must be maintained by the SUBRECIPIENT consistent with record retention requirements of this Agreement, and be made available upon request by the DEPARTMENT, and local, state, or federal auditors.
- m. All work under this Agreement must end on or before the Grant Agreement End Date, and the final reimbursement request must be submitted to the DEPARTMENT within 45 days after the Grant Agreement End Date, except as otherwise authorized by written amendment of this Agreement and issued by the DEPARTMENT.
- n. No costs for purchases of equipment/supplies will be reimbursed until the related equipment/supplies have been received by the SUBRECIPIENT, its subrecipient or contractor, or any non-federal entity to which the SUBRECIPIENT makes a subaward, and is invoiced by the vendor.

- o. SUBRECIPIENTS shall only use federal award funds under this Agreement to supplement existing funds, and will not use them to replace (supplant) non-federal funds that have been budgeted for the same purpose. The SUBRECIPIENT may be required to demonstrate and document that the reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

The DEPARTMENT shall provide Advance Payments as provided by FEMA and as required and authorized by law.

4. **CLOSEOUT**

To initiate close-out, the SUBRECIPIENT is required to certify in writing, by Project Worksheet Number, date completed and total amount expended on the project, completion of the small projects. To initiate close-out of the large projects, the SUBRECIPIENT shall submit certification of completion on a STATEMENT OF DOCUMENTATION/FINAL INSPECTION REPORT form to the DEPARTMENT.

The DEPARTMENT will then complete a site inspection and a financial review of documentation to support the claimed costs. Certifications on small and large projects are due within sixty days following the completion of the project or receipt of the approved Project Worksheet, whichever date is later.

If SUBRECIPIENT is claiming federal PA Management Costs: Indirect costs, direct administrative costs, and other administrative expenses associated with a specific project must be supported by documentation to substantiate the eligibility of management activities and associated costs that has been prepared and assembled in accordance with PA Management Costs Interim Policy – Standard Operating Procedures prior to close-out.

After all of the projects have been certified as complete and approved for closure by FEMA, the DEPARTMENT will forward a final A19-1A State of Washington Invoice Voucher to the SUBRECIPIENT for release of the remaining funds due to the subrecipient for eligible costs, including any retainage previously withheld, and the allowance for federal indirect costs.

5. **DOCUMENTATION / REPORTING REQUIREMENTS**

For all Advance Payment, the SUBRECIPIENT shall provide documentation and receipts for all costs related to the Advance Payment and provide such to the DEPARTMENT quarterly.

The SUBRECIPIENT is required to retain all documentation which adequately identifies the source and application of Public Assistance funds, including the federal indirect cost reimbursement, for six years following the closure of this disaster grant. For all funds received, source documentation includes adequate accounting of actual costs and recoveries incurred.

The SUBRECIPIENT shall also comply with the Federal Funding Accountability and Transparency Act (FFATA) and related OMB Guidance consistent with Public Law 109-282 as amended by section 6202(a) of Public Law 110-252 (see 31 U.S.C. 6101 note) and complete the FFATA Form located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> and return to the DEPARTMENT; which is incorporated by reference and made a part of this Agreement.

Quarterly Reports: The SUBRECIPIENT is required to submit to the DEPARTMENT a quarterly report indicating the status of all their large projects. The status shall identify the costs incurred to date, the percentage of work completed, the anticipated completion date of the project and whether cost under runs or over runs are expected. In addition, the SUBRECIPIENT should note in the comment field any challenges or issues associated with the project. Failure to submit a complete quarterly report within 15 days following the end of the quarter will result in suspension of all payments to the SUBRECIPIENT until a complete quarterly report is received by the DEPARTMENT. The quarterly report will serve as the basis for any FEMA Office of Chief Financial Officer (OCFO) funds reduction.

6. **TIME EXTENSIONS**

A time extension request is required to be forwarded to the DEPARTMENT by the SUBRECIPIENT for a project prior to the expiration of the approved completion date. If the project is approved and funded after the statutory approval time period for completion, then a time extension request must be submitted to the DEPARTMENT within fifteen days of receipt of the funding package.

In accordance with 44CFR206.204, the DEPARTMENT reserves the right, in its sole discretion, to consider and approve a time extension request after expiration of the approved completion date and within the DEPARTMENT's statutory extension authority. Requests for time extensions beyond the DEPARTMENT's authority will be considered and approved by FEMA, at their sole discretion.

All determinations made regarding time extension requests will be based on a case by case evaluation of specific factual circumstances.

A time extension request must be in writing and identify the Project Worksheet number, the reason the project has not been completed within the prior approved completion period, the reason the time extension request was not submitted prior to the statutory approval time period (if applicable), a current status of the completion of the work, a detailed timeline for completion of the remaining elements, and an anticipated completion date for the completion of the remaining work. Failure to submit a time extension request in a timely manner may result in denial of the time extension request, and loss of funding for the related project.

7. PROCUREMENT

The SUBRECIPIENT shall comply with all procurement requirements of 2 CFR Part 200.318 through 200.326 and as specified in the General Terms and Conditions, Exhibit A.11.

8. SUBRECIPIENT MONITORING:

- a. The DEPARTMENT will monitor the activities of the SUBRECIPIENT from award to closeout. The goal of the DEPARTMENT's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with this Agreement, federal and state audit requirements, federal grant guidance, and applicable federal and state financial regulations, as well as 2 CFR Part 200 Subpart F.
- b. To document compliance with 2 CFR Part 200 Subpart F requirements, the SUBRECIPIENT shall complete and return to the DEPARTMENT 2 CFR Part 200 Subpart F Audit Certification Form" located at <http://mil.wa.gov/emergency-management-division/grants/requiredgrantforms> with the signed Agreement and each fiscal year thereafter until the Agreement is closed, which is incorporated by reference and made a part of this Agreement.
- c. Monitoring activities may include, but are not limited to:
 - i. review of financial and performance reports;
 - ii. monitoring and documenting the completion of Agreement deliverables;
 - iii. documentation of phone calls, meetings, e-mails, and correspondence;
 - iv. review of reimbursement requests and supporting documentation to ensure eligibility and consistency with Agreement work plan, budget, and federal requirements;
 - v. observation and documentation of Agreement related activities;
 - vi. on-site visits to review equipment records and inventories, to verify source documentation for reimbursement requests and performance reports, and to verify completion of deliverables.
- d. The SUBRECIPIENT is required to meet or exceed the monitoring activities, as outlined above and in 2 CFR Part 200 Subpart F, for any non-federal entity to which the SUBRECIPIENT makes a subaward as a pass-through entity under this Agreement.
- e. Compliance will be monitored throughout the performance period to assess risk. Concerns will be addressed through a Corrective Action Plan. If the SUBRECIPIENT fails to comply with federal or state statutes or regulations, or the terms and conditions of this Agreement, the DEPARTMENT may impose any additional subaward conditions as described in 2 CFR 200.207. If the DEPARTMENT determines that noncompliance cannot be remedied by imposing additional conditions, it may take one or more of the following actions:
 - i. Temporarily withhold cash payments pending correction of the deficiency by the SUBRECIPIENT.
 - ii. Wholly or partially suspend or terminate the subaward to the SUBRECIPIENT.
 - iii. Initiate suspension or debarment proceedings under 2 CFR 180 or recommend such a proceeding be initiated by the federal awarding agency.
 - iv. Withhold further federal awards for the project or program.
 - v. Take any other remedies that may be legally available.

- f. The DEPARTMENT agrees to:
- i. Provide technical assistance during all monitoring or evaluation activities. The DEPARTMENT will coordinate and schedule the meetings necessary to conduct and complete all monitoring and evaluation activities.
 - ii. Develop the SUBRECIPIENT's project worksheet(s) (PW) and supporting attachments with FEMA and the SUBRECIPIENT's assistance based upon the costs determined to be eligible.
 - iii. Submit the SUBRECIPIENT's funding package to FEMA.
 - iv. Notify the SUBRECIPIENT when funding approval is received, issue payment per the process described above see Article II, A.4 – Payments, and provide the SUBRECIPIENT with a copy of the approved project worksheet.
 - v. Work with the SUBRECIPIENT to resolve any issues identified during the monitoring process.
 - vi. Review and respond appropriately to the SUBRECIPIENT's requests for time extensions and changes.

9. LIMITED ENGLISH PROFICIENCY (CIVIL RIGHTS ACT OF 1964 TITLE VI)

All subrecipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that subrecipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. Providing meaningful access for persons with LEP may entail providing language assistance services, including oral interpretation and written translation. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000), requires federal agencies to issue guidance to recipients, assisting such organizations and entities in understanding their language access obligations. DHS published the required recipient guidance in April 2011, DHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 76 Fed. Reg. 21755-21768, (April 18, 2011). The Guidance provides helpful information such as how a recipient can determine the extent of its obligation to provide language services; selecting language services; and elements of an effective plan on language assistance for LEP persons. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

B. FEMA STATE AGREEMENT TERMS AND CONDITIONS

As a subrecipient of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS/FEMA terms and conditions of the Presidential Declaration and the FEMA State Agreement, which are incorporated in and made a part of this Agreement in Appendix F of the Washington State Public Assistance Applicant Manual dated March 4, 2019 (**Attachment 4**).

**Washington State Military Department
GENERAL TERMS AND CONDITIONS
Department of Homeland Security (DHS)/
Federal Emergency Management Agency (FEMA)
Grants**

A.1 DEFINITIONS

As used throughout this Agreement, the following terms will have the same meaning as defined in 2 CFR 200 Subpart A (which is incorporated herein by reference), except as otherwise set forth below:

- a. **"DEPARTMENT"** means the Washington State Military Department, as a state agency, any division, section, office, unit or other entity of the DEPARTMENT, or any of the officers or other officials lawfully representing that DEPARTMENT. The DEPARTMENT is a recipient of a federal award directly from a federal awarding agency and is pass-through entity making a subaward to a subrecipient under this Agreement.
- b. **"SUBRECIPIENT"** when capitalized is primarily used throughout this Agreement in reference to the non-federal entity identified on the Face Sheet of this Agreement that has received a subaward from the DEPARTMENT. However, the definition of "subrecipient" is the same as in 2 CFR 200.93 for all other purposes. **"Monitoring Activities"** means all administrative, construction, financial, or other review activities that are conducted to ensure compliance with all state and federal laws, rules, regulations, authorities and policies.
- c. **"Project"** means those actions funded through the Public Assistance Program and described in approved Project Worksheets. Projects may include one or more of the following: reimbursement of costs for emergency response, debris removal and/or repair or restoration of damaged public facilities. A project may be a small, large, improved, or alternate project.
- d. **"Investment Justification"** means grant application investment justification submitted by the SUBRECIPIENT describing the project for which federal funding is sought and provided under this Agreement. Such grant application investment justification is hereby incorporated into this Agreement by reference.

A.2 ADVANCE PAYMENTS

The DEPARTMENT shall make no payments in advance or in anticipation of goods or services to be provided under this Agreement, except as required under 2 CFR 200.305 for federal grants. SUBRECIPIENT shall not invoice the DEPARTMENT in advance of delivery and invoicing of such goods or services, except as authorized under 2 CFR 200.305.

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C §5121-5207), Advance Payment process, FEMA will process a SUBRECIPIENT project worksheet which is provided to the state of Washington for direct disbursement to SUBRECIPIENT.

Pursuant to these provisions and RCW 43.88.160(5), these grant funds are not subject to the advance payments prohibition and will be disbursed immediately to SUBRECIPIENT as grants authorized by law with subsequent authentication and certification of expenditures.

A.3 AMENDMENTS AND MODIFICATIONS

The SUBRECIPIENT or the DEPARTMENT may request, in writing, an amendment or modification of this Agreement. Modifications may be requested for Grant Agreement end date, budget or scope change. However, such amendment or modification shall not be binding, take effect or be incorporated herein until made in writing and signed by the authorized representatives of the DEPARTMENT and the SUBRECIPIENT. No other understandings or agreements, written or oral, shall be binding on the parties.

A.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, 42 U.S.C. 12101 ET SEQ. AND ITS IMPLEMENTING REGULATIONS ALSO REFERRED TO AS THE "ADA" 28 CFR Part 35.

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

A.5 APPLICATION REPRESENTATION-MISREPRESENTATION, INACCURACY AND BREACH

The DEPARTMENT relies upon the SUBRECIPIENT's application in making its determinations as to eligibility for, selection for, and scope of funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

A.6 ASSURANCES

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations. In addition, as a SUBRECIPIENT of FEMA funding, the SUBRECIPIENT shall comply with all applicable DHS terms and conditions as specified in Appendix F of the Washington State Public Assistance Applicant Manual dated March 4, 2019 incorporated in this Agreement as **Attachment 4**.

A.7 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, OR INELIGIBILITY

As federal funds are a basis for this Agreement, the SUBRECIPIENT certifies that the SUBRECIPIENT is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency.

The SUBRECIPIENT shall complete, sign, and return a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form located at <http://mil.wa.gov/emergency-management-division/requiredgrantforms>. Any such form completed by the SUBRECIPIENT for this Agreement shall be incorporated into this Agreement by reference.

Further, the SUBRECIPIENT agrees to comply with all applicable federal regulations concerning the federal debarment and suspension system, including 2 CFR Part 180. The SUBRECIPIENT certifies that it will ensure that potential sub-contractors or sub-recipients or any of their principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in "covered transactions" by any federal department or agency. "Covered transactions" include procurement contracts for goods or services awarded under a non-procurement transaction (e.g. grant or cooperative agreement) that are expected to equal or exceed \$25,000, and sub-awards to sub-recipients for any amount. With respect to covered transactions, the SUBRECIPIENT may comply with this provision by obtaining a certification statement from the potential sub-contractor or sub-recipient or by checking the System for Award Management (<http://www.sam.gov>) maintained by the federal government. The SUBRECIPIENT also agrees not to enter into any arrangements or contracts with any party on the Washington State Department of Labor and Industries' "Debarred Contractor List" (<http://www.lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors/>).

A.8 CERTIFICATION REGARDING RESTRICTIONS ON LOBBYING

As required by 44 CFR Part 18, the SUBRECIPIENT hereby certifies that to the best of their knowledge and belief: (1) no federally appropriated funds have been paid or will be paid by or on behalf of the SUBRECIPIENT to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an 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 any federal contract, grant, loan, or cooperative agreement; (2) that 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, grant, loan, or cooperative agreement, the SUBRECIPIENT will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; (3) and that, as applicable, the SUBRECIPIENT will require that the language of this certification be included in the award documents for all subawards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into, and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code.

A.9 COMPLIANCE WITH APPLICABLE STATUTES, RULES AND DEPARTMENT POLICIES

The SUBRECIPIENT and all its contractors shall comply with, and the DEPARTMENT is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, executive orders, OMB Circulars, and/or policies. This obligation includes, but is not limited to: nondiscrimination laws and/or policies, Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, as supplemented by Department of Labor regulations (41 CFR chapter 60); Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3); Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protection Agency regulations (40 CFR part 15); Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5); Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871, as amended), the Americans with Disabilities Act (ADA), Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Civil rights Act of 1968, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (PL 93-288, as amended), Title 44 of the Federal Regulations, 2 CFR Part 3002, Ethics in Public Service (RCW 42.52), Covenant Against Contingent Fees (48 CFR Section 52.203-5), Public Records Act (RCW 42.56), Prevailing Wages on Public Works (RCW 39.12), State Environmental Policy Act (RCW 43.21C), Shoreline Management Act of 1971 (RCW 90.58), State Building Code (RCW 19.27), Energy Related Building Standards (RCW 19.27A), Provisions in Buildings for Aged and Handicapped Persons (RCW 70.92), and safety and health regulations.

DEPARTMENT and SUBRECIPIENT agree that all activity pursuant to this Agreement will be in accordance with all the applicable current federal, state and local laws, rules and regulations.

In the event of the SUBRECIPIENT's or its contractor's noncompliance or refusal to comply with any applicable law, regulation, executive order, OMB Circular or policy, the DEPARTMENT may rescind, cancel, or terminate the Agreement in whole or in part in its sole discretion.

The SUBRECIPIENT is responsible for all costs or liability arising from its failure to comply with applicable laws, regulations, executive orders, OMB Circulars or policies.

A.10 CONFLICT OF INTEREST

No officer or employee of the DEPARTMENT; no member, officer, or employee of the SUBRECIPIENT or its designees or agents; no member of the governing body of the jurisdiction in which the project is undertaken or located; and no other official of such the SUBRECIPIENT who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds thereof, for work to be performed in connection with the project assisted under this Agreement.

The SUBRECIPIENT shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to this provision.

A.11 CONTRACTING & PROCUREMENT

a. The SUBRECIPIENT shall use a competitive procurement process in the procurement and award of any contracts with contractors or sub-contractors that are entered into under the original contract award. The procurement process followed shall be in accordance with 2 CFR Part 200.318 General procurement standards through 200.326 Contract Provisions.

As required by Appendix II to 2 CFR Part 200, all contracts entered into by the SUBRECIPIENT under this Agreement must include the following provisions, as applicable:

1) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

2) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

The procurement process followed shall be in accordance with 2 CFR Parts 200 and 3002, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, as applicable to the SUB-GRANTEE. All subcontracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10) Procurement of recovered materials – As required by 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11) Notice of Federal awarding agency requirements and regulations pertaining to reporting.

12) Federal awarding agency requirements and regulations pertaining to copyrights and rights in data.

13) Access by the DEPARTMENT, the SUBRECIPIENT, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

14) Retention of all required records for six years after the SUBRECIPIENT has made final payments and all other pending matters are closed.

15) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

b. The DEPARTMENT reserves the right to review the SUBRECIPIENT procurement plans and documents, and require the SUBRECIPIENT to make changes to bring its plans and documents into compliance with the requirements of 2 CFR Part 200.318 through 2 CFR 200.326. The SUBRECIPIENT must ensure that its procurement process requires contractors and subcontractors to provide adequate documentation with sufficient detail to support the costs of the project and to allow both the SUBRECIPIENT and DEPARTMENT to make a determination on eligibility of project costs.

c. All sub-contracting agreements entered into pursuant to this Agreement shall incorporate this Agreement by reference.

A.12 DISCLOSURE

The use or disclosure by any party of any information concerning the DEPARTMENT for any purpose not directly connected with the administration of the DEPARTMENT's or the SUBRECIPIENT's responsibilities with respect to services provided under this Agreement is prohibited except by prior written consent of the DEPARTMENT or as required to comply with the state Public Records Act, other law or court order.

A.13 DISPUTES

Except as otherwise provided in this contract, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute resolution panel to resolve the dispute. A request for a dispute resolution board shall be in writing, state the disputed issues, state the relative positions of the parties, and be sent to all parties. The panel shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the SUBRECIPIENT and a third party mutually agreed upon by both parties. The panel shall, by majority vote, resolve the dispute. Each party shall bear the cost for its panel member and its attorney fees and costs, and share equally the cost of the third panel member.

A.14 DUPLICATION OF BENEFITS

The SUBRECIPIENT agrees that the funds for which federal or state assistance is requested does not, or will not, duplicate benefits or funds received for the same loss from any other source. The SUBRECIPIENT will pursue, and require sub-recipients to pursue, full payment of eligible insurance benefits for properties or any other losses covered in a project under this Agreement. The SUBRECIPIENT will repay the DEPARTMENT any funds provided under this grant agreement that are duplicated by other benefits, funds, or insurance proceeds. The SUBRECIPIENT will also seek recovery against any party or parties whose negligence or other intentional or tortious conduct may have caused or contributed to the expenditures for which these grants funds are provided. The SUBRECIPIENT will repay the DEPARTMENT any funds recovered by settlement, judgment or other court order in an action to recover funds provided by this grant. The SUBRECIPIENT shall notify the DEPARTMENT as early as possible and work in conjunction with the DEPARTMENT and FEMA to ensure appropriate apportionment of any duplicated or recovered payment.

A.15 HAZARDOUS SUBSTANCES

The SUBRECIPIENT shall inspect and investigate the proposed development/construction site for the presence of hazardous substances. The SUBRECIPIENT shall fully disclose to the DEPARTMENT the results of its inspection and investigation and all other knowledge the SUBRECIPIENT has as to the presence of any hazardous substances at the proposed development/construction project site. The SUBRECIPIENT will be responsible for any associated clean-up costs. "Hazardous Substance" is defined in RCW 70.105D.020 (10).

A.16 LEGAL RELATIONS

It is understood and agreed that this Agreement is solely for the benefit of the parties to the Agreement and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.

To the extent allowed by law, the SUBRECIPIENT, its successors or assigns, will protect, save and hold harmless the DEPARTMENT, the State of Washington, and the United States Government and their authorized agents and employees, from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of the SUBRECIPIENT, its sub-contractors, assigns, agents, contractors, consultants, licensees, invitees, employees or any person whomsoever arising out of or in connection with any acts or activities authorized by this Agreement.

To the extent allowed by law, the SUBRECIPIENT further agrees to defend the DEPARTMENT and the State of Washington and their authorized agents and employees in any litigation; including payment of any costs or attorneys' fees for any claims or action commenced thereon arising out of or in connection with acts or activities authorized by this Agreement.

This obligation shall not include such claims, costs, damages or expenses which may be caused by the sole negligence of the DEPARTMENT; provided, that if the claims or damages are caused by or result from the concurrent negligence of (1) the DEPARTMENT, and (2) the SUBRECIPIENT, its agents, or

employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence¹¹⁸ of the SUBRECIPIENT, or SUBRECIPIENT's agents or employees.

Insofar as the funding source, the DEPARTMENT of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA), is an agency of the federal government, the following shall apply:

44 CFR 206.9 Non-liability. The federal government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Federal government in carrying out the provisions of the Stafford Act.

A.17 LIMITATION OF AUTHORITY – AUTHORIZED SIGNATURE

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement. Only the DEPARTMENT's Authorized Signature and the Authorized Signature of the assigned SUBRECIPIENT Agent or Alternate for the SUBRECIPIENT Agent, formally designated in writing, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by both parties Authorized Signature representatives. Further, only the Authorized Signature representative or Alternate for the SUBRECIPIENT shall have authority to sign reimbursement requests, certification of project completion, time extension requests, amendment and modification requests, requests for changes to project status, and other requests, certifications and documents authorized by or required under this Agreement.

A.18 LOSS OR REDUCTION OF FUNDING

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion or end date, the DEPARTMENT may unilaterally reduce the scope of work and budget or unilaterally terminate or suspend all or part of the Agreement as a "Termination for Cause" without providing the SUBRECIPIENT an opportunity to cure. Alternatively, the parties may renegotiate the terms of this Agreement under "Amendments and Modifications" to comply with new funding limitations and conditions, although the DEPARTMENT has no obligation to do so.

A.19 NONASSIGNABILITY

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the SUBRECIPIENT.

A.20 NONDISCRIMINATION

The SUBRECIPIENT shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, religion, national origin, marital status, honorably discharged veteran or military status, or disability (physical, mental, or sensory) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement.

A.21 NOTICES

The SUBRECIPIENT shall comply with all public notices or notices to individuals required by applicable local, state and federal laws and shall maintain a record of this compliance.

A.22 OCCUPATIONAL SAFETY/HEALTH ACT and WASHINGTON INDUSTRIAL SAFETY/HEALTH ACT (OSHA/WISHA)

The SUBRECIPIENT represents and warrants that its work place does now or will meet all applicable federal and state safety and health regulations that are in effect during the SUBRECIPIENT's performance under this Agreement. To the extent allowed by law, the SUBRECIPIENT further agrees to indemnify and hold harmless the DEPARTMENT and its employees and agents from all liability, damages and costs of any nature, including but not limited to, costs of suits and attorneys' fees assessed against the DEPARTMENT, as a result of the failure of the SUBRECIPIENT to so comply.

A.23 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The DEPARTMENT makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds does not and will not acquire any ownership interest or title to such property of the SUBRECIPIENT.

The SUBRECIPIENT shall assume all liabilities arising from the ownership and operation of the project and agrees to hold the DEPARTMENT and the State of Washington and the United States government harmless from any and all causes of action arising from the ownership and operation of the project.¹¹⁹

A.24 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

A.25 PRIVACY

Personal information collected, used or acquired in connection with this agreement shall be used solely for the purposes of this agreement. SUBRECIPIENT and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law or court order. SUBRECIPIENT agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the SUBRECIPIENT through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The SUBRECIPIENT agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the SUBRECIPIENT's unauthorized use, loss or disclosure of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

A.26 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

A.27 PUBLICITY

The SUBRECIPIENT agrees to submit to the DEPARTMENT prior to issuance all advertising and publicity matters relating to this Agreement wherein the DEPARTMENT's name is mentioned or language used from which the connection of the DEPARTMENT's name may, in the DEPARTMENT's judgment, be inferred or implied. The SUBRECIPIENT agrees not to publish or use such advertising and publicity matters without the prior written consent of the DEPARTMENT. The SUBRECIPIENT may copyright original work it develops in the course of or under this Agreement; however, pursuant to 2 CFR Part 200.315, FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for government purposes.

The SUBRECIPIENT shall include language which acknowledges the funding contribution of the DEPARTMENT and FEMA to this project in any release or other publication developed or modified for, or referring to, the project.

Publication resulting from work performed under this Agreement shall include an acknowledgement of the DEPARTMENT and FEMA's financial support, by CFDA number, and a statement that the publication does not constitute an endorsement by FEMA or reflect FEMA's views.

A.28 RECAPTURE PROVISION

In the event the SUBRECIPIENT fails to expend funds under this Agreement in accordance with applicable federal, state, and local laws, regulations, and/or the provisions of the Agreement, the DEPARTMENT reserves the right to recapture funds in an amount equivalent to the extent of noncompliance. Such right of recapture shall exist for the life of the project following Agreement

termination. Repayment by the SUBRECIPIENT of funds under this recapture provision shall occur within 30 days of demand. In the event the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs and expenses thereof, including attorney fees.

A.29 RECORDS AND REPORTS

- a. The SUBRECIPIENT agrees to maintain all books, records, documents, receipts, invoices and all other electronic or written records necessary to sufficiently and properly reflect the SUBRECIPIENT's contracts, subawards, grant administration, and payments, including all direct and indirect charges, and expenditures in the performance of this Agreement (the "records").
- b. The SUBRECIPIENT's records related to this Agreement and the projects funded may be inspected and audited by the DEPARTMENT or its designee, by the Office of the State Auditor, DHS, FEMA or their designees, by the Comptroller General of the United States or its designees, or by other state or federal officials authorized by law, for the purposes of determining compliance by the SUBRECIPIENT with the terms of this Agreement and to determine the appropriate level of funding to be paid under the Agreement.
- c. The records shall be made available by the SUBRECIPIENT for such inspection and audit, together with suitable space for such purpose, at any and all times during the SUBRECIPIENT's normal working day.
- d. The SUBRECIPIENT shall retain and allow access to all records related to this Agreement and the funded project(s) for a period of at least six (6) years following final payment and closure of the grant under this Agreement. Despite the minimum federal retention requirement of three (3) years, the more stringent State requirement of six (6) year must be followed.

A.30 RECOVERY OF FUNDS

Any person who intentionally causes a condition for which funds are provided under this Agreement shall be liable for the costs incurred by the state and federal governments in responding to such disaster. In addition to its own duty to recover duplicated funds or funds expended due to the intentional or negligent actions of others. SUBRECIPIENT will cooperate in a reasonable manner with the DEPARTMENT and the United States in efforts to recover expenditures under this Grant Agreement.

A.31 RESPONSIBILITY FOR PROJECT/STATEMENT OF WORK/WORK PLAN

While the DEPARTMENT undertakes to assist the SUBRECIPIENT with the project/statement of work/work plan (project) by providing grant funds pursuant to this Agreement, the project itself remains the sole responsibility of the SUBRECIPIENT. The DEPARTMENT undertakes no responsibility to the SUBRECIPIENT, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the design, development, construction, implementation, operation and maintenance of the project, as these phrases are applicable to this project, is solely that of the SUBRECIPIENT, as is responsibility for any claim or suit of any nature by any third party related in any way to the project.

Prior to the start of any construction activity, the SUBRECIPIENT shall ensure that all applicable Federal, State, and local permits and clearances are obtained, including but not limited to FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders.

The SUBRECIPIENT shall defend, at its own cost, any and all claims or suits at law or in equity, which may be brought against the SUBRECIPIENT in connection with the project. The SUBRECIPIENT shall not look to the DEPARTMENT, or to any state or federal agency, or to any of their employees or agents, for any performance, assistance, or any payment or indemnity, including but not limited to cost of defense and/or attorneys' fees, in connection with any claim or lawsuit brought by any third party related to any design, development, construction, implementation, operation and/or maintenance of a project.

A.32 SEVERABILITY

If any court of rightful jurisdiction holds any provision or condition under this Agreement or its application to any person or circumstances invalid, this invalidity does not affect other provisions, terms or conditions

of the Agreement, which can be given effect without the invalid provision. To this end, the terms and conditions of this Agreement are declared severable. ¹²¹

A.33 SINGLE AUDIT ACT REQUIREMENTS (including all AMENDMENTS)

Non-federal entities as subrecipients that expend \$750,000 or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F. Non-federal entities that spend less than \$750,000 a year in federal awards are exempt from federal audit requirements for that year, except as noted in 2 CFR Part 200 Subpart F. As defined in 2 CFR Part 200, the term "non-federal entity" means a State, local government, Indian Tribe, institution of higher education, or non-profit organization that carries out a federal award as a recipient or subrecipient.

SUBRECIPIENTS that are required to have an audit must ensure the audit is performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the United States Comptroller General and the OMB Compliance Supplement. The SUBRECIPIENT has the responsibility of notifying its auditor and requesting an audit in compliance with 2 CFR Part 200 Subpart F, to include the Washington State Auditor's Office, a federal auditor, or a public accountant performing work using GAGAS, as appropriate. Costs of the audit may be an allowable grant expenditure as authorized by 2 CFR Part 200 Subpart F.

The SUBRECIPIENT shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subrecipients or contractors also maintain auditable records.

The SUBRECIPIENT is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report.

The SUBRECIPIENT must respond to DEPARTMENT requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The DEPARTMENT reserves the right to recover from the SUBRECIPIENT all disallowed costs resulting from the audit.

Once the single audit has been completed and includes an audit findings, the SUBRECIPIENT must send a full copy of the audit to the DEPARTMENT and its corrective action plan no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to:

**Contracts Office
Washington Military Department
Finance Division, Building #1 TA-20
Camp Murray, WA 98430-5032**

If Contractor claims it is exempt from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT must send a letter identifying this Agreement and explaining the criteria for exemption no later than nine (9) months after the end of the SUBRECIPIENT's fiscal year(s) to the address listed above.

The DEPARTMENT retains the sole discretion to determine whether a valid claim for an exemption from the audit requirements of this provision has been established.

The SUBRECIPIENT shall include the above audit requirements in any subawards.

Conducting a single or program-specific audit in compliance with 2 CFR Part 200 Subpart F is a material requirement of this Agreement. In the absence of a valid claim of exemption from the audit requirements of 2 CFR Part 200 Subpart F, the SUBRECIPIENT's failure to comply with said audit requirements may result in one or more of the following actions in the DEPARTMENT's sole discretion: a percentage of federal awards being withheld until the audit is completed in accordance with 2 CFR Part 200 Subpart F; the withholding or disallowing of overhead costs; the suspension of federal awards until the audit is conducted and submitted; or termination of the federal award.

A.34 SUBRECIPIENT NOT EMPLOYEE

The parties intend that an independent contractor relationship will be created by this Agreement. The SUBRECIPIENT, and/or employees or agents performing under this Agreement are not employees or

agents of the DEPARTMENT in any manner whatsoever. The SUBRECIPIENT will not be presented as nor claim to be an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, nor will the SUBRECIPIENT make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DEPARTMENT or of the State of Washington by reason of this Agreement, including, but not limited to, Workmen's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

It is understood that if the SUBRECIPIENT is another state department, state agency, state university, state college, state community college, state board, or state commission, that the officers and employees are employed by the State of Washington in their own right and not by reason of this Agreement.

A.35 TAXES, FEES AND LICENSES

Unless otherwise provided in this Agreement, the SUBRECIPIENT shall be responsible for, pay and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the SUBRECIPIENT or its staff required by statute or regulation that are applicable to Agreement performance.

A.36 TERMINATION FOR CONVENIENCE

Notwithstanding any provisions of this Agreement, the SUBRECIPIENT may terminate this Agreement by providing written notice of such termination to the DEPARTMENTs Key Personnel identified in the Agreement, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this Agreement, the DEPARTMENT, in its sole discretion and in the best interests of the State of Washington, may terminate this Agreement in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing to the SUBRECIPIENT. Upon notice of termination for convenience, the DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds. In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

A.37 TERMINATION OR SUSPENSION FOR CAUSE

In the event the DEPARTMENT, in its sole discretion, determines the SUBRECIPIENT has failed to fulfill in a timely and proper manner its obligations under this Agreement, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the SUBRECIPIENT unable to perform any aspect of the Agreement, or has violated any of the covenants, agreements or stipulations of this Agreement, the DEPARTMENT has the right to immediately suspend or terminate this Agreement in whole or in part.

The DEPARTMENT may notify the SUBRECIPIENT in writing of the need to take corrective action and provide a period of time in which to cure. The DEPARTMENT is not required to allow the SUBGRANTEE an opportunity to cure if it is not feasible as determined solely within the DEPARTMENT's discretion. Any time allowed for cure shall not diminish or eliminate the SUBRECIPIENT's liability for damages or otherwise affect any other remedies available to the DEPARTMENT. If the DEPARTMENT allows the SUBRECIPIENT an opportunity to cure, the DEPARTMENT shall notify the SUBRECIPIENT in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the DEPARTMENT, or if such corrective action is deemed by the DEPARTMENT to be insufficient, the Agreement may be terminated in whole or in part.

The DEPARTMENT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the SUBRECIPIENT from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the SUBRECIPIENT, if allowed, or pending a decision by the DEPARTMENT to terminate the Agreement in whole or in part.

In the event of termination, the SUBRECIPIENT shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the SUBRECIPIENT: (1) was not in default or material breach, or (2) failure to perform was outside of the SUBRECIPIENT's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".¹²³

A.38 TERMINATION PROCEDURES

In addition to the procedures set forth below, if the DEPARTMENT terminates this Agreement, the SUBRECIPIENT shall follow any procedures specified in the termination notice. Upon termination of this Agreement and in addition to any other rights provided in this Agreement, the DEPARTMENT may require the SUBRECIPIENT to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

If the termination is for convenience, the DEPARTMENT shall pay to the SUBRECIPIENT the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the DEPARTMENT prior to the effective date of Agreement termination, and the amount agreed upon by the SUBRECIPIENT and the DEPARTMENT for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the DEPARTMENT, (iii) other work, services and/or equipment or supplies which are accepted by the DEPARTMENT, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this Agreement. If the termination is for cause, the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. The DEPARTMENT shall have no other obligation to the SUBRECIPIENT for termination. The DEPARTMENT may withhold from any amounts due the SUBRECIPIENT such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT in writing, the SUBRECIPIENT shall:

- a. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- b. Place no further orders or sub-contracts for materials, services, supplies, equipment and/or facilities in relation to this Agreement except as may be necessary for completion of such portion of the work under the Agreement as is not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, title, and interest of the SUBRECIPIENT under the orders and sub-contracts so terminated, in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and contracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts, with the approval or ratification of the DEPARTMENT to the extent the DEPARTMENT may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver in the manner, at the times, and to the extent directed by the DEPARTMENT any property which, if the Agreement had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work as shall not have been terminated by the DEPARTMENT in compliance with all contractual requirements; and
- g. Take such action as may be necessary, or as the DEPARTMENT may require, for the protection and preservation of the property related to this Agreement which is in the possession of the SUBRECIPIENT and in which the DEPARTMENT has or may acquire an interest.

A.39 UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)

The SUBRECIPIENT shall comply with 2 CFR §200.321 and will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible and will take all necessary affirmative steps to utilize business firms that are certified as minority-owned and/or women-owned in carrying out the purposes of this Agreement. The following steps are

required by the subrecipient if any contracts with contractors or sub-contractors are entered into under the original contract award:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

The SUBRECIPIENT may also set utilization standards, based upon local conditions or may utilize the State of Washington MWBE goals, as identified in. WAC 326-30-041.

A.40 VENUE

This Agreement shall be construed and enforced in accordance with, and the validity and performance shall be governed by the laws of the State of Washington. Venue of any suit between the parties arising out of this Agreement shall be the Superior Court of Thurston County, Washington. The SUBRECIPIENT, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

A.41 WAIVERS

No conditions or provisions of this Agreement can be waived unless approved in advance by the DEPARTMENT in writing. The DEPARTMENT's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

Index #9

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 3-2-2020

AGENDA ITEM:	
Member Placement Contract Between Washington State Employment Security Department, Washington Service Corps and the City of Marysville	
PREPARED BY:	DIRECTOR APPROVAL:
Diana Rose	
DEPARTMENT:	
Executive	
ATTACHMENTS:	
Copy of proposed SAMPLE Member Placement Contract	
BUDGET CODE:	AMOUNT:
00100110.51100	\$10,000.00
SUMMARY: This member placement contract will allow us to have a full-time federally funded position to assist the city with outreach efforts in our Limited English Proficiency (LEP) populations.	

RECOMMENDED ACTION:

Approve the Member Placement Agreement and authorize the Mayor to sign

MEMBER PLACEMENT CONTRACT BETWEEN
WASHINGTON STATE
EMPLOYMENT SECURITY DEPARTMENT
WASHINGTON SERVICE CORPS

WSC ONLY: 127 Contract #: _____ (As assigned by ESD)
--

AND

[NAME OF SPONSORING ORGANIZATION]

AmeriCorps Member Placement PY 2020-21

1. INTRODUCTION

This Contract, pursuant to 45 CFR Chapter XXV (§§2500-2550), and to all applicable federal, state or local laws, rules and regulations, is made and entered into by and between the Washington State Employment Security Department's Washington Service Corps, hereinafter called "WSC", located at 212 Maple Park Avenue SE, Olympia, Washington 98501, and

_____ ,
 hereinafter called "Sponsoring Organization" at
 _____ .

In consideration of the terms and conditions contained herein, including attached exhibits, the parties mutually agree as follows:

2. PURPOSE

It is the purpose of this Contract to establish terms and conditions which the Sponsoring Organization and WSC must follow to meet the requirements of the AmeriCorps Program and the Corporation for National and Community Service grant programs.

Project Title(s):			
Program Participation Fee Type	Fee per Member	Members Awarded	Total Fee
	\$		\$
	\$		\$
Grand Total			\$

3. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below.

- A. "CNCS" means the Corporation for National & Community Service, the national oversight organization for the CNCS Grant Program which funds the AmeriCorps program.
- B. "AMERICORPS MEMBER" or "MEMBER" means an individual who has been selected to serve in an approved national service position under the AmeriCorps program.
- C. "MINORITY OR WOMEN OWNED BUSINESS ENTERPRISES," shall mean businesses organized for profit, performing a commercially useful function, which are legitimately owned and controlled by one or more minority individuals or women and certified by the Office of Minority and Women's Business Enterprises. The minority owners must be United States citizens or lawful permanent residents.
- D. "SPONSORING ORGANIZATION" shall mean that agency, firm, organization, individual or other entity performing services under this Contract. SPONSORING ORGANIZATION includes those accepting member placements as a sub-grantee per the CNCS Terms and Conditions. It shall include any Member service site subcontracted under oral or written agreement with the SPONSORING ORGANIZATION.
- E. "SUB-SERVICE SITE" shall mean that agency, firm, organization, individual or other entity subcontracted under oral or written agreement with SPONSORING ORGANIZATION performing all or part of the services as required by this Contract.
- F. "WASHINGTON SERVICE CORPS" or "WSC" means the sub-agency within ESD designated as the direct recipient of grant funds from the CNCS grant program to implement an AmeriCorps program in the State of Washington.

4. CONTRACT MANAGEMENT

WSC's Contract Manager, or his/her successor, shall provide the Sponsoring Organization the assistance and guidance necessary for the performance of this Contract. WSC's Contract Manager shall be responsible for the review and acceptance of the Sponsoring Organization's performance, deliverables, invoices and expenses, and accepting any reports from the Sponsoring Organization.

WSC Contract Manager responsible for management of this Contract is:

Name: Kari Wood
 Title: Contracts & Systems Specialist
 Phone Number: (888) 713-6080 FAX: _____
 Email: kawood@esd.wa.gov

Sponsoring Organization staff member responsible for management of this Contract is:

Name: _____
 Title: _____
 Phone Number: _____ FAX: _____
 Email: _____

5. STATEMENT OF WORK

The Sponsoring Organization shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in the Statement of Work, attached and incorporated as Exhibit A.

Failure to comply with the requirements within Exhibit A, Statement of Work, may result in termination of this Contract and removal of the AmeriCorps Member(s) from the site, see Sections 38 and 39.

6. TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the Terms and Conditions of this Contract, including the Statement of Work.

The federal funding source, Corporation for National and Community Service (CNCS), designates that all those accepting member positions as a sub-grantee (Sponsoring Organizations) will understand fully and comply with and include in all awards and contracting or agreement processes the following Terms and Conditions, Assurances and Certifications as part of the federal granting process:

- CNCS Assurances and Certifications, attached and incorporated herein as Exhibit B.
- [2020 Terms and Conditions for AmeriCorps State and National Grants](#), incorporated by reference.
- [2020 AmeriCorps General Grant and Cooperative Agreement Terms and Conditions](#), incorporated by reference.

7. CONTRACT TERM

Subject to its other provisions, the contract term is September 1, 2020 to August 31, 2021 unless terminated sooner as provided herein. The member placement may begin on any date on or after September 1, 2020 that is mutually agreed upon by both parties so long as Sponsoring Organization fulfills its requirements as stated in Exhibit A no later than August 31, 2021.

8. REPORTING

The Sponsoring Organization shall comply with the requirements set forth in Section IV of the Statement of Work, Exhibit A.

9. PAYMENT

The parties have agreed that the total program participation fee payable to WSC for placing _____ AmeriCorps Member(s) in the project(s) listed above will not exceed \$ _____.

The Sponsoring Organization will not be reimbursed for any travel expenses.

10. FEES

A. Program Participation Fee

WSC shall submit an initial invoice to Sponsoring Organization for the total program participation fee. Failure of Sponsoring Organization to pay the program participation fee

within 30 days after the invoice date may result in removal of the member(s) from site and termination of this contract by WSC.

The program participation fee will not be refunded or pro-rated to the Sponsoring Organization for any Member who terminates service early. If a Member terminates early, WSC MAY allow a limited opportunity to refill the placement (depending on timing, and availability of Member placements) at no additional charge to the Sponsoring Organization, in accordance with WSC policy.

Payment for total program participation fee shall be made in accordance with the table in Section 1 of this Contract. However, if Sponsoring Organization, upon written notice to WSC, requests a reduction in the number of originally-awarded placements that remain unfilled after payment, Sponsoring Organization shall receive a full refund for the program participation fee of the unfilled placements only.

B. Administrative Fee for Non-Compliance

WSC is required to comply with federal and state law, and provide documentation to meet regulatory requirements. Failure of the Sponsoring Organization to provide the required documentation and information required under this Contract puts the program at risk and creates additional administrative costs for WSC. Therefore, WSC, at its sole discretion, reserves the right to charge a fee in the amount of \$1,000.00 to the Sponsoring Organization should it not meet its compliance requirements as outlined in this contract. Any such fee would be used to offset administrative work required by WSC to ensure the Sponsoring Organization is in compliance.

11. INSURANCE

A. Liability Insurance

The Sponsoring Organization will maintain insurance coverage at all times when performing services under this Contract via commercial insurance, self-insurance, or any other similar risk-financing alternative. Written evidence of insurance must be provided to WSC prior to the commencement of service. Insurance certificates (evidencing commercial insurance) must list Washington State Employment Security Department as an additional insured.

The Sponsoring Organization shall provide insurance coverage or its alternative, which shall be maintained in full force and effect during the term of this Contract as follows:

The minimum acceptable limits shall be as indicated below for each of the following categories:

- i. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$1 million general aggregate;
- ii. Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, with a combined single limit of not less than \$1 million per accident if the Sponsoring Organization will require a Member to operate a vehicle in performance of the Member's service.

B. Industrial Insurance

Prior to performing work under this Contract, Sponsoring Organization shall provide or purchase industrial insurance coverage for its employees, as may be required of an “employer” as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. WSC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Sponsoring Organization which might arise under the industrial insurance laws during the performance of duties and services under this Contract.

The Sponsoring Organization, unless it is a State entity, waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the State and its agencies, officials, agents or employees.

12. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, 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. 2020 Terms and Conditions for AmeriCorps State and National Grants, incorporated by reference;
- C. 2020 AmeriCorps General Grant and Cooperative Agreement Terms and Conditions, incorporated by reference;
- D. Those Terms and Conditions as contained in this basic contract instrument;
- E. The Statement of Work attached hereto as Exhibit A and incorporated herein;
- F. Request for Application or Intent to Continue, incorporated by reference;
- G. Response to Request for Application or Response to Intent to Continue, incorporated by reference; and
- H. Any other provisions of this Contract whether incorporated by reference or otherwise.

13. USE AND DISCLOSURE OF INFORMATION

The use or disclosure by any party of any information concerning a program recipient or Member for any purpose not directly connected with the administration of WSC's or the Sponsoring Organization's responsibilities, with respect to contracted services provided under this Contract, is prohibited unless required by law or by written consent of the recipient or Member, their attorney, or their legally authorized representative.

The Sponsoring Organization shall use any private and confidential information provided under this Contract solely for the purpose for which the information was disclosed. The Sponsoring Organization shall not disclose or misuse any private and confidential information under this Contract unless the disclosure is required by law. The misuse or unauthorized release of private and confidential information shall subject Sponsoring Organization, its employees or agents to a civil penalty of \$5,000 and other applicable sanctions under state (RCW 50.13.060(13) and 50.13.0.80(3) and federal law.

14. MUTUAL REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other party as follows: Such party has the requisite power and authority and the legal right to enter into this Agreement and to perform its obligations hereunder; and has taken all requisite action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder. This Agreement has been duly executed and delivered on behalf of such party, and constitutes a legal, valid, binding obligation, enforceable against such party in accordance with its terms. All necessary consents, approvals, and authorizations of all governmental authorities and other persons or entities required to be obtained by such party in connection with this Agreement have been obtained.

15. ACCESS TO RECORDS AND FACILITIES / AUDITS

The Office of the State Auditor, federal grantor agency, the Comptroller General of the United States or any of their duly authorized representatives, and any persons duly authorized by WSC shall have full access to and the right to examine and copy any or all books, records, papers, documents and other material regardless of form or type which are pertinent to the performance of this Contract, or reflect all direct and indirect costs of any nature expended in the performance of this Contract. In addition, these entities shall have the right to access, examine and inspect any site where any phase of the program is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office, or other locations of the Sponsoring Organization. The Sponsoring Organization shall maintain its records and accounts in such a way as to facilitate the audit and examination, and assure that Sub-Service Sites also maintain records that are auditable. Access shall be at all reasonable times not limited to the required retention period, but as long as records are retained, and at no additional cost to WSC.

16. ASSIGNMENT

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

17. ASSURANCES

WSC and the Sponsoring Organization agree that all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state or local laws, rules and regulations.

18. ATTORNEY FEES AND COSTS

If any litigation is brought to enforce this Contract or any litigation arises out of any Contract term, clause or provision, each party shall be responsible for its own expenses, costs and attorney fees.

19. CHANGES AND MODIFICATIONS

- A. Changes to any of the terms, conditions, or requirements of this Contract shall be at the sole discretion of WSC, and only be effective upon written issuance of a Contract Amendment signed by both parties. However, changes to point of contact information may be updated without the issuance of a Contract Amendment.

- B. Modification of this Contract may be needed when a request from the Sponsoring Organization to reduce the number of unfilled awarded placements results in an increase in the program participation placement fee. This modification shall be made upon mutual written agreement by WSC and the Sponsoring Organization.
- C. In the event none of the placements awarded in this Contract are filled by WSC's stipulated final member start date, this Contract will be considered null and void.

20. CONFLICT OF INTEREST

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

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

21. CONFORMANCE

If any provision of this Contract is in conflict with or 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.

22. DEBARMENT AND SUSPENSION

The Sponsoring Organization certifies that it is in compliance with and shall not contract with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible from participation in Federal Programs under Executive Order 12549, and "Government Wide Debarment and Suspension (Nonprocurement) and Government Wide Requirements for Drug-Free Workplace (Grants)" codified at 45 CFR part 2542.

23. DISALLOWED COSTS

At WSC's sole discretion, and to the extent permitted by law, the Sponsoring Organization is responsible for any audit exceptions or disallowed costs incurred by WSC as a result of the Sponsoring Organization's negligence, or the negligence of its Sub-Service Site(s).

24. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in non-binding mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. Nothing in this Contract shall be

construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a Dispute Resolution Board, or arbitration.

25. GOVERNING LAW

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County. All parties agree to the exclusive jurisdiction of such court and waive any right to challenge jurisdiction or venue.

26. INDEMNIFICATION

To the fullest extent permitted by law, the Sponsoring Organization shall indemnify, defend, and hold harmless the State of Washington, WSC, and all officials, agents, and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of or failure to perform this Contract. Sponsoring Organization's obligation to indemnify, defend, and hold harmless includes any claim by Sponsoring Organization's agents, employees, representatives, or any Sub-Service Site, or its employees.

In the case of negligence of both WSC and the Sponsoring Organization, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party.

27. INDEPENDENT CAPACITY

Except in cases where the Employment Security Department is the Sponsoring Organization, the Sponsoring Organization and his or her employees or agents performing under this Contract are not employees or agents of WSC. The Sponsoring Organization will not hold itself out as, nor claim to be, an officer or employee of, WSC or the Employment Security Department by reason hereof, nor will the Sponsoring Organization make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Sponsoring Organization.

28. INFORMATION TECHNOLOGY RESOURCES

The Sponsoring Organization is required to conserve and protect state resources for the benefit of the public interest. This requirement is necessary to maintain public trust, conserve public resources and protect the integrity of state information resources and systems.

The Sponsoring Organization must conform to ESD Policy and Procedure #2016, which is hereby incorporated by reference, when using ESD-provided state-owned information technology resources.

29. PROHIBITED ACTIVITIES

Activities prohibited in AmeriCorps subtitle C programs are described in 45 C.F.R 2520.65.

- A. While charging time to the AmeriCorps project, accumulating service or training hours, wearing or displaying the AmeriCorps/WSC logo, or otherwise performing activities supported by the AmeriCorps project or the Corporation, the AmeriCorps

Member(s), Sponsoring Organization staff and service site staff may not engage in the following activities:

- 1) Attempting to influence legislation;
- 2) Organizing or engaging in protests, petitions, boycotts, or strikes;
- 3) Assisting, promoting, or deterring union organizing;
- 4) Impairing existing contracts for services or collective bargaining agreements;
- 5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- 6) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- 7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- 8) Providing a direct benefit to—
 - (i) A business organized for profit;
 - (ii) A labor union;
 - (iii) A partisan political organization;
 - (iv) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - (v) An organization engaged in the religious activities described in paragraph (7) of this section, unless Corporation assistance is not used to support those religious activities;
- 9) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;
- 10) Providing abortion services or referrals for receipt of such services;
- 11) Such other activities as the Corporation may prohibit.

B. Furthermore, Member(s), Sponsoring Organization staff and service site staff may not engage in conduct in a manner that would associate their AmeriCorps project, WSC or the Corporation for National and Community Service with prohibited activities.

C. WSC prohibited activities for Members:

In addition to the prohibited activities above, AmeriCorps Members may not engage in the following activities as part of their service:

- 1) Organizing a letter-writing campaign to Congress;
- 2) Participating in activities that pose a significant safety risk to participants;
- 3) Preparing any part of a grant proposal or performing other fundraising functions to help the project achieve its program placement fee requirements, or to pay the project's general operating expenses. Additionally, members cannot write or support preparation of a grant from CNCS or any other federal agency; and
- 4) Fundraising, unless under the following circumstances:
 - it provides direct support to a specific service activity;
 - falls within the project's approved objectives;

- is not the primary activity of the project; and
- does not exceed 10% of the total hours served in their term.

AmeriCorps Members, like other private citizens, may participate in the above listed activities on their own time, at their own expense, and on their own initiative. However, the AmeriCorps/WSC logos must not be worn while doing so.

Federal funding for AmeriCorps Members is approved with the understanding that member service is directly supporting AmeriCorps objectives. Contrary circumstances could lead to removal of AmeriCorps Member(s) from the service site and termination of this Agreement.

30. RECORDS RETENTION

Sponsoring Organization shall retain all books, records, documents and other material which reflect all direct and indirect costs of any nature expended in the performance of this Contract, including participant data, for a period of six years from termination of the Contract. Records shall be retained beyond the above referenced retention period(s) if litigation or audit is begun prior to the end of the period referenced above, or if a claim is instituted prior to the end of the period referenced above involving the Contract covered by the records. In these instances, the records will be retained until the litigation, claim or audit has been finally resolved.

31. SEVERABILITY

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

32. SINGLE AUDIT ACT REQUIREMENTS

If the Sponsoring Organization is a sub-recipient of federal awards as defined by Office of Management and Budget (OMB) 2 CFR 200, the Sponsoring Organization shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers. The Sponsoring Organization shall make the Sponsoring Organization's records available for review or audit by officials of the federal awarding agency, the Comptroller General of the United States, the General Accounting Office, Employment Security Department, and the Washington State Auditor's Office. The Sponsoring Organization shall incorporate OMB 2 CFR 200 audit requirements into all contracts between the Sponsoring Organization and its Sub-Service Sites who are sub-recipients. The Sponsoring Organization shall comply with any future amendments to OMB 2 CFR 200 and any successor or replacement Circular or regulation.

If the Sponsoring Organization expends \$750,000 or more in federal awards during the Sponsoring Organization's fiscal year, the Sponsoring Organization shall procure and pay for a single or program-specific audit for that year. Upon completion of each audit, the Sponsoring Organization shall submit to the Contract Manager named in this Contract the audit report and other appropriate documentation as required in OMB 2 CFR 200.

33. SITE SECURITY

While on WSC premises, Sponsoring Organization, its agents, employees, or Sub-

Service Sites shall conform in all respects with physical, fire or other security policies or regulations.

34. SMALL, MINORITY, AND WOMEN-OWNED BUSINESS ENTERPRISES

The WSC shall provide to qualified small, minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Contract.

35. SUBCONTRACTING

The Sponsoring Organization shall not subcontract (whether oral or written) work or services contemplated under this Contract, except as provided for in the Statement of Work, without obtaining the prior written approval of WSC for the authority to enter into subcontracts. WSC retains the authority to review and approve or disapprove all subcontracts. Sponsoring Organization acknowledges that such approval for any subcontract does not relieve the Sponsoring Organization of its obligations to perform hereunder.

At WSC's request, the Sponsoring Organization will forward copies of Subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

For any proposed Sub-Service Site, the Sponsoring Organization shall:

- A. Be responsible for Sub-Service Site's compliance with the Terms and Conditions in the Contract, the Statement of Work and the Subcontract terms and conditions;
- B. Ensure that the Sub-Service Site follows WSC's reporting formats and procedures as specified by WSC.
- C. Ensure that written agreements with Sub-Service Site(s) reference the primary contract between Sponsoring Organization and WSC.

36. TAXES

It is mutually agreed and understood that all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Sponsoring Organization staff be the sole liability of the Sponsoring Organization.

37. TERMINATION, SUSPENSION AND REMEDIES

A. Termination or Suspension for Cause

In the event WSC determines the Sponsoring Organization has failed to comply with the conditions of this Contract in a timely manner, WSC has the right to suspend or terminate this Contract. Before suspending or terminating this Contract for cause, WSC may, at its sole discretion, notify the Sponsoring Organization in writing of the need to take corrective action. If corrective action is not taken, the Contract may be terminated or suspended. In the event of termination or suspension, the Sponsoring Organization shall be liable for damages as authorized by law including, but not limited to, any administrative costs.

WSC reserves the right to suspend all or part of this Contract during investigation of the alleged compliance breach pending corrective action by the Sponsoring Organization or a decision by WSC to terminate this Contract.

A termination shall be deemed to be a "Termination for Convenience" if the

investigation determines that the Sponsoring Organization: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of WSC provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

WSC reserves the right to immediately suspend all, or part of, this Contract, when it has reason to believe that fraud, abuse, malfeasance, misfeasance or nonfeasance has occurred on the part of the Sponsoring Organization under this Contract.

B. Termination for Funding Reasons

Either party may unilaterally terminate this Contract in the event that funding from federal, state or other public sources becomes no longer available to the party or is not allocated for the purpose of meeting its obligation hereunder. In the event funding is limited in any way, this Contract is subject to re-negotiation under any new funding limitations and conditions. Such action is effective upon receipt of written notification by the Sponsoring Organization. Positions noted as "DSHS-Funded" are contingent on receipt of funds for those positions from the Washington State Department of Social & Health Services.

C. Termination or Suspension for Convenience

Except as otherwise provided in this Contract, WSC may, by ten (10) days' written notice, beginning on the second day after mailing, suspend or terminate this Contract, in whole or in part. If this Contract is suspended, the Schedule shall be delayed for a period of time equal to the period of such suspension. WSC may, by ten (10) days' written notice, beginning on the second day after mailing, lift the suspension of the Contract, in whole or in part, at which time the Schedule and the parties' right and obligations shall resume to the extent that the suspension is lifted.

D. Termination for Withdrawal of Authority

In the event that WSC's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, WSC may terminate this Contract by seven (7) calendar days or other appropriate time period by written notice to Sponsoring Organization. No penalty shall accrue to WSC in the event this Section shall be exercised. This Section shall not be construed to permit WSC to terminate this Contract in order to acquire similar Services from a third party.

38. TERMINATION PROCEDURE

Upon termination of this Contract, WSC, in addition to any other rights provided in this Contract, may require the removal of Member(s) from their service site(s).

The rights and remedies of WSC provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. After receipt of a notice of termination and except as otherwise directed by WSC, the Sponsoring Organization shall:

- A. Stop work under this Contract and service provided by WSC's AmeriCorps Member(s) on the date, and to the extent specified, in the notice;

- B. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of WSC to the extent WSC may require, which approval or ratification shall be final for all purposes of this clause;
- C. Complete performance of such part of the work as shall not have been terminated by WSC; and
- D. Take such action as may be necessary, or as WSC may direct, for the protection and preservation of all performance measurement data related to the Member service which is in the possession of the Sponsoring Organization. Upon WSC's direction, Sponsoring Organization must deliver such data to WSC in the manner, at the times and to the extent directed by WSC.

39. TREATMENT OF ASSETS

- A. Any property of WSC furnished to the Sponsoring Organization shall, unless otherwise provided herein, or approved by the Program Manager in writing, be used only for the performance of this Contract.
- B. Property will be returned to WSC in like condition to that in which it was furnished to the Sponsoring Organization, normal wear and tear excepted. The Sponsoring Organization shall be responsible for any loss or damage to property of WSC in the possession of the Sponsoring Organization which results from the negligence of the Sponsoring Organization or which results from the failure on the part of the Sponsoring Organization to maintain said property in accordance with sound management practices.
- C. If any WSC property is damaged or destroyed, the Sponsoring Organization shall notify WSC and shall take all reasonable steps to protect that property from further damage.
- D. The Sponsoring Organization shall surrender to WSC all property of WSC upon completion, termination or cancellation of this Contract.
- E. All reference to the Sponsoring Organization under this clause shall include any employees, agents or Sub-Service Sites.

40. USE OF NAME PROHIBITED

The Sponsoring Organization shall not in any way contract on behalf of or in the name of WSC. Nor shall the Sponsoring Organization release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of WSC.

41. WAIVER

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

42. ELECTRONIC SIGNATURES, COUNTERPARTS, AND DELIVERY

The parties agree that this contract may be executed in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement; and that electronic signature, or e-signature, of this contract shall be the same as execution of an

original ink signature; and that E-mail, electronic, or facsimile delivery of a signed copy of this contract shall be the same as delivery of an original.

43. ALL WRITINGS CONTAINED HEREIN

This Contract sets forth in full the entire agreement of the parties in relation to the subject matter hereof. Any other agreement, representation, or understandings, verbal or otherwise, relating to the professional services of the Sponsoring Organization or otherwise dealing in any manner with the subject matter of this Contract is hereby deemed to be null and void and of no force and effect whatsoever.

By signing below, the Sponsoring Organization agrees to perform all actions and support all intentions of this Contract and all terms and conditions of the Exhibits and Attachments.

IN WITNESS WHEREOF, the parties have executed this Contract.

Washington State
Employment Security Department

By _____	By (print name) _____
Title _____	Title _____
Signature _____	Signature _____
Date _____	Date _____

- Attachments:**
Exhibit A Statement of Work
Exhibit B CNCS Assurances and Certifications

AmeriCorps Member Placement PY 2020-21

STATEMENT OF WORK

Exhibit A

Responsibilities of the Sponsoring Organization

Section I – Sponsoring Organization Duties and Financial Responsibilities

1. Provide transportation or mileage reimbursement to Member(s) to conduct service away from their established service site during service hours. Reimbursement amount is subject to Sponsoring Organization's written travel policy, not to exceed federally-allowable transportation or mileage reimbursement. In the absence of written policy, reimbursement must follow federal guidelines.
2. Provide lodging and meals to Member(s) when travel (including overnight) is necessary to perform site-required service or training away from the service site. Reimbursement amount is subject to Sponsoring Organization's written travel policy, not to exceed federally-allowable transportation or mileage reimbursement. In the absence of written policy, reimbursement must follow federal guidelines.
3. Provide transportation or mileage reimbursement to Member(s) who attend the required member regional training, to be scheduled in program year 2020-21. Reimbursement amount is subject to Sponsoring Organization's written travel policy, not to exceed federally-allowable transportation or mileage reimbursement. In the absence of written policy, reimbursement must follow federal guidelines.
4. Reimburse WSC for costs of any FBI checks that are beyond the allowed one FBI check per enrolled position, including, but not limited to:
 - cancellation or rescheduling fees incurred due to no-shows or changes made with less than 24 hours' notice to Fieldprint;
 - applicants who back out after fingerprinting;
 - applicants who do not follow instructions and must re-do the FBI check;
 - applicants who do not enter their legal name as it appears on their government-issued photo ID when registering with Fieldprint.
5. Directly pay for or reimburse Member-Applicants for any background checks the Sponsoring Organization may require beyond the criminal history checks required by the Corporation for National and Community Service.
6. All Member expenses to serve at the site are the responsibility of the Sponsoring Organization. This includes, but is not limited to, Member reasonable accommodation or ergonomic assessment.
7. Comply with the Grant Program Civil Rights and Non-Harassment Policy (incorporated by reference), Assurances and Certifications (incorporated by reference), AmeriCorps Member Service Agreement (incorporated by reference) and the Request for

Application / Intent to Continue Expectations & Agreements (incorporated by reference).

8. Abide by all applicable state and federal laws and CNCS policy on Equal Opportunity Employment. An environment free of discrimination for all AmeriCorps Members must be provided. Recognizing that the fabric of our society is strengthened by the diversity of its citizens, the policy of CNCS is to ensure a mutual respect for all differences among us. Discrimination for race, color, gender, national origin, religion, age, mental or physical disability, sexual orientation, marital or parental status, military service, and religious, community or social affiliations, or any other category protected by state or federal non-discrimination law will not be tolerated. Treatment of all Members must be based upon merit.
9. Comply with all WSC Policies, Procedures, and other guidance in effect during the term of this Contract, including the current policies and procedures listed below, and other policies or procedures that may be developed and implemented throughout the program year:
 - POL-105 – Providing Adequate Oversight & Support of Members
 - POL-110 – Completing National Service Criminal History Checks
 - POL-120 – Managing Member Hours
 - POL-121 – Ensuring Service Activities are Allowable
 - POL-122 – Managing Alternative Service
 - POL-123 – Managing Member Leave
 - POL-124 – Managing Member Participation in WSC Training
 - POL-125 – Managing Limited Teleservice by Members
 - POL-130 – Managing Member Conduct
 - POL-131 – Managing Member Appearance and Use of Service Gear
 - POL-133 – Managing Member Accidents-Injuries
 - POL-140 – Managing Reasonable Accommodation Requests for Members
 - POL-150 – Managing Member Transfers
 - POL-155 – Refilling Positions
 - POL-160 – Managing Member Deployment for Disaster Response
10. Establish and impart safety guidelines and rules that ensure the well-being of the Member(s) and participants.
11. Ensure Sponsoring Organization has current Drug-Free Work Place and Non-Discrimination Policies, and these are shared and made available to Member(s).
12. Ensure that Member(s) provides direct service in accordance with the position description.

- Ensure any changes to duties are updated on the *Member Position Description* form and immediately sent to WSC.
 - Administrative and/or janitorial duties that are directly related to and are necessary to reach the Member's service goals, will be allowed. However, administrative and/or janitorial duties that support general organizational goals are not allowed.
13. Ensure that service activities do not displace or supplant employees. Service activities and project must expand or enhance the organization's impact, not simply sustain a service or work of the organization.
14. AmeriCorps positions are unique and limited in scope. If the Sponsoring Organization ascertains that the Member's position is the same or substantially similar to that of union-represented employees of the Sponsoring Organization or service site, the Sponsoring Organization must obtain and provide written concurrence of the AmeriCorps placement from the local labor organization.
15. Ensure accuracy of Member's service.
- Monitor Member(s) service hours to ensure that the Member is serving an average of at least 40 hours a week for the full term of service, and is on track to complete the required minimum service hours indicated in the Member Service Agreement.
 - Members must get adequate breaks according to the Member Service Agreement. This includes a lunch break of at least 30 minutes.
 - Monitor timesheets for accuracy and to ensure Member(s) do not exceed the percentage of time allowed in training (20%) and fundraising (10%).
 - Project staff will approve all member electronic timesheets through the WSC electronic timesheet system no later than five (5) business days after the end of each semi-monthly living allowance payment period.
 - No hours can be granted for service out of state (disaster deployment may be only consideration).
 - Member training out-of-state can only occur with prior WSC approval.
 - Generally, no hours can be granted for out-of-country trainings. In rare cases, this may be allowed with prior written approval of WSC.
 - No hours can be performed prior to the first day of the term of service.
 - No hours can be performed after the last day of the term of service.
16. Ensure that Member(s) do not participate in any activities which are not allowable under CNCS regulations and guidance.
17. Communicate to Member(s) that they must be available to serve the hours needed by the project including any weekend and evening service activities.
18. Ensure AmeriCorps Member(s) wear AmeriCorps gear daily while serving.
19. Prominently display WSC logo on Sponsoring Organization's website, and marketing or educational materials produced by the Sponsoring Organization to be used in promotion of the AmeriCorps position or project.

20. Ensure service site has the WSC and AmeriCorps*State logos visibly posted as follows:
- In a prominent location visible to staff and customers where member serves: sign with WSC logo, AmeriCorps logo, and “AmeriCorps Member Serves Here”.
 - At the entrances to the building where Member serves: sign with WSC logo, AmeriCorps logo, and (optional) service site name.
21. Prominently display signage provided by WSC (or its equivalent) at the Member’s service site listing AmeriCorps prohibited activities (reference Section 29(A), *Prohibited Activities*).
22. When communicating with customers, stakeholders, Legislative Representatives, or media about the program a Member is serving in, the Sponsoring Organization and any Member service site will identify the roles of both the Washington Service Corps and AmeriCorps in the project. For example: “As part of the Washington Service Corps, the AmeriCorps Members serving at (organization name).....”
23. If the Member is reimbursed for use of a personal vehicle in the performance of their service duties, require and retain member’s proof of valid driver’s license and current proof of vehicle insurance.
24. Participate in the following types of monitoring/audits from federal or state WSC program partners:
- Desk review of program documents by WSC Site and Member Services Coordinator or an authorized representative.
 - On-site monitoring/audit process by WSC Site and Member Services Coordinator or an authorized representative. This includes allowing access to member or program files, documents and materials; as well as access to members and staff for interviews.
 - Scheduled programmatic visits as requested by WSC state program/funding partners (such as Serve Washington, CNCS, or Washington State Employment Security Department).
25. Host scheduled programmatic visits as requested by WSC Site & Member Services Coordinator or authorized partner/stakeholder related to the program.
26. In the event of any change to the information regarding the Sponsoring Organization, notify the WSC Site & Member Services Coordinator within ten (10) working days.
27. Ensure that AmeriCorps Member eligibility verification is met.
28. Ensure that AmeriCorps Member(s) do not accept or solicit monetary or other service site compensation from the Sponsoring Organization or in addition to their WSC stipend or living allowance while serving as a Member of the WSC.

Section II - Recruitment and Enrollment of AmeriCorps Member(s)

1. Conduct recruitment, interviews, and selection of Members according to guidance provided by WSC.

2. Comply with WSC criminal history check requirements as identified in guidance including, but not limited to, WSC policy #POL-110. Comply with other criminal history check requirements that may be developed and required throughout the program year to maintain CNCS compliance.
3. Submit all required Member enrollment documents to WSC by the required date. The enrollment documents must be complete, accurate, and approved in advance by WSC.

Section III - Oversight of WSC Project and Support of AmeriCorps Member(s)

1. At the time of enrollment of Member(s), identify staff persons from the Sponsoring Organization who are to provide oversight and support of the Member(s).
 - Identify a Sponsoring Organization staff to be the primary point of contact for the AmeriCorps project.
 - Identify a service site staff to provide primary oversight and support for the Member(s) at the service site location.
 - Identify backup staff to provide oversight and support to the member when the primary staff is not available.
2. In the event of a change in site staff, follow WSC policy #POL-105.
3. Orient any new site staff to their AmeriCorps duties and ensure they review this Contract, the WSC Member Service Agreement, and the policies & guidance materials on the WSC website.
4. Update Member position descriptions as necessary and submit signed forms to WSC for approval. Changes in Member's service site, schedule, or duties require an amended position description. If the WSC becomes aware of any change without prior approval, it may result in the removal of the member from the Sponsoring Organization.
5. Ensure Member's site staff completes core required trainings provided by WSC, and any other WSC-required training offered throughout the program year. Failure to complete required training will be considered a non-compliance issue, subject to Section 37, *Termination, Suspension and Remedies*, and may jeopardize future placements of WSC AmeriCorps Members with the Sponsoring Organization.
6. Orient Member(s) to AmeriCorps, WSC, the Sponsoring Organization, service site, the community demographics and client base, and the service they will provide. Ensure Member(s) are made aware of and understand the Prohibited Activities, as well as policies and procedures of WSC, the Sponsor Organization and Sub-Service Site.
7. Ensure Member(s) are aware of safety measures and procedures of the Sponsoring Organization and Sub-Service Site.
8. Provide Member access to project documents, to include but not limited to Member Service Agreement, Request for Application, Contract and Exhibits, Performance Plan, etc.

9. Inform Member(s) about Sponsoring Organization rules of conduct and appropriate behavior, including procedures for communicating service hours and absences. Provide Member(s) with policy manuals and/or handbooks, and include organizational chart for Sponsoring Organization.
10. Introduce Member(s) to other Sponsoring Organization staff and include Member(s) in appropriate Sponsoring Organization functions. Orient the service site staff to the Member and the duties, as well as the differences between an AmeriCorps member and staff.
11. Provide appropriate tools and equipment for the Member(s) to perform service and to communicate with WSC.
12. Recognize and support distinct roles and responsibilities of the Member(s) as outlined in the Member's position description. If the service site has closures (e.g. school breaks) throughout the year, incorporate plans for alternate service activities during these closures.
13. Provide oversight of the Member's progress and skill development, including Member's participation in required site and WSC training.
14. Ensure Member(s) serve on Martin Luther King Jr. National Day of Service and any other day(s) communicated in advance by WSC as a required day of service or special initiative, and encourage participation in other days of national service which occur during the term of service. .
15. Communicate within one (1) business day with WSC Site & Member Services Coordinator regarding Member(s) performance issues or other program concerns.
16. Document Member performance/personnel issues in writing, including actions taken toward resolution.
 - Forward documentation to WSC within one (1) business day to ensure proper documentation for Member file.
 - Obtain WSC approval prior to taking action to remove or transfer a Member.
17. Follow Member discipline procedures as outlined in the Member Service Agreement and WSC policy #POL-130.
 - Work with the WSC Site & Member Services Coordinator if there are any service site policy conflicts or different approaches. These are to be coordinated for clear and consistent messages to Member(s), should disciplinary issues emerge.
 - Please also refer to Section 12, *Order of Precedence*, as contained within this Contract.
18. If the Sponsoring Organization fails to follow required WSC member progressive discipline (as noted in the Member Service Agreement & WSC Policy #POL-130) and subsequently terminates the Member from service, and the Member's grievance hearing grants the former Member a pro-rated education award, the Sponsoring Organization will repay the pro-rated education award amount to WSC.

19. Use retention strategies to ensure Member(s) successfully completes their full term of service.
20. If the Sponsoring Organization, or one of its Sub-Service Sites, hires a Member as an employee before the completion of that Member's agreed-upon term of service, the WSC may elect not to place another Member with the Sponsoring Organization or the Sub-Service Site in the future.
21. If a Member indicates the intent to leave their service early, the Sponsoring Organization will:
 - Troubleshoot reasons for exit with Member and WSC in efforts to retain Member.
 - If Member still decides to terminate service early, work with the Member to complete all WSC-required exit documentation, per the checklist on WSC website, prior to the Member leaving service.
22. Members may not serve in other positions or be under a work, pay or reimbursement agreement or contract for performing work within the Sponsoring Organization or Sub-Service Site while under current WSC Member Service Agreement.

Section IV - Performance Measures and Reporting

1. Collaborate with WSC and the Member(s) to develop a well-defined project that has clear goals and objectives in accordance with the Member's position description and the Request for Application (incorporated by reference).
Once project plan is approved, any adjustments or revisions need prior written approval by WSC.
2. Ensure performance objectives are quantifiable and demonstrate the impact of the Member's service in one of the focus areas, as defined in application and negotiated in writing with WSC.
3. Implement data tracking tools, as agreed-upon by WSC, to use for collecting data on the performance objectives negotiated following award notification.
4. Complete Performance Plan and Data Collection Strategy documents, with tools, assessments and surveys included, following award notification and negotiation and submit by the required deadline stipulated in the 2020-21 Request for Application Projected Timeline. WSC will confirm approval and acceptance of the plan.
5. Ensure that the Performance Measure plan, Data Collection Strategy document and the Member's position description are in alignment to meet the agreed upon targets and support the interventions and data collection process.
6. Comply with other records retention requirements that may be developed and required throughout the program year.
7. Submit quarterly progress reports according to the annual calendar provided by WSC, or as requested by WSC, on outputs and outcomes for each performance target as defined in the Performance Measure Plan and Strategy documents and the Member's position description.

- Upload project site aggregate participant rollup report into the WSC-designated reporting system.
8. Support the Member(s) in reaching the performance goals for volunteer recruitment and training.

Track and report on goals for episodic and ongoing volunteers, hours to be served by volunteers, number of veteran and military family volunteers (if requested), and effective volunteer management strategies.
 9. Submit original, signed performance evaluations of the Member twice during the service term (by due dates provided by WSC) using forms provided on the WSC website.
 10. Notify WSC of impending scheduled visits by stakeholders such as representatives of the Legislature or Congress, or events or activities that may warrant media support. Follow WSC guidance for media relations and interactions including releases for all pictures.
 11. Report AmeriCorps-sponsored activities and events in which stakeholders, legislators or other elected officials are invited to be educated in the effectiveness of the AmeriCorps program.
 12. Ensure that Member(s) submit at least one "Story of Service" per quarter (due dates will be communicated by WSC).
 13. Submit copies of written or electronic articles that highlight Member(s) and/or AmeriCorps project as they occur.
 14. Provide, as requested by WSC, additional performance- and programmatic-related information as needed throughout the program year. This could include response to program impact evaluation surveys, interviews, request for materials, etc.
 15. If data sources are external to the Sponsoring Organization, ensure that appropriate/required data sharing agreements are in place with those data sources.
 16. Support WSC program evaluation, working with external program evaluator sources as required.

Section V - Career Development/Training

1. Provide adequate training to ensure Member is prepared for the roles and responsibilities of the project.
2. Provide a minimum of two (2) site-specific trainings to Member related to the service position.
 - No more than 20% of Member's total service hours may be spent in training.
 - Training received by Member during orientation does not count toward the site-specific training.
3. Submit all requests for approval of out-of-state training for the Member to the WSC at least two weeks in advance of the training.

4. Support Member(s) in attending WSC training and career development opportunities.
 - Release Member(s) to attend mandatory training events, service projects, and other WSC events including WSC-sponsored regional trainings.
 - Ensure members meet all core training requirements.
5. Ensure Member(s) complete core required trainings provided by WSC, and any other WSC-required training offered throughout the program year. Should the Member(s) fail to complete all WSC-required training offered during the Member's term of service, the Sponsoring Organization will be considered to be non-compliant with the contract terms herein, subject to Section 37, *Termination, Suspension and Remedies* and may jeopardize future placements of WSC AmeriCorps Members with the Sponsoring Organization.
6. Release Member(s) from regular service to respond to disasters in accordance with WSC Policy #POL-160. Out-of-state deployments must meet specific CNCS criteria, and require prior written approval of WSC.

Section VI – Sustainability

1. The AmeriCorps project must support the long-term goals of the Sponsoring Organization, and the Sponsoring Organization must be committed to the project.
2. The project must be designed to yield results beyond the Member(s) term of service.
3. The Member(s) position is to enhance or expand the Sponsoring Organization's service to its clients or participants through the project where the Member(s) will be placed, not to maintain existing programs or replace (supplant) staff.

Section VII – Other Responsibilities

Responsibilities of Washington Service Corps

1. Provide program orientation for Members, Sponsoring Organization contract manager, and project site staff.
2. Provide on-going technical support to Members, Sponsoring Organization contract manager, and project site staff by telephone and/or e-mail, webinars, other technology assisted approaches as available and accessible, and on-site visits as arranged.
3. Communicate expectations and procedures about Member service and performance.
4. Create position listing(s) on MyAmeriCorps.gov on behalf of the Sponsoring Organization, and assist, as necessary, in recruitment of applicants on behalf of the Sponsoring Organization.
5. Conduct desk reviews and on-site monitoring reviews, and issue reports that list findings, concerns and observations. Provide technical assistance to the Sponsoring Organization and Members to complete corrective action.
6. Ensure oversight of electronic timesheets for each Member, and maintain the official permanent Member file.

7. Process Member living allowance for payment on the 5th and the 20th of each month.
8. Provide State Industrial Insurance (aka Worker's Compensation) coverage for Members.
9. Provide Medical Insurance coverage for the AmeriCorps Member(s) who do not already have coverage.
10. Provide Sponsoring Organizations with WSC/AmeriCorps logo posters to post in a prominent location.
11. Provide Members with basic AmeriCorps gear.
12. Provide training and development opportunities to Members.

SAMPLE

AmeriCorps Member Placement PY 2020-21**CNCS ASSURANCES AND CERTIFICATIONS****Exhibit B****ASSURANCES**

As the duly authorized representative of the applicant, I certify, to the best of my knowledge and belief, that the applicant:

- Has the legal authority to apply for federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
- Will give the Corporation for National and Community Service (CNCS), the CNCS Inspector General, the Comptroller General of the United States, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will initiate and complete the activities described in the application within the applicable time frame after receipt of CNCS's approval.
- Will comply with all federal statutes relating to nondiscrimination, including any self-evaluation requirements. These include but are not limited to:
 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which prohibits federal grantees from discriminating on the basis of race, color, or national origin;
 2. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in an educational program or activity that receives or benefits from federal financial assistance;
 3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits federal grantees from discriminating on the basis of disability;
 4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits the exclusion of any person on the basis of age from participating in any program or activity receiving federal financial assistance;
 5. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental or financing of dwellings provided in whole or in part with the aid of CNCS funding;
 6. Any other nondiscrimination provisions in the National and Community Service Act of 1990, as amended (NCSA), or the Domestic Volunteer Service Act of 1973, as amended (DVSA); and
 7. The requirements of any other nondiscrimination statute(s) which may apply to the application.

- Will comply with section 543 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-2), as amended, relating to confidentiality of alcohol and drug abuse patient records.
- If a governmental entity -
 1. Will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 2601 *et seq.*), which govern the treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs, and
 2. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will assist CNCS in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-l *et seq.*).
- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984, as amended, and 2 CFR Part 200, Subpart F.
- Will, when issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with CNCS funds, clearly state - (1) the percentage of the total costs of the program or project which will be financed with Federal money; (2) the dollar amount of Federal funds for the project or program; and (3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.
- Will not provide any CNCS funding to the Association of Community Organizations for Reform Now (ACORN), or any of its affiliates, subsidiaries, allied organizations, or successors.
- Will comply with all applicable requirements of all other federal laws, executive orders, regulations, application guidelines, and policies governing the program under which the application is filed.
- Will comply with all rules regarding prohibited activities, including those stated in applicable Notice, grant provisions, and program regulations, and will ensure that no assistance made available by the CNCS will be used to support any such prohibited activities.
- Will comply with the nondiscrimination provisions in the NCSA, which provide that an individual with responsibility for the operation of a project or program that receives assistance under the NCSA shall not discriminate against a participant in, or member of the staff of, such project or program on the basis of race, color, national origin, sex, age, political affiliation, disability, or religion.
- (NOTE: the prohibition on religious discrimination does not apply to the employment of any staff member paid with non-CNCS funds or paid with CNCS funds but employed with the applicant organization prior to or on the date the grant was awarded. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, your organization may be entitled, under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, to receive federal funds and yet maintain that hiring practice, even though the NCSA includes a restriction on religious discrimination in employment of staff hired to work on a CNCS-funded project and paid with CNCS

grant funds. (42 U.S.C. § 5057(c)). For the circumstances under which this may occur, please see the document “Effect of the Religious Freedom Restoration Act on Faith-Based Applicants for Grants” at: <https://www.justice.gov/archive/fbci/effect-fra.pdf>.

- Will provide, in the design, recruitment, and operation of any AmeriCorps program, for broad-based input from – (1) the community served, the municipality and government of the county (if appropriate) in which the community is located, and potential participants in the program; and (2) community-based agencies with a demonstrated record of experience in providing services and local labor organizations representing employees of service sponsors, if these entities exist in the area to be served by the program;
- Will, prior to the placement of participants, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by an AmeriCorps program, to ensure compliance with the non-displacement requirements specified in section 177 of the NCSA;
- Will, in the case of an AmeriCorps program that is not funded through a state, consult with and coordinate activities with the State Commission for the state in which the program operates;
- Will ensure that any national service program carried out by the applicant using assistance provided under section 121 of the NCSA and any national service program supported by a grant made by the applicant using such assistance will address unmet human, educational, environmental, or public safety needs through services that provide a direct benefit to the community in which the service is performed;
- Will comply with the non-duplication and non-displacement requirements set out in section 177 of the NCSA, and in CNCS’s regulations at 45 CFR § 2540.100;
- Will comply with the grievance procedure requirements as set out in section 176(f) of the NSCA and in CNCS’s regulations at 45 CFR § 2540.230;
- Will provide participants in the national service program with the training, skills, and knowledge necessary for the projects that participants are called upon to perform;
- Will provide support services to participants, such as information regarding G.E.D. attainment and post-service employment, and, if appropriate, opportunities for participants to reflect on their service experiences;
- Will arrange for an independent evaluation of any national service program that is carried out using assistance provided to the applicant under section 121 of the NCSA and 45 C.F.R. Part 2522, Subpart E; or, with the approval of CNCS, conduct an internal evaluation of the program;
- Will apply measurable performance goals and evaluation methods, which are to be used as part of such evaluation to determine the program’s impact on communities and persons served by the program, on participants who take part in the projects, and in other such areas as required by CNCS;
- Will ensure the provision of a living allowance and other benefits to participants as required by CNCS;
- Has not violated a federal criminal statute;

- If a state applicant, will ensure that the state subgrants that will be used to support national service programs are selected in conformance with the requirements of the NCSA;
- If a state applicant, will seek to ensure an equitable allocation within the state of assistance and approved national service positions, taking into consideration such factors as the locations of the programs, population density, and economic distress;
- If a state applicant, will ensure that not less than 60% of the assistance will be used to make grants to support national service programs other than those carried out by a state agency, unless CNCS approves otherwise based upon the state applicant not having a sufficient number of acceptable applications to meet the 60% threshold.

CERTIFICATIONS

The certifications set out below are material representations upon which the Corporation for National and Community Service (CNCS) will rely when it determines to award a grant. False certification, or violation of the certification, may be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 2 CFR Part 180, Subparts G and H).

Certification – Debarment, Suspension, and Other Responsibility Matters

This certification is required by OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 CFR Part 180, Section 180.335, *What information must I provide before entering into a covered transaction with a Federal agency?*

As the duly authorized representative of the applicant, I certify, to the best of my knowledge and belief, that neither the applicant nor its principals:

- Is presently excluded or disqualified;
- Has been convicted within the preceding three years of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
- Is presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with, commission or any of the offenses listed in 2 CFR § 180.800(a); or
- Has had one or more public transactions (federal, state, or local) terminated within the preceding three years for cause or default.

Certification – Drug Free Workplace

This certification is required by section 184 of the NCSA (42 U.S.C. 12644), sections 5150-5160 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 8101-8106), and CNCS's implementing regulations at 2 CFR Part 2245, Subpart B. Under these authorities, grantees must certify, prior to award, that they will make a good faith effort, on a continuing basis, to maintain a drug-free workplace.

As the duly authorized representative of the applicant, I certify, to the best of my knowledge and belief, that the applicant will provide a drug-free workplace by:

- A. Publishing a drug-free workplace statement that:
 1. Notifies employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace;
 2. Specifies the actions that the grantee will take against employees for violating that prohibition; and
 3. Informs employees that, as a condition of employment under any award, each employee will abide by the terms of the statement and notify the grantee in writing if the employee is convicted for a violation of a criminal drug statute occurring in the workplace within five days of the conviction;
- B. Requiring that a copy of the statement described in paragraph (A) be given to each employee who will be engaged in the performance of any federal award;
- C. Establishing a drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The grantee's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 4. The penalties that the grantee may impose upon them for drug abuse violations occurring in the workplace;
- D. Providing CNCS, as well as any other federal agency on whose award a convicted employee was working, with written notification within 10 calendar days of learning that an employee has been convicted of a drug violation in the workplace;
- E. Taking one of the following actions within 30 calendar days of learning that an employee has been convicted of a drug violation in the workplace:
 1. Taking appropriate personnel action against the employee, up to and including termination; or
 2. Requiring that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
- F. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A) through (E).

Certification – Lobbying Activities

As required by 31 U.S.C. 1352, as the duly authorized representative of the applicant, I certify, to the best of my knowledge and belief, that:

- No federal appropriated funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer of Congress in connection with the awarding of any federal contract, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement;
- 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 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 applicant will submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

- The applicant will require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.

Certification - Grant Review Process (State Commissions Only)

I certify that in conducting our review process, we have ensured compliance with the National and Community Service Act of 1990, and all state laws and conflict of interest rules.

Certification – Federal Tax Liability

I certify that, if the applicant is a corporation,

- A. The corporation does not have any unpaid federal tax liability—
 1. That has been assessed,
 2. For which all judicial and administrative remedies have been exhausted or have lapsed, and
 3. That is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or
- B. A federal agency has considered suspension or debarment of the corporation based on the unpaid tax liability and has made a determination that this further action is not necessary to protect the interests of the government.

Certification – Felony Criminal Conviction under Federal Law

I certify that, if the applicant is a corporation,

- A. The corporation has not been convicted of a felony criminal violation under any federal law within the preceding 24 months, or
- B. A federal agency has considered suspension or debarment of the corporation based on that conviction and has made a determination that this further action is not necessary to protect the interests of the government

Certifications – Subgrants and Lower Tiered Nonprocurement Transactions with Excluded or Disqualified Persons (NCSA Subtitle C and Social Innovation Fund applicants only)

Definitions

The terms “debarment,” “suspension,” “excluded,” “disqualified,” “ineligible,” “participant,” “person,” “principal,” “proposal,” and “voluntarily excluded” as used in this document have the meanings set out in 2 CFR Part 180, Subpart I, “Definitions.” A transaction shall be considered a “covered transaction” if it meets the definition in 2 CFR Part 180 Subpart B, “What is a covered transaction?”

Assurance requirement for subgrant and other lower tier nonprocurement agreements

You agree by submitting this proposal that, if we approve your application, in accordance with 2 CFR Part 180 Subpart C, you shall not enter into any lower tier nonprocurement covered transaction with a person without verifying that the person is not excluded or disqualified unless authorized by CNCS.

Assurance inclusion in subgrant agreements

You agree by submitting this proposal that you will obtain an assurance from prospective participants in all lower tier covered nonprocurement transactions and in all solicitations for lower tier covered nonprocurement transactions that the participants will comply with the provisions of 2 CFR Part 180 subparts A, B, C and I.

Notice of error in certification or assurance

You must provide immediate written notice to us if at any time you learn that a certification or assurance was erroneous when submitted or has become erroneous because of changed circumstances.

SAMPLE

Index #10

CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 03/02/2020

AGENDA ITEM:	
Arlington Municipal Airport Use Agreement	
PREPARED BY:	DIRECTOR APPROVAL:
Commander Robb Lamoureux	
DEPARTMENT:	
Police	
ATTACHMENTS:	
Arlington Municipal Airport Use Agreement	
BUDGET CODE:	AMOUNT:
00103740.545000	\$433.80
SUMMARY:	

As part of the department’s annual Essential Skills Training (EST) we will be conducting Pursuit Intervention Technique (PIT) for all commissioned officers.

This training will be conducted over three full days at the Arlington Municipal Airport (AMA) grounds. This is the same location we have used for Emergency Vehicle Operations Course (EVOC) training in years past.

Utilization of the AMA grounds for the training requires the signing of a “Use Agreement” between the City of Marysville and the City of Arlington/Arlington Municipal Airport.

RECOMMENDED ACTION:

Staff recommends City Council authorize the Mayor to sign the Arlington Municipal Airport Use Agreement.

**ARLINGTON MUNICIPAL AIRPORT
USE AGREEMENT**

VARIABLE SECTION:

General

The City of Arlington/Arlington Municipal Airport and the City of **Marysville Police Department** (“permittee”) agree that the permittee, may use and occupy the following prescribed real property: that part of the land within the boundary of the Arlington Municipal Airport that is shown on the attached Exhibit A.

Such use is for the purpose of conducting driver training for the Marysville Police Department for the 2020 Calendar Year

1. Fees – This land use permit is issued for the periods listed above and may be reviewed by the Arlington City Council and Airport Commission on a yearly basis. This entire agreement is open to review and possible approval/disapproval on an annual basis by the City of Arlington/Arlington Municipal Airport. It is revocable for any breach of the conditions noted herein. **An administrative fee of \$100 is required each year this agreement is renewed.** Permittee is responsible for all damages.

The property being utilized shall be considered rented for any day in which the permittee conducts the event. This shall include the set-up and teardown of the event. The payment for this use fee shall be mailed or hand delivered to the City of Arlington or the Arlington Municipal Airport Office.

Acreage required for this usage totals **2 acres**, which equals **\$144.60 per day**. The land use fee shall be paid quarterly.

The permittee shall have the right of first refusal regarding use of the event site if another user approaches the airport for the use of the entire event site.

[remainder of this page blank]

MASTER SECTION:

1. Late Charges - There shall be assessed and the *permittee* shall pay upon any installment of the use fee or portion thereof not paid within twenty (20) days after such fee installment is due and payable, a late charge penalty for each week or fraction thereof the use fee or portion thereof is not paid equal to five percent (5%) of the amount for such use fee or portion thereof (plus accrued late charge penalties, if any) due and payable. The amount of such late charge penalty shall be added to the amount due each month, and the total thereof shall be subject to a late charge for each succeeding month of fraction thereof in the amount of five percent (5%) of the total.

2. Insurance

- A. Insurance Term

The permittee 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 permittee and his or her guests, representatives, volunteers and employees.

- B. No Limitation

Permittee's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the permittee 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

Permittee'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 covering premises, operations, products-completed operations and contractual liability. The City shall be named as an additional insured on permittee'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, \$1,000,000 general aggregate.

The insurance policy shall contain, or be endorsed to contain that the permittee'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 permittee's insurance and shall not contribute with it.

D. City Full Availability of Permittee Limits

If the permittee 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 permittee, irrespective of whether such limits maintained by the permittee 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 permittee.

E. Certificate of Insurance and Acceptability of Insurers

The permittee 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. Participation in a City risk pool with equivalent coverage shall be considered compliant with this section.

3. Event Equipment - The *permittee* will supply at its expense all equipment to conduct the event including portable toilets, tents, portable operations buildings, food vending operations, fencing, and other miscellaneous equipment, such as aviation band radios, cell phones, etc.

It is agreed that: **(A)** The *permittee* will provide their own security service and also adequate fire extinguishers and signage to comply with requirement imposed by the Arlington Fire Department. **(B)** The *permittee* will provide adequate signage and guidance on roads and streets surrounding the airport to citizens attending the event. **(C)** The *permittee* shall observe all federal, state and local laws, orders or regulations applicable to the premises including the erection of antennas, signs, displays, and shall keep the premises in a neat, orderly, safe and sanitary condition. **(D)** The *permittee* shall not close any roadway normally in public use without proper approval.

4. Set-Up/Teardown - **(A)** The *permittee* shall coordinate the setup, erection, cordoning, blocking, rerouting, teardown, fencing, or other activities to prepare the premises for the event, all of which may have the potential for disrupting normal airport operations, with the Airport Manager prior to commencement of the same. A detailed plan may be required by the Airport Manager prior to approving the same. *Permittee* acknowledges that plans for activities which may interfere with the operational surfaces of the airport, including all runways, taxiways, landing areas, and surface roads, must be provided to the Airport Manager during regular business hours and in sufficient time for the Airport Manager to review and approve the same, and to give prior notice to the Federal Aviation Administration and the local users of the operational surfaces.

(B) All labor required for the setup, erection, cordoning, blocking, rerouting, teardown, fencing, or other activities to prepare the premises for the event shall be provided by *permittee* and at *permittee's* expense. In the event *permittee* wishes to contract with the airport for any of these

services, the same shall be done by separate written agreement following the provision of an estimate for the same. Any charges resulting from said written agreement will provide for the reimbursement to the airport of its actual costs to provide the services. Provision of these services by the airport is discretionary, and is subject to the *permittee* providing the airport with sufficient advance notice so as to allow for planning to avoid undue hardship or excessive overtime costs.

(C) The *permittee* shall not cut any trees on the property without the prior approval of the Airport Manager, and shall take all reasonable precautions to prevent and suppress forest, brush and grass fire; to prevent the pollution of any water on or in the vicinity of the land; and to provide for the protection of game birds or animals and or domesticated animals known to frequent the areas of occupation. In addition, the *permittee* shall return the used site to the condition of that area prior to the event. This will include collection and removal of all litter, dismantling of all use structures, fences, portable toilets and other items connected with the event. Any vegetation disturbed during the use (i.e. turf) shall be returned to original condition. This will include seeding, fertilizing, watering, grooming and any other means necessary to return the vegetation to a condition that equals or betters its pre-event state. Also any pavement breakdown due to this use will be brought back to pre-use standard.

(D) Any and all airport surfaces used by the *permittee* shall be returned to the airport in a condition at least as good as before the event. Where any vegetation has been disturbed, *permittee* shall restore the same using appropriate landscaping practices, including the application of topsoil, fertilizer, seeding and watering, to ensure proper repair or restoration. The airport shall remain responsible for maintaining in the operational surfaces of the airport during the term of the use agreement; the responsibility for checking and grooming all non-operational surfaces shall be *permittees*.

(E) *Permittee* shall not alter any airport surface or facility without the prior written approval of the Airport Manager. Airport may, in airport's discretion, agree to share in the costs of any such improvements deemed by airport to be appropriate and of general benefit to the airport or its users.

5. Safety - The *permittee* will take all reasonable steps to ensure and support safe flying conditions in and around the airfield. This will include, but not be limited to, briefing all participants on observing safe practices around the airfield, staying away from the active runway, taxiways and aircraft parking areas and respecting an aircraft's right-of-way at all times. The *permittee's* representative shall meet with the Airport Manager as necessary for safety briefings on the airfield situation. Additionally, to facilitate the above items, an airport site visit or orientation tour is highly recommended.

6. Area of Usage - As discussed and agreed upon the *permittee's* event shall only utilize the area as depicted on the attached site map.

7. Accidents/Indemnity - The *Permittee* has personally inspected the premises and is informed as to all risks which may be associated with the planned activities on the premises above described. Being fully informed as to the risks and in consideration of being given the privilege to utilize the property, *Permittee*, on behalf of itself and its elected and appointed officials, employees and agents, agree to assume all risks in connection with *Permittee's* use of the

property and further agrees to hold harmless and defend the City of Arlington, its elected and appointed officials, employees and volunteers, for any injury or damages which may occur to Permittee, its elected and appointed officials, employees, volunteers or invitees while on the property. Permittee further agrees to hold harmless, defend and indemnify the City of Arlington, its elected and appointed 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 Premises or from any activity, work or thing done, permitted, or suffered by Permittee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

8. Utilities - The *permittee* hereby covenants and agrees to pay all charges for heat, light, water and sewer, and for all other public utilities which shall be used in or charged against the event during the full term of this use agreement. *Permittee* shall at its cost construct and keep in repair a suitable septic tank or other lawful sewage system, in accordance with Snohomish County Health and Sanitary Regulations. Any permits therefor which may be required shall be secured by *permittee* at *permittee's* expense prior to installation.

9. Munitions - The *permittee* understands that permission to use the airport land does not grant permission to use any type of munitions, smoke, pyrotechnics, chemical training agent, gas, or explosive training devices to include blank rifle ammunition. Permission to use such devices will be given separately and is always subject to immediate verbal revocation by the Airport Manager or his representatives. If the *permittee* desire to use such devices, he must specify in writing at least six months in advance to the Airport Manager or his representative the following: type, smoke and noise producing effects, persistency of smoke, pyrotechnics the intended use site and the time of use. Further, *permittee* shall obtain approval from the Puget Sound Air Pollution Control agency at least one month prior to use. A copy of said approval shall be given to the Airport Manager. Further, *permittee* must guarantee that all such devices or their residue will be removed from the airfield and safely disposed of prior to his departure. The Airport Manager reserves the right to approve in part or in entirety or deny completely the use of such devices. Additionally, the presence of weapons, whether real or fake, requires the written permission of the Airport Manager. In such case the only weapons loaded with live ammunition will be those used by the Arlington Police Department. The *permittee* shall inform the local law enforcement officers to include the Arlington City Police Chief, Snohomish County Sheriff and the local Washington State Patrol office of the number and type of weapons to be used at least four weeks in advance.

10. Usage - The *permittee* shall conduct and carry on in said premises only the business usage for which said premises are to be used, and shall not use the premises for illegal purposes. The *permittee* will cooperate with and notify the responsible enforcement agency of any illegal or unlawful activity which becomes known during the period of occupancy.

11. Access - The *permittee* will allow the Airport Manager or his/her representative free access at all times to said premises for the purpose of inspection. Nothing herein shall be constructed as in anyway limiting the authority of the airport/city building official under existing law.

12. Notice - All notices and consents hereunder shall be given in writing, delivered in person or mailed by certified mail, postage pre-paid, to the receiving party at its address, or to such other address as the receiving party may notify the sender beforehand referring to its use agreement.

13. Governmental Fees - All fees due under applicable law to the city, county or state on account of any legal inspection made on premises by any officer thereof, shall be paid by *permittee*.

14. Liens and Insolvency - *Permittee* shall keep the property in which the use agreement is exercised free from any liens arising out of any work performed, materials furnished or obligations incurred by *permittee*. If the *permittee* becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the *permittee* the airport may cancel this use agreement at airport's option.

15. Default and Re-entry - If any fees above reserved, or any part thereof, shall be and remain unpaid when the same shall become due, or if the *permittee* shall violate or default in any of the covenants and agreements therein contained, then the airport may cancel this use agreement and re-enter said premises.

16. Cost and Attorney's Fees - If by reason of any default on the part of either party, litigation is commenced to enforce any provision of this use agreement or to recover for breach of any provision of this use agreement the prevailing party shall be entitled to recover from the other party reasonable attorney's fees in such amount as is fixed by the court, and all costs and expenses incurred by reason of the breach or default by the other under this use agreement.

17. Non Waiver of Breach - The failure of either party to insist upon strict performance of any of the covenants and agreements of this use agreement or to exercise any option herein conferred in anyone or more instance, shall not be construed to be a waiver or relinquishment of any such strict performance or of the exercise of such option, or any other covenants or agreements but the same shall be and remain in full force and effect.

18. Restrictions and Consents - This use agreement shall be and is subject to all the terms, covenants, restrictions, reservations and agreements contained in that certain Quit Claim Deed dated February 25, 1959, by the United States of America to Town of Arlington, recorded in Snohomish County, Washington, on August 20, 1959, in Volume 690 of Deeds, pages 38 through 46, under Auditor's File No. 1356180, records of said county, including the written consent of the Federal Aviation Agency if the leased premises are to be used for other than airport purposes. Under the requirements imposed upon airport as recipient of Federal Aid Airport Program Grant Funds, the parties agree as follows: **(A)** *Permittee* covenants that it will not, in its operation at the Arlington Airport, on the basis of race, color, creed, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by parts 15 and 21 of the Federal Aviation Regulations (49 CFR), and in that the airport has the right to take such action as the United States government may direct to enforce this covenant. **(B)** With respect to any aeronautical services, *permittee* agrees: **1)** to furnish said aeronautical service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and **2)** to charge fair, reasonable and not unjustly discriminatory prices for each unit of service, provided, that the *permittee* may be

allowed to make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

19. Nondiscrimination - The *permittee* on behalf of itself and its elected and appointed officials, employees and agents, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on the said property described in this use agreement for a purpose for which a Department of Transportation or activity is extended or for another purpose involving the provision of similar services or benefits, the *permittee* shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

The *permittee*, for itself and its elected and appointed officials, employees and agents, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that **(A)** no person on the grounds of race, color or national origin shall be excluded from the participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, or **(B)** that in the construction of any improvements in, over or under such land and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and **(C)** that the *permittee* shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and **(D)** that in the event of breach of any of the above nondiscrimination covenants, the City of Arlington shall have the right to terminate this use agreement and to re-enter and repossess said land and facilities thereon, and hold the same as if said use agreement had never been made or issued.

20. Hazardous Wastes - The *permittee* shall not permit dangerous wastes, hazardous wastes, or extremely hazardous wastes as defined by RCW 70.105.010 et seq. to exist on the premises and shall, at *permittee's* sole expense, undertake to comply with all rules, regulations, and policies of the Washington State Department of Ecology and the United States Environmental Protection Agency. *Permittee* shall promptly notify the City Fire Department of the existence of dangerous wastes, hazardous wastes, or extremely hazardous wastes as required by state and federal regulations.

Permittee shall comply with any provisions of the local hazardous waste plan as now in existence or hereinafter enacted. *Permittee* shall comply with any requirements for hazardous waste disposal as may be imposed by RCW 70.105B. 030 and the State Department of Ecology.

21. Venue - The venue of any suit which may be brought by either party under the terms of this use agreement or growing out of the tenancy under this use agreement shall at the option of the airport be in court or courts in Snohomish County, Washington.

22. Public Policy - The City of Arlington reserves the right to suspend this land use agreement at any time for legitimate public safety.

23. Obligations - The airport shall notify the *permittee* of any security, maintenance or other requirements necessary to the safe and orderly conduct of the event prior to the event. The *permittee* shall apply security, maintenance or other requirements during the event. Regarding requests for airport service(s) only a principle officer of the *permittee* can request service(s) from the city/airport. Once service(s) have been requested by the *permittee* from the city/airport the *permittee* is required to pay for service(s). The airport shall provide a cost estimate and timeline to complete the service(s). This estimate shall also include whether the city/airport can complete the service(s) within the outlined time frame. In the event of only partial clean-up, teardown, site restoration or application of agreed to services by the *permittee*, the city/airport shall apply the current billing rate for city/airport services to remedy any of the above and bring the site back to pre-event status. No intoxicating venues, beverages or drug usage shall be allowed on the *permittee* event site.

*Signature of Permittee's
Authorized Representative*

*David Ryan, Airport Director
Arlington Municipal Airport*

EVOC TRIANGLE

