



CITY COUNCIL 345 6th Street, Suite 100, Bremerton, WA 98337 - Phone (360) 473-5280

***** AMENDED *****

WEDNESDAY, AUGUST 16, 2023
CITY COUNCIL HYBRID MEETING AGENDA

Most Council Members and staff will be participating in the meeting in-person, and the public is invited to attend. Or beginning at 5:30 PM, the public may participate remotely through one of the following options:

- To stream online only (via BKAT Feed, with no interaction possible): <https://bremerton.vod.castus.tv/vod/?live=ch1&nav=live>
 - **Members of the public** are invited to join the Zoom Meeting by clicking on the link below:
<https://us02web.zoom.us/j/89694813320?pwd=Z0JvSXNhSFp1c0xhL1NxUjRhN2QxUT09>
 - Or One tap mobile: US: +12532050468,,89694813320#,,, *173061# or +12532158782,, 89694813320#,,, *173061#
 - Or Telephone: US: +1 253 205 0468 or +1 253 215 8782
- Webinar ID: 896 9481 3320
Passcode: 173061

Public questions or comments may be submitted ahead of time to City.Council@ci.bremerton.wa.us

1. **BRIEFING**: 5:00 – 5:30 P.M. in **COUNCIL CONFERENCE ROOM 603**
 - A. Review of Agenda
 - B. General Council Business (*Only as necessary...*)
2. **CALL TO ORDER**: 5:30 P.M. in **FIRST FLOOR CHAMBERS**
3. **MAYOR'S REPORT**
4. **CONSENT AGENDA**
 - A. Claims & Check Register
 - B. Minutes of Meeting – August 2, 2023
 - C. Minutes of Study Session – August 9, 2023
 - D. Interlocal Agreement with Kitsap Conservation District for the Rain Garden & Low Impact Development Project
 - E. ~~Resolution No. 3364 to adopt the City of Bremerton Stormwater Comprehensive Plan Update~~
Pulled down to General Business Item 6A...
 - F. Create Stormwater Program Manager position at Pay Band 14 of the Management, Professional Confidential & Fiduciary Salary Plan
 - G. Contract Service Order with Astound Business Solutions, LLC for Dark Fiber Services; and related Budget Amendment
 - H. Water Quality Combined Financial Assistance Agreement with the State of WA Department of Ecology for the Tracyton Beach Road Sewer Improvements Project
 - I. Ordinance No. 5481 to amend BMC Section 9.10.030 entitled “Rotating Roster”
 - J. Authorization to pursue legal action to abate nuisance and code violations at 1241 8th Street and 723 S. Hartford Avenue
5. **PUBLIC RECOGNITION** – *This is an opportunity for attendees to address the Council on any City-related item that is not already listed on the Agenda. Please approach the podium or raise your Zoom hand if viewing remotely and wait to be recognized. Then, state your name for the record, and limit your comments to under 3-minutes...*
6. **GENERAL BUSINESS**
 - A. Resolution No. 3364 to adopt the City of Bremerton Stormwater Comprehensive Plan Update
7. **COUNCIL MEMBER REPORTS**
8. **ADJOURNMENT OF CITY COUNCIL BUSINESS MEETING**

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4A

SUBJECT:

Claims & Check Register

Study Session Date: N/A

COUNCIL MEETING Date: August 16, 2023

Department: Legal Services

Presenter: Angela Hoover

Phone: (360) 473-5323

SUMMARY:

Approval of the following checks and electronic fund transfers:

1. Check Numbers 403799-403960 and EFT Numbers V38001-V38111 in the grand total amount of \$2,980,499.14
2. Regular Payroll for pay period ending July 31, 2023 in the amount of \$1,092,349.21
3. Regular Payroll Payout and Missed Overtime for pay period ending July 31, 2023 in the amount of \$391.00
4. Retiree Payroll for pay period ending July 31, 2023 in the amount of \$38,911.50

ATTACHMENTS:

FISCAL IMPACTS (Include Budgeted Amount):

STUDY SESSION AGENDA:

Limited Presentation

Full Presentation

STUDY SESSION ACTION:

Consent Agenda

General Business

Public Hearing

RECOMMENDED MOTION:

Move to approve the consent agenda as presented.

COUNCIL ACTION:

Approve

Deny

Table

Continue

No Action

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4B

SUBJECT: Minutes of Meeting – August 2,
2023

Study Session Date: N/A
COUNCIL MEETING Date: August 16, 2023
Department: City Council
Presenter: Council President
Phone: (360) 473-5280

SUMMARY: The Minutes of Meeting held on August 2, 2023 are attached.

ATTACHMENTS: Meeting Minutes

FISCAL IMPACTS (Include Budgeted Amount): None

STUDY SESSION AGENDA: N/A

STUDY SESSION ACTION: Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve the August 2, 2023 Meeting Minutes as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

CITY COUNCIL HYBRID MEETING MINUTES

Wednesday, August 2, 2023

The weekly meeting of the City Council of the City of Bremerton was called to order Wednesday, August 2, 2023, at 5:09 PM in Council Conference Room 603 of the NORM DICKS GOVERNMENT CENTER, 345 6th Street, Bremerton, Washington, with Council President Jeff Coughlin presiding. Council Members present were Jennifer Chamberlin, Denise Frey, Quinn Dennehy, Michael Goodnow, Anna Mockler, and Eric Younger. Also present were Assistant City Attorney Mychael Raya; City Clerk Angela Hoover; Legislative Office Manager Lori Smith; and IT Manager Dave Sorensen. At 5:30 PM, the meeting moved to the First Floor Meeting Chambers.

President Coughlin announced the City Council is conducting the Council Meeting in-person with an option for the public to join in person, participate via Zoom, or view on BKAT, because Community involvement is encouraged; and lastly, provided a reminder that now that it is election season, to refrain from any comments on political campaigns or ballot measures.

MAYOR'S REPORT – *Mayor Wheeler highlighted...*

- A new Program with PSE to provide Energy Assessments to Small Businesses
- The Status of the Washington Avenue & 11th Street Construction Project
- The City would be receiving a \$165,000 Grant Award for Admiral Theatre Improvements
- Welcomed new Bremerton School District Superintendent Dr. James Crawford
- Was pleased the Kitsap Conference Center is forecasting over 30,000 attendees in 2024

CONSENT AGENDA

4A – Check Numbers 403626 through 403798 and Electronic Fund Transfers V37916 through V38000 in the grand total amount of \$3,932,796.07; Regular Payroll for pay period ending April 15, 2023 in the amount of \$1,012,794.87; and Regular Payroll for pay period July 15, 2023 in the amount of \$1,072,085.60

4B – Minutes of Meeting – July 19, 2023

4C – Minutes of Study Session – July 26, 2023

4D – Confirm Appointment of Susie Beil to the Bremerton Housing Authority Board of Commissioners

4E – Confirm Appointment of Melissa Watkinson to the CDBG Project Review Committee

There were no questions or comments from the public...

5:46 PM M/S/C/U (Chamberlin/Dennehy) Move to approve the CONSENT AGENDA as presented.

PUBLIC RECOGNITION – *Comments from the public were submitted by **Mary Lou Long**; **Jane Rebelowski**; **Jo Walter**; **Dawn Michelle**; **Joslyn**; **James Langenburg**; **Jim Cline**; **Joie Hayes**; **Marwan Cameron**; **Justin Gurley**; **Molly Brooks**; and **Erinn Hale**...*

GENERAL BUSINESS

6A – RESOLUTION NO. 3362 TO ADOPT THE WARREN AVENUE BRIDGE MULTIMODAL PROJECT PREFERRED DESIGN ALTERNATIVE:

Managing Engineer **Shane Weber** explained that City staff have concluded a bridge configuration alternatives analysis and public outreach process that included five Stakeholder Advisory Group (SAG) Meetings, two public surveys, two open houses, and presentations and briefings to the City Council; a total of eleven alternatives were considered. Projects were eliminated from consideration due to structural infeasibility, unacceptable maintenance requirements, alignment with survey results, and cost constraints. As a result of the feasibility and outreach process, Staff recommends Alternative 2 as the Preferred Alternative. Alternative 2 includes 10-foot clear width pathways on both sides of the bridge with

two outlooks on each side (four total) and is within the current budget of \$26.5 Million. In addition, Staff also recommends moving Alternative 3 forward to be bid as an add alternate with the potential to award Alternative 3 if the bid cost is within budget. Alternative 3 includes 12' pathways on both sides of the bridge but will also require utilizing project funds to purchase a new Under Bridge Inspection Truck (UBIT) for WSDOT to maintain the bridge. A new UBIT truck is estimated at \$1M with additional mitigation costs to WSDOT that are currently undefined. SCJ Alliance Consultant Aaron Knight was available to add to the presentation.

Questions and comments from the public were provided by Dianne Iverson; Amanda Rodgers; Sharon Budd; Christopher Susi; Jane Rebelowski; Travis Merigan; and Sanjay Stone... With a response provided by Mr. Weber...

7:09 PM Motion in support of Resolution No. 3363, "Alternative X" was made by Frey; and seconded by Mockler... Questions and comments were provided by Frey, Mockler, Chamberlin, Younger, Dennehy, Goodnow, and Coughlin... Second round of discussion by Frey, Younger, Dennehy, Mockler, Chamberlin, Goodnow, and Coughlin... With responses provided by Mr. Weber; Public Works Director Tom Knuckey; Mr. Knight; and President Coughlin...

Point-of-Order was called by Goodnow to request more explanation about Alternative X Resolution No. 3363, with a response provided by President Coughlin who established that the alternate version was included in the online Council Meeting Packet...

Following several rounds of Council discussion, Vice President Chamberlin called for the question, which was seconded by Council Member Dennehy...

8:26 PM M/S/C (Frey/Mockler) Move to adopt Resolution No. 3363 endorsing the City of Bremerton Warren Avenue Bridge Multimodal Project "Alternative X" Design Alternative.

Voted in Favor of Motion: Frey, Dennehy, Goodnow, Mockler, Coughlin

Voted Opposed to Motion: Younger, Chamberlin

Abstained: Goodnow

Motion Carried: 4-Yes; 2-No; 1-Abstention

COUNCIL MEMBER REPORTS

Jennifer Chamberlin addressed the homelessness issue while relating to her own experiences with homelessness; was pleased to meet Dr. Crawford; encouraged the community to view the blooms at Blueberry Park; and was excited to see the Pickleball Courts full every day.

Denise Frey reported on Sanders/Halverson Neighborhood Watch "Take Back the Night/Alley" event and the Joint District 2 & 3 Community Meeting that was held in conjunction with Bridging Bremerton; and thanked the community for their thoughtful comments on the Warren Avenue Bridge Multimodal Project.

Quinn Dennehy was very encouraged at the increase in public engagement, moved by the passion and commitment of his fellow Council Members, and welcomed Dr. Crawford.

Michael Goodnow was pleased when Mayor Wheeler recognized him with a proclamation; and expressed his disappointment at what he described as a lack of transparency with the process on the previous item.

Anna Mockler invited everyone to attend the next District 6 Town Hall Meeting on Monday, August 14 from 4:00 to 6:00 PM at the Public Works Facility. And wished President Coughlin a happy birthday!

Eric Younger welcomed Dr. Crawford, and thanked him for sitting through the entire Council Meeting, and offered observations on the popularity of Pickleball and Cornhole.

Jeff Coughlin echoed comments on Dr. Crawford, acknowledged former Superintendent Dr. Leavell, and was pleased with the collaboration between the City, School District, and non-profits; appreciated the community and fellow Council Members for their comments, efforts, and knowledge on the homelessness issue; was excited for all of the community events happening this weekend; thanked Public Works for the extensive planning for the 11th & Perry and Washington & 11th Projects, now underway; enjoyed attending the Kitsap Industrial Readiness Summit hosted by the Kitsap Economic Development Alliance; and was pleased at the turnout at the recent Joint District 2 & 3 Meeting.

20:52:11

Lavelle and when he was in office and, you know you had a real breath of experience and knowledge and I'm seeing that in you several fold and really a drive to do things newer and better and I think there's some really great collaboration brewing between the city and the school district and our library and our nonprofits and I just I sense great things for Bremerton coming

President Coughlin announced the next Study Session on Wednesday, August 9 beginning at 5:00 PM will be held in the 6th Floor Council Conference Room of the Norm Dicks Government Center, and the public is welcome and encouraged to attend.

With no further business, **President Coughlin** adjourned the Council Meeting at 8:55 PM.

Prepared and Submitted by:

Lori Smith

LORI SMITH
Legislative Office Manager

APPROVED by the City Council on the 16th day of August, 2023.

JEFF COUGHLIN, City Council President

Attest:

ANGELA HOOVER, City Clerk

JC:AH:ls:cg

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4C

SUBJECT: Minutes of Study Session –
August 9, 2023

Study Session Date: N/A
COUNCIL MEETING Date: August 16, 2023
Department: City Council
Presenter: Council President
Phone: (360) 473-5280

SUMMARY: The Minutes of Study Session held on August 9, 2023 are attached.

ATTACHMENTS: Meeting Minutes

FISCAL IMPACTS (Include Budgeted Amount): None

STUDY SESSION AGENDA: N/A

STUDY SESSION ACTION: Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve the August 9, 2023 Meeting Minutes as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

CITY COUNCIL STUDY SESSION MINUTES

Wednesday, August 9, 2023

A Study Session of the City Council of the City of Bremerton was called to order on Wednesday, August 9, 2023 at 5:00 PM in Council Conference Room 603 located in the Norm Dicks Government Center at 345 6th Street, with Council President Jeff Coughlin presiding. Other Council Members present were Eric Younger, Anna Mockler, Michael Goodnow, Denise Frey, and Jennifer Chamberlin. Council Member Quinn Dennehy was absent. Legislative Office Manager Lori Smith provided staff support.

President Coughlin established that the Study Session is open for the public to attend in person or view remotely, but there will be no opportunities for input, the content of these items is subject to change, and no action is anticipated...

He further established that a recording will be available online within a few days following the meeting. And any of the items approved for action by the Council tonight, will be placed on the **August 16, 2023 City Council Meeting Agenda** or as otherwise determined...

A. **BRIEFINGS on AGENDA BILL ITEMS**

1. Interlocal Agreement with Kitsap Conservation District for the Rain Garden & Low Impact Development Project **Consent Agenda**
2. Resolution to adopt the City of Bremerton Stormwater Comprehensive Plan Update **Consent Agenda**
3. Create Stormwater Program Manager position at Pay Band 14 of the Management, Professional Confidential & Fiduciary Salary Plan **Consent Agenda**
4. Contract Service Order with Astound Business Solutions, LLC for Dark Fiber Services; and related Budget Amendment **Consent Agenda**
5. Water Quality Combined Financial Assistance Agreement with the State of WA Department of Ecology for the Tracyton Beach Road Sewer Improvements Project **Consent Agenda**
6. Ordinance to amend BMC Section 9.10.030 entitled "Rotating Roster" **Consent Agenda**

President Coughlin called a break from 6:57 to 7:07 PM...

7. Ordinance to amend BMC Chapter 9.32 entitled "Unauthorized Camping" **Discussion will continue at the August 23 Study Session...**
8. ~~Resolution to repeal Resolution No. 3349; and adopt updated Council Rules & Procedures~~ **No discussion. Item was postponed until the August 23 Study Session**

B. **GENERAL COUNCIL BUSINESS**

1. Lodging Tax Advisory Committee Briefing (*Kick-Off Meeting 8/8/23*) – Chair Denise Frey
2. Regional and Other Committee/Board Briefings
3. Other General Council Business was also briefly discussed.

President Coughlin established that the next Council Meeting would be on Wednesday, August 16, 2023 beginning at 5:30 PM in the First Floor Meeting Chambers of the Norm Dicks Government Center, and that the public is invited to attend in person or remotely.

With no further business, the Study Session was adjourned at 9:05 PM.

Prepared and Submitted by:

Lori Smith

LORI SMITH, Legislative Office Manager

APPROVED by the City Council on the 16th day of August, 2023.

JEFF COUGHLIN, Council President

ATTEST:

ANGELA HOOVER, City Clerk

JC:AH:ls:cg

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4D

SUBJECT:

Interlocal Agreement with Kitsap
Conservation District for the Rain Garden &
Low Impact Development Project

Study Session Date:	<u>August 9, 2023</u>
COUNCIL MEETING Date:	<u>August 16, 2023</u>
Department:	<u>PW&U</u>
Presenter:	<u>Chance Berthiaume</u>
Phone:	<u>(360) 473-5929</u>

SUMMARY:

Bremerton's rain garden project will provide technical and financial support to residential property owners for the design and installation of rain gardens, and other low impact development BMPs within the City limits. The program will provide services to separate residential stormwater from the sanitary sewer service connection to help reduce Combined Sewer Overflows during storm events and improve stormwater quality using green infrastructure.

The Kitsap Conservation District has experienced staff who will complete site visits, rain garden designs, and installations. They have extensive rain garden experience and proven success with similar programs. The project will offer resources to teach people to care for their rain gardens and other plantings using natural methods.

ATTACHMENTS:

Interlocal Agreement with the Kitsap Conservation District

FISCAL IMPACTS (Include Budgeted Amount): The cost of this agreement will be an amount not to exceed \$240,000, over a 4 year period, with \$30,000 per year budgeted in the Wastewater Utility beginning in July of 2023 through December 31, 2026, and \$30,000 per year budgeted in the Stormwater Utility. The annual combined cost is a maximum of \$60,000/year.

STUDY SESSION AGENDA:

Limited Presentation Full Presentation

STUDY SESSION ACTION:

Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve the Interlocal Agreement with the Kitsap Conservation District for the Rain Garden Low Impact Development (LID) Project; and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

**INTERLOCAL AGREEMENT
2023-2026**

**Between the City of Bremerton and the Kitsap Conservation District
Regarding Rain Garden & Low Impact Development {LID} Education & Outreach,
Technical Assistance, and Installation**

PREAMBLE

This Interlocal Agreement (hereinafter "agreement") is by and between the City of Bremerton (hereinafter "City") and the Kitsap Conservation District (hereinafter "District".)

RECITALS

WHEREAS, the City is committed to preventing stormwater runoff pollution and Combined Sewer Overflows (CSOs); and

WHEREAS, the City and the District have a common goal to promote Best Management Practices to protect water quality, provide education to land owners on land use impacts, and support the use of Low Impact Development (LID) practices; and

WHEREAS, the services proposed under this agreement will promote improved water quality for local waterways and the mitigation of pollution impacts on fish and wildlife, including shellfish; and

WHEREAS, the District's contribution of services can assist the City in compliance with Washington Department of Ecology CSO reduction requirements; and

WHEREAS, the District's contribution of services can assist the City in compliance with its NPDES (National Pollutant Discharge Elimination System) Municipal Stormwater Permit in the areas of Runoff Control and Education/Outreach; and

WHEREAS, the District has the expertise and experience to provide assistance to property owners on land management activities and reducing impacts to water quality; and

WHEREAS, the City and the District desire to enter into an agreement and continue to work collaboratively in providing information and services to property owners that will protect water quality; and

WHEREAS, the Interlocal Cooperation Act, RCW 39.34, authorizes the parties hereto to enter into this agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and the District agree as follows:

AGREEMENT

1 SERVICES BY DISTRICT

The District shall perform such duties and services as are listed on the scope of work attached hereto as Exhibit A. Said services shall be performed in accordance with the approved scope of work and budget specified in Exhibit A. All services funded under this Agreement shall be provided exclusively within the boundaries of incorporated City of Bremerton. The District shall furnish all services, labor, and related equipment to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2 PAYMENT

The City shall reimburse the District only for actual incurred costs upon presentation of a properly executed invoice in a form approved by the City. The sum of the District's reimbursement requests during the duration of this Agreement shall not exceed Sixty Thousand Dollars (\$60,000) per year, of which a maximum of Thirty Thousand Dollars (\$30,000) may be reimbursed for LID projects that include disconnection of storm runoff from the sanitary sewer system in support of CSO reduction, **and/or** a maximum of Thirty Thousand Dollars (\$30,000) may be reimbursed for LID projects at properties with no stormwater connection to the sanitary sewer system in support of NPDES permit requirements and stormwater pollution prevention. The anticipated (budgeted) and actual distribution of funds will be reported by the District quarterly and monitored by the City. Reimbursement requests shall be submitted once a quarter. The City reserves the right to withhold payments pending timely delivery of progress reports or documents as may be required under this Agreement. The City shall reimburse the District within sixty (60) days of receipt of a properly executed District invoice.

3. GENERAL ADMINISTRATION AND MANAGEMENT

The Stormwater Permit Coordinator, or designee, shall be the City's representative and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this Agreement.

The Chair of the Board of Supervisors for the Kitsap Conservation District, or his/her designee, shall represent the District in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of the City pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the District's representative.

The parties do not create through this Agreement a separate legal entity subject to suit. The parties will not jointly own real or personal property as part of this undertaking.

4. REPORTING

The District shall produce quarterly and year-end reports summarizing the work performed and

evaluating the performance and results of the work performed pertaining to this Agreement.

Progress reports shall include, but are not limited to, the following information:

- a. Status of the work plan.
- b. A description of work performed during the period and progress made to date, including performance indicators that reflect effectiveness of the program elements as set forth in Exhibit A.
- c. Description of any adverse conditions that have affected the program objectives and/or time scheduled, and actions taken to resolve these issues.
- d. Progress reports shall be submitted as follows: For each year, *Quarterly reports* are due the closest workday to April 30, July 30, and October 30; *Year-end invoice and Year-end report* is due January 10th. The Year-end Report shall contain a summary of major accomplishments realized during the year. This report shall include, but not be limited to, photographs, slides, and any other graphics that would enhance the content and/or appearance of the report.

5. INSPECTION AND AUDIT

The District shall maintain all books, records, documents, and other evidence pertaining to the costs and expenses allowable under this Agreement in accordance with generally accepted accounting practices. All such books and records required to be maintained by this Agreement shall be subject to inspection and audit by representatives of the City and/or the Washington State Auditor at all reasonable times, and the District shall afford the proper facilities for such inspection and audit. Representatives of the City and/or the Washington State Auditor may copy such books, accounts, and records where necessary to conduct or document an audit. The District shall preserve and make available all such books of account and records for a period of five {5} years after final payment under this Agreement. In the event that any audit or inspection identifies any discrepancy in such financial records, the District shall provide the City with appropriate clarification and/or financial adjustments within thirty {30} calendar days of notification of the discrepancy.

6. INDEPENDENT CONTRACTOR

- A. The District and the City understand and expressly agree that the District is an independent contractor in the performance of each and every part of this Agreement. The District expressly represents, warrants, and agrees that its status as an independent contractor in the performance of the work and services required under this Agreement is consistent with and meets the six-part independent contractor test set forth in RCW 51.08.195. The District, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing the services required under this Agreement. The District shall make no claim of City employment nor shall claim any related employment benefits, social security, and/or retirement benefits.

- B The District shall be solely responsible for paying all taxes, deductions, and assessments, including but not limited to federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the District shall pay the same before it becomes due.
- C The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the District performs hereunder.

7. DISCRIMINATION AND COMPLIANCE WITH LAWS

- A The District agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, sexual orientation, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.
- B The District shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement.
- C Violation of this Section 7 shall be a material breach of this Agreement and grounds for cancellation, termination or suspension by the City, in whole or in part, and may result in ineligibility for further work for the City.

8. TERM AND TERMINATION OF AGREEMENT

- A This Agreement shall become effective upon execution by both parties and shall continue in full force until December 31, 2026, unless sooner terminated by either party as provided below.
- B This Agreement may be terminated by either party without cause upon thirty (30) days written notice to the other party. In the event of termination, all finished or unfinished documents, reports, or other material or work of the District pursuant to this Agreement shall be submitted to the City, and the District shall be entitled to just and equitable compensation as set forth in Section 2 for any satisfactory work/services completed prior to the date of termination.

9. HOLD HARMLESS AND INDEMNIFICATION

- A. The District agrees to protect, defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the District, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the District under this Agreement.
- B. The City agrees to protect, defend, indemnify, and hold harmless the District, its officers, employees, and agents from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) caused by or occurring by reason of any negligent act, error and/or omission of the City, its officers, employees, and/or agents, arising out of or in connection with the performance or non-performance of the services, duties, and obligations required of the City under this Agreement.
- C. In the event that the District and the City are both negligent, then each party's liability for indemnification shall be limited to the contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to that party, its officers, employees and agents.
- D. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity of each party under Washington's Industrial Insurance Act, RCW Title 51, as respects the other parties only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the employees of each party. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- E. The City's inspection or acceptance of any of the District's work when completed shall not be grounds to avoid any of these covenants of indemnification.
- F. Nothing contained in this section of this Agreement shall be construed to create a liability or a right of indemnification in any third party.
- G. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

10. INSURANCE

The District shall maintain insurance as follows:

- Commercial General Liability as described in Exhibit B.
- Automobile Liability as described in Exhibit B.

The District shall comply with the provisions of RCW Title 51, Industrial Insurance. For the duration of this Agreement, the District shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in RCW Title 51, and shall maintain full compliance with RCW Title 51.

11. SUBLETTING OR ASSIGNING CONTRACT

The District shall not assign or subcontract any portion of the services provided within the terms of this Agreement without obtaining prior written approval from the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of the District as stated herein.

12. EXTENT OF AGREEMENT/MODIFICATION

This Agreement, together with Exhibits or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

13. SEVERABILITY

- A. If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. FAIR MEANING

The terms of this Agreement shall be given their fair meaning and shall not be construed in favor of or against either party hereto because of authorship. This Agreement shall be deemed to have been drafted by both of the parties.

15. NON-WAIVER

A waiver by either party hereto of a breach by the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

16. NOTICES

Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

City of Bremerton
100 Oyster Bay Ave N
Bremerton, WA 98312
Attention: Stormwater Permit Coordinator
Phone: {360} 473-5929
Fax: {360} 473-5018

Kitsap Conservation District
10332 Central Valley Road
Poulsbo, WA 98370
Attention: Chair of the Board of Supervisors
Phone: {360} 204-5529
Fax: {360} 204-5519

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

17. SURVIVAL

Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

18. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

19. VENUE

The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Kitsap County, Washington.

20. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

21. FILING

Pursuant to RCW 39.34.040, this Agreement shall be filed with the Kitsap County Auditor or listed by subject on the public website of the parties hereto or on another electronically retrievable public source.

EXECUTED THIS ___ DAY OF _____, 202_.

KITSAP CONSERVATION DISTRICT

CITY OF BREMERTON



Albert Allpress
Chair, Board of Supervisors

Greg Wheeler
Mayor



Date

Date

EXHIBIT A SCOPE OF WORK & BUDGET

PURPOSE

- Reduce Combined Sewer Overflows (CSOs), which is the overflow of sewage and stormwater into Puget Sound that occurs as a result of stormwater exceeding the hydraulic capacity of the sanitary sewer system
 - / Disconnect storm runoff from the sanitary sewer system at selected properties and use LID practices if possible to allow water to infiltrate into the ground
- Support NPDES permit compliance and environmental stewardship objectives through:
 - / Public education on LID principals and applications
 - / Increased use of LID practices to mitigate the effects of existing development
 - / Water quality improvements achieved from the LID retrofit projects
- Provide an opportunity for private property owners within the City to obtain financial assistance for small-scale LID projects they might not otherwise construct
- Provide cost reimbursement to private property owners
- Provide funds for technical assistance for small-scale LID projects

Within the City of Bremerton ("City"), some private properties still have downspouts and other stormwater runoff sources connected to the sanitary sewer. This can be a problem in large storm events because the extra stormwater can overwhelm the sanitary sewer and cause a CSO in that basin. Disconnecting these properties and directing the runoff to LID where possible will help reduce CSOs and therefore improve water quality, protect marine habitats, and reduce risks to human health. In addition, directing this water into LID will treat the stormwater by removing metals, nutrients, and other pollutants before the water reaches Puget Sound. The City and the Kitsap Conservation District ("District") share a common goal to promote Best Management Practices (BMPs) to protect water quality, provide education to landowners on land use impacts, and support the use of Low Impact Development ("LID") practices.

The District has the expertise and experience to provide education and technical assistance to property owners who are interested in learning about LID principals or employing stormwater BMPs on their property.

The City and the District desire to enter into this agreement and work collaboratively.

SCOPE OF WORK

The District will partner with the City to develop and accomplish the following tasks:

- Task 1- Education and outreach
- Task 2- Identify opportunities & locations for small-scale LID projects
- Task 3- Implement District rain garden/LID program within City limits
- Task 4- Administration, documentation, and reporting

TASK 1 - EDUCATION AND OUTREACH

Objective: Promote public knowledge of LID practices and promote the rain garden/LID program.

Scope:

- 1.1 The District shall work with the City to create outreach materials including but not limited to brochures, flyers, and letters to advertise the program.
- 1.2 The District shall conduct outreach to eligible property owners to recruit program participants.

TASK 2 - IDENTIFY OPPORTUNITIES & LOCATIONS FOR SMALL-SCALE LID PROJECTS

Objective: Develop a list of potential small-scale rain garden/LID sites based on CSO basins of concern, stormwater connection to the sanitary sewer, District analysis, and in consultation with City staff.

Scope:

- 2.1 Develop a list of potential sites and facility types
- 2.2 Analyze potential sites for BMP type and estimated costs

TASK 3 - IMPLEMENT DISTRICT RAIN GARDEN/LID PROGRAM WITHIN CITY LIMITS

Objective: The District will implement its existing rain garden/LID program for properties within the City limits.

Scope:

- 3.1 Recruit property owners consistent with Task 2 with the specific goal of CSO reduction, recruit property owners City-wide with the overall goal of increasing the use of LID practices to reduce stormwater pollution and improve water quality, and provide technical support for the design and installation of rain gardens or other small-scale LID projects.
- 3.2 The design of all projects shall be consistent with City codes and standards.
- 3.3 The agreement between the District and property owner shall not be inconsistent with City codes and ordinances.
- 3.4 The agreement with the property owners shall include a requirement for on-going maintenance which is consistent with City standards. The District will provide O&M inspection for those properties receiving cost-share within this agreement for a period not to exceed the contracts dates of this ILA.

TASK 4-ADMINISTRATION, DOCUMENTATION, AND REPORTING

Objective: To provide project management, including communication, documentation, and submittal of billing invoices and reports.

Scope:

- 5.1 Project management efforts shall include conducting, coordinating, and scheduling project activities, including quality control.
- 5.2 Communication with the City shall be through postal mail, email, consultation meetings and phone discussions.
- 5.3 Project documentation shall include a separate file for each project location which contains, at a minimum, a copy of: the signed landowner agreement; the design report; documentation of satisfactory completion; photo(s) of the completed project; and GPS location. Upon site completion, a copy of each file shall be submitted to the City with the subsequent quarterly report.
- 5.4 Billing invoices, progress reports, and supportive documentation shall be submitted to the City's Project Manager on a quarterly and annual basis.
- 5.5 Maintain all records throughout the duration of the agreement and archive for an additional five years for audit purposes.

BUDGET

4-YR BUDGET	
Rain Garden & LID	City
Technical assistance and cost-share to provide outreach/education, downspout disconnection, and installation of small-scale LID projects at properties with stormwater runoff connected to the sanitary sewer system	Up to \$120,000 not to exceed \$30,000 per year
Technical assistance and cost-share to provide outreach/education, technical assistance, and installation of small-scale LID projects at properties with no stormwater connection to the sanitary	Up to \$120,000 not to exceed \$30,000 per year
Total 4-Year project budget	Up to \$240,000

EXHIBIT B INSURANCE

Insurance against claims for injuries to persons or damage to property arising out of or in connection with the performance of this Agreement by the District, its officers, employees and agents:

- A. Automobile Liability Insurance with limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage.

- B. Commercial General Liability Insurance written on an occurrence basis with limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

Before commencing work and services, the District shall provide to the person identified in Section 16 of the Agreement a Certificate of Insurance evidencing the required insurance. City reserves the right to request and receive a certified copy of all required insurance policies.

Any payment of deductible or self-insured retention shall be the sole responsibility of the District. City shall be named as an additional insured on the Commercial General Liability Insurance Policy, with regard to work and services performed by or on behalf of the District using ISO Additional Insured endorsement CG 20 10 01 and Additional Insured-Completed Operations endorsement CG 20 37-10 901 or substitute endorsements providing equivalent coverage. A copy of the endorsement naming City as an additional insured shall be attached to the Certificate of Insurance.

The District's Commercial General Liability insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

The District's insurance shall be primary and non-contributory insurance as respects the City and shall contain a waiver of subrogation against the City for claims arising out of any operations, liabilities and obligations to which coverage applies. It shall be an affirmative obligation upon the District to advise the City's Risk Manager by fax at (360} 473-5161, or by certified mail, return receipt requested to City of Bremerton, Attn: Risk Management, 345 6th Street, Suite 100, Bremerton, WA 98337 within two days of the cancellation, suspension or substantive change of any insurance policy set out herein, and failure to do so shall be construed to be a breach of this Agreement.

The City also reserves its unqualified right to require at any time and for any reason, proof of coverage in the form of a duplicate of the insurance policy with all endorsements as evidence of coverage.

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4E

*Pulled down to
General Business Item 6A*

SUBJECT:

Resolution No. 3364 to adopt the City of
Bremerton Stormwater Comprehensive Plan
Update

Study Session Date: August 9, 2023
COUNCIL MEETING Date: August 16, 2023
Department: PW & U
Presenter: Chance Berthiaume
Phone: (360) 473-5929

SUMMARY:

Stormwater system planning is essential for the Stormwater Utility to maintain operational conditions that provide adequate service to residents, protect property from flooding, and protect waters around Bremerton from pollution generated by the developed environment. Comprehensive planning is a new requirement of the NPDES Municipal Phase II Stormwater Permit that defines many actions of the Utility programs.

ATTACHMENTS: (1) Resolution No. 3364; (2) Stormwater Comprehensive Plan is available at this link: <https://www.bremertonwa.gov/1319/Stormwater-Comprehensive-Plan> (3) Proposed Modifications **Added 8/15/23 2:00 PM**

FISCAL IMPACTS (Include Budgeted Amount): The Stormwater Comprehensive Plan includes anticipated annual operational expenses for the Stormwater Utility and a 20-year Capital Improvement Plan.

STUDY SESSION AGENDA: Limited Presentation Full Presentation

STUDY SESSION ACTION: ~~Consent Agenda~~ General Business Public Hearing

RECOMMENDED MOTION:

Move to approve Resolution No. 3364 adopting City of Bremerton 2022-27 Stormwater Comprehensive Plan.

COUNCIL ACTION: Approve Deny Table Continue No Action

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4F

SUBJECT:

Create Stormwater Program Manager position at Pay Band 14 of the Management, Professional Confidential & Fiduciary Salary Plan

Study Session Date: August 9, 2023
COUNCIL MEETING Date: August 16, 2023
Department: PW&U
Presenter: T. Knuckey
Phone: (360) 473-2376

SUMMARY:

In July, Human Resources completed a desk audit on the NPDES Stormwater Permit Coordinator, and the conclusion was that the incumbent should be reclassified to a new position titled "Stormwater Program Manager" at Pay Band 14 of the Management, Professional, Confidential & Fiduciary Salary Plan. The incumbent has since taken another position in the City, and so the existing position is vacant. The requested action before Council is to create a new Stormwater Program Manager position; the existing NPDES Stormwater Permit Coordinator position will remain vacant and will be eliminated with the 2024 budget.

ATTACHMENTS:

- 1) Job Description **Updated 8/11/23 10:20 AM**
- 2) Excerpt from the Management, Professional, Confidential & Fiduciary Salary Plan

FISCAL IMPACTS (Include Budgeted Amount): Depending on the new hire, the cost to the stormwater Fund could increase to a maximum of \$5,000/year.

STUDY SESSION AGENDA: Limited Presentation Full Presentation

STUDY SESSION ACTION: Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to create the Stormwater Program Manager position at Pay Band 14 of the Management, Professional, Confidential & Fiduciary Salary Plan.

COUNCIL ACTION: Approve Deny Table Continue No Action

STORMWATER PROGRAM MANAGER

GENERAL FUNCTION

This position is responsible for leading, administering and managing the City's Stormwater Program. This position oversees implementation of the City's National Pollutant Discharge Elimination System (NPDES) Phase II Municipal permit to ensure both regulatory compliance as well as adherence to best environmental practices for the City of Bremerton. The incumbent is the liaison between the City and Department of Ecology on all stormwater and permit issues. This position also coordinates supporting actions from all City departments, divisions, and management including developing policy, programs, and providing guidance to management and staff to ensure City activities support program goals, and Permit requirements. The position reports to the Utility Manager.

REPRESENTATIVE ESSENTIAL DUTIES AND RESPONSIBILITIES (Note – this list is intended only to illustrate the various types of work that may be performed. The omission of specific statements does not exclude them from the position.)

- Implement National Pollutant Discharge Elimination System (NPDES) Stormwater Permit program as required by the Department of Ecology. Includes providing guidance to city management and staff related to required Permit compliance, creates annual updates to the Stormwater Management Program Plan, compiles and submits the annual NPDES report, and oversees the correction of illicit discharges and inspection of facilities as required by the Permit.
- Coordinate and participate in the development and updating of short and long-range plans, including the City's Comprehensive Plan, Stormwater Plan, and drainage basin watershed plans to protect and enhance both the built and natural environments.
- Manage the development of the annual stormwater operations budget. This includes program administration, water quality monitoring, public education & outreach (E&O), public involvement and participation, illicit discharge detection and elimination (IDDE), and source control programs.
- Define and support city-wide staff training for stormwater pollution prevention.
- Supervise and provide leadership to the Stormwater Environmental Technician. Duties include setting work priorities, planning, organizing, assigning, advising, assisting, motivating, annual evaluations, and training, as necessary.
- Work with the Stormwater Project Manager to develop and implement the Stormwater Program CIP.
- Develop and manage professional services contracts.
- Initiate, develop, and submit grant applications to support CIP project and program funding.
- Develop new programs to meet Permit requirements through collaborative effort with affected department and divisions.
- Work with property owners and stakeholders to develop watershed protection and restoration plans.
- Manage education program regarding pollution prevention and use of BMPs.
- Develop and review various reports, plans, feasibility studies, and environmental documents.
- Present materials to City staff, elected officials, and the public.
- Represent the City at meetings involving other municipal governments, and State and Federal agencies.

STORMWATER PROGRAM MANAGER

- Serve as liaison with Federal, State, and other agencies with respect to regulation and programs.
- Serve on various councils or panels as requested, including West Sound Stormwater Managers Group, Puget Sound Partnership Salmon Recovery Council, West Sound Partners for Ecosystem Recovery.
- Update code and policies as needed to comply with Permit requirements.
- Update City ordinances related to the management of surface water systems and compliance with the NPDES Permit.
- Stay abreast of new trends and innovations in the field of surface water and environmental programs.

Other Duties

- **Regular attendance is an essential requirement**
- **Performs related work as assigned and/or required**

KNOWLEDGE, SKILLS AND ABILITIES (Entry Requirements)**Knowledge of:**

- Maintenance and repair methods of municipal utility stormwater, water, and wastewater infrastructure, equipment, and systems.
- Construction methods, standards, equipment, labor, and inspection applications.
- Modern practices, materials and methods used for utility service operations, infrastructure equipment and system maintenance.
- Safe working practices, procedures, and safety training methods.

Ability to:

- Interpret and effectively apply complex governmental policy intent and/or specific regulatory provisions to general and specific conditions.
- Evaluate, plan, and establish a proper sequence of action for personnel to accomplish goals.
- Assemble, organize, evaluate and produce statistical and factual summations/cost estimates.
- Persuasively and ethically communicate ideas and assert a point of view in complex or controversial situations.
- Provide verbal and written directives, information, and advice to a wide variety of people.
- Exhibit and instill in subordinates a high service priority in contacts with the public and others encountered in work.

QUALIFYING EDUCATION AND EXPERIENCE (Minimum Requirements)

- Any combination of education or experience equivalent to a four-year degree in environmental sciences, and five years in a supervisory position. Municipal experience is preferred.

Required Licensing and Certification

- A valid Washing State driver's license is required and must be obtained prior to date of appointment, or another date set by the City.
- Stormwater manager certification within 1 year of hire.

STORMWATER PROGRAM MANAGER**PHYSICAL REQUIREMENTS**

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Must be able to operate motorized vehicles, heavy equipment when necessary. Able to work extended hours during extreme weather conditions. Be able to lift items up to 50 lbs, stoop, stand or sit for extended periods of time.

WORKING CONDITIONS

The work environment characteristics described are representative of those an employee encounters while performing the essential functions of this job. Variety of weather conditions related to seasonal activities, heat, rain, storm, and snow. Be able to work under diverse situations. Office environments. Work is performed in the office and in the field with exposure to noise, traffic, and various weather conditions. Works long hours and different shifts in emergency situations. Works on call 24-hour call back when necessary.

LEGAL and REGULATORY EMPLOYMENT CONDITIONS

Fair Labor Standards Act: The position qualifies for exemption from the Fair Labor Standards Act minimum wage and overtime provisions under the Act's Administrative Employees exemptions.

Representation: This position is excluded from bargaining unit representation.

Civil Service: The classification is excluded from the City's Civil Service System.

Appointment and Removal Authority: The position is filled by appointment by the Department Head. Removal is by action of the Department Head in conformance with Human Resources Policies.

This classification specification does not constitute an employment agreement between the City and employee. It is subject to change by the City, with the approval of Human Resources, as the needs of the City and requirements change.

CITY OF BREMERTON
MANAGEMENT, PROFESSIONAL, CONFIDENTIAL & FIDUCIARY SALARY PLAN - 2023
 General Wage Adjustment 2.50% - Effective 1-1-23

PAY BAND	TITLE	SALARY BASE	RATE 1	RATE 2	RATE 3	RATE 4	RATE 5	RATE 6	RATE 7	RATE 8
16	ASSISTANT CITY ATTORNEY II	MONTH	8,749.58	9,192.52	9,422.28	9,657.86	9,899.30	10,146.80	10,400.44	10,660.50
	ASSISTANT FINANCE DIRECTOR	SEMI-MONTH	4,374.79	4,596.26	4,711.14	4,828.93	4,949.65	5,073.40	5,200.22	5,330.25
	CITY PROSECUTOR	ANNUAL	104,994.96	110,310.24	113,067.36	115,894.32	118,791.60	121,761.60	124,805.28	127,926.00
	ENGINEERING PROJECT MANAGER-CAPITAL	SEMI-MO DEF COMP	174.99	183.85	188.45	193.16	197.99	202.94	208.01	213.21
	ENGINEERING PROJECT MANAGER-TRANS.									
	FORESTRY MANAGER									
	INTERNAL SERVICES MANAGER									
	PLANNING MANAGER									
	PUBLIC WORKS OPERATIONS MANAGER									
	RISK MANAGER									
	UTILITY/FACILITIES MANAGER									
	WASTEWATER MANAGER									
15	ASSET MANAGER	MONTH	8,327.96	8,749.58	8,968.32	9,192.52	9,422.28	9,657.86	9,899.30	10,146.80
	BUILDING OFFICIAL	SEMI-MONTH	4,163.98	4,374.79	4,484.16	4,596.26	4,711.14	4,828.93	4,949.65	5,073.40
	COURT ADMINISTRATOR	ANNUAL	99,935.52	104,995.01	107,619.84	110,310.24	113,067.36	115,894.32	118,791.60	121,761.60
		SEMI-MO DEF COMP	166.56	174.99	179.37	183.85	188.45	193.16	197.99	202.94
14	ASSISTANT CITY ATTORNEY I	MONTH	7,926.70	8,327.96	8,536.14	8,749.58	8,968.32	9,192.52	9,422.28	9,657.86
	ASSISTANT CITY PROSECUTOR II	SEMI-MONTH	3,963.35	4,163.98	4,268.07	4,374.79	4,484.16	4,596.26	4,711.14	4,828.93
	EQUITY, DIVERSITY, INCL. MANAGER	ANNUAL	95,120.40	99,935.52	102,433.68	104,994.96	107,619.84	110,310.24	113,067.36	115,894.32
	PARKS OPERATIONS MANAGER	SEMI-MO DEF COMP	158.53	166.56	170.72	174.99	179.37	183.85	188.45	193.16
13	CITY CLERK	MONTH	7,544.72	7,926.70	8,124.82	8,327.96	8,536.14	8,749.58	8,968.32	9,192.52
		SEMI-MONTH	3,772.36	3,963.35	4,062.41	4,163.98	4,268.07	4,374.79	4,484.16	4,596.26
		ANNUAL	90,536.64	95,120.40	97,497.84	99,935.52	102,433.68	104,994.96	107,619.84	110,310.24
		SEMI-MO DEF COMP	150.89	158.53	162.50	166.56	170.72	174.99	179.37	183.85
12	BUDGET ANALYST	MONTH	7,181.20	7,544.72	7,733.36	7,926.70	8,124.82	8,327.96	8,536.14	8,749.58
	CDBG ADMINISTRATOR	SEMI-MONTH	3,590.60	3,772.36	3,866.68	3,963.35	4,062.41	4,163.98	4,268.07	4,374.79
	RISK MANAGEMENT SPECIALIST	ANNUAL	86,174.40	90,536.64	92,800.32	95,120.40	97,497.84	99,935.52	102,433.68	104,994.96
		SEMI-MO DEF COMP	143.62	150.89	154.67	158.53	162.50	166.56	170.72	174.99
11	CONTRACTS ADMINISTRATOR	MONTH	7,047.34	7,181.20	7,300.64	7,444.72	7,593.36	7,746.70	7,904.82	8,072.96
	EXECUTIVE ASSISTANT	SEMI-MONTH	3,523.67	3,590.60	3,680.32	3,772.36	3,866.68	3,963.35	4,062.41	4,163.98
	LEGISLATIVE ASSISTANT	ANNUAL	84,568.08	86,174.40	88,327.68	90,536.64	92,800.32	95,120.40	97,497.84	99,935.52
	PARKS PRESERVATION DEVELOPMENT MGR	SEMI-MO DEF COMP	140.95	143.62	147.21	150.89	154.67	158.53	162.50	166.56
10	PUBLIC ACCESS MANAGER	MONTH	6,505.78	6,835.18	7,006.04	7,181.20	7,360.64	7,544.72	7,733.36	7,926.70
	ASSISTANT CITY PROSECUTOR I	SEMI-MONTH	3,252.89	3,417.59	3,503.02	3,590.60	3,680.32	3,772.36	3,866.68	3,963.35
	ASSISTANT COURT ADMINISTRATOR	ANNUAL	78,069.36	82,022.16	84,072.48	86,174.40	88,327.68	90,536.64	92,800.32	95,120.40
	HUMAN RESOURCES ANALYST II	SEMI-MO DEF COMP	130.12	136.70	140.12	143.62	147.21	150.89	154.67	158.53
9	PUBLIC ACCESS MANAGER	MONTH	6,192.30	6,505.78	6,668.44	6,835.18	7,006.04	7,181.20	7,360.64	7,544.72
	ASSISTANT CITY PROSECUTOR I	SEMI-MONTH	3,096.15	3,252.89	3,334.22	3,417.59	3,503.02	3,590.60	3,680.32	3,772.36
	ASSISTANT COURT ADMINISTRATOR	ANNUAL	74,307.60	78,069.36	80,021.28	82,022.16	84,072.48	86,174.40	88,327.68	90,536.64
	HUMAN RESOURCES ANALYST II	SEMI-MO DEF COMP	123.85	130.12	133.37	136.70	140.12	143.62	147.21	150.89

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4G

SUBJECT:

Contract Service Order with Astound
Business Solutions, LLC for Dark Fiber
Services; and related Budget Amendment

Study Session Date:	<u>August 9, 2023</u>
COUNCIL MEETING Date:	<u>August 16, 2023</u>
Department:	<u>IT + PWU WR / WWTP</u>
Presenter:	<u>Hans N/Cami A/Eric B.</u>
Phone:	<u>(360) 473-5477</u>

SUMMARY:

Phase 2 of SCADA communication upgrades for wastewater pump stations, and the addition of redundant diverse routes for COB employee crucial sites managed by IT, and the addition of WR sites to the dark fiber network and the alternative east Bremerton access route. Use of this dark fiber cable will standardize communications for all departments and significantly improve reliability. The original Master Services Agreement was previously approved under Wave Business Solutions now known as ASTOUND BUSINESS SOLUTIONS, LLC, and is still in effect for this new "Order for Dark Fiber Services (Multi-Sites) - OP313711" identifies the specific locations of cable to be installed along with the monthly cost for service, and the one time cost,

ATTACHMENTS:

- 1) City of Bremerton - Order for Dark Fiber Services (Multi-Sites) - OP313711- 07-26-2023 – CLEAN.docx
- 2) 3 - Legal Review Submission_ City of Bremerton - Master Services Agreement - 12-03-2021.docx.pdf

FISCAL IMPACTS (Include Budgeted Amount):

New charges for WWTP are \$3,900 plus tax to replace existing average charges of \$3,200 per month.

New charges for WR are \$6,300 plus tax to replace existing average charges of \$2000 per month.

New charges for IT are \$2700 plus tax per month.

No budget adjustment is required as it is already budgeted in 2023 .

One time CIP funds for dark fiber buildout cost from WWTP \$99,005.99, WR \$144,464.17 and IT \$57,628.42 for a total of: \$301,098.58 from capital improvement funds.

STUDY SESSION AGENDA:

Limited Presentation Full Presentation

STUDY SESSION ACTION:

Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve the Dark Fiber Services Order with ASTOUND BUSINESS SOLUTIONS, LLC, and amend the budget to reflect the Contract amounts in the fiscal impacts section above, and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action

**ORDER FOR DARK FIBER SERVICES
OP313711**

This Order for Dark Fiber Services: OP313711 (this “Service Order”) is entered into as of the date of last signature below (the “Effective Date”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, d/b/a Astound Business Solutions, acting on behalf of itself and as agent for its Affiliates (collectively, “Provider”), and the CITY OF BREMERTON (“Customer”). This Service Order is made pursuant to and will be governed by that certain Master Services Agreement for Enterprise Services – Governmental Customer by and between Provider and Customer dated December 3, 2021 (the “MSA”). All capitalized terms used but not defined in this Service Order shall have the meanings given to them in the MSA.

Section 1: Dark Fiber Services. Provider shall provide to Customer the dark fiber services set forth in the following table (each, a “Service”). The Services shall connect the end points set forth below (each such location, a “Service Site”), using the number of dark fiber strands described below, in exchange for the one-time, non-recurring installation charges (“NRC”) set forth below, and the monthly recurring charges (“MRC”) set forth below:

Fiber Route Identifier	A Location End Point	Z Location End Point	Description of Fiber	NRC	MRC
BPD Route	1025 Burwell Street Bremerton, WA 98337 47.564824° / -122.634644°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
PWU Route	100 Oyster Bay Avenue Bremerton, WA 98312 47.564067° / -122.672347° **Fiber entrance to be on North Side of Bldg to Create Geographic Diversity from CCF Route 1**	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$32,852.07	\$300.00
FS1 Route	911 Park Avenue Bremerton, WA 98337 47.569689° / -122.630545°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
BMC Route	550 Park Avenue Bremerton, WA 98337 47.567137° / -122.629945°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
FS3 Route	3031 Olympus Drive Bremerton, WA 98337 47.591480° / -122.619215°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
FS2 Route	5005 Kitsap Way Bremerton, WA 98312 47.569117° / -122.682580°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
BSC Route	1140 Nipsic Avenue Bremerton, WA 98310 47.571512° / -122.610839°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
PRK Route	680 Lebo Boulevard Bremerton, WA 98310 47.582228° / -122.629677°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
BKAT Route	7266 Tibardis Road NW Bremerton, WA 98311 47.629218° / -122.665824°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$24,776.35	\$300.00

CE6 Route	801 Burwell Street Bremerton, WA 98337 47.565016° / -122.630392°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
CE8 Route	100 Washington Avenue Bremerton, WA 98337 47.563135° / -122.625526°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$0.00	\$300.00
PS12 Route	1705 East 31 st Street Bremerton, WA 98310 47.591840° / -122.621557°	345 6 th Street Bremerton, WA 98337	1 strand single mode dark fiber	\$12,942.80	\$300.00
CE2 Route	1537 Park Ave Bremerton, WA 98337 47.575786° / -122.630516°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
SB2 Route	3641 Freighter Place Bremerton, WA 98312 47.564824° / -122.630319°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$74,060.98	\$300.00
WB3 Route	416 Cambrian South Bremerton, WA 98312 47.558270° / -122.654194°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
KL1 Route	225 O Street West Bremerton, WA 98312 47.561686° / -122.694104°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
KL2 Route	1976 Price Road NW Bremerton, WA 98312 47.565951° / -122.701468°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
KL4 Route	1621 Kitsap Way Bremerton, WA 98312 47.567405° / -122.653784°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$24,945.01	\$300.00
OB6 Route	2902 Shore Drive Bremerton, WA 98310 47.568219° / -122.610546°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
OB5 Route	2150 Shorewood Drive Bremerton, WA 98312 47.578070° / -122.686078°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
CW3 Route	262 Stevens Drive Bremerton, WA 98312 47.586420° / -122.654506°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
OF17 Route	2601 Farragut Street Bremerton, WA 98314 47.558682° / -122.652260°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
PSB Route	1025 Burwell Street Bremerton, WA 98337 47.564824° / -122.634644°	1600 Oyster Bay Avenue S. Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
PS08 Route	7300 West Werner Road Bremerton, WA 98312 47.559510° / -122.697848°	1650 3 rd Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00

R06 Route	5144 Francis Street Bremerton, WA 98312 47.556604° / -122.686164°	1650 3 rd Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
CCF Route 1	1650 3 rd Avenue Bremerton, WA 98312 47.549296° / -122.677587°	100 Oyster Bay Avenue N. Bremerton, WA 98312 **Fiber entrance to be on South Side of Bldg to Create Geographic Diversity from PWU Route**	1 strand single mode dark fiber	\$14,007.00	\$300.00
BS10 Route	5785 Imperial Way SW Bremerton, WA 98312 47.496670° / -122.766335°	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$12,732.70	\$300.00
PS2A Route	2426 Anderson Hill Road SW Bremerton, WA 98310 47.527114° / -122.680851°	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
R16 Route	260 Sugar Pine Drive Bremerton, WA 98310 47.599106° / -122.646896°	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
R19 Route	2628 Ash Street Bremerton, WA 98310 47.581819° / -122.623630°	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
RO5 Route	3200 1 st Street Bremerton, WA 47.564784° / -122.659150°	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
Snyder Flow Control Route	Snyder Flow Control 47°35'2.21"N / 122°39'5.00"W	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
Warren Ave. Flow Control Route	Warren Avenue Flow Control 47°34'39.28"N / 122°37'57.56"W	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
Manette Flow Control Route	Manette Flow Control 47°34'8.81"N / 122°37'24.19"W	100 Oyster Bay Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
PS11 Route	844 Callahan Drive Bremerton, WA 98310 47.586962° / -122.626430°	1705 East 31 st Street Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00
PS13 Route	2929 Olympus Drive Bremerton, WA 98310 47.590045° / -122.619446°	1705 East 31 st Street Bremerton, WA 98310	1 strand single mode dark fiber	\$6,393.31	\$300.00
R15 R18 Route	1925 NE Cheryl Street Bremerton, WA 98310 47.602102° / -122.617344°	1705 East 31 st Street Bremerton, WA 98310	1 strand single mode dark fiber	\$0.00	\$300.00

PS14 Route	1930 Homer Jones Drive Bremerton, WA 47°34'39.97"N / 122°37'17.34"W	1705 East 31 st Street Bremerton, WA 98310	1 strand single mode dark fiber	\$23,727.84	\$300.00
PS2 Route	2380 Anderson Hill Road SW Bremerton, WA 98367 47.524380° / -122.682607°	2426 Anderson Hill Road SW Port Orchard, WA 98367	1 strand single mode dark fiber	\$0.00	\$300.00
W14 Route	5853 S. Central Valley Road NE Bremerton, WA 98311 47.616640° / -122.650397°	50 NE Vena Avenue Bremerton, WA 98311	1 strand single mode dark fiber	\$32,857.38	\$300.00
R17 R20 Route	400 Ridge Lane NE Bremerton, WA 98311 47.611711° / -122.642523°	50 NE Vena Avenue Bremerton, WA 98311	1 strand single mode dark fiber	\$0.00	\$300.00
CCF Route 2	1650 3 rd Avenue Bremerton, WA 98312 47.549296° / -122.677587°	50 NE Vena Avenue Bremerton, WA 98312	1 strand single mode dark fiber	\$0.00	\$300.00
W13 Route	50 NE Vena Avenue Bremerton, WA 47.613521° / -122.650575°	1705 East 31 st Street Bremerton, WA 98310	1 strand single mode dark fiber	\$41,803.14	\$300.00
TOTAL COST:				\$301,098.58	\$12,900.00

Section 2: Initial Service Term. The Initial Service Term for all of the Services is two hundred forty (240) months.

Section 3: One-Time, Non-Recurring Installation Charge. Customer shall pay Provider a one-time, non-recurring installation charge in the amount of Three Hundred One Thousand Ninety-Eight and 58/100 Dollars (\$301,098.58) for the installation of all the dark fiber Services listed above pursuant to this Service Order.

Section 4: No CPI or Other Rate Increases. The MRC for the Services set forth in Section 1 above is fixed for the duration of the Initial Service Term. Provider shall not impose any type of CPI-based increase or other cost-of-living / inflation-based adjustment to the MRC for the Services during the Initial Service Term.

Section 5: Customer Information.

Account Name: City of Bremerton
Account Executive to Customer: Jeff Stoner

Invoicing Address: 345 6th Street
Bremerton, WA 98337
ATTN: Accounts Payable

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

Customer Site Contact:
Hans Nilsson
Hans.Nilsson@ci.bremerton.wa.us
Office: 360-473-5477

Customer Billing Contact:
Hans Nilsson
Hans.Nilsson@ci.bremerton.wa.us
Office: 360-473-5477

Customer Technical Contact:
Hans Nilsson
Hans.Nilsson@ci.bremerton.wa.us
Office: 360-473-5477

[Signatures on following page.]

The submission of this Service Order to Customer by Provider does not constitute an offer. Instead, this Service Order will become effective only when both parties have signed it. The date this Service Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the Effective Date of this Service Order.

CUSTOMER:

CITY OF BREMERTON

By _____

Name: _____

Title: _____

Date: _____

PROVIDER:

WAVE BUSINESS SOLUTIONS, LLC
d/b/a Astound Business Solutions

By _____

Name: _____

Title: _____

Date: _____

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MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

This Master Services Agreement for Enterprise Services – Governmental Customer (this “**MSA**”) is entered into as of this 3rd day of December, 2021 (the “**Effective Date**”), by and between WAVE BUSINESS SOLUTIONS, LLC, a Washington limited liability company, on behalf of itself and its Affiliates (collectively, “**Provider**”), and the CITY OF BREMERTON (“**Customer**”). For purposes of this MSA, the term “**Affiliate**” shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Each of Provider and Customer may be referred to in this MSA as a “**Party**” and together as the “**Parties**.”

ARTICLE 1 – STRUCTURE OF AGREEMENT

1.1 Purpose of MSA. Provider and its Affiliates provide various facilities-based telecommunications services, including Ethernet transport, dedicated internet access, phone over fiber, dark fiber, and related services (as applicable, the “**Services**”). This MSA is neither an agreement to purchase nor a commitment to provide Services. The purpose of this MSA is to provide the general terms, conditions and framework within which Customer and its Affiliates may from time to time purchase Services from Provider and its Affiliates, pursuant to one or more “**Service Orders**,” as described in Section 1.2 below.

1.2 Service Orders. The purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a “**Service Site**”); (iii) the initial term of the Service Order (the “**Initial Service Term**”); (iv) the pricing for the Service, including (a) the monthly recurring charges (“**MRC**”) for the Service, and (b) any non-recurring charges (“**NRC**”) associated with installation of the Service; and (v) any other terms or conditions specific to the particular Service Order. Each fully-executed Service Order shall be governed by and become part of this MSA, and this MSA together with all fully-executed Service Orders shall be collectively referred to as the “**Agreement**.” Depending on the location of the Service Site, in some instances Services may be provided by an Affiliate of Provider.

1.3 Additional Documents Comprising Agreement; Order of Precedence. If one or more Service Level Agreements are attached to this MSA as Exhibits (the “**SLA**”), the SLA constitutes a part of this MSA. Customer’s use of any Services purchased pursuant to the Agreement will also be governed by Provider’s Acceptable Use Policy for Commercial Services (the “**AUP**”) which is posted on Provider’s website at <http://wavebusiness.com/commercial-AUP>. Additional provisions that are applicable only to specific types of Services are contained in Provider’s Service-Specific Terms and Conditions (the “**Service-Specific T&Cs**”) which is posted on Provider’s website at <http://wavebusiness.com/serviceterms>. In the event of a conflict between the provisions of any of the foregoing documents, the documents shall have the following order of precedence unless expressly stated otherwise in a particular Service Order: (i) this MSA (including the SLA); (ii) the applicable Service Order; (iii) the AUP; and (iv) the Service-Specific T&Cs.

ARTICLE 2 – TERM AND RENEWAL

2.1 Term of MSA. The term of this MSA (the “**MSA Term**”) shall be for five (5) years, commencing on the Effective Date and expiring on the date that is one day prior to the fifth (5th) anniversary of the Effective Date. Notwithstanding the foregoing, so long as any one or more Service Orders entered into pursuant to this MSA remain in effect, this MSA shall not terminate with respect to said Service Orders but shall continue to govern same until the expiration or termination of said Service Orders.

2.2 Term of Service Orders. The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term of a Service Order, unless either Party terminates the Service Order by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, the Service Order will automatically renew for successive periods of one (1) year (each, a “**Renewal Term**”). During any Renewal Term for a Service Order, either Party may terminate the Service Order at the end of the then-current Renewal Term by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the then-current Renewal Term. The total period of time a Service Order is in effect is referred to as the “**Service Term**” for the Service Order at issue.



ARTICLE 3 – INSTALLATION, TESTING, ACCEPTANCE AND USE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider's control, Customer shall provide Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Provider Equipment**") necessary to connect Provider's network facilities to the Customer demarcation point(s) at the Service Site (the "**Demarcation Point(s)**"); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Customer Equipment**") from the Demarcation Point(s) to Customer's internal network. Unless a Service Site is within Provider's control, Customer shall be responsible for maintaining appropriate conditions at the Service Site, including HVAC, electrical power, and security. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Testing, Acceptance and Service Commencement Date. Provider shall use commercially reasonable efforts to install the Services consistent with Provider's usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer's option, participate in Provider's final testing of the Service. For Services having a committed bandwidth, the committed information rate shall be measured at the Ethernet layer and includes the Ethernet frame itself. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the "**Service Commencement Date**"). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.2, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

3.3 No Sub-Licensing; Non-Compete. Any Services provided to Customer pursuant to the Agreement are for the sole benefit of Customer. Customer shall not grant to any third party the right to use any of the Services, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, or any other form. Nor shall Customer use the Services for commercial purposes that are competitive with Provider's business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Provider's service area).

ARTICLE 4 – PAYMENT AND BILLING

4.1 Invoicing. All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as "**Fees**." Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 Disputed Invoices. If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider 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 Provider within thirty (30) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such thirty (30) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer's delivery of the applicable Fee Dispute Notice. Fee disputes unresolved within that time period shall be resolved by the mediation and arbitration procedures set forth in Sections 11.2 and 11.3 below.

4.3 Applicable Taxes. All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider's net income or taxes for which Customer possesses a valid exemption certificate,



Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, assessments, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 **Customer Default.** Each of the following shall constitute a default by Customer under the Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten (10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.2 **Remedies for Customer Default.** In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate all Service Orders entered into with Customer; and/or (iv) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

5.3 **Provider Default.** Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 **Remedies for Provider Default.** In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); and/or (ii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by Customer shall be accomplished by providing termination notice to Customer's account manager and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve Customer of its obligations to pay all Fees incurred prior to the early termination date.

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 **Early Termination for Non-Appropriation.** Customer is a public entity subject to legislative appropriation requirements. As a general matter, Customer cannot legally be obligated to make payments for Services that are provided after the end of the fiscal period in which Customer executes a particular Service Order. In the event that, for any future fiscal period, sufficient funds are not appropriated or allocated for payment of any one or more Service Orders, Customer may terminate the Service Order at issue as a matter of public convenience as provided herein without incurring a Termination Charge or any other early termination fee. If and when Customer becomes aware that non-allocation of funds for the coming fiscal period appears likely, Customer shall use reasonable efforts to notify Provider of that possibility prior to the end of the then-current fiscal period. Once the non-appropriation decision has been made, Customer shall, as soon as reasonably practicable, deliver written notice of termination for non-appropriation to Provider specifying which Service or Services and/or which Service Order or Service Orders are being



terminated for non-appropriation and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination.

6.2 Early Termination for Customer Convenience. Customer may, at any time after executing a Service Order, discontinue one or more of the Services ordered and/or terminate the Service Order by giving at least thirty (30) days' advance written notice to Customer's account manager and to the notice address specified in Article 13 below. Any early termination of a Service pursuant to this Section 6.2 shall be referred to as "**Termination for Customer Convenience.**" In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

6.3 Early Termination for Default. In accordance with Article 5 above, either Party may elect to terminate this MSA and/or one or more Service Orders prior to the scheduled Expiration Date in the event of an uncured Default by the other Party.

6.4 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 6.2 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The "**Termination Charge**" shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; (iii) with respect to off-net Services only, any documented cancellation or termination charges or fees imposed on Provider by any third party in connection with the early termination of the Services; and (iv) one hundred percent (100%) of all remaining MRCs Customer was to pay Provider for the Service during the remainder of the applicable Service Term. If incurred, the Termination Charge will be due and payable by Customer within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages and is not a penalty.

6.5 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for a period equal to or greater than the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Definition of Confidential Information. "**Confidential Information**" shall mean all information, including the Agreement, regarding the telecommunications needs of Customer and the Services that Provider offers under the Agreement which is disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals, as well as network maps or diagrams exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party's disclosure of same.

7.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (i) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (ii) shall reproduce such Confidential Information only to the extent necessary for such purposes; (iii) shall restrict disclosure of such Confidential Information to employees, contractors, advisors or consultants that have a need to know for such purposes (with disclosure to contractors, advisors and consultants being limited to contractors, advisors and consultants that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (iv) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the



enforcement of its rights under the Agreement; and (v) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 7 may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 7.

7.3 Public Records Act. Notwithstanding anything to the contrary contained elsewhere in this Article 7, 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 Provider in writing as confidential, Customer's sole obligations to Provider shall be: (i) to promptly notify Provider; and (ii) to refrain from disclosing such records for a period of up to ten (10) business days to allow Provider 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 Provider initiates legal proceedings, or Customer initiates legal proceedings or withholds requested records at Provider's request, Provider 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 Provider's request. Customer shall not be liable to Provider for any loss, cost or expense relating to the disclosure of requested records if Provider fails to obtain legal protection against disclosure and Customer releases the records in good faith.

ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider's aggregate liability for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the preceding twelve (12) month period.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole and exclusive remedy for such failure shall be as set forth in the SLA. No such failure shall be considered a Default by Provider under the Agreement.

8.3 No Special Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES



PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

8.6 Disclaimer Regarding HIPAA Compliance. If and to the extent Customer is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and needs its business associates to comply with HIPAA, Provider hereby notifies Customer that Provider's operations are not compliant with HIPAA. Provider's operations are generally exempt from HIPAA pursuant to the conduit exception. However, if and to the extent the Services provided pursuant to any Service Order would not qualify for the conduit exception, Provider's operations with respect to the Services are not HIPAA compliant. Provider will not execute a business associate agreement under HIPAA.

ARTICLE 9 – INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement; (ii) Customer's noncompliance with or Default under the Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under the Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider's noncompliance with or Default under the Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under the Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified Party shall promptly notify the indemnifying Party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified Party without the consent of the indemnified Party. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying Party, all at the cost and expense of the indemnifying Party.

ARTICLE 10 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other severe weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, unavailability of rights-of-way, a governmental authority's failure to timely act, 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 (each, a "**Force Majeure Event**"). If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.



ARTICLE 11 – DISPUTE RESOLUTION

11.1 **Good Faith Negotiations.** Except for actions seeking a temporary restraining order or injunction, in the event any controversy, disagreement or dispute (each, a “**Dispute**”) arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve the Dispute through negotiation. In the event of a Dispute, either Party may give the other Party written notice of the Dispute (each, a “**Dispute Notice**”). The parties will meet and attempt to resolve the Dispute within sixty (60) days of the date on which the Dispute Notice is delivered. All discussions occurring and documents exchanged during negotiations under this Section 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 process. If the Parties do not resolve the Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

11.2 **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.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party’s consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

ARTICLE 13 – NOTICES

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing and directed to the addresses set forth below. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient’s time). Notices received after 5:00 p.m. (recipient’s time) will be effective the next business day.

If to Provider:

Wave Business Solutions, LLC
3700 Monte Villa Parkway
Bothell, WA 98021
ATTN: Business Solutions

If to Customer:

City of Bremerton
1600 Oyster Bay Avenue S.
Bremerton, WA 98312

With a Copy to:

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

With a Copy to:

Either Party may change its notice address by giving notice to the other Party in accordance with this Article.

ARTICLE 14 – REPRESENTATIONS AND COVENANTS

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.



ARTICLE 15 – MISCELLANEOUS

15.1 Entire Agreement; Interpretation. The 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. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The 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 the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the 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 the 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.

15.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.3 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.

15.4 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal-agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

15.5 Exhibits. The following Exhibits, which are attached to this MSA, are incorporated herein and by this reference made a part of this MSA:

- EXHIBIT A - Service Level Agreement for Lit Fiber Services
- EXHIBIT B - Service Level Agreement for Dark Fiber & Wavelength Services

15.6 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.7 Counterparts; Electronic Signatures. Any Service Order entered into by the Parties pursuant to this MSA may be executed in multiple counterparts, each of which shall constitute an original, and all of which 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. The Parties consent to the use of electronic signatures.

[Signatures on following page.]



The Parties are signing this MSA as of the Effective Date set forth in the preamble above.

CUSTOMER:

City of Bremerton

By DocuSigned by:
Greg Wheeler
BAF46095E8E747B...
Name: Greg Wheeler
Title: Mayor

PROVIDER:

Wave Business Solutions, LLC, a Washington limited liability company

By DocuSigned by:
David Lampkin
519DA6B14AAA45A...
Name: David Lampkin
Title: VP Business Solutions

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EXHIBIT A
to
Master Services Agreement for Enterprise Services – Governmental Customer

Service Level Agreement for Lit Fiber Services

This Service Level Agreement for Lit Fiber Services (this “SLA”) is a part of the Master Services Agreement for Enterprise Services – Governmental Customer (“MSA”) between Wave Business Solutions, LLC (“WAVE”) and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of lit fiber Services provided by WAVE pursuant to the MSA: (a) dedicated Internet access services, (b) Ethernet transport services, and (c) voice services, including hosted voice.

1. AVAILABILITY SLA

WAVE’s Network is designed to provide a target **Availability of at least 99.99%** per month. If the Availability target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Availability	Duration of Service Outage	Customer Credit as % of MRC for the applicable Circuit*
99.99% Availability	Less than 4 minutes 20 seconds	Target Met
	4 min. 20 sec. up to 2 hours	5%
	> 2 hour up to 6 hours	10%
	> 6 hours up to 12 hours	20%
	> 12 hours up to 24 hours	35%
	> 24 hours	50%

*Customer credits for Unavailability are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

2. MEAN TIME TO RESTORE (“MTTR”) SLA

In the event of Outages in Services due to failure or malfunction of the WAVE Network or WAVE Equipment, WAVE’s CNOC is designed to provide a **MTTR of 6 hours or less**. If the target MTTR is not met for a particular circuit in a given calendar month, and Customer receives a Service from WAVE on the circuit at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Circuit
6 hr MTTR	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

3. PACKET DELIVERY/PACKET LOSS SLA

The WAVE Network is designed to provide **no greater than 0.1% Packet Loss**. If the Packet Loss target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA. Customer credits for average monthly Packet Loss are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.



Target Maximum Packet Loss	Actual Packet Loss (lower end – upper end)	Customer Credit as % of MRC for the applicable Circuit
≤ 0.1% Packet Loss	0% - 0.1%	Target Met
	> 0.1% - 0.4%	5%
	> 0.4% - 0.7%	10%
	> 0.7% - 1.0%	25%
	> 1.0%	50%

4. LATENCY SLA

The WAVE Network is designed to provide a monthly average one-way Latency not to exceed the following:

- For “Local Market” distances of ≤ 75 miles = 10 ms
- For “Inter-Market” distances of between 76 – 750 miles = 20 ms
- For “Long-Haul” distances of > 750 miles = 50 ms

If the applicable Latency target is not achieved in a given month and WAVE does not remedy the problem within fifteen (15) calendar days from the date on which Customer opens a Trouble Ticket with the WAVE CNOC regarding excessive Latency, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Local Market Latency	Target Inter-Market Latency	Target Long-Haul Latency	Actual One-Way Latency (lower end - upper end)	Customer Credit as % of MRC for the applicable Circuit
10 ms or less	20 ms or less	50 ms or less	≤ Target Latency	Target Met
			> Target up to 8 ms over Target	5%
			> 8 ms up to 15 ms over Target	10%
			> 15 ms up to 20 ms over Target	25%
			> 20 ms over Target	50%

5. NETWORK JITTER SLA

The WAVE Backbone Network is designed to have a monthly average one-way Network Jitter not to exceed the following:

- For Local Market distances of ≤ 75 miles = 2 ms
- For Inter-Market distances of between 76 – 750 miles = 5 ms
- For Long-Haul distances of > 750 miles = 15 ms

If the applicable Network Jitter target is exceeded in a given calendar month, Customer will be entitled to a credit of 1/30th of the MRC of the affected circuit for that month for each full 1ms of Network Jitter above the Network Jitter target set forth above. Any such credit must be claimed as described in this SLA.

6. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different circuit/path for the Service and circuit/path that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the circuit/path that experienced the Chronic Outage without incurring any Termination Charge.

7. DEFINITIONS

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

“Availability” means the ability of Customer to exchange Ethernet packets with the WAVE Network via Customer’s router port.



Availability is measured in minutes of uptime over the calendar month during which the Services are Available:

$$\begin{array}{l} \% \text{ Availability} \\ \text{(per calendar month)} \end{array} = \frac{\text{(Total Minutes in Month – Total Minutes of Unavailability in Month)}}{\text{Total Minutes in Month}}$$

For Ethernet Transport Services and VoIP Services, Availability is calculated at the individual circuit level, between WAVE's Backbone Network and the Customer's router port. For Dedicated Internet Access Services, Availability is calculated from the Customer's router port through the WAVE Network to the handoff point for the Internet. Dedicated Internet Access Service Availability does not include the availability of the Internet itself or any particular Internet resource. Periods of Excused Outage are not included in Availability metrics.

"Chronic Outage" means a series of three (3) or more Service Outages affecting the same Service on the same circuit during a given calendar month, each of which has an actual time to restore "TTR" in excess of WAVE's targeted MTTR.

"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. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. 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.

"Excused Outage" means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE's reasonable control, such as, by way of example only, Force Majeure Events, 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 Services to Customer.

"Jitter" or "Network Jitter" refers to a variation in the interval at which packets are received, also described as the variability in Latency as measured in the variability over time of the packet Latency across a network. Jitter is calculated as an aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Jitter metrics.

"Latency" means how much time it takes, measured in milliseconds, for a packet of data to get from one designated point on WAVE's Network to another designated point on WAVE's Network. Latency is calculated as an aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Latency metrics.

"Mean Time to Restore" or "MTTR" means the average time required to restore the WAVE Network to a normally operating state in the event of an Outage. MTTR is calculated on a circuit basis, as a monthly average of the time it takes WAVE to repair all Service Outages on the specific circuit. MTTR is measured from the time an Outage related Trouble Ticket is generated by the WAVE CNOC until the time the Service 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:

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

Periods of Excused Outage are not included in MTTR metrics.

"Outage" means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, 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.



“Packet Loss” means the unintentional discarding of data packets in a network when a device (e.g., switch, router, etc.) is overloaded and cannot accept any incoming data. Packet Loss is calculated as aggregate average monthly metric measured by WAVE across the WAVE Backbone Network between a sample of WAVE POPs. Local access loops are not included. Periods of Excused Outage are not included in Packet Loss metrics.

“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 (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE CNOC upon notification of a Service-related problem. Trouble Tickets may be generated by WAVE pursuant to its internal network monitoring process, or by Customer’s reporting of a problem to the WAVE CNOC. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE CNOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by WAVE will not provide a basis for Customer credits or Chronic Outage remedies.

“WAVE Backbone Network” means WAVE’s core fiber backbone that connects WAVE’s POPs and regional hubs.

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

“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.

8. CLAIMING CREDITS AND REMEDIES

8.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to Customer’s account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) 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.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to Customer’s account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;



- Type of remedy requested (e.g., substitution or termination);
- Trouble Ticket numbers for each individual Outage event;
- Date and beginning/end time of each of the claimed Outages;
- Trouble Ticket number for the Chronic Outage at issue;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies 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 any of the Services to which this SLA applies.

8.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, 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 or Chronic Outage remedy 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. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be final.

8.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. 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 Services 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 Services or the equipment used to provide the Services, including Customer's use of the Service 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 Services; (iii) scheduled Service 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 Service; (vii) WAVE's termination of the Service for cause, or as otherwise authorized by the Agreement; or (viii) WAVE's inability to deliver Service by Customer's desired due date.

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EXHIBIT B
to
Master Services Agreement for Enterprise Services – Governmental Customer

Service Level Agreement for Dark Fiber & Wavelength Services

This Service Level Agreement for Dark Fiber & Wavelength Services (this “SLA”) is a part of the Master Services Agreement for Enterprise Services – Governmental Customer (“MSA”) between Wave Business Solutions, LLC (“WAVE”) and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of Services provided by WAVE pursuant to the MSA: (i) dark fiber services, and (ii) wavelength services.

1. AVAILABILITY SLA

WAVE’s dark fiber paths and wavelengths 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 a given dark fiber path or wavelength 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. Customer credits for Outages of dark fiber or wavelength Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected Service.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Service
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%

2. MEAN TIME TO RESTORE (“MTTR”) SLA

In the event of Outages in the Services, WAVE’s CNO is designed to provide a MTTR of **no greater than 6 hours**. If the target MTTR is not met for a particular dark fiber path or wavelength in a given calendar month, and Customer receives a Service from WAVE on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Service
6 hr MTTR	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

3. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the path that experienced the Chronic Outage without incurring any Termination Charge.



4. DEFINITIONS

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

“Availability” means the dark fibers or the wavelength at issue is available to and accessible by Customer at the specified locations, is 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 or wavelength Services, thus any Outage must be reported to WAVE by Customer.

“Chronic Outage” means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore “TTR” in excess of WAVE’s targeted MTTR.

“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. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. 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.

“Excused Outage” means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond WAVE’s reasonable control, such as, by way of example only, Force Majeure Events, 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 Services to Customer.

“Mean Time to Restore” or “MTTR” means the average time required to restore the Service(s) 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 CNOC until the time the Service 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 Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, 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 demarc is connected that is performed during a standard maintenance window (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer’s Service.

“Trouble Ticket” means a trouble ticket generated through the WAVE CNOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the WAVE CNOC and open a Trouble Ticket regarding the problem.

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

“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.

5. CLAIMING CREDITS AND REMEDIES

5.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to WAVE. Credits are exclusive of any applicable taxes charged to Customer or collected by WAVE.

- (i) To claim SLA-related Service credits, Customer must do the following:
 - (a) Open a Trouble Ticket with the WAVE CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);
 - (b) Submit a written request for the credit(s) to Customer's account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and
 - (c) 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.
- (ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:
 - (a) Open a Trouble Ticket regarding the Chronic Outage with the WAVE CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;
 - (b) Submit a written request for a remedy regarding the Chronic Outage to Customer's account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and
 - (c) Provide the following documentation when requesting the remedy:
 - Customer name and contact information;
 - Type of remedy requested (e.g., substitution or termination);
 - Trouble Ticket numbers for each individual Outage event;
 - Date and beginning/end time of each of the claimed Outages;
 - Trouble Ticket number for the Chronic Outage at issue;
 - Circuit IDs for each pertinent circuit/path; and
 - Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies 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 any of the Services to which this SLA applies.

5.2 WAVE's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by WAVE. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, 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 or Chronic Outage remedy 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. If Customer's claim for a Chronic Outage remedy is approved, WAVE will notify Customer of the date on which the requested substitution or termination will occur. WAVE's determination regarding whether or not an SLA has been violated shall be final.

5.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. 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 Services 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 Services or the equipment used to provide the Services, including Customer's use of the Service 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 Services; (iii) scheduled Service 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 Service; (vii) WAVE's termination of the Service for cause, or as otherwise authorized by the Agreement; or (viii) WAVE's inability to deliver Service by Customer's desired due date.

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AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4H

SUBJECT:

Water Quality Combined Financial
Assistance Agreement with the State of WA
Department of Ecology for the Tracyton
Beach Road Sewer Improvements Project

Study Session Date: August 9, 2023
COUNCIL MEETING Date: August 16, 2023
Department: PW&U/Engineering
Presenter: Bill Davis
Phone: (360) 473-2312

SUMMARY:

The City has been offered a \$5,008,000 loan from the Department of Ecology to improve the sanitary sewer along Tracyton Beach Road. The current sewer requires weekly maintenance by City operations and maintenance staff to avoid backups and a potential overflow. The improvements, which include two new small pump stations and gravity sewer mains, will increase the velocity through the existing main to increase capacity and eliminate the settling of solids. The project is scheduled to be designed in 2023/2024 and constructed in 2025. The requested action before the City Council is to approve the loan agreement and authorize the Mayor to execute the loan.

ATTACHMENTS:

- 1) CWSRF Loan Agreement WQC-2023-BremPW-00148; 2) Site Plan

FISCAL IMPACTS (Include Budgeted Amount): The project is included in the Wastewater CIP (Project ID WW00036). The loan has an interest rate of 1.1 percent for a term of 20 years.

STUDY SESSION AGENDA:

Limited Presentation Full Presentation

STUDY SESSION ACTION:

Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve the Clean Water State Revolving Fund Loan Agreement for the Tracyton Beach Road Sewer Improvements Project; and authorize the Mayor to finalize and execute the agreement with substantially the same terms and conditions as presented.

COUNCIL ACTION: Approve Deny Table Continue No Action



Agreement No. WQC-2023-BremPW-00148

WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF BREMERTON

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

GENERAL INFORMATION

Project Title:	Tracyton Beach Road Sewer Improvements
Total Cost:	\$5,008,000.00
Total Eligible Cost:	\$5,008,000.00
Ecology Share:	\$5,008,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2022
The Expiration Date of this Agreement is no later than:	12/31/2025
Project Type:	Wastewater Facility

Project Short Description:

This project improves water quality in Sinclair Inlet and Port Washington Narrows by improving the sewer collection system along Tracyton Beach Road in East Bremerton. This project consists of design and construction of improvements to the collection system to increase the velocity of waste through the gravity main.

Project Long Description:

This project improves water quality in Sinclair Inlet and Port Washington Narrows by improving the sewer collection system along Tracyton Beach Road in East Bremerton. This project consists of design and construction of improvements to the collection system to increase the velocity of waste through the gravity main.

The RECIPIENT owns, operates, and maintains two wastewater treatment plants (West Plant and East Plant) and their respective collection systems.

Agreement No: WQC-2023-BremPW-00148
Project Title: Tracyton Beach Road Sewer Improvements
Recipient Name: City of Bremerton

The gravity pressure main along Tracyton Beach Road has had ongoing maintenance issues for many years and requires RECIPIENT staff to visit the system weekly to jet and vactor the line, to prevent sewage system overflows (SSO). The flow velocity in the pipe is very low, since there is not enough sewage flow from the upland collection systems that drains into the pipe. Because of the very low flow velocity, solid deposition occurs and there is no scouring of the pipe. Sewage solidifies in the main and prevents continuous flow. To keep sewage moving through the pipe and to prevent SSO events, the main requires ongoing maintenance, which is expensive and prevents the RECIPIENT's operation and maintenance (O&M) staff from performing other urgent maintenance work due to limited resources.

Overall Goal:

The goal of this design and construction project is to minimize the possibility of an SSO events to Puget Sound and reduce the burden on the RECIPIENT to maintain the sewer main along Tracyton Beach Road.

Agreement No: WQC-2023-BremPW-00148
Project Title: Tracyton Beach Road Sewer Improvements
Recipient Name: City of Bremerton

RECIPIENT INFORMATION

Organization Name: City of Bremerton

Federal Tax ID: 91-6001231
UEI Number: HV84RG6NYNG4

Mailing Address: 100 Oyster Bay Ave N
Bremerton, WA 98312

Physical Address: 345 6th Street
Bremerton, WA 98337

Organization Email: chance.berthiaume@ci.bremerton.wa.us

Contacts

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

<p>Project Manager</p>	<p>William Davis Managing Engineer</p> <p>345 6th Street, Suite 100 Bremerton, Washington 98337 Email: william.davis@ci.bremerton.wa.us Phone: (360) 473-2312</p>
<p>Billing Contact</p>	<p>Kirsten Cooper</p> <p>345 6th Street, Suite 100 Bremerton, Washington 98337 Email: kirsten.cooper@ci.bremerton.wa.us Phone: (360) 473-5209</p>
<p>Authorized Signatory</p>	<p>Greg Wheeler Mayor</p> <p>345 6th Street, Suite 600 Bremerton, Washington 98337 Email: greg.wheeler@ci.bremerton.wa.us Phone: (360) 473-5266</p>

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

ECOLOGY INFORMATION

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

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

Contacts

<p>Project Manager</p>	<p>Madison Diaz</p> <p>PO Box 330316 Shoreline, Washington 98133-9716 Email: MDIA461@ecy.wa.gov Phone: (425) 495-1777</p>
<p>Financial Manager</p>	<p>Tammie McClure</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: tmcc461@ecy.wa.gov Phone: (360) 628-4315</p>

Agreement No: WQC-2023-BremPW-00148
Project Title: Tracyton Beach Road Sewer Improvements
Recipient Name: City of Bremerton

Angela Hoover

City Clerk

Date

Kylie Finnell

City Attorney

Date

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 1 **Task Cost: \$30,000.00**

Task Title: Grant and Loan Administration

Task Description:

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

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

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

Task Goal Statement:

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

Task Expected Outcome:

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

Grant and Loan Administration

Deliverables

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

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 2 **Task Cost:** \$54,000.00

Task Title: Environmental Permitting and Cultural Resources

Task Description:

A. The RECIPIENT will conduct appropriate environmental reviews of the project. The RECIPIENT will provide a complete SERP information package with a SERP Cover Sheet at the time plans and specification are submitted to ECOLOGY for approval. The RECIPIENT will include the SEPA checklist and threshold determination, documentation of public participation, and required Environmental Justice information.

B. The RECIPIENT will conduct appropriate cultural resources reviews of the project. The RECIPIENT will provide a Ecology Cultural Resources Review form. The RECIPIENT will provide any additional information for ECOLOGY to lead the required cultural resources consultation. Costs incurred for ground disturbing activities that occur before cultural resources review will not be eligible for reimbursement.

C. The RECIPIENT will complete an ECOLOGY inadvertent discovery plan template for their project.

Task Goal Statement:

See overall goal.

Task Expected Outcome:

See overall goal.

Environmental Permitting and Cultural Resources

Deliverables

Number	Description	Due Date
2.1	Complete SERP information package.	
2.2	Ecology Cultural Resources Review form.	
2.3	Public Inadvertent Discovery Plan.	

Agreement No: WQC-2023-BremPW-00148
Project Title: Tracyton Beach Road Sewer Improvements
Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 3 **Task Cost:** \$612,000.00

Task Title: Project Design

Task Description:

A. The RECIPIENT will procure engineering services in accordance with state law. The RECIPIENT will include ECOLOGY's specification insert in the contract documents. The RECIPIENT will submit all contracts for engineering services before ECOLOGY will provide reimbursement for work performed under this task.

B. The RECIPIENT will design improvements to the collection system to increase the velocity through the gravity main and improve the sewer collection system along Tracyton Beach Road in East Bremerton. This may include pump stations, grinder pump stations, conveyance pipelines and decommissioning of sewer lines. Plans and specifications developed by the RECIPIENT will be consistent with planning and design requirements of Chapter 173-240 WAC.

C. The plans and specifications, construction contract documents, and addenda will be approved by the RECIPIENT prior to submittal for ECOLOGY review. All paper construction plans submitted to ECOLOGY for review and approval will be reduced to no larger than 11" x 17" in size. All reduced drawings will be completely legible. The project manager may request plans be submitted in either PDF or AutoCAD electronic format, and specifications in a searchable PDF or Microsoft Word electronic file. A current construction cost estimate will be submitted along with each plan/specification submittal. The project manager may request a spreadsheet in electronic file format.

D. The RECIPIENT will provide the plan of interim operation for the facility.

E. The RECIPIENT will complete the facility designs within one year after the execution of this AGREEMENT.

F. The RECIPIENT will provide a constructability review and quality assurance check copy of the project drawing and specification package at the 60 percent and 90 percent completion.

G. The RECIPIENT will submit an amendment to the ECOLOGY approved engineering report dated December 3, 2021. The amendment will be reviewed and approved by ECOLOGY prior to submitting design documents for this project. The Engineering Report dated December 3, 2021, in combination with the approved amendment, will constitute the planning documents ready for drafting project plans and specifications. The amendment to the engineering report will be in accordance with the requirements of WAC 173-240-060.

H. As a condition of receiving this funding, the RECIPIENT will conduct an investment grade efficiency audit (IGEA). The RECIPIENT will review their energy use related to their wastewater systems looking for cost effective energy savings. The recipient may also submit documentation of an energy efficiency review conducted within the last 5 years. If the RECIPIENT cannot conduct an energy audit of the utility, the RECIPIENT may procure a third-party analysis of potential energy and water efficiency measures for incorporation into the design of the wastewater treatment and collection facilities.

Task Goal Statement:

See overall goal.

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

Task Expected Outcome:

See overall goal.

Project Design

Deliverables

Number	Description	Due Date
3.1	Executed contracts for design engineering services.	
3.2	Documentation of the RECIPIENT’s process for procuring engineering services and affidavit of publications.	
3.3	Documentation of opinions of probable construction costs for the proposed improvement.	
3.4	Final bid documents for the RECIPIENT’s use in soliciting bids from Contractors to construct the improvements.	
3.5	Two copies of the final design with detailed cost estimates and specifications.	
3.6	60 and 90-percent design documents.	
3.7	Engineering Report amendment will be submitted to address design changes not included in the approved Engineering Report.	
3.8	IGEA documentation.	

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 4 **Task Cost: \$0.00**

Task Title: Project Design (Continued)

Task Description:

I. As a condition of receiving this funding, the RECIPIENT will provide ECOLOGY with a plan for increasing user rates necessary to support this loan. The plan will include the total revenue requirement and the user rates necessary for the RECIPIENT to operate and maintain the funded utility, to establish reserves to pay for equipment replacement, and to pay debt service. The plan will identify a schedule of rate increases necessary to achieve the total revenue requirement by the estimated date of loan repayment. The RECIPIENT will provide ECOLOGY with a resolution or ordinance adopting the required schedule of rate increases. Funding for this task provided in Task 3.

Task Goal Statement:

See overall goals.

Task Expected Outcome:

See overall goals.

Project Design (Continued)

Deliverables

Number	Description	Due Date
4.1	Sewer Revenue and User Rate plan, and implementing ordinance.	

Agreement No: WQC-2023-BremPW-00148
Project Title: Tracyton Beach Road Sewer Improvements
Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 5 **Task Cost:** \$112,000.00

Task Title: Project Construction Management

Task Description:

A. The RECIPIENT will provide adequate and competent construction management and inspection for the Project. This may involve procuring the professional services. If professional services are procured, the RECIPIENT will procure them in accordance with state law. The RECIPIENT will include ECOLOGY's specification insert in the contract documents. The RECIPIENT must submit all contracts for construction management services before ECOLOGY will provide reimbursement for work performed under this task.

B. The RECIPIENT will develop a detailed Construction Quality Assurance Plan (WAC 173-240-075) and submit it to ECOLOGY for approval. This plan will describe the activities which the RECIPIENT will undertake to achieve adequate and competent oversight of all construction work.

C. The RECIPIENT will ensure construction progresses according to a timely schedule developed to meet completion dates indicated in the construction contract. The RECIPIENT will revise or update the schedule whenever major changes occur and resubmit to ECOLOGY. In the absence of any major changes, the RECIPIENT will describe progress of the construction in the quarterly progress reports.

D. Upon completion of construction, the RECIPIENT will provide ECOLOGY's Project Manager with a set of "as-built" plans (i.e., record construction drawings which reflect changes, modifications, or other significant revisions made to the project during construction).

E. Upon project completion, the RECIPIENT will submit the Declaration of Construction Completion form to ECOLOGY in accordance with WAC 173-240-090. The form, when signed by a professional engineer, indicates that the project was completed in accordance with the plans, specifications, and major change orders approved by ECOLOGY, and is accurately shown on the as-built plans.

Task Goal Statement:

See overall goal.

Task Expected Outcome:

See overall goal.

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

Project Construction Management

Deliverables

Number	Description	Due Date
5.1	Executed contracts for construction management services.	
5.2	Documentation of the RECIPIENT’s process for procuring construction management services.	
5.3	Construction Quality Assurance Plan.	
5.4	“As-built” plans.	
5.5	Substantial Completion and Physical Completion documents/letters.	
5.6	Declaration of Construction completion) and one electronic copy of the Record Drawings. Submit the electronic copy in searchable PDF format at minimum resolution of 300 dpi.	

Agreement No: WQC-2023-BremPW-00148
 Project Title: Tracyton Beach Road Sewer Improvements
 Recipient Name: City of Bremerton

SCOPE OF WORK

Task Number: 6 **Task Cost: \$4,200,000.00**

Task Title: Project Construction

Task Description:

A. The RECIPIENT will execute a contract with a contractor selected in compliance with state law. The RECIPIENT will include ECOLOGY’s specification insert in the contract documents. The RECIPIENT will submit Bid Tabs, the Notice of Award, the Notice to Proceed, and a copy of the executed contract before ECOLOGY will provide reimbursement for work performed under this task.

B. The RECIPIENT will complete the construction in accordance with the approved Plans and Specifications. The construction project may include pump stations, grinder pump stations, conveyance pipelines and decommission sewer lines.

C. The RECIPIENT will conduct a pre-construction conference and will invite ECOLOGY staff to the meeting.

Task Goal Statement:

See overall goal.

Task Expected Outcome:

See overall goal.

Project Construction

Deliverables

Number	Description	Due Date
6.1	Copy of the advertisement for bids and the affidavit of publication.	
6.2	Copy of the bid tabs, notice of award and a copy of the executed construction contract.	
6.3	Copy of the notice to proceed.	
6.4	Minutes of the pre-construction meeting.	

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SCOPE OF WORK

Task Number: 7 **Task Cost: \$0.00**

Task Title: Change Order Allowance

Task Description:

A. The RECIPIENT will negotiate all change orders to the construction contract necessary for successful completion of the project.

B. The RECIPIENT will submit the change orders to ECOLOGY for approval. Change orders that are a significant deviation from the approved plans/specifications will be submitted for approval, prior to execution. All other change orders will be submitted within 30 days after execution.

Task Goal Statement:

See overall goal.

Task Expected Outcome:

See overall goal.

Change Order Allowance

Deliverables

Number	Description	Due Date
7.1	A copy of all change orders.	

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SCOPE OF WORK

Task Number: 8 **Task Cost: \$0.00**

Task Title: Asset Management Plan

Task Description:

A. As a condition of receiving this funding, the RECIPIENT will prepare an asset management program (fiscal sustainability plan). The RECIPIENT will certify that a plan that contains at least the minimum required elements listed below has been developed and is being implemented:

1. An inventory of critical assets that belong to the utility.
2. An evaluation of the condition and performance of the critical assets.
3. A plan to maintain, repair, and replace the critical assets and to fund those activities.
4. A process to evaluate and implement water and energy conservation efforts as part of the plan.

B. This task may involve procuring professional services. If professional services are procured, the RECIPIENT will procure them in accordance with state law. The RECIPIENT will include ECOLOGY’s specification insert in the contract documents. The RECIPIENT will submit all contracts for professional services before ECOLOGY will provide reimbursement for work performed under this task.

C. The RECIPIENT will certify that a plan that contains at least the minimum required elements listed above has been developed and is being implemented.

Task Goal Statement:

See overall goal.

Task Expected Outcome:

See overall goal.

Asset Management Plan

Deliverables

Number	Description	Due Date
8.1	Executed contracts for professional services.	
8.2	Certification that the asset management program (fiscal sustainability plan) has been developed and is being implemented.	

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BUDGET

Funding Distribution EL230360

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

Funding Title: SRF Loan (State) Funding Type: Loan
 Funding Effective Date: 07/01/2022 Funding Expiration Date: 12/31/2025

Funding Source:

Title: CWSRF-SFY23 (State)

Fund: FD0727

Type: State

Funding Source %: 100%

Description: The Clean Water Act (CWA) (33 U.S.C 1251-1387) established the State Revolving Fund (SRF) low interest loans program (40. C.F.R. Part 31, 35 Sub Part K). Washington State administers the program under Chapter 173-98 WAC. The portion of this project funded with this funding distribution comes from non-federal source and are not subject to Federal Funding Accountability and Transparency Act (FFATA) and Single Audit Act (SAA). However, this project is subject to the federal requirements outlined in Section 4 and 5 of agreement terms and conditions.

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%

Recipient Match %: 0%

InKind Interlocal Allowed: No

InKind Other Allowed: No

Is this Funding Distribution used to match a federal grant? No

Effective Interest Rate: 1.1% Interest Rate: 0.8% Admin Charge: 0.3%

Terms: 20 years

Project Start Date: 07/01/2022 Project Completion Date: 12/31/2025

Estimated Initiation of Operation date: 12/31/2025

Loan Security: Revenue Secure Lien Obligation of the Recipient

Final Accrued Interest: \$

Final Loan Amount: \$

Repayment Schedule Number: 681

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SRF Loan (State)	Task Total
Grant and Loan Administration	\$ 30,000.00
Project Design	\$ 612,000.00
Project Construction Management	\$ 112,000.00
Project Construction	\$ 4,200,000.00
Environmental Permitting and Cultural Resources	\$ 54,000.00

Total: \$ 5,008,000.00

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SRF Loan (State)	0.00 %	\$ 0.00	\$ 5,008,000.00	\$ 5,008,000.00
Total		\$ 0.00	\$ 5,008,000.00	\$ 5,008,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

SECTION 1: DEFINITIONS

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

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

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

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

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

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

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

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

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

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

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

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

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

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

“Equivalency” means projects designated by ECOLOGY to meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

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

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed. This term is only used in loan agreements.

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

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

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

B. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

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a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.

b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.

c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.

2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.

3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.

2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.

3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

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e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:

i. No hazardous substances were found on the site, or

ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed “clean.”

2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.

3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

C. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

D. Electronic Fund Transfers: Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process or electronic fund transfers, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

E. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

F. Funding Recognition: The RECIPIENT must inform the public about ECOLOGY or any EPA (see Section 3.B for Section

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319 funded or Section 5.E for SRF funded projects) funding participation in this project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Sign logos are available from ECOLOGY's Financial Manager upon request.

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

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

I. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

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

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

L. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service ("NRCS") Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

SECTION 3: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

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

1. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website. (This form is used for Section 319 funds only)
2. "Section 319 Initial Data Reporting" form in EAGL.

A. Data Reporting: The RECIPIENT must complete the "Section 319 Initial Data Reporting" form in EAGL before this

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agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F. of these Special Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. (Applies to both the Section 319 funded projects and the Centennial match projects)

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement: (Applies to Section 319 funded projects only)

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

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date. (For Section 319 funded projects only)

SECTION 4: THE FOLLOWING CONDITIONS APPLY TO SECTION 319 AND STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting.”

B. Acquisitions: Section 319 and SRF Equivalency project RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

C. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an

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independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: <https://facweb.census.gov/>.

D. Archaeological Resources and Historic Properties (Section 106): The RECIPIENT shall comply with the additional requirements under section 106 of the National Historic Preservation Act (NHPA, 36 CFR 800).

E. Unique Entity Identifier (UEI) and Central Contractor Registration (CCR) Requirements: RECIPIENTS shall have a UEI number. Unless exempted from this requirement under 2 CFR 25.110, the RECIPIENT must ensure that their organization's information in the System for Award Management (SAM), <https://www.sam.gov>, is kept current through project closeout. This requires that the RECIPIENT reviews and updates the information at least annually after the initial registration, and more frequently if information changes.?

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

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

1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.

2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.

3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.

4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.

5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

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The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request.

Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

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

“The Contractor will not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

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

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTS shall ensure that loan funds provided under this

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

H. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

I. Trafficking In Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons during the period of time this agreement is effective. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

SECTION 5: THE FOLLOWING CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

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

1. Financial Capability Assessment Documentation
2. Opinion of RECIPIENT's Legal Council
3. Authorizing Ordinance or Resolution
4. Federal Funding Accountability and Transparency Act (FFATA) Form (Required for SRF Equivalency projects only)
5. CWSRF Federal Reporting Information form available in EAGL
6. Fiscal Sustainability Plan (Asset Management) Certification Form in EAGL (Only required if the project includes construction of a wastewater or stormwater facility construction)
7. Cost and Effectiveness Analysis Certification Form in EAGL (Required for all projects receiving SRF Loan funding)
8. State Environmental Review Process (SERP) Documentation (Required for facility projects only)

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

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B. American Iron and Steel (Buy American): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT’S compliance with this provision.

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

D. Equivalency Projects: (For designated equivalency projects only)

1. The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see www.gpo.gov/fdsys/pkg/USCODE-2011-title40/pdf/USCODE-2011-title40-subtitleI-chap11.pdf).

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: In addition to Section 2.F of these Terms and Conditions, the RECIPIENT agrees to comply with the EPA SRF Signage Guidance in order to enhance public awareness of EPA assistance agreements nationwide. The signage guidance can be found at: <https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Water-Quality-grants-and-loans/Facility-project-resources>.

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

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

(i) the execution of this agreement; or

(ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of

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ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or

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

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

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

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest based on the interest rate identified in this agreement as the "Effective Interest Rate," per annum, calculated on the basis of a 365 day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan "Loan Term" as outlined in this agreement.

J. Loan Repayment:

Sources of Loan Repayment

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

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

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

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

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute

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a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

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

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

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

(i) The Loan Amount with interest

(ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY’s notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

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

Method and Conditions on Repayments

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

Thereafter, equal payments shall be due every six months.

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

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

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

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

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this

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agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.

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

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

K. Loan Security

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

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the

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RECIPIENT” to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

N. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

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

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

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verify that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR (If applicable)
- Washington State Prevailing Wage Rate, Chapter 39.12 RCW (Pertaining to all recipients)
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33”

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

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

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

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Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT's financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

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

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or
3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.
4. Expressed written agreement by the ECOLOGY.

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

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

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

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ECOLOGY or RECIPIENT funds.

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

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

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

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

Termination and Default Remedies

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

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

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

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding. Repayments not made immediately upon such acceleration will incur Late Charges.

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

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

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance,

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ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property.

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

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

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

Damages. Notwithstanding ECOLOGY's exercise of any or all of the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

GENERAL FEDERAL CONDITIONS

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

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set

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out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

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

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

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

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

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

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

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;

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2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#) <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](#) <https://sam.gov/SAM/> exclusion list.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

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

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

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

6. COMMUNICATION

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

7. COMPENSATION

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

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

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

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

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

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

9. CONFLICT OF INTEREST

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

10. CONTRACTING FOR GOODS AND SERVICES

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

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

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

11. DISPUTES

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

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

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

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

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

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

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

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

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

14. INDEMNIFICATION

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

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

15. INDEPENDENT STATUS

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

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16. KICKBACKS

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

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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

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

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

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

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

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

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22. RECORDS, AUDITS, AND INSPECTIONS

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

All records shall:

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

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

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

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

23. RECOVERY OF FUNDS

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

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

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

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

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

24. SEVERABILITY

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

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

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

26. SUSPENSION

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

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27. SUSTAINABLE PRACTICES

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

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

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

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

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

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

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

b) For Convenience

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

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

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

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

c) By Mutual Agreement

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

d) In Event of Termination

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

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

29. THIRD PARTY BENEFICIARY

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

30. WAIVER

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

End of General Terms and Conditions



MAP – PROJECT SITE

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4I

SUBJECT: Ordinance No. 5481 to amend
BMC Section 9.10.030 of the entitled
"Rotating Roster"

Study Session Date:	<u>August 9, 2023</u>
COUNCIL MEETING Date:	<u>August 16, 2023</u>
Department:	<u>Legal</u>
Presenter:	<u>Kylie Finnell,</u> <u>City Attorney</u>
Phone:	<u>(360) 473-2345</u>

SUMMARY: The City Council desires to add language to Bremerton Municipal Code (BMC) Chapter 9.10 by amending BMC 9.10.030. The current provisions contained in BMC 9.10.030 potentially allow eligible towing operators the opportunity to create multiple companies under the same corporate entity thereby resulting in an inequitable amount of time placed on the rotating roster. The language added in the proposed amendment is largely similar to language contained in the Port Orchard Municipal Code and would prevent this situation from occurring.

ATTACHMENTS: Ordinance No. 5481

FISCAL IMPACTS (Include Budgeted Amount):

STUDY SESSION AGENDA: Limited Presentation Full Presentation

STUDY SESSION ACTION: Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to pass Ordinance No. 5481 amending Section 9.10.030 of the Bremerton Municipal Code entitled "Rotating Roster."

COUNCIL ACTION: Approve Deny Table Continue No Action

ORDINANCE NO. 5481

AN ORDINANCE of the City Council of the City of Bremerton, Washington, amending Section 9.10.030 of the Bremerton Municipal Code entitled “Rotating Roster.”

WHEREAS, the current provisions of Section 9.10.030 of the Bremerton Municipal Code relating to the tow truck rotating roster result in the potential to create an inequity amongst eligible towing operators; and

WHEREAS, the City Council desires to amend the provisions relating to Section 9.10.030 of the Bremerton Municipal Code in order to ensure that each eligible towing operator has an opportunity for an equitable amount of time to remain on the rotating roster; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 9.10.030 of the Bremerton Municipal Code entitled "Rotating Roster" is hereby amended to read as follows:

9.10.030 ROTATING ROSTER.

Towing operators placed by the Chief of Police on the roster maintained in accordance with BMC 9.10.010 shall have the exclusive right to provide City authorized and City requested tows; provided, however, ~~t~~That the various individual towing operators shall be granted such right on a rotating basis, for periods of thirty (30) days; and ~~p~~Provided, further, ~~t~~That if during the towing operator’s period of rotation the City has need for towing services which the towing operator does not possess the equipment to meet, the City may, at its option, request towing services from any towing operator capable of meeting those needs. Any corporate entity owning or controlling one or more tow companies shall be considered a single company for the purposes of the rotating roster.

SECTION 2. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener, clerical, typographical, and spelling errors, references, ordinance numbering, section/subsection numbers and any references thereto.

SECTION 3. Severability. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall take effect and be in force ten (10) days from and after its passage, approval and publication as provided by law.

PASSED by the City Council the _____ day of _____, 20__.

JEFF COUGHLIN, Council President

Approved this _____ day of _____, 20__.

GREG WHEELER, Mayor

ATTEST:

APPROVED AS TO FORM:

ANGELA HOOVER, City Clerk

KYLIE J. FINNELL, City Attorney

PUBLISHED the _____ day of _____, 20__.
EFFECTIVE the _____ day of _____, 20__.
ORDINANCE NO. _____.

R:\Legal\Legal\Ordinances\Legal\2023.07.25 Ordinance - BMC 9.10.030 - Rotating Roster.docx

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

4J

Item added...

SUBJECT:

Authorization to pursue legal action to abate
nuisance and code violations at 1241 8th
Street and 723 S. Hartford Avenue

Executive Session: July 5, 2023

COUNCIL MEETING Date: August 16, 2023

Department: Legal

Presenter: Brett Jette

Phone: (360) 473-2345

SUMMARY: On July 5, 2023, City Council approved taking legal action against a number of properties for nuisance and code violations. The address of two properties were incorrectly addressed. This is to formally fix the error.

ATTACHMENTS:

FISCAL IMPACTS (Include Budgeted Amount):

RECOMMENDED MOTION:

Move to approve the City Attorney or retained outside counsel to pursue any necessary legal action to abate nuisances and code violations, collect fines imposed for nuisances and code violations, and collect any fees and costs associated with the abatement of nuisances and code violations at: *1241 8th Street and 723 S. Hartford Avenue, Bremerton, WA*

COUNCIL ACTION: Approve Deny Table Continue No Action

AGENDA BILL
CITY OF BREMERTON
CITY COUNCIL

6A

SUBJECT:

Resolution No. 3364 to adopt the City of
Bremerton Stormwater Comprehensive Plan
Update

Study Session Date: August 9, 2023
COUNCIL MEETING Date: August 16, 2023
Department: PW & U
Presenter: Chance Berthiaume
Phone: (360) 473-5929

SUMMARY:

Stormwater system planning is essential for the Stormwater Utility to maintain operational conditions that provide adequate service to residents, protect property from flooding, and protect waters around Bremerton from pollution generated by the developed environment. Comprehensive planning is a new requirement of the NPDES Municipal Phase II Stormwater Permit that defines many actions of the Utility programs.

ATTACHMENTS: (1) Resolution No. 3364; (2) Stormwater Comprehensive Plan is available at this link: <https://www.bremertonwa.gov/1319/Stormwater-Comprehensive-Plan> (3) Proposed Modifications **Added 8/15/23 2:00 PM**

FISCAL IMPACTS (Include Budgeted Amount): The Stormwater Comprehensive Plan includes anticipated annual operational expenses for the Stormwater Utility and a 20-year Capital Improvement Plan.

STUDY SESSION AGENDA: Limited Presentation Full Presentation

STUDY SESSION ACTION: Consent Agenda General Business Public Hearing

RECOMMENDED MOTION:

Move to approve Resolution No. 3364 adopting City of Bremerton 2022-27 Stormwater Comprehensive Plan.

COUNCIL ACTION: Approve Deny Table Continue No Action

RESOLUTION NO. 3364

A RESOLUTION of the City Council of the City of Bremerton, Washington, adopting the 2023 Stormwater Comprehensive Plan.

WHEREAS, the City of Bremerton desires to plan for the future and growth in its stormwater system service area; and

WHEREAS, a stormwater comprehensive plan provides a means to meet future stormwater collection, conveyance, and treatment needs; and

WHEREAS, the City is required to formally adopt a stormwater comprehensive plan under Bremerton Municipal Code Chapter 15.04.040 Stormwater Comprehensive Plan; and

WHEREAS, the City was issued a NPDES Municipal Stormwater Phase II Permit by the Washington State Department of Ecology that requires a stormwater comprehensive plan; and

WHEREAS, the requirement for comprehensive stormwater planning is specified in the Revised Code of Washington 36.70A.070; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BREMERTON, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Adoption. The City of Bremerton Stormwater Comprehensive Plan dated May 2023, attached hereto as Exhibit A and incorporated by this reference, is hereby adopted.

SECTION 2. Severability. If any one or more sections, subsections, or sentences of this Resolution are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Resolution and the same shall remain in full force and effect.

SECTION 3. Effective Date. This Resolution shall take effect and be in force immediately upon its passage.

PASSED by the City Council of the City of Bremerton, Washington this _____ day of _____, 20____.

JEFF COUGHLIN, Council President

APPROVED AS TO FORM:

ATTEST:

KYLIE J. FINNELL, City Attorney

ANGELA HOOVER, City Clerk

Note: The following yellow highlighted sections reflect modifications based on comments received from City Council at the August 09, 2023 Study Session. Only those sections of the Plan that were modified are shown.

1.5 Public Involvement Conducted for This Plan

Public review and comment opportunities were provided as part of State Environmental Policy Act (SEPA) review of the draft plan (Appendix A), and in conjunction with City Council meetings where the Plan has been presented for the Council's consideration and adoption.

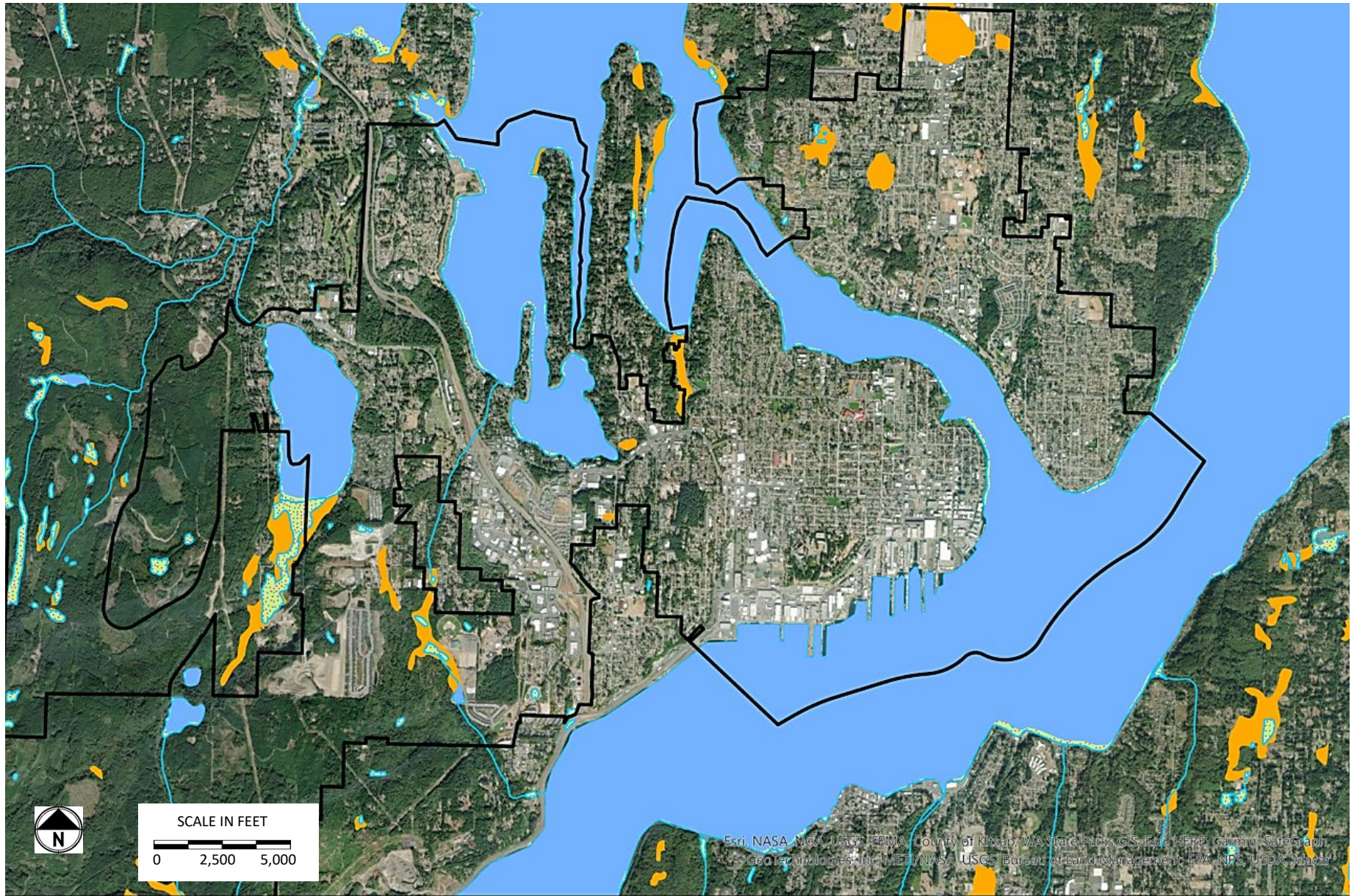
A total of five public comments were received on the draft plan; four comments were received regarding flooding concerns on Rainer Avenue North, and one comment was received regarding drainage issues on East 16th Street. A capital project was added to the 20-year CIP in response to comments from Rainier Avenue citizens, and City staff will evaluate conditions on East 16th Street as part of CIP review in 2023-24. City Council review comments were received at the Council Study Session on August 09, 2023. Copies of comments received are provided in the Appendix.

3.4.2 Wetlands

Wetlands play an integral role in the ecology of the City's watersheds. The combination of shallow water, high levels of nutrients and primary productivity is ideal for the development of organisms that form the base of the food web and feed many species of fish, amphibians, shellfish and insects. Wetlands serve important stormwater quality, flood protection and groundwater recharge functions within the City's landscape and also provide essential habitat for fish and wildlife, including endangered species.

Wetlands, because of their unique position in the landscape, naturally receive stormwater. Past urbanization has altered the natural wetland hydrologic cycle in many locations due to increases in impervious area that increase the volume and rate of runoff, while decreasing groundwater recharge. Uncontrolled urban stormwater can cause erosion and channelization in wetlands, which ultimately adversely impacts the ability of wetlands to support aquatic habitat. Reductions in groundwater recharge within a watershed can also reduce dry weather flows into and out of wetlands. Wetlands therefore have a limited capacity for handling increased flows or additional pollutant loadings that can be associated with stormwater. Degraded wetlands can lose their capacity to remove excess sediments, nutrients, and other pollutants, and provide habitat for fish and wildlife, if they are not adequately protected.

Within the City, wetlands are protected by a combination of land use regulations (BMC Chapter 20.14) and stormwater regulations (BMC 15.04). City stormwater code requirements for wetlands mirror those in Ecology's SWMMWW, which require that wetlands be protected from pollutant loading and hydrologic impacts. The City considers opportunities to restore and protect existing wetlands when evaluating stormwater capital projects. Wetlands are often highly effective at filtration, and construction of artificial wetlands to treat stormwater can provide treatment as well as habitat and open space benefits. The City considers treatment wetlands as a BMP option when evaluating specific stormwater projects. Current mapping of wetlands and hydric soils (which are typically associated with wetlands) in the City are shown in Figure 3.6.



Legend

- Waterbodies
- Flowlines
- Wetland Areas
- Hydric Soils
- Bremerton City Limits

Figure 3-1. Wetlands and Hydric Soils
 Stormwater Comprehensive Plan
 City of Bremerton



Opportunistic stormwater controls. This requirement would be aimed at encouraging eligible project types that improve stormwater management infrastructure. The proposed approach would use elements from the Phase I Structural Stormwater Control (SSC) Program, specifically the project types that are eligible for providing credit to the “level of effort” (see definition below), as well as the method for calculating the area being treated by the stormwater BMP – i.e. the method to determine “equivalent area” that is meeting new and redevelopment standards from the SW Permit’s Appendix 1. Opportunistic stormwater controls could consist of a wide range of BMPs including bioretention, treatment wetlands, vegetated filter strips and other similar BMPs that use plants and soils to treat stormwater and enhance habitat and aesthetics. Specific requirements and options for Opportunistic Stormwater Controls have not yet been developed. The City will evaluate specific needs and regulatory gaps after the final updated 2024-29 SW Permit is issued in 2024.

9.3 Planning Projects

Planning projects typically consist of identifying stormwater related deficiencies, alternatives and proposed capital improvements for a specific watershed, basin or sub-basin catchment area. These planning studies are essential for identifying stormwater infrastructure needs, options and costs to address both historical and emerging stormwater needs in the City. Planning projects typically include assessment of natural features such as streams, wetlands and shorelines and include strategies and projects for both protection and restoration of these natural resources.

An important goal of all planning studies is to identify the specific capital projects that are to advance to the Stormwater CIP. Planning studies provide a basis for selecting a preferred BMP, as well as provide information on the relative priority of the project compared to other projects on the CIP. Specific BMP options that are evaluated in a planning study reflect the unique needs and conditions of the study area, and typically include a broad range of BMPs including bioretention, treatment wetlands, ponds and vaults.

Planning projects are typically not included in a CIP because they do not directly result in a specific capital asset. However, to account for the cost and scheduling of these planning projects they are included as part of this Plan. Most planning projects are contingent on grant funding. Proposed planning projects are shown in Table 9.3.

9.4 Rain Garden Program

Rain gardens are a bioretention stormwater treatment method that provides stormwater infiltration and treatment at a small, site-specific scale, typically a single family residence. A rain garden is typically a shallow bowl-shaped depression in the landscape that collects rainwater. They are often planted with native plants and are a natural way to manage rain on developed property while adding beauty to the landscape.

In an effort to increase the number of rain gardens in the City, the City contracts with the Kitsap County Conservation District to assist landowners with design and construction of rain gardens with the City limits. This voluntary program provides private landowners technical and financial assistance to install rain gardens on their property. The rain garden program is not included in the CIP because they do not directly

result in a specific City owned capital asset. However, to account for the cost and scheduling of these planning projects they are included as part of this Plan. The program is currently funded at \$240,000 for a four year period 2023-2026 by a combination of the Stormwater and Wastewater Utilities due to the ability of raingardens to help reduce both combined sewer overflows, and stormwater related water quality and flooding impacts.

APPENDIX F: COMMENTS RECEIVED ON DRAFT PLAN

**Published for
August 16
Council Meeting**

4E – Public Comments

From: Anna Mockler <Anna.Mockler@ci.bremerton.wa.us>
Date: August 9, 2023 at 4:27:20 PM PDT
To: Chance Berthiaume <Chance.Berthiaume@ci.bremerton.wa.us>
Subject: Stormwater Comp Plan

Chance, my apologies for not getting these comments to you sooner. Two family hospitalizations in a week. Let me start off by saying that many parts of this Comp Plan are beyond my knowledge, so I appreciate your forbearance in advance. A thorough, well-done plan, exactly what I've come to expect of all your work. Congratulations.

Now for the comments:

Wetlands are barely noted in this plan. It appears to be entirely a built system. I won't repeat information you know well as to the efficacy of natural wetlands in reducing runoff, which are effectively mimicked by well-constructed stormwater wetlands, e.g., Manchester. Both systems are more self-sustaining, requiring less maintenance. Where feasible, constructed stormwater wetlands, aka stormwater parks, are a fiscally conservative solution that serves equity and inclusion by providing refuges for quiet enjoyment of the natural world. These are especially important where new development makes little or no provision for common green space.

Further, the wetland system associated with Wright Creek, delineated in 2021, that runs roughly behind the bark park down to Reservoir 3, does not appear to be shown on any of the maps in this plan. This is quite a large system, and I am shocked at its omission. From a Werner Road parking lot used as a neighborhood trailhead, the "upstream" portion of this system is quite visible in the low area below the new development we call the Wi-Fi housing, running roughly north-south off Werner Road. That portion has not been delineated, to my knowledge. As DCD relies on Kitsap County parcel search to determine wetland presence, I

imagine many wetland areas, especially forested wetlands, would not appear to be present.

On p. 4-1, the relative absence of swales and rain gardens is pretty striking. We need more of these self-sustaining, attractive features.

On p. 5-17, 5.14.2, Tree Retention, does not address COB's current regulations which do not protect native or significant trees, and do not require replanting. These regulations offer no protection to tree cover. The plan calls for COB to "develop and adopt tree canopy retention/restoration objectives to improve stormwater management and support water quality improvements". This is a worthy goal, which will also help mitigate effects of climate change. It seems most unlikely to be accomplished with our current BMC 20.50.

On p. 5-18, 5.14.3, a section on Opportunistic Stormwater Controls references BMPs and the SSC Program. Do either or both of these address the inclusion of stormwater wetlands, rain gardens, swales, and other naturalistic features that are fiscally conservative, lower maintenance, serve equity and inclusion, and are also just plain attractive? This DOE requirement's guidelines are unclear, and assessment methods are equally unclear. Do you have any updates on this?

Excellent plan for stormwater runoff prevention on new construction and developments. Is there money set aside for maintaining silt fences, for example, and for other on-site monitoring? In my experience, where there's no monitoring, there's rarely compliance. People aren't mean by nature, they just often don't know they're causing harm.

The focus on anadromous fish continues to be very welcome. Did I miss a section on maintaining shade in a wide buffer around fish-bearing streams? Keeping temperatures cool is vital, that's one thing I know about such streams.

That's it for now. Thanks for reading all this, Chance.

Yours,
Anna

Anna Mockler
Bremerton City Councilor, District Six
Chair, Public Works and Audit Committees

From: [Heather Blough](#)
To: [Chance Berthiaume](#)
Subject: City of Bremerton Stormwater Comp Plan
Date: Friday, May 26, 2023 5:29:20 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

I would like the city to prioritize and install a stormwater system on North Rainier Ave between 19th and 20th streets to keep the residents safe from any future floods.

Thank you for your consideration,

Heather Blough

1930 N Rainier

Bremerton, WA 98312

Sent from my iPad

From: lorie.flatray@gmail.com
To: [Chance Berthiaume](#)
Subject: Public Comments Bremerton Stormwater Utility Comprehensive Plan
Date: Friday, May 19, 2023 11:00:10 PM
Attachments: [Bremerton Stormwater Comprehensive Plan Public Comments.docx](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Berthiaume,

Attached are the comments on behalf of the Manette Shoreline Condominium Owners Association.

Thank you,
Loretta Flatray, President

Bremerton Stormwater Comprehensive Plan Public Comments

Dear City Professionals,

The Manette Shoreline Condominium Owners Association at 1717 East 16th Street, has the following comments on the Stormwater Comprehensive Plan.

East 16th Street west of Lower Wheaton Way appears to lack stormwater drains and catch basins. During regular rain we have observed water running from Wheaton Way down East 16th Street. Rainwater flows from East 16th across our property into drains in our parking lots and some flows uncontrolled into our yard at several points. The water flowing downhill to the south on Lower Wheaton Way is only partially caught by the drain north of East 16th and some continues and turns the corner and flows down East 16th. Further, water from houses and apartments (Sea Glass Villages) to the north also flows down to East 16th. The uncontrolled stormwater is causing the City's property to erode into our property and causing erosion at several points on our property.

On December 24, 2022, the City's stormwater system was apparently overwhelmed causing water to spout at the end of East 16th Street and, until diverted by a fast-acting neighbor, was flowing into our front yard and garden causing damage (see pictures below). Since there is still an orange cone at the location at the end of East 16th, it appears that a permanent fix has not yet been completed.

The west, dead end of East 16th street does not appear to have proper stormwater management (curbing or drainage) and does not have adequate stormwater overflow protections to prevent storm water from running toward our waterside building and into our yard at several points. The eroded soil has washed down and built up in our yard at several points. Our Association has previously submitted a plan for a curtain drain and we know that the upcoming sewer replacement project may present an opportunity to improve and reconfigure stormwater drainage along East 16th Street to protect both our property and the City's property. We hope that you will please incorporate into the Stormwater Comprehensive Plan a plan for stormwater management along East 16th Street. Thank you.

Sincerely,

Loretta Flatray, President
Manette Shoreline Condominium Owners Association
1717 East 16th Street
Bremerton, WA 98310



December 24, 2022, stormwater overflow and stream running toward 1717 E 16th Street.



Stormwater running uncontrolled along the south side of the dead end of East 16th Street



Damage to yard from December 24, 2022, Stormwater overflow

From: [Nathalie Cushing](#)
To: [Chance Berthiaume](#)
Subject: RAINIER AVE N (between 19-20th)
Date: Saturday, May 27, 2023 8:28:38 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Chance!

I am writing to express serious concern for the street of Rainier Ave N between 19th & 20th street in Bremerton, this is regarding water issues the vast majority of the year. I wrote to the city when I first bought my house as my home was flooding and they put in asphalt berms which may or may not have helped.

With the problems continuing I learned more about our conservation group and worked with them for a year to install a rain garden and downspout underground piping on my property, I've also spent close to 40k on contractors working to keep my foundation from flooding. All of this has done little and I expect my home to flood yet again come fall rains.

Most of the year I have no option but to park in essentially a pond in the street, it's unbelievable the amount of water on this street.

Rainier Ave N (between 19-20th street) is in DIRE NEED of a drain and improvements. Please consider our street for these improvements!

Best,
Nathalie

--

Nathalie Cushing
*1948 & 1946 Rainier Ave N
Bremerton, WA 98312*

From: [Torie Brazitis](#)
To: [Chance Berthiaume](#)
Cc: [Ben, Torie &](#)
Subject: Stormwater Comprehensive Plan Update - Brazitis comments
Date: Saturday, May 27, 2023 6:41:38 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon, Mr. Berthiaume.

Below are my comments on the draft City of Bremerton Stormwater Comprehensive Plan and related documents, including my request for prioritization of stormwater improvements on the 1900 block of North Rainier Avenue.

My family moved into our home in May 2020. In December 2020, three days before Christmas, I walked out of my home office in the basement level and wondered why the floor was cold. In fact, the entire basement level was flooded by groundwater seeping in from the streetside of the house. Water traveled between the foundation and a large room full of new laminate flooring, into carpet, into baseboards, under our furniture, and came in through walls. By the time we were done, we had ripped up the floors and cut out half the drywall in the basement to find the source of the leak. Since then, we have spent thousands of dollars repairing damage, installing new drainage systems for our property, sealing walls, and putting in a large sump pump. We also installed a berm along the street, as the primary source of the water was sheet runoff from Rainier Avenue. Our insurance did not cover these repairs or improvements.

We request the City urgently prioritize stormwater system improvements on North Rainier Avenue so there is better protection from catastrophic flooding and damage in the future. I see other neighbors along Rainier Avenue also have temporary berms, many of which are deteriorating. Without modification, these systems risk being overwhelmed in future major rainfall events, leaving additional Rainier Avenue residents with expensive repair bills for damage against which they could not adequately protect their houses.

Thank you for your consideration of this request.

Regards,
Torie Brazitis
1906 Rainier Avenue
Bremerton, WA 98312

From: [Nancy Lazara](#)
To: [Chance Berthiaume](#)
Cc: [Nathalie Cushing 1827](#)
Subject: Stormwater system needed!
Date: Sunday, May 28, 2023 9:22:48 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chance,

I am part owner of 1948 North Rainier Ave with my daughter Nathalie Cushing. The lack of a Stormwater System is a huge issue for us - and for all the other residents of the street.

In the last 2 years, we have made a very large investment in Bremerton with our house and the addition of a LEGAL ADU. Sadly, weI have no doubt that it will flood this winter. We've done everything we can, including the addition of all new gutters, removal of our concrete driveway to improve drainage, and the installation of a Rain Garden, but the amount of water dumping downward into our property from the street is more than we can address as homeowners. We need the governments help to deal with the water.

PLEASE prioritize North Rainier between 19th and 20th to get a real system to take the water away.

Sincerely,

Nancy Lazara Cushing
1946 Rainier Avenue North
Bremerton WA
206-972-8979

**Published for
August 16
Council Meeting**

4E – Public Comments

From: [City Council](#)
To: [Torie Brazitis](#)
Cc: [City Council](#); [Greg Wheeler](#); [Thomas Knuckey](#); [Chance Berthiaume](#); [Hillary Hamilton](#); [Public Works & Utilities Customer Response](#)
Subject: RE: Public Comment (Item 4E) - Rainier Ave N Stormwater Issues (Torie Brazitis)
Date: Tuesday, August 15, 2023 6:16:00 PM
Attachments: [AUGUST 16, 2023 - \(Amended\) COUNCIL MEETING AGENDA.pdf](#) *(Was attached to the response email)*

Ms. Brazitis,

This is to acknowledge receipt of the email thread below, which has been provided to Council Members for their review and consideration. Due to the questions you've asked about Stormwater, a copy will also be forwarded to the Mayor and Public Works Department.

Most Council Members and City Department staff participate in Council Meetings in-person; and the public is also invited to attend. But beginning at 5:30 PM, an opportunity is provided for the public to participate remotely through several options (please see the attached Agenda).

Prior to the vote, the Chair will ask if any member of the public wishes to comment on any of the Items listed under the **Consent Agenda**, including Item 4E "Resolution No. 3364 to adopt the City of Bremerton Stormwater Comprehensive Plan Update". But note that the public does not have to attend in-person to provide comment. Your email, as well as any other emails received will be included in the Council Packet as a part of the record.

Council Department

From: Torie Brazitis torie.brazitis@gmail.com
Sent: Monday, August 14, 2023 5:32 PM
To: Jeff Coughlin Jeff.Coughlin@ci.bremerton.wa.us; Anna Mockler Anna.Mockler@ci.bremerton.wa.us; City Council City.Council@ci.bremerton.wa.us; nathaliecushing@gmail.com; Ben, Torie & benjones.98041@gmail.com
Subject: Re: Rainier Avenue North stormwater issues

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

(Whoops! Found the full Council email, in case that's cleaner.)

Good evening, Council Members.

Please see below.

Should my neighbors and I on North Rainier Avenue attend the meeting Wednesday to speak to this, or will it be moot?

As well, I asked Public Works four days ago for more information on the project scoring and when the plan will next be updated, so we can follow it and advocate for completion of these improvements. I have not yet heard back.

Thank you all for your service to our community!

Regards,
Torie Brazitis
Bremerton, WA 98312

On Mon, Aug 14, 2023, 4:58 PM Torie Brazitis <torie.brazitis@gmail.com> wrote:
Good evening, Council Members.

(Including Jeff as well for awareness.)

I see it's on the consent agenda. It seems like it wouldn't be worth attending, as it would be done by the time public comment arrives.. Is that the case?

Please advise so I can let my neighbors know if they should attend. I don't want to waste their time, though, if there isn't value in it.

Thank you!

Regards,
Torie

From: **Torie Brazitis** <torie.brazitis@gmail.com>
Date: Fri, Aug 11, 2023, 7:00 AM
Subject: Rainier Avenue North stormwater issues
To: Anna Mockler <Anna.Mockler@ci.bremerton.wa.us>

Good morning, Anna.

I see you're considering the Stormwater Comprehensive Plan next week.

We had major flooding in our house at 1906 Rainier Avenue North in 2020 from street runoff. The City put a temporary berm now in front of our house (and many others!), but we're hoping the City will fix the street at some point.

When I heard this plan was up for review, I canvassed my neighbors on the east (downhill) side of Rainier Avenue and found out many of them have had significant flooding of their homes from this as well. You'll see in the plan that five comments were received, and four were from Rainier Avenue North. That's us.

Public Works added the project in the 20-year plan. However, there's no timeline or funding identified.

In advance of the meeting, I asked Chance for more info on the ranking of this project against others, as it got a score of 41. I also asked how often this plan is renewed so I can come back again until the project happens.

If I can, I will try to come by Wednesday at the meeting to speak to this, but I wanted you to be aware. If you're able to stop by Rainier Avenue North before the meeting, I can meet you and show you the temporary berms so you're aware of the interim measures. If you'd like, I can extend an invite to my neighbors who've also had issues so they can tell you about it.

Let me know if you'd like to come by and see it. Thanks!

Regards,
Torie Brazitis



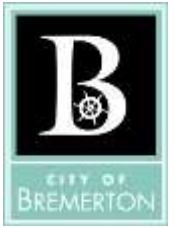
MAYOR'S REPORT

August 16, 2023

BREMERTON
WASHINGTON



11th Street Update





2022 Wastewater Treatment Plant Outstanding Performance Award

Congratulations to Bremerton's Wastewater Division Team!

- Of nearly 300 wastewater treatment plants statewide, Bremerton was one of only 109 to achieve top performance from the Dept. of Ecology.
- The award means that the Bremerton Wastewater Treatment Plant achieved top performance for its operations in 2022.
- The Bremerton's Wastewater Treatment Plant has received the award several times; this is the third consecutive year the treatment plant has received the award.
- The recognition gives the citizens of Bremerton confidence that the Wastewater Division is being operated and maintained efficiently.
- The award recognizes the hard work and dedication our wastewater staff have to protecting the waters of Puget Sound and the communities around it.

BEAUTIFY BREMERTON

Saturday, September 9th



- Bremerton residents or landlords are eligible to participate
- Free disposal of yard waste from 8 AM to 2 PM
- Location in parking lot at Legion Field, East 29th Street, East Bremerton
- For full details and information needed for yard waste disposal, visit:

<http://www.bremertonwa.gov/DocumentCenter/View/2758/> or contact 360-473-5920

District Six Council Report





DISTRICT SIX TOWNHALL

*Presented by Anna Mockler,
Bremerton City Council, District Six*

Every Second Monday, 4-6pm
100 Oyster Bay Ave N (Bremerton Public Works)

**What are your hopes and concerns?
Talk to your City Councilor**

**What Council did last month
and
What they'll look at soon**

Questions? Email Anna.Mockler@ci.bremerton.wa.us



2023 Dates:

Jan 9, Feb 13, Mar 13, Apr 10, May 8, June 12,
July 10, Aug 14, Sept 11, Oct 9, Nov 13, Dec 11





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Guardian**

Gamechanger': judge rules in favor of young activists in
US climate trial | Montana | The Guardian

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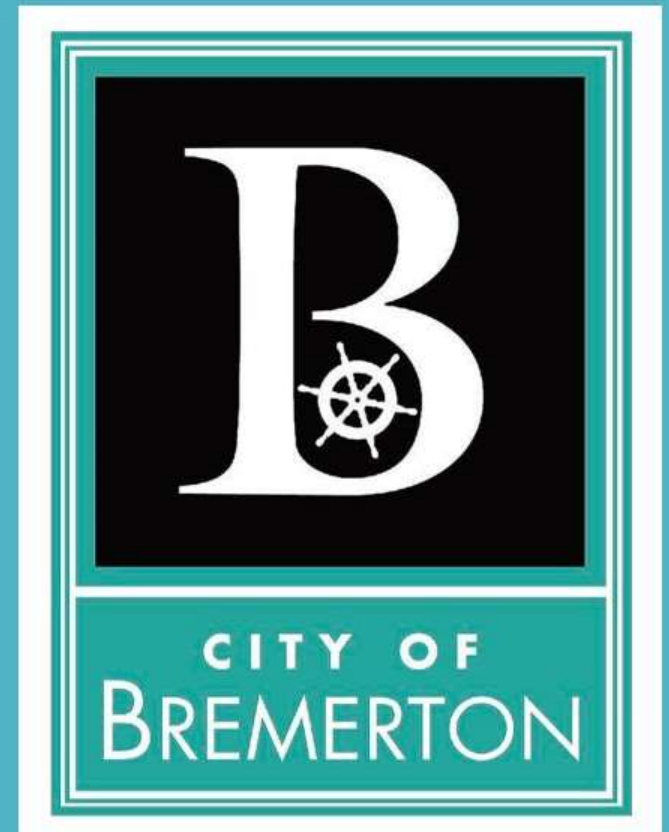


Report from District 2 Representative

Denise Frey

Councilmember, District 2

August 16, 2023



Who Knew?

Anyone with a green waste can from Waste Management can compost!

COMPOSTING GUIDE

All of these materials can go in your green yard and food waste cart for compost collection.



Food Scraps



Food-Soiled Paper



Yard Trimmings



KEEP OUT of Your Compost Cart

- | | | |
|-----------------------------|----------------|--------------------------|
| ▲ NO plastic bags | ▲ NO BBQ coals | ▲ No noxious weeds* |
| ▲ NO glass or metal | ▲ NO diapers | ▲ No compostable plastic |
| ▲ NO liquids, oil or grease | ▲ NO pet waste | ▲ No stickers or labels |

*To identify noxious weeds, visit www.nrcb.wa.gov/printable-noxious-weed-list

Extra Yard Waste

There is a charge for extra yard waste.

Food waste must go in provided cart.

Put extra yard trimmings in:

- **Cans with handles** (32 gal., 65 lb. limit)
 - Label cans "Yard Waste"
 - Put next to yard cart at least 2 ft. from garbage.
- **Kraft paper yard bags**
- **Bundles** (4'-2x8 ft. limit)
- Extra yard waste is \$2.99 per additional 32 gal. bag, can, or unit.

Compost Service

is expanding in Kitsap. Check Kcowa.us/compost to see if service is available in your neighborhood.



Beautiful historic Lahaina on Maui before the August 2023 fires

COUNCIL DISTRICT 1

Jennifer Chamberlin







**TOGETHER, WE ARE
STRONGER. SUPPORT MAUI
RESIDENTS AFFECTED BY
THE WILDFIRES.**



**DONATE TO THE MAUI STRONG FUND OF
HAWAI'I COMMUNITY FOUNDATION
[HAWAIICOMMUNITYFOUNDATION.ORG/MAUI-STRONG](https://hawaiicommunityfoundation.org/maui-strong)**



Kitsap County ISLANDER FESTIVAL

August 19, 2023



BABA B



SAMU



STONE II



WILL 84

FEATURING:
IRIE NATION
DJ SIO
DJ UNA

PENDERGAST REGIONAL PARK
1199 UNION AVE
10AM TO 9 PM

LIVE MUSIC LOCAL VENDORS CULTURAL PERFORMANCES FREE EVENT

— ACCEPTING CANNED GOODS FOR LOCAL FOOD BANKS —



District 3 Report

August 16, 2023





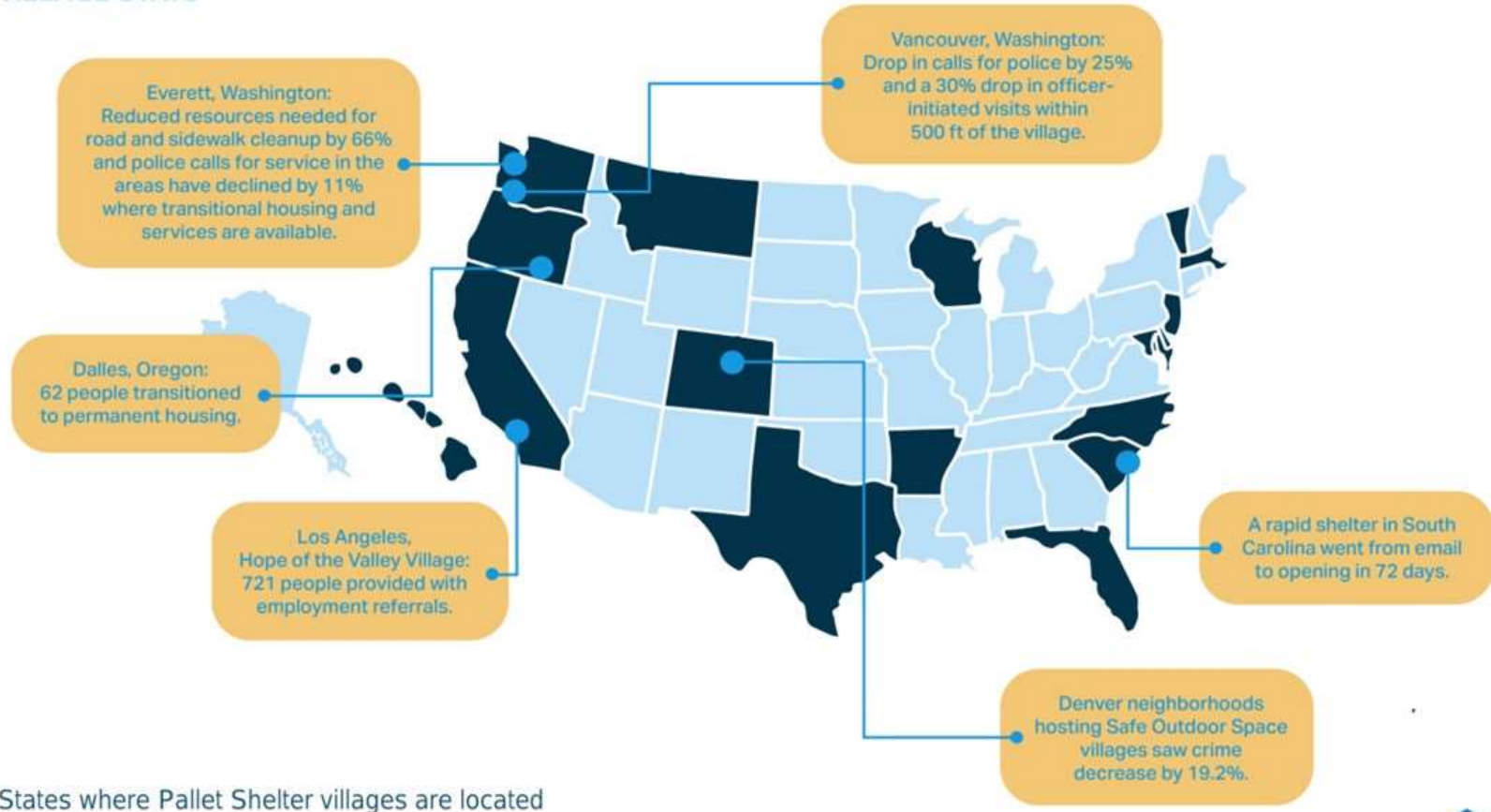
SHELTER 64



STANDARD TWO-STALL BATHROOM



VILLAGE STATS



VANCOUVER, WA

Featured Project

SIZE:
29 Shelters

POPULATION SERVED:
Local unhoused neighbors,
couples and pets

FUNDING:
City funds

IMPACT DATA POINTS:

- 46 people served
 - 14 transitioned to permanent housing
 - 10 currently working to obtain housing
 - Rest have completed housing assessment
- 30% reduction calls and officer related visits since opening
- Fire and EMS related call dropped from 15.6% to 6% of total area

“It’s an opportunity for people to get their lives together. If they were using for whatever reason — for trauma, to stay awake — they have an opportunity to clean up here with support, instead of being kicked out of wherever they were.”

JAMIE SPINELLI, VANCOUVER'S HOMELESS RESOURCES COORDINATOR





THE MANETTE BUSINESS ASSOCIATION PRESENTS

MUSIC IN MANETTE

WHITEY DOMSTAD PARK

THURSDAY EVENINGS • 6:30-8:30PM

Featuring

Megan and Heidi



SCHROETER GOLDMARK & BENDER PRESENTS

ROCK THE DOCK

2023

CATCH THE *Bremerton* ↔ *Silverdale*
CARLISLE II

 **GREATER
KITSAP
CHAMBER**

Sept 2nd, 3rd & 4th

POP UP FERRY



**FREE SAILINGS BETWEEN THE
SILVERDALE WATERFRONT
& BREMERTON MARINA
BLACKBERRY FESTIVAL WEEKEND**

Please note, only yard waste will be accepted this year.

BEAUTIFY BREMERTON

Saturday, September 09th — 8:00am to 2:00pm

There is one dumpster location at this year's All City Clean Up event. Please see below addresses for location details. Thank you for your efforts to Beautify Bremerton!

DUMPSTER LOCATIONS PARKING LOT AT LEGION FIELD

EAST BREMERTON

East 29th Street

Accepted items: Yard waste

JOIN THE COMMUNITY. MAKE A DIFFERENCE.

Together, we can do it! Keep Kitsap neighborhoods clean, one spot at a time. Volunteer to clean up litter in your neighborhood.



Visit <https://adopt-a-spot-kitsap.hub.arcgis.com> to learn more.



FAQs

How do I provide proof of residency?

Residents may provide proof of residency by showing their driver's license or a recent City of Bremerton utility bill. Landlords must provide a copy of their Landlord Business License.



HOUSEHOLD HAZARDOUS WASTE

If a container has the words **caution, warning, flammable, combustible, danger, toxic, or poison** and still has product inside, it does not belong in the garbage, recycling, or down a drain. Kitsap and Mason County residents can safely dispose of hazardous household products at the Kitsap County Household Hazardous Waste (HHW) Collection Facility for no cost. Qualifying businesses and nonprofits can use the Small-Quantity Generator hazardous waste disposal program for a fee.

Address:	Kitsap County Household Hazardous Waste Facility 5553 5th Avenue SW, Bremerton, 98312
Residential waste from Kitsap and Mason County Households:	No fee, no appointment needed for small amounts of waste. Appointment required for large loads and potentially dangerous products. Large loads are more than 50 containers, loads over 50 gallons total, or containers larger than 5 gallons. Potentially dangerous products include laboratory chemicals, unknown chemicals, or containers that may be hot. Visit www.us-hhwaste.com to make appointment or call Kitsap 360-337-8777. Residential hours: Thurs., Fri. Sat. from 8 a.m. to 4 p.m. Closed July 4, Thanksgiving weekend, and Christmas Eve through New Year's Day.
Business and nonprofit waste:	Fee charged. Appointment required. Qualifying Small Quantity Generators only. Visit www.us-hhwaste.com to request appointment or call Kitsap 360-337-8777.
Restrictions:	These products are not accepted at the HHW Facility: Visit Recycle.kitsapgov.com to find recycling or safe disposal sites: No medical waste or medications (other than needles/ syringes); no TVs or computers; no propane tanks (larger than 1 liter); no empty or leaking containers; no marine items; no explosives; no aerosols; no fireworks; no household garbage; no radioactive waste.

MORE RESOURCES

What Do I Do With It?

Recycle.KitsapGov.com

The Kitsap County **What Do I Do With It?** online tool helps you find recycling or disposal sites for a variety of household items. Type the name of your waste item into the search bar at Recycle.KitsapGov.com and learn how to recycle, compost, or safely dispose of it.



2023 BEAUTIFY BREMERTON

All City Clean Up
Saturday, Sept. 09
8am-2pm

Only yard waste accepted this year

Are you a Bremerton resident or landlord?

If so, you may participate in the September 09th Beautify Bremerton day. **Free disposal of yard waste** for City of Bremerton residents and landlords. Residents must provide proof of residency. Bremerton landlords must provide a copy of their Landlord Business License. The City reserves the right to reject any loads. For more information, please call 360-473-5920.