Mayor Scott Korthuis

Council Members Gary Bode Ron De Valois Gerald Kuiken Nick H. Laninga Brent Lenssen Kyle Strengholt Mark Wohlrab



City Council - Regular Meeting Annex - 205 Fourth Street April 17, 2023

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Summary Reports and Presentations

Approval of Minutes

1. Draft Council Minutes – April 3, 2023

Citizen Comment

Consent Agenda

- 2. Approval of Payroll and Claims
- 3. Berthusen Park Annual Report (2022)
- 4. Ord-23-1668 LMC 10.17-Wheeled All-Terrain Vehicles
- 5. Temporary Construction Easement-Top Family Living Trust
- 6. Amendment to Existing Right-of-Way and Conditional Use Permit Requirements for the Duffner Mobile Home Park (2010 Front Street)
- 7. Award Bid for Jim Kaemingk Sr Trail Depot to 8th Phase 1
- 8. CSG Forte Payments Inc Payment Processing Agreement

Public Hearing

Unfinished Business

New Business

Other Business

- 9. Draft Public Works Committee Meeting Minutes April 5, 2023
- 10. Calendar

Executive Session

Adjournment

EXECUTIVE SUMMARY



Meeting Date:	April 17, 2023		
Name of Agenda Item:	Draft Council Minutes -	- April 3, 2023	
Section of Agenda:	Approval of Minutes		
Department:	Administration		
Council Committee Revie	<u>w:</u>	Legal Review:	
Community Development	Public Safety	□ Yes - Reviewed	
Finance	Public Works	No - Not Reviewed	
□ Parks	⊠ Other: N/A	Review Not Required	
Attachments:			
Draft Council Minutes – April 3, 2023			
Summary Statement:			
Draft Council Minutes for Council review and possible approval.			
Recommended Action:			
Review and approve draft minutes.			



CITY COUNCIL MINUTES OF REGULAR MEETING



April 3, 2023

1. CALL TO ORDER

Mayor Korthuis called to order the April 3, 2023 regular session of the Lynden city council at 7:00 p.m. held in the city's council chambers.

PLEDGE OF ALLEGIENCE

ROLL CALL

Members present: Councilors Gary Bode, Gerald Kuiken, Nick Laninga, and Mark Wohlrab.

Members absent: Councilor Ron De Valois, Brent Lenssen, and Kyle Strengholt.

Staff present: HR Director Kari Heeringa, Planning Director Heidi Gudde, Police Chief Steve Taylor, Public Works Director Steve Banham, City Clerk Pam Brown, City Administrator John Williams, and City Attorney Bob Carmichael.

OATH OF OFFICE - None

SUMMARY REPORTS AND PRESENTATIONS - None

APPROVAL OF MINUTES

Councilor Bode moved, and Councilor Laninga seconded to approve the April 3, 2023, regular meeting minutes. Motion approved on 4-0 vote.

CITIZEN COMMENT

<u>Cynthia Ripke-Kutsagoitz, Guide Meridian, Lynden</u> Cynthia commented on several general topics.

CITY COUNCIL MINUTES OF REGULAR MEETING



5

2. CONSENT AGENDA

Payroll Liability to March 12 through March 25, 2023

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	
Check Liability	
Total Non-L&I Liabilities	
Quarterly Liabilities	
Total EFT & Other Liabilities	\$415,336.92

Approval of Claims – April 4, 2023

Manual Warrants No.	<u>26988</u>	through	26988		\$600.00
EFT Payment					
Pre-Pays					\$30,832.93
				Sub Total	
				Pre-Pays	\$31,432.93
Voucher Warrants No.	26989	through	<u>27045</u>		\$222,171.55
EFT Payments					\$231,166.27
				Sub Total	\$453,337.82
				Total	
				Accts. Payable	\$484,770.75

Temporary Construction Easement and Right of Way Agreement - Vander Griend Lumber

The City needed to obtain easements from Vander Griend Lumber for the construction of Jim Kaemingk Sr. trail extension between Depot and 8th St. With this agreement the city obtains the necessary temporary easement for the in-water work that will be done during this year's fish window and obtains the necessary permanent easement for the trail on the northwest portion of the parcel. The total cost for these easements is \$30,000.00 and will be paid out of the project funding District (TBD) Funds.

Motion made by Councilor Bode seconded by Councilor Kuiken to approve the consent agenda as presented. Motion approved 4-0.

CITY COUNCIL MINUTES OF REGULAR MEETING



3. PUBLIC HEARING

Stormwater Management Action Plan

The City is required to develop a Stormwater Management Action Plan as a requirement of the City's Stormwater National Pollution Discharge Elimination System (NPDES) Permit with the State Department of Ecology. The area of the City was divided into discrete stormwater basins following established policy, and the basins were ranked based on criteria including opportunity for improvement. The Central District Basin has been identified as an area with the most needed improvements. Within that basin the City identifies the work that has been done in the recent past and identified both short- and long-term future projects that would be accomplished to improve water quality. There are three Judson Area Stormwater Low Impact Design projects (8th, 9th,10th, and Judson Streets) that have either received or are likely to receive grant funding for construction in this basin.

In response to feedback from the public and staff, additions, deletions and/or clarifications have been incorporated into the Stormwater Management Action Plan. The Public Works Committee reviewed the draft Stormwater Management Action Plan at their meeting on March 8, 2023, and City Council set this Public Hearing at their March 20, 2023 meeting.

Mayor Korthuis opened the public hearing at 7:12 p.m. There were no comments. Mayor Korthuis closed the public hearing at 7:12 p.m.

Motion made by Councilor Bode seconded by Councilor Wohlrab to approve and authorize the Mayor's signature on the City's Stormwater Management Action Plan. Motion approved 4-0.

4. UNFINISHED BUSINESS - None

5. NEW BUSINESS

Site Specific Rezone 23-01 – Moa Property

Rezone application 23-01 is coming before the City Council seeking a shift in residential zoning category from a single-family RS-100 zone to a multi-family RM-1 zone. The subject property, located at the east end of Grover Street, is less than one acre in size at approximately 30,300 square feet. The land and existing home were subdivided in 2021 from one lot into three single-family lots and addressed as 1181, 1183, and 1185 E. Grover Street. After division, one new home and associated accessory dwelling unit (ADU) was constructed on the site. Although the owners executed and recorded an ADU covenant stating they would be living on the property they are now not interested in

CITY COUNCIL MINUTES OF REGULAR MEETING



meeting this development requirement and are instead seeking to utilize each lot of the three-lot plat for rentals.

The RM-1 zoning, if approved, would allow the two existing homes to be legally converted into duplexes with the potential for a third duplex on the remaining vacant lot – a total of six multi-family units. The Planning Commission held a public hearing on March 9th to consider the application and accept public testimony. The Commission concluded that the request did not meet the criteria to rezone, and the resulting decision was a recommendation to deny.

The Technical Review Committee provided a detailed report which considered the tangible aspects of a potential rezone but also the process by which a rezone was sought, which was essentially, after the fact. Due to these circumstances specific to this application, staff offered conclusions but abstained from offering a specific recommendation to approve or deny. If approved a corresponding ordinance, with any Council conditions will be brought forward at a subsequent meeting.

Motion made by Councilor Bode, seconded by Councilor Kuiken to deny rezone application 23-01. Motion approved 4-0.

6. OTHER BUSINESS - None

7. EXECUTIVE SESSION

The council did not hold an executive session.

8. ADJOURNMENT

April 3, 2023, regular session of the Lynden City Council adjourned at 7:25 p.m.

Pamela D. Brown, City Clerk

Scott Korthuis, Mayor

EXECUTIVE SUMMARY



Meeting Date:	April 17, 2023		
Name of Agenda Item:	Approval of Payroll and Claims		
Section of Agenda:	Consent		
Department:	Finance		
Council Committee Revi	riew: Legal Review:		
Community Developme	ent 🛛 Public Safety	□ Yes - Reviewed	
⊠ Finance	Public Works	□ No - Not Reviewed	
Parks	□ Other:	☑ Review Not Required	
Attachments:	ients:		
None			
Summary Statement:			
Approval of Payroll and Cl	oval of Payroll and Claims		
Recommended Action:	Recommended Action:		
Approval of Payroll and Cl	l of Payroll and Claims		

EXECUTIVE SUMMARY - FINANCE



Meeting Date:	April 17, 2023		
Name of Agenda Item:	2022 Berthusen Park Annual Report		
Section of Agenda:	Consent		
Department:	Finance		
Council Committee Revi	ew:	Legal Review:	
Community Developme	ent 🛛 Public Safety	□ Yes - Reviewed	
⊠ Finance	Public Works	No - Not Reviewed	
Parks	□ Other:	☑ Review Not Required	
Attachments:			
2022 Berthusen Park Ann	ual Report:		
Summary Statement:			
Annual Review of the Ber	thusen Park Annual Report:		
Annual Review of the Berthusen Park Annual Report: As stipulated in the Berthusen will, granting Berthusen Park to the City of Lynden, a financial report needs to be reviewed annually by the City Council.			
Recommended Action:			
For Information Only.			

BERTHUSEN PARK - 2022 FINANCIAL REPORT

REVENUES:

Non-Operating Revenues:

Beginning Cash/Investment (Nonspendable) Beginning - Cash/Investments (Assigned): Interest Income - Trust			72,220 131,178 1,887	
	Total Non-Operating Revenues:			\$ 205,285
Operating Revenues				05 000
	Real Estate Property Taxes Interest			65,000 57
	Facility Rentals			13,315
	Land Leases			21,299
	House Rent			2,354
	Miscellaneous			-85
	Total Operating Revenues:			\$ 101,940
	TOTAL REVENUES:			\$ 307,225
EXPENDITURES:				
Operating Expenditu	ires:			
	Salaries/Benefits		36,079	
	Assessments/Taxes		1,200	
	Communications (Telephone)		872	
	Insurance		9,795	
	Public Utilities		3,161	
	Repairs/Maintenance		8,944	
	Supplies Miscellaneous		7,217 429	
	Total Operating Expenditures:	\$	67,697	
	TOTAL EXPENDITURES:	\$	67,697	
			<u> </u>	
TOTAL ENDING CA	ASH / INVESTMENT	\$	239,528	
ALLOCATION:				
ENDING CASH/INVESTMENT - TRUST (Nonspendable)		\$	72,220	
ENDING CASH-WORKING CAPITAL (Assigned)		\$	167,308	
Prepared by: Anthony Burrows, Finance Director				

Prepared by: Anthony Burrows, Finance Direc Council Review: April 17, 2023 Published Lynden Tribune: April 19, 2023

EXECUTIVE SUMMARY



Meeting Date:	April 17, 2023		
Name of Agenda Item:	Ordinance 23-1668 adding LMC Title 10.17		
Section of Agenda:	Consent		
Department:	Administration		
Council Committee Revie	<u>ew:</u>	Legal Review:	
Community Development	Public Safety	Yes - Reviewed	
Finance	Public Works	No - Not Reviewed	
Parks	□ Other:	Review Not Required	
Attachments:			
Ordinance 23-1668	Ordinance 23-1668		
Summary Statement:			
Discussion arose in the Public Safety Committee to allow the City and other public entities (including school districts) to use wheeled all-terrain vehicles (WATV), also known as utility terrain vehicle (UTV) for maintenance purposes on city streets with a speed of 35 mph or less. These vehicles must be owned and operated by a public entity and meet all the safety requirements of the state RCW, meet the additional requirements of LMC 10.17, and must be inspected annually by the Lynden Police Department. The Public Safety Committee reviewed this ordinance at its April 6 th meeting and recommended taking the ordinance to City Council for approval.			
Recommended Action:			
Council makes a motion to adopt ordinance 23-1668 and authorize the Mayor's signature.			

ORDINANCE NO. 23-1668

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING LYNDEN MUNICIPAL CODE SECTION 10, ADDING CHAPTER 10.17 WHEELED ALL-TERRAIN VEHICLES USE BY PUBLIC ENTITIES

An Ordinance of the City of Lynden Amending Lynden Municipal Code Title 10: Vehicles and Traffic, adding Chapter 10.17 entitled Wheeled All-Terrain Vehicles use by Public Entities.

WHEREAS, Chapter 46.09 RCW allows cities to authorize the operation of wheeled allterrain vehicles on public roadways within their jurisdiction through legislative action; and

WHEREAS, the Lynden City Council intends to authorize the operation of wheeled allterrain vehicles by public entities for the purposes of conducting official duties, subject to the limitations, conditions and requirements set forth herein.

NOW, THEREFORE, BE IT ORDAINED by the City of Lynden as follows:

<u>Section 1.</u> Title 10 of the Lynden Municipal Code is hereby amended to add a new chapter 10.17 entitled Wheeled All-Terrain Vehicles.

Chapter 10.17

WHEELED ALL TERRAIN VEHICLES

<u>Sections</u>

10.17.010 Definitions

10.17.020 Use of Wheeled All-Terrain Vehicles on City Streets

10.17.030 Registration Requirements of a Wheeled All-Terrain Vehicle

10.17.040 Duty to Obey Traffic-Control Devices and Rules of the Road

10.17.050 Prohibited Uses

10.17.060 Violation-Penalty

10.17.070 Severability

10.17.010 Definitions

When used in this chapter, the City defines the words and phrases listed below as follows:

- A. "City" means the City of Lynden, its elected officials, employees, and agents.
- B. "City Street" means every way, lane, road, street, boulevard, and every way or place in the city open as a matter of right to public vehicular traffic inside the city limits.
- C. "Rules of the Road" means all the rules that apply to vehicle or pedestrian traffic as set forth in state statute, rule or regulation.
- D. "Sidewalk" means that property between the curb lines or the lateral lines of a city street and the adjacent property parallel and in proximity to a city street and dedicated to use by pedestrians.
- E. "Wheeled All-Terrain Vehicle" or "WATV" means:
 - (1) A utility-type vehicle designed and capable of travel over designated roads that travels on four or more low-pressure tires of 20 psi or less, has a maximum width of less than 74 inches, has a maximum weight of less than 2,000 pounds, has a wheel base of 110 inches or less, and satisfies at least one of the following:
 - (a) Has a minimum width of 50 inches;
 - (b) Has a minimum weight of at least 900 pounds; or
 - (c) Has a wheelbase of over 61 inches;
 - (d) Has a steering wheel for steering control; and
- F. Has non-straddle seating with the operator and passenger sitting side by side in the vehicle; manufactured primarily for recreational non-highway all-terrain use.
 "Public Entity" means any agency of any political subdivision of the State of Washington, to include cities, counties and school districts (whether public or private).

10.17.020 Use of Wheeled All-Terrain Vehicles on City Streets:

Subject to the restrictions and requirements set forth in this chapter, Use of Wheeled All-Terrain Vehicles that are owned and operated by the city or other public entity may be used on city streets to move between one maintenance location to another within the city limits. These WATV's must meet the following criteria:

- (a) Definition of WATV for purposes of this chapter will be those set forth in RCW 46.09.310 (19) (b)
- (b) The WATV must be equipped with all safety equipment required under RCW 46.09.457
- (c) WATV's may only be operated on city streets by a licensed driver aged 18 or older.
- (d) The WATV must have a bed for carrying cargo or a maintenance service box.
- (e) WATV's may only be operated on streets with a speed limit of 35mph or less.
- (f) WATV's may cross streets with a speed limit in excess of 35mph at a controlled crossing.
- (g) All publicly owned WATV's shall be clearly marked with the agency name and logo.
- (h) WATV's must be equipped with amber lights that are capable of flashing, and that are visible from both front and rear. Lights must be flashing when the vehicle is in use.
- (i) Prior to being put into use on city streets, all publicly owned WATV's shall be registered with and inspected by the Lynden Police Department, and annually thereafter.
- (j) No publicly owned WATV may be operated on city streets by anyone other than the approved agency.

10.17.030 Registration Requirements of a Wheeled All-Terrain Vehicle:

A WATV operated on a city street must comply with all registration requirements of the city, as listed in section 10.17.020 above.

10.17.040 Duty to Obey Traffic-Control Devices and Rules of the Road:

Unless otherwise directed by a police officer, a person operating a WATV must obey all the rules of the road that apply to vehicle or pedestrian traffic and must obey the

instructions of official traffic-control signals, signs, and other devices applicable to vehicles.

10.17.050 Prohibited Uses:

(a) No person may operate a WATV in a negligent or unsafe manner, but instead must operate it with reasonable regard for his/her own safety and for the safety of others.

(b) No person may occupy a WATV unless that person is seated in a seat designed to carry a person.

(c) No person may tow any devices or persons behind a WATV.

10.17.060 Violation-Penalty:

A person who violates a provision of this chapter is guilty of a traffic or other infraction as prescribed by RCW 46.09.470 or any applicable section of Lynden Municipal Code (LMC), exclusive of any statutory assessments; provided, that any conduct that constitutes a criminal offense may be charged as such and is subject to the maximum penalties allowed for such offense.

10.17.070 Severability:

If any section, subsection, sentence, clause, paragraph, phrase, or word of this chapter should be held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, paragraph, phrase, or word of this chapter.

Section 2 - Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, ____ IN FAVOR _____ AGAINST AND SIGNED BY THE MAYOR THIS 17th DAY OF APRIL, 2023.

Scott Korthuis, Mayor

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXECUTIVE SUMMARY



Maating Data	April 17 2022		
Meeting Date:	April 17, 2023		
Name of Agenda Item:	Temporary Construction	n Easement	
Section of Agenda:	Consent		
Department:	Administration		
Council Committee Revie	ew: Legal Review:		
Community Development	Public Safety	⊠ Yes - Reviewed	
Finance	Public Works	No - Not Reviewed	
□ Parks	\boxtimes Other:	Review Not Required	
	_Council		
Attachments:			

Temporary Construction Easement

Summary Statement:

The City needed to obtain an easement from the Top Family Trust for the construction of Jim Kaemingk Sr. trail extension between Depot and 8th St. In the attached agreement the city obtains the necessary temporary easement for the in-water work that will be done during this year's fish window. The revised agreement is a \$18,500 payment to the Top Family Living Trust in exchange for a 12-month temporary construction easement commencing on May 5, 2023. The two possible 3-month extensions remain in the agreement.

Recommended Action:

Staff recommends Council make a motion to authorize the Mayor to sign and execute the Temporary Construction Easement.

RETURN TO: ROBERT A. CARMICHAEL CARMICHAEL CLARK, PS P. O. BOX 5226 BELLINGHAM, WASHINGTON 98227 PHONE: 360-647-1500

DOCUMENT TITLE:

Temporary Construction Easement Agreement

REFERENCE NUMBER OF RELATED DOCUMENT: n/a

GRANTORS: Top Family Living Trust

GRANTEE: City of Lynden, a Washington municipal corporation

ABBREVIATED LEGAL DESCRIPTION:

THAT PTN OF NE NW DAF-BEG AT NW COR OF NE NW-TH E 180 FT-TH S 797 FT M/L TO N LI OF HAWLEY'S ADD TO LYNDEN-TPOB-TH W 180 FT-TH N 164 FT-TH E 180 FT-TH S 164 FT TO TPOB-LESS RDS-EXC THAT PTN OF LOT 1 LYNDEN CITY TRAIL SHORT PLAT/LLA AS REC AF 2070403245

ASSESSOR'S TAX PARCEL NUMBER(S):

PTN 4003201454930000

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement ("Agreement") is made and entered into this _____ day of ______ 2023, by and between the Top Family Living Trust ("Grantor") and the City of Lynden, a Washington municipal corporation ("Grantee" or "City"). Grantor and Grantee may be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, The Top Family Living Trust is the owner of the real property legally described in Exhibit A hereto and fully incorporated herein by reference ("Grantor's Property"); and

WHEREAS, the City of Lynden ("City") is engaged in the expansion of the Jim Kaemingk Sr. Trail to improve and extend the trail; and

WHEREAS, a temporary construction easement over a portion of the Grantor's Property will facilitate the City's work on a portion of the Jim Kaemingk Sr. Trail on an adjacent parcel owned by the City; and

WHEREAS, the above recitals are a materials part of this Agreement,

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

The Top Family Living Trust, in consideration of the terms and conditions specified herein, hereby grants and conveys to the City of Lynden an exclusive temporary construction easement over the portion of Grantor's Property described in **Exhibit B** hereto and depicted in **Exhibit C** hereto, both of which are incorporated herein by reference ("Temporary Construction Easement").

This Agreement shall be governed by the following terms and conditions:

1. <u>Purpose</u>. This grant shall provide the Grantee with an exclusive temporary construction easement for construction, inspection, alteration, ingress and egress for the purposes of constructing a new portion of the Jim Kaemingk Sr. Trail (the "Project"), located adjacent to the north boundary of Grantors' Property.

2. <u>Payment</u>. The Temporary Construction Easement described above are granted in exchange for a payment of \$18,500 from the City to Grantor. Payment must be made on or before May 5, 2023, or this Agreement is null and void. In the event that the three-month extensions discussed in Section 4 are executed, the City will pay an additional \$11,000 to Grantor for each three-month extension.

3. <u>Commencement of Term of Agreement</u>. The Temporary Easement term shall commence on May 5, 2023.

4. <u>Termination/Extension</u>. This Temporary Construction Easement shall terminate on May 5, 2024; provided that, Grantee may extend the term for up to two (2) additional three (3) month

increments by providing forty-five (45) days written notice to the Grantor prior to expiration of the term or extended term.

5. <u>Restoration</u>. The Grantee shall, upon completion of the Project, repair any damage caused when performing the Project work and leave the Grantors' Property in a clean and tidy condition equal to that which existed on the date of execution of this Agreement. Bank stabilization work will occur within the Temporary Construction Easement.

6. Insurance. Grantee shall procure and maintain in force, without cost or expense to Grantors, on or before the Commencement Date of this Temporary Easement and throughout the Term or as long as Grantee remains in possession of Grantor's Property, a broad form comprehensive general liability policy of insurance covering bodily injury and property damage, with respect to the use and occupancy of the property with liability limits of not less than \$2,000,000.00 per occurrence. Grantors shall be named as additional insured on all such policies, which policies shall in addition provide that they may not be canceled or modified for any reason without fifteen (15) days prior written notice to Grantors. Grantee shall provide Grantors with a certificate or certificates of such insurance within ten (10) days of the execution of this Agreement. If Grantee is self-insured through the Office of State Risk Management, a certified statement setting out (1) program approval of the state risk manager, and (2) coverage(s) (including additional named insured) enumerated herein shall be appended to this Agreement.

7. <u>Hold Harmless.</u> Grantors and Grantee shall indemnify and hold each other harmless from any and all damages and litigation expenses resulting from any claims or causes of action for injury to persons or property arising from any acts or omissions of either party, their employees, or authorized agents, to the extent and in the same proportion as employees or authorized agents are determined to be at fault.

8. <u>Assignment</u>. Grantee shall not assign, convey, or transfer this Temporary Construction Easement or any interest herein, without prior written consent of Grantors.

9. <u>Notice</u>. Any notice, declaration, demand, or communication to be given by a Party to this Agreement to the other Party shall be in writing and transmitted to the other Party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

To Grantors:	To Grantee:
Top Family Living Trust	City of Lynden
1904 Bender Park BLVD #A	Attn: Steve Banham
Lynden, WA 98264-8524	300 4th Street
	Lynden, WA 98264

10. <u>Complete Agreement/Modification.</u> This Agreement and the terms and conditions herein represents a complete agreement between the Parties. There are no other representations, warranties, covenants, agreements, collateral agreements, or other conditions affecting this Agreement other that those set forth herein. Modification of this Agreement or any of its terms and conditions shall be binding upon the Parties only if they are in writing and fully executed by the Parties.

11. <u>Applicable Law/Construction/Venue</u>. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In the event this Agreement is in conflict with the provisions of any law or statutes governing the subject matter hereof, such law or statute only to the extent of such conflict shall be controlling. The venue of any action brought to interpret or enforce any provision of this Agreement shall be laid in Whatcom County, Washington.

GRANTOR:

Top Family Living Trust

GRANTEE: CITY OF LYNDEN

michaer Bv: J. TO Its: Trustee

By: Scott Korthuis Its: Mayor

STATE OF WASHINGTON)) ss. COUNTY OF WHATCOM)

On this <u>b</u> day of <u>P</u>, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared <u>Dichard</u> <u>Iop</u>, the <u>Twate</u> of the Top Family Living Trust, who acknowledged said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and stated on oath that they were authorized to execute this instrument on behalf of said entity.

WITNESS my hand and conficial seal hereto affixed the day and year first written above.

tary Public in and for the State of Washington esiding at: 🗤 Ny commission expires: Million Manual Ma Manual Manu STATE OF WASHINGTON) ss. COUNTY OF WHATCOM)

On this _____ day of ____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared______, the

______ of the CITY OF LYNDEN, a Washington municipal corporation, who acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and stated on oath that he/she was authorized to execute this instrument on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Notary Public in and for the State of Washington Residing at: My commission expires: _____

EXHIBIT A

Legal Description of Grantor's Property

Assessor's Tax Parcel Number: 400320 145493 0000

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M. DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, THENCE EAST 180 FEET, THENCE SOUTH 797 FEET M/L TO THE NORTH LINE OF HAWLEY'S ADDITION TO LYNDEN, TO THE POINT OF BEGINNING, THENCE WEST 180 FEET, THENCE NORTH 164 FEET, THENCE EAST 180 FEET, THENCE SOUTH 164 FEET TO THE POINT OF BEGINNING, LESS ROADS, EXCEPT THAT PORTION OF LOT 1 LYNDEN CITY TRAIL SHORT PLAT, LOT LINE ADJUSTMENT AS RECORDED UNDER AUDITOR'S FILE NUMBER 2070403245.

INCLUDING THAT PORTION OF AN ADJACENT AREA OF DEED GAP CONVEYED BY THE CITY OF LYNDEN, RECORDED UNDER WHATCOM COUNTY ASSESSOR'S FILE NUMBER 2111202452.

EXHIBIT "B"

TEMPORARY CONSTRUCTION EASEMENT

TOP FAMILY LIVING TRUST to THE CITY OF LYNDEN

A variable width easement over and across a portion of the Northeast quarter of the Northwest quarter of Section 20, Township 40 North, Range 3 East of W.M., said easement described as follows:

All that portion of said quarter quarter lying: Southerly of Lot 1 of the Lynden City Trail Short Plat / Lot Line Adjustment, as per the map thereof, recorded under Whatcom County Auditor's File No. 2070403245, Southwesterly of Fishtrap Creek, East of the West line of said quarter quarter, East of the Northerly extension of East line of Lot 5, Block 31, Hawleys Addition to Lynden, as per the map thereof recorded in Book 1 of Plats, Page 87, record of Whatcom County, Washington and Northeasterly and Northwesterly of the following described line:

Commencing at the Southwest corner of said Lot 1; thence South 02° 52' 35" West on a southerly extension of said Lot 1 a distance of 50.11 feet to the **true point of beginning** of this line description: thence South 51° 08' 05" East a distance of 222.44 feet; thence North 72° 16' 16" East a distance of 105.42 feet; thence North 02° 45' 12" East a distance of 15.47 feet more or less to Fishtrap Creek and the **terminus** of this line description.

As shown on Exhibit "C" attached hereto and incorporated herein by reference.

Situate in Whatcom County, Washington.

Subject to all easements, covenants, restriction and/or agreements of record, or otherwise.





EXECUTIVE SUMMARY - City Council

Meeting Date:	April 17, 2023		
Name of Agenda Item:	Amendment to Existing Right-of-Way and Conditional Use Permit Requirements for the Duffner Mobile Home Park (2010 Front Street)		
Section of Agenda:	Consent Agenda		
Department:	Public Works		
Council Committee Review: Legal Review:			
Community Developm	ent 🛛 Public Safety	⊠ Yes - Reviewed	
Finance	☑ Public Works □ No - Not Reviewed		
Parks	Other: Review Not Required		
Attachments:		•	

Amendment to February 7, 2007 Agreement for ROW Improvements - 2010 Front Street

Summary Statement:

The current owners of the Duffner Mobile Home Park at 2010 Front Street, Four 'S' Investments, have requested an amendment to the existing 2007 Agreement requiring rightof-way improvements to Front Street abutting their property. The original agreement required the right-of-way improvements after 32 units or if the property is redeveloped. The property owner requested that the trigger for improvements be increased to 46 units and that the improvements be more clearly defined. The City issued a Conditional Use Permit in November 2021 that establishes criteria for adding additional units to the mobile home park. In recognition of the Conditions for adding units established by the Conditional Use Permit approved by the Planning Commission, the Public Works Committee concurred in concept with amending the agreement as proposed by the owner's attorney at their February 8, 2023 Meeting. At the request of staff, the City Attorney drafted the attached amendment. This amendment increases the number of units allowed before triggering the improvements to 46 units, provided the Conditions of the Conditional Use Permit are met. It also clarifies that the "road improvements" mean construction of the street to the City's three-quarters (3/4) street design standard.

The Public Works Committee discussed this at their April 5, 2023, meeting and concurred to recommended approval by City Council.

Recommended Action:

That the City Council approve the amendment to the 2007 Agreement for right-of-way improvements to Front Street required by 2010 Front Street and authorize the Mayor to sign the amendment as drafted by the City Attorney.

Recorded at the Request of and after recording return to: Lesa Starkenburg-Kroontje Attorney at Law P.S. 313 4th Street PO Box 231 Lynden, WA 98264

Document Title: Amendment to Agreement

Reference Document: Agreement, Whatcom County Auditor File No. 2070202655

Grantor: Four 'S' Investments U.S., Inc.

Grantee: City of Lynden

Abbreviated Legal Description: Ptn NE ¼ SE ¼ Sec 24 Twp 40 N Rge 2 E Additional Legal Descriptions attached on page _____

Assessor Tax Parcel Nos:

- 1. **400224 462156 0000**
- 2. **400224 502162 0000**

AMENDMENT to AGREEMENT

This amendment to Agreement ("Amendment") is effective ______, 2023, by and between Four 'S' Investments U.S., Inc., a Washington corporation ("Four 'S'") and the City of Lynden ("City"). This Amendment modifies the existing Agreement described below.

Recitals

Whereas, City and the prior owner of the Property entered into an agreement titled "Agreement" on February 7, 2007, recorded under Whatcom County Auditor File No. 2070202655 ("Agreement"), which settled a dispute between them; and

Whereas, the Agreement compels the Future Owner of the Property to pay for future improvements to the road fronting that portion of the Property lying westerly of Station No. 22 + 70, and as shown on Exhibit A thereof; and

Whereas, the Agreement provided that whenever the Property developed more than thirty-two (32) mobile homes, a Future Owner's obligation to pay for "road improvements" would be triggered; and

Whereas, the term "road improvements" was not defined in the Agreement; and

Whereas, Four 'S' became the successor in interest to the prior owner and a Future Owner by purchasing the Property subject to the Agreement; and

Whereas, the City approved a certain conditional use permit for Four 'S' Investments, dated November 23, 2021 ("Conditional Use Permit"), subject to nineteen (19) enumerated conditions set forth on pp. 7-8 of the Conditional Use Permit, to authorize that additional mobile homes be allowed on Property, so that the total number of mobile homes could be forty-six (46); and

Whereas, Condition No. 18 of the Conditional Use Permit requires compliance with the requirements and conditions listed in Section VI of the Technical Review Committee Staff Report dated October 15, 2021 ("TRC Report"); and

Whereas, Four 'S' Investments activities related to the Conditional Use Permit must also be conducted in compliance with the requirements, conditions, and mitigating measures set forth in the City of Lynden Mitigated Determination of Non-Significance for the "Duffner Mobile Home Park Expansion" dated July 20, 2021 ("Project MDNS"); and

Whereas, the Conditional Use Permit, TRC Report, and Project MDNS are and will remain documents on file with the City and are hereby fully incorporated into this Amendment by reference; and

Whereas, the City is amenable to delaying any improvements to the road fronting the Property so that such improvements align with other City plans for the area, and to keep the infrastructure costs affordable for the addition of the mobile home units; and

Whereas, the foregoing recitals form a material part of this Amendment;

Now therefore know all persons by these presents, in consideration of the covenants and agreements of the parties hereto, Four 'S' and City hereby agree as follows:

1. <u>Replacing the Number 32</u>

In the Agreement's Section 2(a), the text at the end of the paragraph reading "thirty-two (32)" is struck and replaced with the text "forty-six (46)". This is the sole change to Section 2(a).

2. <u>Amending the Corresponding Footnote</u>

In the only footnote to the Agreement's Section 2(a), which is marked "1," any text reading "thirty-two (32)" is struck and replaced with the text "forty-six (46)".

3. Defining "Road Improvements"

The following text is added after the last sentence of the Agreement's Section 2:

When used throughout this Agreement, "road improvements" means a project to construct standard three-quarters (¾) improvements that would bring the existing road section described herein up to the City's legislated street design standards.

4. Incorporating All Requirements and Conditions of Conditional Use Permit, TRC Report, and MDNS as Requirements of this Amendment

The following text shall be added as a new last paragraph to the Agreement's Section 2: The right to have more than thirty-two (32) and up to a maximum of forty-six (46) mobile homes on the Property shall be subject to and dependent upon full and ongoing perpetual compliance with all conditions and requirements set forth in the Conditional Use Permit, TRC Report, and Project MDNS, as described in the Amendment. Failure to timely satisfy and maintain ongoing compliance with all such conditions and requirements shall result in automatic recission of any right to have more than thirty-two (32) mobile homes on the Property.

5. <u>Survival</u>

Except as modified herein, all other terms and conditions of the Agreement shall remain in full force and effect. All capitalized terms not defined herein shall have the meaning given to them in the Agreement.

6. Non-Waiver of Enforcement

For so long as this Amendment remains in place, failure by the City to enforce any provision herein, regardless of the passage of time, shall not be a waiver of the right to enforce or a defense for noncompliance, nor shall any provision herein be a defense to revocation of the Conditional Use Permit.

7. <u>Entire Agreement</u>

The Agreement, as modified by this Amendment, shall be read as one instrument. This Amendment shall bind and apply to the parties hereto, along with their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned parties have caused this Amendment to be executed as of the date first written above.

 STATE OF WASHINGTON } } ss. COUNTY OF WHATCOM }

On this _____day of _____, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ______ as _____ of **FOUR "S" INVESTMENTS U.S., INC.**, who acknowledged said instrument to be his free and voluntary act and deed for Four "S" Investments U.S., Inc. for the uses and purposes herein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Print Name:
Notary Public in and for the State of Washington.
My commission expires:

STATE OF WASHINGTON

COUNTY OF WHATCOM

On this ______day of ______, 2023, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _______ as ______ of **THE CITY OF LYNDEN**, who acknowledged said instrument to be his free and voluntary act and deed for the City for the uses and purposes herein mentioned.

ss.

WITNESS my hand and official seal hereto affixed the day and year first written above.

EXECUTIVE SUMMARY - City Council



Meeting Date:	April 17, 2023			
Name of Agenda Item:	Award Bid for Jim Kaemingk Sr Trail – Depot to 8 th – Phase 1			
Section of Agenda:	Consent			
Department:	Public Works			
Council Committee Rev	Review: Legal Review:			
Community Developm	ent	□ Yes - Reviewed		
□ Finance	oxtimes Public Works	□ No - Not Reviewed		
⊠ Parks	□ Other:	Review Not Required		
Attachments:				
1) Certified Bid Tabulation				

2) Reichhardt & Ebe - Recommendation to Award

Summary Statement:

Staff recently solicited bids for the Jim Kaemingk Senior Trail – Depot to 8th – Phase 1. The project provides for the construction of approximately 1,500 linear feet of the Jim Kaemingk Sr. Trail base, 120 linear feet of concrete trail, bridge abutments, boardwalk foundations, sidewalk replacement, and associated restoration. The project is located between Depot Road, near Lynden City Park, extending west to 8th Street and south to Main Street. This project is being primarily funded through an EDI and two State Department of Commerce (Legislative) Grants. Six bids were received on April 6, 2023, as shown on the attached Bid Tabulation prepared by Reichhardt & Ebe.

At the Public Works Committee meeting on April 5, 2023, the committee concurred that the bid results could be forwarded directly to City Council after being informed of the results. The Public Works Committee was advised of the bids and concurred to recommend award to Western Refinery Services (WRS), the lowest responsive and responsible bidder, in the amount of \$1,349,238.40, including Washington State Sales Tax. The Engineer's Estimate was \$1,659,489.40.

The Parks Committee will be reviewing the bids at their regular meeting prior to the City Council Meeting.

Recommended Action:

That City Council award the contract for the Jim Kaemingk Sr Trail – Depot to 8th – Phase 1 to Western Refinery Services (WRS) in the amount of \$1,349,238.40, including Washington State Sales Tax and authorize the Mayor to sign the contract.



April 7, 2023

City of Lynden 300 4th Street Lynden, WA 98264

Attn: Mark Sandal Programs Manager

Re: Jim Kaemingk Sr. Trail - Depot to 8th - Phase 1 Recommendation to Award

Dear Mark,

We have reviewed all construction bid proposals for the above referenced project. Western Refinery Services provided the lowest responsive bid for Schedules A, B, and C at \$1,349,238.40

The Certified Tabulation of Bids Received and the Bidder's Checklist are attached for your information and review.

We recommend that you award the contract to Contractor Name subject to the following:

1. Required project funds are available.

Sincerely,

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Tyler Buys, P.E. Reichhardt & Ebe Engineering, Inc.

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1 LS \$ 35,000.00 \$ 35,000.00 \$ 1,500.00 \$ 1,500.00 \$ 3,000.00 \$ 3,000.00 \$ 2,200.00 \$ 9,500.00 \$ 9,500.00 \$ 4,679.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 2,500.00 \$ 3,000.00 \$ 2,500.00 \$ 3,000.00 \$ 5,000.00 \$ 5,000.00 \$ 4,679.00 \$ 4,679.00 \$ 2,500.00 \$ 2,500.00 \$ 3,000.00 \$ 2,500.00 \$ 3,000.00 \$ 5,000.00 \$ 5,000.00 \$ 5,000.00 \$ 4,679.00 \$ 4,679.00 \$ 4,679.00 \$ 2,500.00 \$ 3,000.00 \$ 3,000.00 \$ 5,000.00 \$ 5,000.00 \$ 5,000.00 \$ 5,000.00 \$ 4,775.00 \$ 4,775.00 \$ 4,670.00 \$ 7,600.00 \$ 3,879.17 \$ 936. 1 LS \$ 7,000.00 \$ 50,000.00 \$ 50,000.00 \$ 50,000.00 \$ 4,800.00 \$ 4,775.00 \$ 4,775.00 \$ 4,700.00 \$ 7,600.00 \$ 3,879.17 \$ 936. 1 LS \$ 5,000.00 \$ 3,600.00 \$ 1,700.00 \$ 5,000.00 \$ 1,000.00 \$ 4,800.00 \$ 4,250.00 \$ 1,124.00 \$ 7,694.00 \$ 3,600.00 \$ 3,600.00 \$ 1,053.67 \$ 2	n Wire Fence						,				,		,				,		\$ 2.28
1 LS \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 2,500.00 \$ 3,500.00 \$ 5,000.00 \$ 5,000.00 \$ 4,775.00 \$ 4,775.00 \$ 4,500.00 \$ 4,500.00 \$ 3,879.17 \$ 936. 1,000 TON \$ 70.00 \$ 70.00 \$ 60,000.00 \$ 60,000.00 \$ 50,000.00 \$ 48,000.00 \$ 48,000.00 \$ 48,000.00 \$ 48,000.00 \$ 50,000.00 \$ 50,000.00 \$ 76,000.00 \$ 55,333 \$ 10. 5 EA \$ 5000.00 \$ 2,500.00 \$ 50,000.00 \$ 50,000.00 \$ 44,200.00 \$ 50,000.00 \$ 50,000.00 \$ 44,200.00 \$ 55,817 \$ 300.00 \$ 300.00 \$ 44,200.00 \$ 50,000.00 \$ 1,800.00 \$ 425,000 \$ 2,550.00 \$ 1,10.00 \$ 5,600.00 \$ 4,800.00 \$ 5,600.00 \$ 3,600.00 \$ 5,600.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 1,800.00 \$ 4,250.00 \$ 3,800.00 \$ 4,800.00 \$ 3,600.00 \$ 1,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 3,000.00 \$ 1,800.00 \$ 1,800.00 \$ 1,800.00 \$ 1,800.00 \$ 1,800.00 \$ 1,800.00 \$ 1	Post Base System	50					,				,		,				,		\$ 167.53 \$ 8,184.10
1,000 TON \$ 70,00 \$ 70,000 \$ 60,000.00 \$ 50,000.00 \$	nent Signing	1									,						,		\$ 936.57
6 EA \$ 600.00 \$ 3,600.00 \$ 1,170.00 \$ 500.00 \$ 3,000.00 \$ 4,800.00 \$ 4,250.00 \$ 1,249.00 \$ 7,494.00 \$ 800.00 \$ 4,800.00 \$ 5,78.17 \$ 354. 34 EA \$ 1,300.00 \$ 44,200.00 \$ 900.00 \$ 30,600.00 \$ 1,000.00 \$ 34,000.00 \$ 28,050.00 \$ 990.00 \$ 33,660.00 \$ 1,770.00 \$ 580,38.00 \$ 990.00 \$ 30,600.00 \$ 1,053.67 \$ 298. 7 EA \$ 800.00 \$ 5,600.00 \$ 1,950.00 \$ 5,000.00 \$ 3,000.00 \$ 2,100.00 \$ 425.00 \$ 2,975.00 \$ 1,110.00 \$ 7,770.00 \$ 800.00 \$ 3,600.00 \$ 1,053.67 \$ 298. 10 EA \$ 800.00 \$ 5,600.00 \$ 1,950.00 \$ 5,000.00 \$ 5,000.00 \$ 3,000.00 \$ 4,250.00 \$ 1,110.00 \$ 7,770.00 \$ 800.00 \$ 8,000.00 \$ 6,000.00 \$ 6,000.00 \$ 1,000.00 \$ 1,000.00 \$ 4,250.00 \$ 1,380.00 \$ 3,000.00 \$ 6,001.33 \$ 399. 10 EA \$ 800.00 \$ 4,800.00 \$ 1,950.00 \$ 1,900.00 \$ 3,000.00 \$ 1,800.00 \$ 4,250.00 \$	bed Gravel	,	TON	\$ 70.00	\$ 70,000.00	\$60.00 \$	60,000.00	\$ 50.00	\$ 50,000.00	\$48.00 \$	48,000.00	\$48.00	48,000.00	\$50.00	\$ 50,000.00	\$76.00 \$	76,000.00	\$55.33	\$ 10.11
34 EA \$ 1,300.00 \$ 44,200.00 \$ 30,600.00 \$ 1,000.00 \$ 30,600.00 \$ 1,000.00 \$ 30,600.00 \$ 1,000.00 \$ 30,600.00 \$ 1,000.00 \$ 30,600.00 \$ 33,660.00 \$ 1,070.00 \$ 56,038.00 \$ 990.00 \$ 30,600.00 \$ 1,053.67 \$ 298. 7 EA \$ 800.00 \$ 5,600.00 \$ 1,950.00 \$ 5,000.00 \$ 30,000.00 \$ 2,100.00 \$ 24,000.00 \$ 1,707.00 \$ 56,038.00 \$ 990.00 \$ 30,600.00 \$ 1,053.67 \$ 298. 10 EA \$ 800.00 \$ 1,950.00 \$ 1,950.00 \$ 5,000.00 \$ 5,000.00 \$ 30,000.00 \$ 4,250.00 \$ 1,388.00 \$ 13,880.00 \$ 8,000.00 \$ 6,01.33 \$ 399. 0 EA \$ 800.00 \$ 4,800.00 \$ 1,950.00 \$ 5,000.00 \$ 30,000.00 \$ 4,250.00 \$ 1,388.00 \$ 13,880.00 \$ 8,000.00 \$ 8,000.00 \$ 5,601.00 \$ 30,001.00 \$ 4,250.00 \$ 1,249.00 \$ 1,440.00 \$ 6,001.03 \$ 30,001.00 \$ 1,600.00 \$ 1,400.00 \$ 1,800.00 \$ 1,400.00 \$ 1,800.00 \$ 1,600.00 \$ 1,400.00 \$ 1,800.00 \$ 1,400.00 \$ 1,800.00	pe A	-																	\$ 309.07
7 EA \$ 800.00 \$ 5,600.00 \$ 195.00 \$ 1,365.00 \$ 500.00 \$ 3,000.00 \$ 2,100.00 \$ 425.00 \$ 1,110.00 \$ 7,770.00 \$ 800.00 \$ 5,600.00 \$ 5,550.00 \$ 3,11. 10 EA \$ 800.00 \$ 8,000.00 \$ 1,950.00 \$ 5,000.00 \$ 5,000.00 \$ 3,000.00 \$ 4,250.00 \$ 1,388.00 \$ 13,880.00 \$ 8,000.00 \$ 6,01.33 \$ 399. 6 EA \$ 800.00 \$ 4,800.00 \$ 1,950.00 \$ 5,000.00 \$ 3,000.00 \$ 4,250.00 \$ 1,249.00 \$ 1,388.00 \$ 8,000.00 \$ 8,000.00 \$ 6,01.33 \$ 399. or 16 EA \$ 1,200.00 \$ 19,200.00 \$ 1,400.00 \$ 1,800.00 \$ 1,800.00 \$ 1,400.00 \$ 1,800.00 \$ 1,400.00 \$ 1,800.00 \$ 1,400.00 \$ 1,200.00 \$ 1	pe B pe B Imported	-					,				,			. ,	. ,		,		\$ 354.26 \$ 298.13
10 EA \$ 800.00 \$ 8,00.00 \$ 1,950.00 \$ 5,00.00 \$ 5,00.00 \$ 3,00.00 \$ 4,250.00 \$ 1,388.00 \$ 1,388.00 \$ 8,00.00 \$ 8,00.00 \$ 6,01.33 \$ 3,99. 6 EA \$ 800.00 \$ 4,800.00 \$ 195.00 \$ 1,700.0 \$ 500.00 \$ 3,000.00 \$ 4,250.00 \$ 1,388.00 \$ 1,380.00 \$ 800.00 \$ 8,000.00 \$ 8,000.00 \$ 3,09.00 \$ 4,250.00 \$ 1,249.00 \$ 1,380.00 \$ 8,000.00 \$ 8,000.00 \$ 5,78.17 \$ 354.00 \$ 3,000.00 \$ 1,600.00 \$ 1,400.00 \$ 1,200.00	pe C	7									,		,				,		\$ 311.61
or 16 EA \$ 1,200.00 \$ 19,200.00 \$ 14,400.00 \$ 1,800.00 \$ 16,000.00 \$ 1,400.00 \$ 22,400.00 \$ 10,73.00 \$ 17,168.00 \$ 600.00 \$ 9,600.00 \$ 1,128.83 \$ 382. 6 EA \$ 350.00 \$ 2,100.00 \$ 450.00 \$ 10,000.00 \$ 400.00 \$ 2,400.00 \$ 10,000.00 \$ 3,420.00 \$ 600.00 \$ 3,600.00 \$ 424.17 \$ 162. : and Private Facilities 1 EST \$ 15,000.00 <td>pe D</td> <td>10</td> <td>EA</td> <td>\$ 800.00</td> <td>\$ 8,000.00</td> <td>\$195.00 \$</td> <td>1,950.00</td> <td>\$ 500.00</td> <td>\$ 5,000.00</td> <td>\$300.00 \$</td> <td>3,000.00</td> <td>\$425.00</td> <td>4,250.00</td> <td>\$1,388.00</td> <td>\$ 13,880.00</td> <td>\$800.00 \$</td> <td>8,000.00</td> <td>\$601.33</td> <td>\$ 399.08</td>	pe D	10	EA	\$ 800.00	\$ 8,000.00	\$195.00 \$	1,950.00	\$ 500.00	\$ 5,000.00	\$300.00 \$	3,000.00	\$425.00	4,250.00	\$1,388.00	\$ 13,880.00	\$800.00 \$	8,000.00	\$601.33	\$ 399.08
6 EA \$ 350.00 \$ 2,100.00 \$ 450.00 \$ 10.00 \$ 100.00 \$ 400.00 \$ 2,400.00 \$ 425.00 \$ 570.00 \$ 3,420.00 \$ 600.00 \$ 3,600.00 \$ 162.00 : and Private Facilities 1 EST \$ 15,000.00	pe E	•									,		,				,		\$ 354.26
and Private Facilities 1 EST \$ 15,000.00 \$	echanical Anchor	-															,		\$ 382.04 \$ 162.54
	g Connection Existing Public and Private Facilities	1			· · · · ·						,						,		9 102.04 \$ -
\$ 1,183,675.00 \$ 874,356.00 \$ 925,126.00 \$ 1,158,861.00 \$ 1,152,771.00 \$ 1,347,676.00 \$ 1,444,101.00						φ. 2,200.00 ψ	,					+ , 5 5 5 . 5 5 9	,	+ , 0 0 0 . 0 0			,		



4/7/23

	Schedule B - Roadway, Storm and Sidewalk																		
Item	Item	Quantity	Unit	Unit	Amount	Unit	Amount	Unit	Amount	Unit	Amount	Unit	Amount	Unit	Amount	Unit	Amount		
No.	Description	Quantity	Unit	Price	Amount	Price	Amount	Price	Amount	Price	Anount	Price	Amount	Price	Amount	Price	Anount		
56	Mobilization	1	LS	\$ 25,000.00 \$	25,000.00	\$25,000.00	\$ 25,000.00	\$ 16,000.00 \$	16,000.00	\$18,500.00	\$ 18,500.00	\$10,000.00 \$	10,000.00	\$13,986.00	\$ 13,986.00	\$18,000.00 \$	18,000.00	\$16,914.33	\$ 4,587.85
57	Project Temporary Traffic Control	1	LS	\$ 15,000.00 \$	15,000.00	\$400.00	\$ 400.00	\$ 1,500.00 \$	1,500.00	\$25,000.00	\$ 25,000.00	\$34,000.00 \$	34,000.00	\$33,219.00	\$ 33,219.00	\$6,500.00 \$	6,500.00	\$16,769.83	\$ 14,386.33
58	Clearing and Grubbing	1	LS	\$ 2,500.00 \$	2,500.00	\$9,000.00	\$ 9,000.00	\$ 9,000.00 \$	9,000.00	\$2,500.00	\$ 2,500.00	\$7,500.00 \$	7,500.00	\$1,359.00	\$ 1,359.00	\$2,500.00 \$	2,500.00	\$5,309.83	\$ 3,251.43
59	Removal of Structures and Obstructions	1	LS	\$ 25,000.00 \$	25,000.00	\$2,000.00	\$ 2,000.00	\$ 20,000.00 \$	20,000.00	\$15,000.00	\$ 15,000.00	\$20,000.00 \$	20,000.00	\$13,259.00	\$ 13,259.00	\$17,000.00 \$	17,000.00	\$14,543.17	\$ 6,120.71
60	Sawcut ACP	3,900	LF-IN	\$ 0.75 \$	2,925.00	\$1.50	\$ 5,850.00	\$ 1.00 \$	3,900.00	\$0.22	\$ 858.00	\$0.50 \$	1,950.00	\$1.00	\$ 3,900.00	\$1.00 \$	3,900.00	\$0.87	\$ 0.41
61	Sawcut PCC	190	LF-IN	\$ 1.00 \$	190.00	\$2.50	\$ 475.00	\$ 1.00 \$	190.00	\$1.10	\$ 209.00	\$1.50 \$	285.00	\$2.00	\$ 380.00	\$2.00 \$	380.00	\$1.68	\$ 0.53
62	Gravel Borrow Incl. Haul	890	TON	\$ 20.00 \$	17,800.00	\$25.00	\$ 22,250.00	\$ 18.50 \$	16,465.00	\$25.00	\$ 22,250.00	\$24.50 \$	21,805.00	\$21.00	\$ 18,690.00	\$24.00 \$	21,360.00	\$23.00	\$ 2.43
63	Roadway Excavation Incl. Haul	400	CY	\$ 27.50 \$	11,000.00	\$26.00	\$ 10,400.00	\$ 15.00 \$	6,000.00	\$16.00	\$ 6,400.00	\$23.50 \$	9,400.00	\$27.00	\$ 10,800.00	\$49.00 \$	19,600.00	\$26.08	\$ 11.23
64	Crushed Surfacing Top Course	230	TON	\$ 45.00 \$	10,350.00	\$60.00	\$ 13,800.00	\$ 33.50 \$	7,705.00	\$45.00	\$ 10,350.00	\$55.00 \$	12,650.00	\$27.00	\$ 6,210.00	\$47.00 \$	10,810.00	\$44.58	\$ 11.43
65	Commercial HMA	270	TON	\$ 135.00 \$	36,450.00	\$171.00	\$ 46,170.00	\$ 151.00 \$	40,770.00	\$150.00	\$ 40,500.00	\$150.00 \$	40,500.00	\$167.00	\$ 45,090.00	\$160.00 \$	43,200.00	\$158.17	\$ 8.47
66	Adjustments to Finished Grade	1	LS	\$ 5,000.00 \$	5,000.00	\$500.00	\$ 500.00	\$ 1,000.00 \$	1,000.00	\$5,000.00	\$ 5,000.00	\$1,600.00 \$	1,600.00	\$17,494.00	\$ 17,494.00	\$3,500.00 \$	3,500.00	\$4,849.00	\$ 5,859.80
67	Catch Basin Type 1	3	EA	\$ 2,750.00 \$	8,250.00	\$1,100.00	\$ 3,300.00	\$ 1,950.00 \$	5,850.00	\$1,350.00	\$ 4,050.00	\$2,100.00 \$	6,300.00	\$1,783.00	\$ 5,349.00	\$4,000.00 \$	12,000.00	\$2,047.17	\$ 937.97
68	Inlet Protection	4	EA	\$ 100.00 \$	400.00	\$50.00	\$ 200.00	\$ 50.00 \$	200.00	\$100.00	\$ 400.00	\$120.00 \$	480.00	\$174.00	\$ 696.00	\$80.00 \$	320.00	\$95.67	\$ 43.13
69	Stabilized Construction Entrance	205	SY	\$ 25.00 \$	5,125.00	\$15.00	\$ 3,075.00	\$ 24.00 \$	4,920.00	\$25.00	\$ 5,125.00	\$31.00 \$	6,355.00	\$15.00	\$ 3,075.00	\$38.00 \$	7,790.00	\$24.67	\$ 8.22
70	Erosion/Water Pollution Control	1	EST	\$ 5,000.00 \$	5,000.00	\$5,000.00	\$ 5,000.00	\$ 5,000.00 \$	5,000.00	\$5,000.00	\$ 5,000.00	\$5,000.00 \$	5,000.00	\$5,000.00	\$ 5,000.00	\$5,000.00 \$	5,000.00	\$5,000.00	\$-
71	Sod Installation	740	SY	\$ 15.00 \$	11,100.00	\$13.00	\$ 9,620.00	\$ 17.00 \$	12,580.00	\$17.00	\$ 12,580.00	\$17.50 \$	12,950.00	\$19.00	\$ 14,060.00	\$23.00 \$	17,020.00	\$17.75	\$ 2.97
72	Topsoil Type A	740	SY	\$ 15.00 \$	11,100.00	\$11.00	\$ 8,140.00	\$ 13.50 \$	9,990.00	\$13.00	\$ 9,620.00	\$14.00 \$	10,360.00	\$15.00	\$ 11,100.00	\$10.00 \$	7,400.00	\$12.75	\$ 1.73
73	Bark or Wood Chip Mulch	250	SY	\$ 10.00 \$	2,500.00	\$7.00	\$ 1,750.00	\$ 9.25 \$	2,312.50	\$9.00	\$ 2,250.00	\$10.00 \$	2,500.00	\$15.00	\$ 3,750.00	\$16.00 \$	4,000.00	\$11.04	\$ 3.29
74	Landscape Restoration	1	EST	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00 \$	10,000.00	\$10,000.00	\$-
75	Cement Conc. Traffic Curb and Gutter	1,290	LF	\$ 30.00 \$	38,700.00	\$30.00	\$ 38,700.00	\$ 35.00 \$	45,150.00	\$38.00	\$ 49,020.00	\$36.00 \$	46,440.00	\$39.00	\$ 50,310.00	\$40.00 \$	51,600.00	\$36.33	\$ 3.30
76	Cement Conc. Pedestrian Curb	110	LF	\$ 40.00 \$	4,400.00	\$30.00	\$ 3,300.00	\$ 30.00 \$	3,300.00	\$33.00	\$ 3,630.00	\$38.50 \$	4,235.00	\$45.00	\$ 4,950.00	\$44.00 \$	4,840.00	\$36.75	\$ 6.18
77	Cement Conc. Driveway Entrance	240	SY	\$ 85.00 \$	20,400.00	\$90.00	\$ 21,600.00	\$ 93.00 \$	22,320.00	\$90.00	\$ 21,600.00	\$97.00 \$	23,280.00	\$107.00	\$ 25,680.00	\$130.00 \$	31,200.00	\$101.17	\$ 14.14
78	Cement Conc. Trail	165	SY	\$ 50.00 \$	8,250.00	\$88.00	\$ 14,520.00	\$ 84.00 \$	13,860.00	\$94.00	\$ 15,510.00	\$86.00 \$	14,190.00	\$113.00	\$ 18,645.00	\$100.00 \$	16,500.00	\$94.17	\$ 9.97
79	Cement Conc. Sidewalk	420	SY	\$ 75.00 \$	31,500.00	\$75.00	\$ 31,500.00	\$ 77.00 \$	32,340.00	\$77.00	\$ 32,340.00	\$84.00 \$	35,280.00	\$84.00	\$ 35,280.00	\$88.00 \$	36,960.00	\$80.83	\$ 4.74
80	Cement Conc. Curb Ramp Type Parallel A	6	EA	\$ 2,500.00 \$	15,000.00	\$3,000.00	\$ 18,000.00	\$ 3,400.00 \$	20,400.00	\$3,500.00	\$ 21,000.00	\$4,000.00 \$	24,000.00	\$3,880.00	\$ 23,280.00	\$4,000.00 \$	24,000.00	\$3,630.00	\$ 365.83
81	Cement Conc. Curb Ramp Type Parallel B	1	EA	\$ 2,500.00 \$	2,500.00	\$3,200.00	\$ 3,200.00	\$ 3,900.00 \$	3,900.00	\$4,000.00	\$ 4,000.00	\$3,500.00 \$	3,500.00	\$4,477.00	\$ 4,477.00	\$4,000.00 \$	4,000.00	\$3,846.17	\$ 405.29
82	Plastic Crosswalk Line	80	SF	\$ 15.00 \$	1,200.00	\$15.63	\$ 1,250.40	\$ 13.00 \$	1,040.00	\$13.00	\$ 1,040.00	\$15.00 \$	1,200.00	\$14.00	\$ 1,120.00	\$13.00 \$	1,040.00	\$13.94	\$ 1.05
83	Plastic Stop Line	20	LF	\$ 20.00 \$	400.00	\$62.50	\$ 1,250.00	\$ 19.50 \$	390.00	\$19.00	\$ 380.00	\$23.00 \$	460.00	\$21.00	\$ 420.00	\$20.00 \$	400.00	\$27.50	\$ 15.71
84	Repair Existing Public and Private Facilities	1	EST	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00 \$	10,000.00	\$10,000.00	\$-
-	Total Schedule B			\$	337,040.00		\$ 320,250.40	9	326,082.50		\$ 354,112.00	\$	376,220.00		\$ 391,579.00	\$	390,820.00		
	Oshadala O. Watas and Osuma																		
lt.e.e.	Schedule C - Water and Sewer	1		11-34		11-34		11-14		11-9		11-14		11-14		11-24			1
Item No.	Item Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount		
85	Mobilization	4	LS	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	10,000.00	\$12,436.00	\$ 12,436.00	\$10,000.00 \$	10,000.00	\$10,406.00	\$ 907.84
		3,900	SF		3,900.00	\$10,000.00	\$ 10,000.00 \$ 975.00	\$ 10,000.00 \$	1,365.00	\$10,000.00 \$0.14	\$ 10,000.00 \$ 546.00	\$10,000.00 \$	7,800.00	\$12,436.00	\$ 12,436.00 \$ 3.900.00	\$10,000.00 \$	1.950.00	\$10,406.00	\$ 907.84 \$ 0.64
86 87	Shoring or Extra Excavation Class B Manhole 48 In. Diam. Type 1	3,900	EA	\$ 1.00 \$ \$ 3,500.00 \$	5 3,900.00 5 7.000.00	\$0.25	\$ 975.00 \$ 16.000.00	\$ 4.600.00 \$	9.200.00	\$0.14	\$ 546.00 \$ 12.600.00	\$2.00 \$	12.800.00	\$1.00	\$ 3,900.00 \$ 8.662.00	\$0.50 \$	1,950.00	\$0.71 \$6.105.17	\$ 0.64 \$ 1.286.42
87		2	EA	\$ 3,500.00 \$ \$ 3,500.00 \$	7,000.00	\$8,000.00	\$ 16,000.00 \$ 8,000.00	\$ 4,600.00 \$	6,000.00	\$6,300.00	\$ 12,600.00 \$ 2,800.00	\$6,400.00 \$	7,800.00	\$4,331.00	\$ 8,662.00 \$ 7,822.00	\$7,000.00 \$	14,000.00	\$6,105.17 \$3,868.50	\$ 1,286.42
88	Connect to Existing Water Main PVC Pipe for Water Main 8 In. Diam.	330	LF	\$ 3,500.00 \$ \$ 85.00 \$	28.050.00	\$4,000.00	\$ 8,000.00 \$ 26,400.00	\$ 3,000.00 \$ \$ 52.00 \$	6,000.00	\$1,400.00		\$3,900.00 \$	32,670.00	\$3,911.00 \$64.00	\$ 7,822.00 \$ 21,120.00	\$7,000.00 \$	24,750.00	\$3,868.50	\$ 1,667.04
89 90	Gate Valve 8 In.	330	EA	\$ 85.00 \$ \$ 2,300.00 \$	9.200.00	\$80.00	\$ 26,400.00 \$ 10.000.00	\$ 52.00 \$ \$ 2,100.00 \$	8,400.00	\$38.00 \$2,200.00	\$ 12,540.00 \$ 8,800.00	\$99.00 \$	32,670.00	\$64.00 \$2,911.00	\$ 21,120.00 \$ 11.644.00	\$75.00 \$	24,750.00	\$68.00	\$ 19.69 \$ 291.23
90	Gate Valve 8 In. Gate Valve 12 In.	4	EA	\$ 2,300.00 \$ \$ 3,500.00 \$	9,200.00 7,000.00	\$2,500.00	\$ 10,000.00 \$ 9.000.00	\$ 2,100.00 \$	8,400.00 7.400.00	\$2,200.00	\$ 8,800.00 \$ 8,000.00	\$2,800.00 \$	9,270.00	\$2,911.00 \$4,505.00	\$ 11,644.00 \$ 9,010.00	\$2,500.00 \$	8.000.00	\$2,501.83	\$ 291.23 \$ 341.32
91	Gate Valve 12 In. Hvdrant Assembly	<u> </u>	EA	\$ 3,500.00 \$ \$ 7,500.00 \$	7,000.00	\$4,500.00	\$ 9,000.00 \$ 8.000.00	\$ 3,700.00 \$	1	\$4,000.00	\$ 8,000.00 \$ 8.000.00	\$4,635.00 \$	9,270.00	\$4,505.00 \$7,382.00	\$ 9,010.00 \$ 7,382.00	\$4,000.00 \$	7.000.00	\$4,223.33 \$7,547.00	\$ 341.32 \$ 605.62
92	,,	1	EA	\$ 7,500.00 \$ \$ 1,700.00 \$	1,700.00	\$8,000.00	\$ 8,000.00 \$ 2,000.00	\$ 6,600.00 \$	6,600.00	\$8,000.00	\$ 8,000.00 \$ 2,200.00	\$8,300.00 \$	8,300.00	\$7,382.00 \$2,357.00	\$ 7,382.00 \$ 2,357.00	\$7,000.00 \$	2.500.00	\$7,547.00 \$2,126.17	\$ 605.62 \$ 262.02
93 94	Service Connection 1 In. Diam. PVC Sanitary Sewer Pipe 6 In. Diam.	50	LF	\$ 1,700.00 \$ \$ 90.00 \$	4.500.00	\$2,000.00	\$ 2,000.00 \$ 5.250.00	\$ 2,000.00 \$	2,000.00	\$2,200.00	\$ 2,200.00 \$ 10.000.00	\$1,700.00 \$	3.600.00	\$2,357.00 \$87.00	\$ 2,357.00 \$ 4.350.00	\$2,500.00 \$	2,500.00	\$2,126.17 \$100.67	\$ 262.02 \$ 49.29
-	, ,		LF		,		, .,	\$ 40.00 \$ \$ 55.00 \$	1	\$200.00 \$114.00	,	\$72.00 \$	3,600.00	\$87.00	\$ 4,350.00 \$ 26.970.00	\$100.00 \$	5,000.00	\$100.67 \$85.83	\$ 49.29 \$ 21.66
95	PVC Sanitary Sewer Pipe 8 In. Diam.	290	EA	\$ 90.00 \$ \$ 1.200.00 \$	26,100.00 2,400.00	\$110.00 \$1,300.00	\$ 31,900.00 \$ 2,600.00		15,950.00 2,400.00	\$114.00 \$2,000.00	\$ 33,060.00 \$ 4,000.00	\$68.00 \$	2,900.00	\$93.00 \$817.00	1	\$75.00 \$	21,750.00 3,000.00	\$85.83 \$1,377.83	\$ 21.66 \$ 355.77
96 97	Sewer Cleanout	4	EA	\$ 1,200.00 \$ \$ 800.00 \$	3.200.00	\$1,300.00	\$ 2,600.00 \$ 2.000.00	\$ 1,200.00 \$ \$ 500.00 \$	2,400.00	\$2,000.00	\$ 4,000.00 \$ 1.400.00	\$1,450.00 \$	2,900.00	\$817.00	\$ 1,634.00 \$ 2.936.00	\$1,500.00 \$	3,000.00	\$1,377.83	\$ 355.77 \$ 255.09
-	Pothole Existing Underground Utility	4			3,200.00 10,000.00		,		10.000.00		, ,	\$1,100.00 \$	4,400.00		\$ 2,936.00 \$ 10.000.00	\$400.00 \$	1,600.00	1	φ ∠ວວ.09 ¢
98	Repair Existing Public and Private Facilities	1	EST	\$ 10,000.00 \$		\$10,000.00	\$ 10,000.00 \$ 142,125,00	\$ 10,000.00 \$	10,000.00	\$10,000.00	\$ 10,000.00 \$ 122.046.00	. ,		\$10,000.00	1			\$10,000.00	φ -
	Subtotal Schedule C Sales Tax Schedule C		8.80%	\$	127,550.00 11.224.40		\$ 142,125.00 \$ 12,507.00		8.841.80		\$ 123,946.00 \$ 10.907.25	\$	142,160.00		\$ 130,223.00 \$ 11,459.62	\$	133,550.00		
			0.00%	\$, .		1 1.1		•,• • • •			\$	1		+,	\$	1		
	Total Schedule C	1	1	\$	138,774.40		\$ 154,632.00	3	109,316.80		\$ 134,853.25	\$	154,670.08		\$ 141,682.62	\$	145,302.40		
	Total Schodulas A. P. C. Inal Salas Tay		1		1.659.489.40	¢	1,349,238.40	¢	1,360,525.30	¢	1,647,826.25	¢	1,683,661.08	¢	1,880,937.62	¢	1,980,223.40		
	Total Schedules A, B, C, Incl Sales Tax	1	1	2	1,009,409.40	φ	1,349,230.40	φ	1,300,323.30	φ	1,047,020.23	φ	1,003,001.08	φ	1,000,937.02	φ	1,300,223.40		

Math Error / Omission



EXECUTIVE SUMMARY



Meeting Date:	April 17, 2023								
Name of Agenda Item:	Service Agreement								
Section of Agenda:	Consent								
Department:	Parks								
Council Committee Revi	ew:	Legal Review:							
Community Developme	ent 🛛 Public Safety	⊠ Yes - Reviewed							
Finance	Public Works	No - Not Reviewed							
⊠ Parks	□ Other: □ Review Not Required								
Attachments:									
Payment Processing Agree	Payment Processing Agreement for Service and Pricing Fee Schedule from CSG Forte for the new Parks								
Department website deve	elopment.								
	Summary Statement:								
The Parks Department, Finance Department, and IT proposed and reviewed the ability to provide a payment portal to take online payment and handle rental services in a more streamlined approach. The current system is out-of-date and needs to be updated to satisfy the requests of the auditors and will help the management team alleviate the flood of phone calls and emails requests for more assistance from park users. CSG Forte has offered a proposal for payment processing and a pricing fee schedule for use on the website. Parks Committee reviewed the updated proposal and recommended forwarding it to full council for approval.									
Recommended Action:									
Motion to approve the Payment Processing Agreement and Pricing Fee Schedule and authorize the Mayor's signature on the agreement.									
PAYMENT PROCESSING AGREEMENT

This Payment Processing Agreement ("Agreement"), including all applicable appendices and addendums hereto, is made by and between **CSG Forte Payments, Inc.,** a Delaware corporation with its primary business address at 2121 Providence Drive, Suite 151, Fort Worth, TX 76106 ("FORTE" or "Party"), and <u>Citv of I vnden Parks Dent</u>, with its primary business address at 8770 Bender Rd. Lynden, WA 98264 ("AGENCY" or "Party" or "Merchant"), and is effective upon the date last signed below (the "Effective Date"). FORTE provides payment processing and related products and services including but not limited to Automated Clearing House ("ACH"), credit and debit card processing, account verification and customer identification (collectively and individually, as applicable, the "Services") to AGENCY who provides services to, or otherwise has a business relationship with, individuals and other entities ("Constituents" or "Customer").

1. GENERAL

The Agreement shall consist of these terms and conditions, each of the Appendices attached hereto if applicable, and all modifications and amendments thereto. Under the terms of the Agreement, AGENCY will be furnished with the Services described in the Agreement and attached Appendices which are selected by Agency and approved by FORTE. For any terms herein that are specifically applicable to any particular Service offered by FORTE, only the terms and conditions that apply to the specific Service(s) requested by AGENCY at any given time shall apply. Some capitalized terms which are not defined herein have specific definitions provided in <u>Appendix A</u>, attached hereto and incorporated by this reference.

2. USAGE

2.1 Use License. Subject to the terms and conditions of this Agreement, FORTE hereby grants to AGENCY a non- exclusive and non-transferable license to access and use the Service(s) contracted for and AGENCY hereby accepts such license and agrees to utilize and access the Services in accordance with the practices and procedures established by FORTE, which may be amended from time to time in accordance with this Agreement. AGENCY may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its Constituents, unless otherwise agreed by FORTE in writing. AGENCY agrees that it will not transmit any material through FORTE's systems in violation of any applicable Law or Rule. FORTE reserves the right to use all means necessary to monitor AGENCY's actions in the event of a real or perceived security risk.

2.2 Use of Proprietary Property. No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of FORTE's Proprietary Property, as defined in Section 3 below, in whole or in part, is granted except as expressly provided by this Agreement. AGENCY shall not reverse engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in this Agreement shall be construed to provide AGENCY with a license of any third-party proprietary information or property.

2.3 Acceptable Use. AGENCY agrees to comply with the reasonable and acceptable use policies and Rules of any networks accessed by AGENCY through the Services. FORTE reserves the right to deny access to, or close any account AGENCY has with FORTE which, in FORTE's opinion, is causing or may cause, harm to or negatively affect a FORTE server or third-party network accessed through FORTE. In the event of such an occurrence, FORTE shall make reasonable efforts to notify AGENCY prior to taking any such action but is not required to do so.

2.4 User and System Security. AGENCY shall ensure that its Users comply with all applicable requirements of this Agreement. AGENCY is responsible for protecting the confidentiality of any and all passwords and credentials provided to AGENCY by FORTE for the purpose of utilizing the Services or other forms of access to AGENCY's accounts with FORTE. AGENCY is responsible for the security of its systems, locations and equipment used in processing Transactions under this Agreement and for developing security procedures and training its employees on the procedures. AGENCY expressly

assumes responsibility for the acts or omissions of all Users on its account(s) with FORTE and for User access to FORTE's systems either directly or through software.

2.5 Use of Information and Data. AGENCY acknowledges and agrees, on behalf of itself and its Constituents, that all information submitted by AGENCY to FORTE in order for FORTE to provide the Services to AGENCY or otherwise contributed by AGENCY pursuant to these Services (including Transaction results), is held in FORTE's database and may be used by FORTE for the purpose of providing the Services to its customers in compliance with all applicable Laws and Rules, including in accordance with the federal Fair Credit Reporting Act ("FCRA"). Further, FORTE may track, review, compile, store and use any information or data received from AGENCY as part of a Transaction or information or data received from a Payment Association or financial institution regarding a Transaction for regulatory compliance or any other legally permissible purpose. Without limiting the foregoing, AGENCY agrees and acknowledges that FORTE may use the routing numbers, account numbers and other PII submitted by AGENCY as well as Transaction results provided to or received by FORTE for the purpose of supporting FORTE's fraud detection, account validation and verification, and/or other commercially available services.

3. OWNERSHIP

All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know- how, and other proprietary rights in or related to the Services (the "Proprietary Property"), are and will remain the sole and exclusive property of FORTE, whether or not specifically recognized or perfected under applicable Law. FORTE shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing Services and/or any new programs, upgrades, modifications or enhancements developed by FORTE in connection with rendering Services to AGENCY, even when refinements and improvements result from AGENCY's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in FORTE by virtue of this Agreement or otherwise, AGENCY hereby expressly transfers and assigns to FORTE all rights, title, and interest which AGENCY may have in and to such refinements and improvements. All reference to any of FORTE's service marks, trademarks, patents or copyrights, or those of FORTE's partners or vendors, shall be made in compliance with the requirements, including periodic updates thereto, as provided at http://www.forte.net/trademark.

4. CONFIDENTIALITY

The Parties acknowledge that, by virtue of this Agreement, each has been and will continue to be entrusted with certain Confidential Information (as defined in Appendix A) pertaining to the other's business, including, but not limited to, proprietary information developed by, acquired by, or licensed to each Party. Each Party agrees that, except to the extent and in the manner necessary to perform its duties hereunder, it will not disclose to others or use for its own benefit any Confidential Information of the other Party and it will hold all Proprietary Property, as defined herein, confidential in perpetuity. Additionally, in the course of providing and receiving the Services, each Party acknowledges that it may receive or have access to PII. as more fully defined in Appendix A). As such, each Party shall: (i) keep all PII in strict confidence, with the degree of care necessary to avoid unauthorized access, use or disclosure; (ii) use PII solely and exclusively for the purposes provided in this Agreement; (iii) implement administrative, physical and technical safeguards to protect PII that are at least as rigorous as accepted industry practices; and (iv) have in place a program that complies with applicable legal requirements regarding PII, including, if applicable, PCI standards for data security. Except with respect to Personal Information, this Section 4 will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other Party, through no fault of the other Party, (iii) is disclosed under force of law, applicable regulation, governmental regulation or court order, or (iv) is required to be disclosed by a banking partner, an Acquirer or an applicable Payment Network.

5. TERM AND TERMINATION

5.1 Term. This Agreement shall have an initial term of 5 years (the "Term"). Thereafter, this Agreement will automatically renew for additional one (1) year terms unless either Party provides thirty (30) days' prior written notice of termination to the other Party.

5.2 Termination for Material Breach. In the event of a material breach of this Agreement by one Party and failure to cure within thirty (30) days of receipt of written notice of the breach, the other Party may terminate immediately by providing written notice of termination.

5.3 Termination with Notice. FORTE may terminate this Agreement with prior notice in the event (i) there is a material adverse change to AGENCY or its financial condition; (ii) AGENCY experiences Excessive Chargebacks pursuant to Section 6.12 herein; or (iii) AGENCY is in violation of any applicable Law, Rule or regulation. Notwithstanding the foregoing, FORTE reserves the right to suspend AGENCY's receipt of services under section 6.17 in conjunction with sending notice of intent to terminate AGENCY's account.

5.4 Termination without Notice. FORTE may immediately terminate this Agreement without prior notice in the event (i) that it determines AGENCY has experienced an actual or suspected data security breach; (ii) FORTE is instructed to terminate the Agreement by a financial institution, Acquirer or Payment Network; or (iii) FORTE observes irregular, suspicious or fraudulent Transaction activity on Merchant's account that is reasonably determined to expose FORTE to risk of financial, reputational, or other measurable loss. Notwithstanding the foregoing, FORTE may, in its own discretion, temporarily suspend AGENCY's receipt of services prior to terminating AGENCY's account.

6. TRANSACTION PROCESSING

6.1 Accepting Transactions. FORTE shall process credit card, debit card and ACH Transactions on AGENCY's behalf on a 24-hour basis. Transactions which are received before the daily designated cut-off time will be originated for settlement through the corresponding payment network. Transactions which are received after the designated cut-off time will be included in the next business day's settlement processing.

- **6.1.1** Sale Transactions. If a Transaction is sent to FORTE as a sale of goods or services, it will automatically be captured for settlement in time for the next designated cut-off time.
- **6.1.2** Authorization-Capture Transactions. If a Transaction is sent to FORTE for Authorization (as more fully defined in <u>Appendix A</u>) only or for delayed processing, then it will be the responsibility of AGENCY to submit a corresponding "capture" Transaction within forty-eight (48) hours of the Authorization in order to complete the Transaction process for settlement. Transactions which are not captured within forty-eight (48) hours of Authorization are untimely and may be rejected by FORTE.
- **6.2 Transaction Format**. FORTE is responsible only for processing Transactions which are received and approved by FORTE in the proper format, as established by FORTE.
 - **6.2.1** Card Not Present Transactions. For card-based Transactions in which the card is not present, AGENCY must obtain and include as part of the Authorization request the three (3) or four (4) digit validation code and the cardholder's billing address information.

6.3 AGENCY Account. In order to provide Transaction processing services, FORTE may need to establish one (1) or more service accounts on AGENCY's behalf or require AGENCY to establish a service account with a third-party provider sub-contracting with FORTE.

6.4 Limited-Acceptance Agency. If appropriately indicated on AGENCY's application with FORTE, AGENCY may be a Limited-Acceptance Agency, which means that AGENCY has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. FORTE and its associated credit card Acquirer have no obligation other than those expressly provided under the Rules of a Payment Network and applicable Law as they may relate to limited acceptance. AGENCY, and not FORTE or Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

6.5 Bona Fide Sales. AGENCY shall only complete Transactions produced as the direct result of bona fide sales made by AGENCY to cardholders, and AGENCY is expressly prohibited from processing, factoring, laundering, offering, and/or presenting sales Transactions which are produced as a result of sales made by any person or entity other than AGENCY, for purposes related to financing terrorist activities or for purposes that may be used as part of a scheme which violates any law governing the use of the Services which may include but not be limited to Bank Secrecy Act or USA Patriot Act.

6.6 Setting Limits on Transaction Amount. AGENCY may set a minimum Transaction amount to accept a card that provides access to a credit account, under the following conditions: the minimum Transaction amount does not (i) differentiate between card issuers; (ii) differentiate between MasterCard, Visa, or any other acceptance brand; and iii) exceed ten dollars (or any higher amount established by the Federal Reserve). AGENCY may set a maximum Transaction amount to accept a card that provides access to a credit account, under the following conditions: AGENCY is (i) a department, agency or instrumentality of the U.S. government; (ii) a corporation owned or controlled by the U.S. government; or (iii) an agency whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum Transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

6.7 Additional Agreements AGENCY understands and agrees that in order to receive the Services, Agency may be required to enter into additional agreements directly with the Payment Networks or other third parties.

6.8 Modifying Transactions. AGENCY shall regularly and promptly review all Transactions and shall immediately notify FORTE upon discovery of any and all discrepancies between the records of AGENCY compared with those provided by FORTE or AGENCY's bank, or with respect to any Transaction that AGENCY believes was made erroneously or without proper authorization from the Constituent or Consumer. At AGENCY's request, FORTE will make commercially reasonable efforts to reverse, modify, void or delete a Transaction after it has been submitted for settlement. All requests must be made in writing (electronic mail will be deemed as "in writing" for these purposes), signed or sent by an individual pre-authorized by AGENCY to make such requests and delivered to FORTE. AGENCY agrees FORTE will not be held responsible for any losses, directly or indirectly, incurred by AGENCY or other third parties as a result of FORTE's failure to accomplish the request before the Transaction has been processed through the applicable Payment Network or for making any necessary changes as requested by Agency.

6.9 Delay or Rejection of Transactions. FORTE may delay or reject any Transaction without prior notification to AGENCY which is improperly formatted, is untimely, or is missing information, which may cause it to downgrade; or if FORTE has reason to believe such Transaction is fraudulent or improperly authorized; or for any reason such delay or rejection is permitted or required under the Rules or regulations. FORTE shall have no liability to AGENCY by reason of the rejection of any such Transaction.

6.10 Returned Items. FORTE shall make available to AGENCY details related to the receipt of any Transaction that is returned unpaid or any Transaction which is charged back and shall credit or charge such returned item to AGENCY's Settlement Account.

6.11 Chargebacks. AGENCY acknowledges and agrees that it is bound by the Payment Networks Rules with respect to any Chargeback. AGENCY understands that obtaining an authorization from a Consumer for any sale shall not constitute a guarantee of payment, and such sales can be returned or charged back to AGENCY like any other item hereunder. In the event a Transaction is charged back for any reason, the amount of such Transaction will be deducted from AGENCY's designated Settlement Account or any payment due to AGENCY.

6.12 Excessive Chargebacks. Using limits established by the Payment Networks as a standard for review, FORTE reserves the right to suspend and/or terminate AGENCY's access to the Services should AGENCY's chargeback ratio exceed allowable limits in any given period. FORTE will make reasonable efforts to provide AGENCY with notice and a time to cure its excessive chargebacks prior to suspending or terminating AGENCY's access to the Services. AGENCY acknowledges and expressly

authorizes FORTE, in compliance with Payment Network Rules, to provide to the Payment Networks and applicable regulatory bodies, AGENCY's name and contact information as well as Transaction details should AGENCY's chargeback ratio exceed the allowable limits in any given period.

6.13 Resubmitting Transactions. AGENCY shall not re-submit any Transaction unless it is returned as (i) insufficient funds (R01) or (ii) uncollected funds (R09) or unless a new Authorization is obtained from Constituent.

6.14 Settlement. Settlement of AGENCY's funds for Transactions, less any Chargebacks or Returns, to AGENCY's designated Settlement Account will occur within seventy-two (72) hours of origination excluding weekends and US federal banking holidays. Settlement of Transactions will occur via electronic funds transfer over the ACH Network. Upon receipt of AGENCY's sales data for card Transactions through FORTE's Services, Acquirer will process AGENCY's sales data to facilitate the funds transfer between the various Payment Networks and AGENCY. After Acquirer receives credit for such sales data, Acquirer will fund AGENCY, either directly to the AGENCY-Owned Designated Account or through FORTE to an account designated by FORTE (the "FORTE Designated Account"), at Acquirer's sole option, for such card Transactions. AGENCY agrees that the deposit of funds to the FORTE Designated Account shall discharge Acquirer of its settlement obligation to AGENCY and any dispute regarding the receipt or amount of settlement shall be between FORTE and AGENCY. Acquirer will debit the FORTE Designated Account for funds owed to Acquirer as a result of the Services provided hereunder unless an Agency-owned account is otherwise designated by AGENCY. Further, if a cardholder disputes a Transaction, if a Transaction is charged back for any reason, or if FORTE or Acquirer reasonably believes a Transaction is unauthorized or otherwise unacceptable, the amount of such Transaction may be charged back and debited from AGENCY if settled to an Agency-owned account or debited from the FORTE Designated Account if settled to that account.

6.15 Provisional and Final Payment. AGENCY, AGENCY's third party senders (if applicable), and/or AGENCY's agent(s) understand and agree that Debit or Credit Entries may be transmitted through the ACH Network, that payment of a Debit or Credit Entry by the RDFI to the Receiver is provisional until receipt by the RDFI of final settlement for such Debit or Credit Entry, and, if such settlement is not received, the RDFI will be entitled to a refund from the Receiver of the amount credited and AGENCY will not be deemed to have paid the Receiver the amount of the Debit or Credit Entry. The rights and obligations of AGENCY concerning the Debit or Credit Entry are governed by and construed in accordance with the laws of the state in which the processing ODFI is located unless AGENCY and FORTE have agreed that the laws of another jurisdiction govern the rights and obligations.

6.16 Reporting. FORTE will make daily origination and deposit reports available to AGENCY on a 24/7 basis through the Internet-based FORTE platform.

6.17 Temporary Suspension of Services. Should any of the following occur: (i) FORTE observes irregular, suspicious or possible fraudulent Transaction activity on AGENCY's account; (ii) FORTE determines there is an irregularity in AGENCY's account, documentation, processes or financial condition that is inconsistent with FORTE's risk requirements; (iii) AGENCY is in material breach of its payment or other financial obligations to FORTE; or (iv) FORTE is required by Laws, Rules or a Payment Network, FORTE reserves the right to temporarily suspend Services to AGENCY without prior written notice. In the event FORTE suspends Services to AGENCY under the terms of this Section, FORTE will provide AGENCY with notice of the suspension and the reason for such suspension, along with remediation actions so long as communicating such would not create a security risk or violate any legal obligation of FORTE.

6.18 Authorization. AGENCY specifically authorizes FORTE to (i) to debit and credit AGENCY's designated bank account in order to carry out its duties under this Agreement and (ii) debit its designated bank account and any account owned by the same entity as AGENCY or by an entity with the same tax identification number as AGENCY to collect any payment obligation owed to FORTE by AGENCY hereunder. Further, AGENCY authorizes FORTE to act as its agent for receipt of settlement funds in connection with the Services and FORTE accepts such appointment subject to any conditions and

limitations of this Agreement. AGENCY agrees that receipt by FORTE of funds from AGENCY's Customer shall constitute receipt of payment to AGENCY, extinguishing such Customer's payment obligation to AGENCY (to the extent such obligation has not otherwise been extinguished) as if such Customer had paid AGENCY directly. If FORTE fails to fund AGENCY's account in an amount corresponding to such Customer's payment, AGENCY's sole recourse shall be to FORTE, not the Customer.

7. TRANSACTION AUTHORIZATION

7.1 **Constituent Authorization**. AGENCY shall obtain authorization from Constituent prior to requesting a Transaction to or from Constituent's account.

7.2 Retention. AGENCY shall retain proof of Constituent's authorization for a period of not less than two (2) years for standard Transactions and for a period of not less than five (5) years for health- related Transactions from the Authorization date or revocation of Authorization date and shall provide such proof of Authorization to FORTE upon request within five (5) business days of the request.

7.3 Revoked Authorization. AGENCY shall cease initiating Transactions to or from a Constituent's account immediately upon receipt of any actual or constructive notice of a Constituent's termination or revocation of authorization. AGENCY may re-initiate Transactions to or from a Constituent's account only upon receiving new Authorization from Constituent.

8. AGENCY PROHIBITIONS

AGENCY must not (i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (ii) add any tax to Transactions unless applicable Law expressly requires that AGENCY impose a tax (any tax amount, if allowed, must be included in the Transaction amount and not collected separately); (iii) request or use an account number for any purpose other than as payment for its goods or services; (iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from AGENCY; (v) disburse funds in the form of cash unless AGENCY is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the Transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by AGENCY) or unless AGENCY is participating in a cash back service; (vi) submit any Transaction receipt for a Transaction that was previously charged back to the Acquirer and subsequently returned to AGENCY, irrespective of cardholder approval; (vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt that has been deemed uncollectable by AGENCY; or (viii) submit a Transaction that represents collection of a dishonored check. AGENCY further agrees that under no circumstance will AGENCY store cardholder data in violation of the Laws or the operating regulations of any Payment Network, including, but not limited to, the storage of track-2 data. Neither AGENCY nor its agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales Transaction.

9. AUTHORIZATION

9.1 ACH Authorization. AGENCY authorizes FORTE to electronically debit and credit AGENCY's designated bank account(s) for any amounts owed to or by AGENCY in accordance with the terms of this Agreement. Further, AGENCY authorizes FORTE to act as its agent for receipt of settlement funds in connection with the Services and FORTE accepts such appointment subject to any conditions and limitations of this Agreement. AGENCY agrees that receipt by FORTE of a Constituent's funds shall constitute receipt of payment to AGENCY, extinguishing the Constituent's payment obligation to AGENCY as if the Constituent had paid AGENCY directly. If FORTE fails to fund AGENCY's account in an amount corresponding to a Constituent's payment, AGENCY's sole recourse shall be to FORTE, not the Constituent.

9.2 Third Party Service Provider. If AGENCY uses the Services through or in conjunction with a

third-party service provider that is not a party to this Agreement, AGENCY authorizes FORTE to provide the authorized third party with its FORTE merchant account information and credentials. If applicable, AGENCY authorizes the third party to originate Transactions and receive the corresponding results on its behalf.

10. CONSTITUENT DISPUTES

All disputes between AGENCY and its Constituents relating to any Transaction processed under this Agreement will be settled by and between AGENCY and Constituent. AGENCY agrees FORTE bears no responsibility or involvement in any such dispute.

11. COMPLIANCE WITH LAWS, RULES AND REGULATIONS

In performing its duties under this Agreement, each Party agrees to comply with all applicable Rules, regulations and Laws, including but not limited to all confidentiality and security requirements of the USA Patriot Act (or similar law, rule or regulation), all Rules of any applicable Payment Networks, all requirements under the Payment Card Industry Data Security Standard (or similar applicable data security law, rule or regulation) including but not limited to the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Payment Networks. Each Party agrees to cooperate and provide information reasonably requested by the other to facilitate its compliance with any applicable Law, Rule or regulation. Additionally, should a Payment Network or regulatory body impose a fee or fine on AGENCY for any violation of the Rules or Laws or regulations by AGENCY, such fee or fine may be charged to FORTE as a pass-through to AGENCY. If any such fee or fine is charged to FORTE, AGENCY shall reimburse FORTE for any such fees or fines.

12. DATA SECURITY

FORTE shall implement and maintain a commercially reasonable security program, in accordance with the Information Security Requirements attached hereto as <u>Appendix E</u>.

13. PRICING AND PAYMENT

13.1 FORTE will provide the Services in accordance with the fees listed on the Pricing Fee Schedule, attached hereto as <u>Schedule 1</u>, or any amendments thereto. Pricing based on AGENCY absorbing the fees for the Services ("Absorbed Fee Model") will result in fees being billed to the AGENCY monthly in arrears and will automatically be debited from AGENCY's designated account via ACH debit.
13.2 Pricing based on a service fee that is charged to Constituents per Transaction ("Service Fee Model") will result in a non-refundable service fee either (i) added to or (ii) charged as a separate Transaction to Constituent at the time of payment. Pricing under the Service Fee Model is calculated based on historical or estimated transactional amount activity by AGENCY. In the event that experiential transaction activity varies significantly from the historical or estimated amounts, FORTE shall have the right to adjust the service fee in accordance with the experiential transaction activity.
13.3 FORTE's pricing is subject to the underlying fees established by the Payment Networks and its service providers. As such, in the event FORTE experiences an increase in cost for any processing services utilized by AGENCY during Term of this Agreement, FORTE will pass through the increases with no additional markup to AGENCY. FORTE will provide AGENCY a minimum of thirty (30) days' notice of any change or adjustment in fees.

14. LIMITS OF LIABILITY

14.1 NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE INCURRED IN RELATION TO THIS AGREEMENT. THE AMOUNT OF DAMAGES RECOVERABLE BY EITHER PARTY FROM THE OTHER WILL NOT EXCEED THAT PARTY'S ACTUAL, DIRECT DAMAGES AND WILL BE LIMITED TO THE AMOUNT OF THE AVERAGE MONTHLY FEES AND CHARGES PAID BY AGENCY TO FORTE, EXCLUDING ANY PASS-THROUGH FEES, FOR THE SERVICES FOR THE IMMEDIATE THREE (3) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE APPLICABLE CLAIM. NEITHER PARTY WILL BE LIABLE FOR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT IF SUCH PERFORMANCE WOULD RESULT IN IT BEING IN BREACH OF ANY LAW, RULE, REGULATION OR REQUIREMENT OF ANY GOVERNMENTAL AUTHORITY. THE PROVISIONS OF THIS SECTION WILL SURVIVE TERMINATION OF THIS AGREEMENT.

14.2 FORTE SHALL NOT BE RESPONSIBLE FOR ERRORS, ACTS OR FAILURES TO ACT OF OTHERS, INCLUDING, AND AMONG OTHER ENTITIES, BANKS, OTHER PROCESSORS, COMMUNICATIONS CARRIERS OR CLEARING HOUSES, THROUGH WHICH TRANSACTIONS MAY BE ORIGINATED OR THROUGH WHICH FORTE MAY RECEIVE OR TRANSMIT INFORMATION, AND NO SUCH ENTITY SHALL BE DEEMED AN AGENT OF FORTE.

15. REPRESENTATIONS AND WARRANTIES.

15.1 FORTE's Representations and Warranties. FORTE makes no representations or warranties concerning the Services except as may be specifically authorized, in writing, or set out herein.
15.1.1 FORTE hereby warrants that its software solutions and the Services will perform in accordance with their published specifications in all material respects.

15.1.2 FORTE further warrants that in performing its obligations hereunder, it shall exercise due care and reasonable efforts to ensure that information originated by AGENCY is transmitted accurately.

15.2 AGENCY's Representations and Warranties. AGENCY represents and warrants to FORTE:
15.2.1 If applicable, with respect to all Transactions originated by FORTE on behalf of AGENCY, (i) each Transaction in all respects has been properly authorized by Receiver; (ii) each Transaction is for an amount agreed to by the Receiver; and (iii) AGENCY shall provide proof of Authorization in compliance with applicable Rules for any Transaction to FORTE upon request within five (5) Business Banking Days.

15.2.2 AGENCY agrees to adhere to the warranties within the applicable Rules for each Transaction FORTE processes on AGENCY's behalf.

15.3 Mutual Representations and Warranties. Each Party represents and warrants to the other:
15.3.1 The execution of this Agreement does not violate any applicable international, federal, state, or local law, Payment Network rule or contract to which such Party is subject.
15.3.2 There are no actions, suits or proceedings existing or pending against or affecting it before any judicial or regulatory authority which would have a material adverse effect on its ability to perform its obligations hereunder.

15.3.3 When executed and delivered, this Agreement will constitute a legal, valid, and binding obligation, enforceable in accordance with its terms.

15. FORTE SERVICE POLICY

FORTE makes no representations or warranties concerning the Services except as may be specifically authorized, in writing, or set out herein. AGENCY acknowledges and understands that FORTE does not warrant that the Services will be uninterrupted or error free and that FORTE may occasionally experience delays or outages due to disruptions that are not within FORTE's control. Any such interruption shall not be considered a breach of the Agreement by FORTE. FORTE shall use its best efforts to remedy any such interruption in the Services as quickly as possible.

16. FORCE MAJEURE

Neither Party will be held liable for any damages, delays or failure to perform any of its obligations under this Agreement if such damages, delays or failure is due to circumstances beyond the reasonable

control of such Party and without its fault or negligence, such as acts of God, fire, flood, earthquakes or other natural disasters, epidemics, industry-wide strikes and governmental acts or orders or restrictions. The Party affected by such circumstances will use all commercially reasonable efforts to avoid or remove such causes of non-performance. Nothing herein shall relieve a Party form its payment obligations for Services rendered.

17. ASSIGNMENT

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Neither Party may assign any of its rights hereunder, nor delegate any of its duties hereunder, without the prior written consent of the other Party, and each Party acknowledges and agrees that, absent such prior written consent, any attempted assignment or delegation hereunder shall be null, void and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement or any rights and obligations hereunder either to an Affiliate or to a third-party successor to all or substantially all of its business, stock or assets, in each case, without the prior written consent of the other Party.

18. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the Laws of the state of Washington without reference to choice of laws rules.

19. AMENDMENT

Except as otherwise provided for herein, the terms and conditions of this Agreement shall not be modified or amended except in writing and agreed to by the Parties. Notwithstanding the foregoing, this Agreement is subject to such modifications, changes, and additions as may be required by reason of any applicable Law, regulation or Rule.

20. PUBLICITY

Neither Party shall use the other Party's name, logo or service marks in conjunction with a press release or advertisement without first obtaining written approval.

21. NOTICE

Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by fax to the intended recipient at the address most recently provided in writing.

22. HEADINGS

The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning of any provision of this Agreement.

23. SEVERABILITY

Should any term, clause or provision herein be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be construed to most closely reflect the original intent of the Parties.

24. ENTIRE AGREEMENT; WAIVER; COUNTERPARTS

This Agreement constitutes the entire understanding of the Parties and revokes and supersedes all prior agreements between the Parties and are intended as a final expression of their agreement. Either Party's waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of the same or other provision. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

25. ELECTRONIC SIGNATURES.

Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Payment Processing Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (i) a person authorized to bind AGENCY indicates acceptance of the terms of this Agreement by following procedures that associate his/her electronic signature with this Agreement and related documents, (ii) such authorized person consents and intends to be bound by the Payment Processing Agreement and related documents, and (iii) the Payment Processing Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Agreement and all related electronic documents shall be governed by the provisions of E-Sign.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective organizations, have executed this Agreement.

CSG FORTE PAYMENTS, INC.

By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

APPENDIX A DEFINITIONS

ACH Network. "ACH Network" or "Automated Clearing House Network" is a batch processing, storeand-forward system that accumulates and distributes ACH Transactions that are received from ODFI (defined below) and are forwarded to the specified RDFI (defined below) according to the specific schedules established by the participants.

Acquirer. "Acquirer" means a sponsoring financial institution or payment processor that enters into an agreement which enables merchants, government entities or their Agent(s) to submit Transactions to a payment network.

Affiliate. "Affiliate" means an entity controlled or managed by the same centralized federal, state or local government.

Agent. "Agent" means any director, officer, employee, representative, Affiliate, third-party vendor or any other person acting on behalf of Agency with the actual, implied or apparent authority of Agency.

Authorization. "Authorization" means a Transaction request on a Consumer bank account or card account to confirm Consumer's account is open, in good standing, and has sufficient funds to complete the submitted transaction.

Business Banking Day. "Business Banking Day" means Monday through Friday excluding banking holidays.

Confidential Information. "Confidential Information" may include information regarding all of the computer software and technologies, systems, structures, architectures, processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods, and information and databases developed, acquired, owned, produced or practiced at any time by a Party or any Affiliate thereof, including software programs and documentation licensed by third parties to the disclosing Party, any business or financial information directly or indirectly related to the disclosing Party's company(s) or investments or its internal administrative audit reports on internal controls, internal risk and underwriting guidelines and policies, billing and accounting systems, Customer and vendor lists and information, employee personnel information and policies and procedures, information regarding the disclosing Party's products and services that is not generally available to the public.

Consumer. "Consumer" means the individual end users, Constituents of AGENCY.

CPA. "CPA" or "Canadian Payment Association" is responsible for operating the two primary settlement systems (payment networks) in Canada, as well as establishing, revising and enforcing the operating Rules for the Canadian payment networks.

Chargeback. "Chargeback" means a Transaction that is rejected by the owner of the account debited or charged because a dispute exists between the Originator of the Transaction (typically Agency) and the account owner.

Credit Entry. "Credit Entry" means an ACH/EFT Transaction that is intended to deposit funds into a Receiver's (defined below) account which has been withdrawn from AGENCY's Settlement Account (defined below).

Debit Entry. "Debit Entry" means an ACH/EFT Transaction that is intended to withdraw funds from a Receiver's account for deposit into AGENCY's Settlement Account (defined below).

Laws. "Laws" means all international, national, regional and local regulations or laws which are applicable to the Services provided herein, including but not limited to federal Regulation E and Title 31 of the Code of Federal Regulations Part 210, Gramm-Leach-Bliley Act, US Bank Secrecy Act ("BSA"), applicable privacy and data security laws, US and local export control laws, including US Foreign Corrupt Practices Act, the Export Administration Act, US Department of Treasury Office of Foreign Assets Control ("OFAC") and similar restrictions under US law, executive order, regulation or Rule (collectively, "Export Laws"), and Fair Credit Reporting Act and USA Patriot Act.

Merchant. "Merchant" means AGENCY.

NACHA. "NACHA" or "National Automated Clearing House Association" is responsible for establishing, revising and enforcing the Operating Rules for the US ACH Network.

ODFI. "ODFI" or "Originating Depository Financial Institution" means the financial institution that receives ACH Transactions from Merchant through FORTE and then forwards these Transactions (defined below) to the ACH Network.

Originator. "Originator" means the AGENCY who has contracted with FORTE to initiate ACH entries, on its behalf, to the ACH Network.

Payment Network. "Payment Network" means an entity that facilitates and governs payment Transactions, including but not limited to VISA, M/C, Discover, NACHA, CPA and may also be referred to as "Payment Association".

Payment Network Resources:

VISA Regulations (from VISA website): <u>https://usa.visa.com/dam/VCOM/download/about-visa/visarules-public.pdf</u> MasterCard Rules (from MC website): <u>https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html</u> Discover rules (from Discover website): <u>http://www.discovernetwork.com/merchants/index.html</u> NACHA: <u>www.nacha.org</u>

PCI-DSS. "PCI-DSS" or "Payment Card Industry Data Security Standard" means the system security measures established by the major credit card companies. The PCI-DSS is mandated by the credit card companies but administered by the Payment Card Industry Security Standards Council.

Personally Identifiable Information or PII. "PII" means unencrypted, unredacted, or non-anonymized personally identifiable information regarding a Consumer or non-personally identifiable information regarding a Consumer that has been aggregated, disaggregated or decompiled in a manner that is sufficient to cause a Consumer to be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to such Consumer's physical, physiological, mental, economic, cultural or social identity, including, by way of example, financial account numbers, credit or debit card numbers (with or without access or pin numbers, if collected), personal addresses, IP addresses, identity cards, residency permits, passport numbers, driver's license numbers and/or other government issued numbers. PII includes "Personal Data" as commonly defined by privacy laws.

RDFI. "RDFI" or "Receiving Depository Financial Institution" means the financial institution that receives the ACH Transactions from the ODFI through the ACH Network and posts these Transactions to the accounts of Receivers (defined below).

Receiver. "Receiver" means an entity or individual Consumer that has an established account with a card issuer or financial institution upon which a Transaction is or may be acted upon.

Reserve. "Reserve" means a specific amount of money that is held in the AGENCY account to be used by FORTE to offset amounts owed to FORTE for Services provided, such as returned items, chargebacks, fees/fines, billing or other AGENCY obligations to FORTE that FORTE is unable to collect from AGENCY.

Rules. "Rules" means the operational rules, policies and procedures established by each applicable Payment Network to govern all transactions and parties that participate in processing Transactions through the associated Payment Network.

Settlement Account. "Settlement Account" means an account established and maintained by AGENCY with a financial institution through which the following may occur: (a) deposit of funds for Debit Entries, (b) the extractions of funds for Credit Entries, reserve funds or fee obligations unless otherwise agreed to by the Parties.

Settlement Entry. "Settlement Entry" means a Debit or Credit Entry to AGENCY's Settlement Account which corresponds to the net amount owed AGENCY by FORTE at the end of each Business Banking Day.

Transaction. "Transaction means any transfer of data or information to FORTE in a format pre-approved by FORTE, including but not limited to payment, verification and authentication items.

Users. "Users" mean all individuals who access a FORTE website or utilize any portion of the FORTE Services on behalf of AGENCY directly or through software that accesses the FORTE systems through AGENCY's systems, by using AGENCY's access credentials or any other access reasonably presumed to be on behalf of AGENCY.

APPENDIX B ACCOUNT VERIFICATION AND AUTHENTICATION SERVICES

1. Representation by Agency. Each request for data through the verification and authentication services shall constitute a representation, warranty and certification by AGENCY that the data (i) shall be used and disclosed only in accordance with the terms of the Agreement, and in accordance with any applicable Rules, regulations or Laws; (ii) shall be used solely for the intended use as stated by AGENCY on AGENCY's application and that use is in compliance with the permissible uses under the Fair Credit Reporting Act ("FCRA") as provided in the FCRA Requirements Addendum located at http://www.forte.net/fair-credit-reporting-act; (iii) AGENCY will follow proper procedures for adverse action notification to its Constituents, as provided by the FCRA Requirements Addendum; and (iv) AGENCY acknowledges it has implemented security measures to prohibit the unauthorized access to the information provided.

2. Use of Services.

2.1 AGENCY SHALL USE THE VERIFICATION SERVICES ONLY IN CONNECTION WITH PAYMENTS PRESENTED TO AGENCY BY ITS CONSTITUENTS IN EXCHANGE FOR GOODS OR SERVICES. AGENCY SHALL NOT RESELL THE VERIFICATION DATA OR SERVICES TO ANY THIRD PARTIES.

2.2 AGENCY understands and agrees that it cannot decline services to a consumer, Constituent or Customer after receiving an approval result from FORTE on a verification inquiry unless AGENCY is declining based on other grounds and/or information. Further, if AGENCY does decline Services to a FORTE approved consumer, Constituent or Customer based on alternate information, AGENCY shall not provide FORTE's contact information as recourse for the consumer, Constituent or Customer to pursue a dispute of the result under FCRA Adverse Action requirements.

2.3 AGENCY shall provide to FORTE, as part of a verification inquiry, the accurate amount for each Transaction AGENCY wants to verify.

3. Retention of Data. AGENCY acknowledges and agrees that it shall not retain, store, compile or aggregate the results of verification or authentication inquiries received from FORTE except as required by applicable Law or to perform its obligations under this Agreement.

4. AGENCY acknowledges and agrees, on behalf of itself and its Constituents, that all information submitted by AGENCY to FORTE in order for FORTE to provide the Services to AGENCY or otherwise contributed by AGENCY pursuant to these Services (including Transaction results) is held in FORTE's database, and may be used by FORTE for the purpose of providing the Services to its Customers in compliance with all applicable Laws and Rules, including in accordance with the federal Fair Credit Reporting Act ("FCRA"). Further, FORTE may track, review, compile, store and use any information or data received from AGENCY as part of a Transaction for regulatory compliance or any other legally permissible purpose. Without limiting the foregoing, AGENCY agrees and acknowledges that FORTE (and/or certain of its Affiliates) may use the routing numbers, account numbers and other PII submitted by AGENCY as well as Transaction results provided to or received by FORTE for the purpose of supporting FORTE's (or certain of its Affiliates) fraud detection, account validation and verification, and/or other commercially available services.

APPENDIX C ACCOUNT UPDATER SERVICES

1. Description of Services. Participating Visa/MasterCard issuers submit the account changes to FORTE's Account Updater database. On a monthly basis, FORTE will compare all of AGENCY's recurring tokenized Transactions against the Account Updater database. FORTE will then update the tokenized card information on file with updated account information.

2. Agency Requirements for Account Updater Participation.

- a. AGENCY must be properly established and registered in the United States.
- b. AGENCY must not have been disqualified from participating in the Visa, MasterCard, or Discover programs.
- c. AGENCY must be in compliance with all Card Association Operating Regulations.
- d. AGENCY must submit inquiries only for those accounts with which it has an ongoing Customer relationship and Customer's authority to submit such payments.
- e. AGENCY may not request Authorization on accounts that have been returned "Contact Cardholder" or "Closed."
- f. AGENCY must not submit inquiries on behalf of any other entity.
- g. AGENCY assumes all risk associated with the use of the Account Updater Service. FORTE shall have no liability whatsoever to AGENCY for any liability associated with the Account Updater Service, including but not limited to the accuracy or completeness of the information provided via the Account Updater Service.

APPENDIX D AMERICAN EXPRESS CARD ACCEPTANCE

1. Merchant hereby acknowledges and agrees that for purposes of acceptance of American Express, the American Express Merchant Operating Guide and any amendments thereto (the "Operating Guide") is hereby incorporated by reference into this Agreement and can be found at www.americanexpress.com/merchantopguide.

All capitalized terms found in this section shall have the attributed meaning from the Operating Guide.

2. Merchant hereby acknowledges and agrees that it is not a party to any agreement between FORTE and American Express.

3. Merchant hereby authorizes FORTE and/or Acquirer to submit American Express transactions to, and receive settlement from, American Express on behalf of Merchant. Merchant must accept the American Express card as payment for goods and services (other than those goods and services prohibited under the Operating Guide) sold, or (if applicable) for charitable contributions made, at all of its establishments, except as expressly permitted by applicable Law. Merchant is jointly and severally liable for the obligations of Merchant's establishments under the Agreement. For the avoidance of doubt, "cardholder" as used in this Agreement shall include Cardmembers as defined in the Operating Guide.

4. Merchant hereby acknowledges and agrees that (i) FORTE or Acquirer may disclose American Express Transaction Data (which for purposes of this section shall have the same definition as "Transaction Data" in the Operating Guide), Merchant Data (as defined below), and other information about Merchant to American Express, (ii) American Express may use such information to perform its responsibilities in connection with the American Express Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purpose, including marketing purposes, and (iii) American Express may use the information obtained in this application at the time of setup to screen and/or monitor Merchant in connection with American Express Card (the "Card") marketing and administrative purposes. If Merchant has provided a wireless phone number in connection with this Agreement, Merchant hereby agrees that it may be contacted at that number and the communications sent may include autodialed text messages or automated prerecorded calls. If Merchant has provided a fax number, Merchant hereby agrees that it may be sent fax communications. To opt out of American Express-related marketing communications, Merchant may contact FORTE customer service as described in this Agreement. For purposes of this section, "Merchant Data" means names, postal and email addresses, tax ID numbers, names and social security numbers of the authorized signer of Merchant and similar identifying information about Merchant. For clarification, Merchant Data does not include American Express Transaction Data.

5. Merchant will adhere to the following website information display guidelines in the event Merchant has a website and/or operates an e-commerce business. Merchant's website must display the following:

- An accurate description of the goods/services offered, including the currency type for the Transaction (e.g., U.S. Dollars). Note: Transaction currency must be in U.S. Dollars.
- Merchant's physical address in the U.S.
- An email address or telephone number for customer service disputes.
- Return/refund policy.
- A description of Merchant's delivery policy (e.g., no overnight delivery).
- A description of Merchant's security practices (e.g., information highlighting security practices Merchant uses to secure Transactions on its systems, including Transactions conducted on the Internet).
- A statement of known export restrictions, tariffs, and any other regulations.

• A privacy statement regarding the type of personal information collected and how the information is used. Additionally, Merchant must provide to customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.

6. Merchant hereby agrees that, in the event that Merchant becomes a High Charge Volume Merchant (as defined below), Merchant will be converted from the American Express Program to a direct American Express Card acceptance relationship with American Express, and upon such conversion, (i) Merchant will be bound by American Express' then-current card acceptance agreement, and (ii) American Express will set pricing and other fees payable by Merchant for American Express Card acceptance. "High Charge Volume Merchant" for purposes of this section means an American Express Program Merchant with either (i) greater than \$1,000,000 in American Express charge volume in a rolling twelve (12) month period or (ii) greater than \$100,000 in American Express charge volume in any three (3) consecutive months. For clarification, if Merchant has multiple establishments, the American Express charge volume from all establishments shall be summed together when determining whether Merchant has exceeded the thresholds above.

7. Except as expressly permitted by applicable Law, Merchant must not: (a) indicate or imply that Merchant prefers, directly or indirectly, any Other Payment Products over the Card, (b) try to dissuade Cardmembers from using the Card, (c) criticize or mischaracterize the Card or any of American Express' services or programs, (d) try to persuade or prompt Cardmembers to use any Other Payment Products or any other method of payment (e.g., payment by check), (e) impose any restrictions, conditions, disadvantages, or fees when the Card is accepted that are not imposed equally on all other payment products, except for electronic funds transfer, cash or check, (f) suggest or require Cardmembers to waive their right to dispute any Transaction, (g) engage in activities that harm American Express' business or the American Express Brand (or both), (h) promote any Other Payment Products (except, if applicable, Merchant's own private label card that it issues for use solely at its Establishments) more actively than Merchant promotes the Card, or (i) convert the currency of the original sale Transaction to another currency when requesting Authorization or submitting Transactions (or both).

8. Merchant may offer discounts or in-kind incentives from its regular prices for payments in cash, ACH funds transfer, check, debit card, or credit/charge card, provided that (to the extent required by applicable Law): (i) Merchant clearly and conspicuously discloses the terms of the discount or in-kind incentive to its customers, (ii) the discount or in-kind incentive is offered to all of Merchant's prospective customers, and (iii) the discount or in-kind incentive does not differentiate on the basis of the Issuer or, except as expressly permitted by applicable state statute, payment card network (e.g., Visa, MasterCard, Discover, JCB, American Express). The offering of discounts or in-kind incentives in compliance with the terms of this paragraph will not constitute a violation of the provisions set forth Section 3.2 of the Operating Guide.

9. Whenever payment methods are communicated to customers, or when customers ask what payments are accepted, Merchant must indicate its acceptance of the Card and display American Express' Marks (including any Card application forms provided to Merchant) as prominently and in the same manner as any Other Payment Products. Merchant must not use American Express' Marks in any way that injures or diminishes the goodwill associated with the American Express Mark, nor in any way (without American Express' prior written consent) indicate that American Express endorses Merchant's goods or services. Merchant shall use the American Express brand and marks in accordance with the requirements set forth in the Operating Guide and shall remove the American Express brand and marks from Merchant's website and wherever else they are displayed upon termination Merchant's acceptance of American Express cards.

10. Any and all Cardmember Information is confidential and the sole property of the Issuer, American

Express or its Affiliates. Except as otherwise specified, Merchant must not disclose Cardmember Information, nor use nor store it, other than to facilitate Transactions in accordance with this Agreement. For more information, refer to the Operating Guide, Section 4.2, "Completing a Transaction at the Point of Sale" and Chapter 8, "Protecting Cardmember Information".

11. Merchant shall not assign to any third party any American Express-related payments due to it under this Agreement, and all indebtedness arising from American Express Charges (as defined below) will be for bona fide sales of goods and services (or both) at its establishments (as defined below) and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that Merchant may sell and assign future American Express transaction receivables to FORTE, its affiliated entities and/or any other cash advance funding source that partners with FORTE or its affiliated entities, without consent of American Express.

12. Merchant hereby agrees that American Express shall have third party beneficiary rights, but not obligations, to enforce this Agreement as against Merchant to the extent applicable to American Express processing. Merchant understands and agrees that it shall have no third party beneficiary rights under any agreement between FORTE and American Express and/or Acquirer. Merchant shall maintain refund policies for purchases on the American Express card that are at least as favorable as its refund policy for purchases on any other payment product. Merchant will disclose any such refund policy to Cardmembers at the time of purchase and in compliance with the Operating Guide and all applicable Laws. Merchant's termination of American Express Card acceptance shall have no direct or indirect effect on Merchant's rights to accept other card brands. To terminate American Express acceptance, Merchant may contact FORTE customer service as described in this Agreement.

13. Without limiting any other rights provided herein, FORTE and/or Acquirer shall have the right to immediately terminate Merchant's acceptance of American Express cards upon request of American Express. Merchant may not bill or collect from any Cardmember for any purchase or payment on the Card unless a chargeback has been exercised, Merchant has fully paid for such charge, and it otherwise has the right to do so. Merchant will comply with all procedural requirements relating to chargebacks, as provided in the Operating Guide, Chapter 11.

14. American Express Liability. SPONSORED MERCHANT ACKNOWLEDGES AND AGREES THAT IN NO EVENT SHALL AMERICAN EXPRESS, ITS AFFFILIATES, AGENTS, SUCCESSORS, OR ASSIGNS BE LIABLE TO SPONSORED MERCHANT FOR ANY DAMAGES, LOSSES, OR COSTS INCURRED, INCLUDING INCIDENTAL, INDIRECT, SPECULATIVE, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (WHETHER BASED ON CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, FRAUD, OR OTHERWISE, OR STATUTES, REGULATIONS, OR ANY OTHER THEORY), ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT.

APPENDIX E INFORMATION SECURITY REQUIREMENTS

- 1. <u>Acknowledgment of Information Security Requirements</u>. FORTE acknowledges and agrees to have a "Security Program" that is compliant with all legal and industry mandated information security requirements applicable to its duties and obligations specified under this Agreement.
- 2. <u>Compliance with Laws and Industry Standards</u>. FORTE agrees to abide by all Laws, Rules and industrymandated information security standards applicable to its duties and obligations related to information security for Services provided by FORTE to AGENCY under this Agreement.

3. Definitions.

- a. Consumer Information. "Consumer Information" means collectively PII and Source Data, as defined below.
- b. Source Data. "Source Data" means data provided by AGENCY relating to AGENCY's account activity or other information collected from the AGENCY in order to process a transaction on a AGENCY's behalf or otherwise necessary for a AGENCY's use of Forte's products and services, whether in individual or aggregate form. Source Data may include PII but is not limited to PII. Source Data is and shall remain the property of a AGENCY and /or its Consumer customer. To the extent that ISV or FORTE have access to or collects such Source Data, each agrees that it does so solely on behalf of the AGENCY and the AGENCY's Consumer customers pursuant to the obligations hereunder and shall maintain the confidentiality of such Source Data and shall treat it in accordance with applicable Law.
- 4. Security Obligations.
 - a. FORTE hereby acknowledges that AGENCY has a responsibility under the law to keep PII (as defined in <u>Appendix A</u>) private and confidential, and as a result of any PII received by FORTE in the performance of this Agreement, FORTE shall have the same responsibility. FORTE also acknowledges that the PII to which it will have access pursuant to this Agreement (if any), that FORTE shall gain possession of any ownership or other proprietary rights with respect to such PII. FORTE acknowledges and understands that PII may be subject to applicable local, state and federal Rules and Laws and applicable information industry standards; provided however, to the extent that AGENCY informs FORTE of a local law expanding the definition of PII in <u>Appendix A</u>, FORTE shall only be required to use commercially reasonable efforts to comply with such expanded local requirements.
 - b. Consumer Information that is collected or obtained from AGENCY pursuant to this Agreement shall be stored and maintained by FORTE in a secure environment and transmitted by FORTE in a secure form that meets industry-mandated data security standards. Although FORTE will protect and safeguard PII in a manner that meets industry-mandated data security standards, the parties agree that there may be some instances in which PII or certain PII data elements are protected in a more secure manner than other data (e.g., encryption).
- 5. <u>Rights to Use and Access</u>. AGENCY hereby grants to FORTE a non-exclusive right to use all of AGENCY's Source Data including PII provided by AGENCY's customers, necessary to perform the Services under this Agreement. FORTE shall limit the use and access to AGENCY's Source Data to uses pursuant to the terms of the Agreement and to FORTE's bona fide employees or independent consultants, contractors or auditors and required governmental agencies, who have a need to know such information

and who agree to comply with use and non-disclosure restrictions similar to those contained within this Agreement.

- 6. <u>Security of Consumer Information</u>. Each Party shall implement and maintain a Security Program that includes appropriate administrative, technical and physical safeguards reasonably designed to: (i) ensure the security and confidentiality of Consumer Information within its systems; (ii) protect against any anticipated threats or hazards to the security or integrity of Consumer Information within its systems; and (iii) protect against unauthorized access to or use of Consumer Information stored on its systems; and (iv) dispose of Consumer Information in a secure manner per applicable Rules and Laws.
 - In order to comply with safeguard obligations generally described in the preceding paragraph, each a. Party shall (1) designate an employee or employees to coordinate its Security Program, (2) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Consumer Information located on its systems that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such risk assessment should include consideration of risks in each relevant area of a Party's operations, including: (i) employee training and management; (ii) information systems, including network and software design, as well as information processing, storage, transmission and disposal; and (iii) detecting, preventing and responding to attacks, intrusions, or other systems failures, which shall include the use of commercially reasonable efforts to establish procedures and logging mechanisms for FORTE systems and networks that will allow tracking and analysis in the event there is a compromise of its systems, and maintain an audit trail history for at least three (3) months for review by AGENCY upon reasonable request; (3) design and implement information safeguards to control the risks identified through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; and (4) use commercially reasonable efforts to assure data security when disposing of any Consumer Information.
- 7. <u>Disclosures</u>. Neither Party shall have an obligation to maintain the confidentiality of any Consumer Information which: (i) has been received by it from a third party without restriction on disclosure and without breach of agreement or other wrongful act by the receiving party; or (ii) is independently developed by it without reference to any Consumer Information. If required by any court of competent jurisdiction or other governmental authority, each Party may disclose to such authority, data, information or materials involving or pertaining to Consumer Information to the extent required by such order or authority. FORTE shall, if not otherwise prohibited, give the other Party as much advance notice of the possibility of such disclosure as is practical so that it may, at its own expense, attempt to stop such disclosure or obtain a protective order concerning such disclosure.
- 8. <u>Breach Notification</u>. In the event of an actual or validated breach of security of a Party's system, website, database, equipment or storage medium or facility that results in unauthorized access to Consumer Information on a Party's system by any third party (including any consultant or subcontractor of the Party that is not authorized to access such information), the Party that experienced the breach shall notify the other Party within a commercially reasonable time after taking any appropriate measures necessary to prevent further access, and shall take commercially reasonable efforts to resecure its systems as soon as possible. The Party that experienced the breach shall provide any information that the other Party reasonably requests pertaining to the incident, unless prohibited from doing so by applicable Rule or Law and shall provide reasonable cooperation to investigate any such incident. In addition, in the event of an actual or validated breach of security to a Party's system regarding PCI data related to AGENCY's account with FORTE, the Party that experienced the breach shall, to the extent reasonably practicable, cooperate with the investigative actions of the appropriate forensic unit and/or law enforcement agency and agrees to provide the other Party with a copy of the final Incident Report, if any, upon request.

- <u>FORTE's Annual Validation of Adherence to Security Standards</u>. FORTE and AGENCY agree to utilize
 existing FORTE assessment reports and Certifications (SSAE report and PCI Certification), to validate
 FORTE's compliance with the Information Security Requirements set forth in this <u>Appendix E</u>.
 - a. FORTE shall maintain all records pertaining to the Services as required by applicable Rule or Law
 - b. FORTE shall provide at its expense, upon AGENCY's written request on no more than an annual basis, its most current independent, SSAE report (third party service organization report). An SSAE report for purposes of this Agreement is defined as a specialized report or reports of controls, generally accepted in the industry, in the areas of financial reporting and general information technology controls for the services provided by a hosted solutions provider, managed services provider, service organization, service bureau or other similarly structured provider of software and hardware solutions. FORTE shall select the type of SSAE report that will be provided based upon the relationship between the parties and the products and services provided by FORTE. In the event AGENCY wishes to receive a type of SSAE report not currently provided by FORTE, AGENCY shall provide no less than eighteen (18) months prior written notice to FORTE and FORTE in its sole discretion shall determine whether it will provide the additional type of SSAE report to AGENCY. FORTE will provide a copy of the most current report prepared; provided that AGENCY shall accept and agree to any conditions imposed by the independent audit firm for access to such report. FORTE will use good faith efforts to assist in resolving any issues that may arise between AGENCY and any independent auditor firm regarding the viewing of the SSAE report. AGENCY may not distribute or provide FORTE's SSAE report to third parties without FORTE's prior written consent.
 - c. FORTE is PCI DSS certified and undergoes an annual audit in order to maintain PCI DSS compliance against the current version of PCI DSS published on the PCI SSC (PCI Security Standards Council) website.
 - d. AGENCY and its auditors will maintain the confidentiality of FORTE's procedures and processes, which FORTE describes as confidential, and which are disclosed as a result of any review or audit. FORTE agrees that any material failure, as defined by AGENCY in its reasonable discretion, to cooperate fully and promptly in the conduct of any audit requested pursuant to this paragraph will constitute grounds for AGENCY to immediately terminate the Agreement and cease receiving Services from FORTE; provided, however, AGENCY shall provide FORTE with written notice of such material failure to cooperate and FORTE shall have thirty (30) days opportunity to cure. Such termination shall be [AGENCY/Agency]'s sole and exclusive remedy for any such failure to cooperate.
- 10. <u>Network and Application Scans</u>. FORTE shall perform network and application security scans that test the FORTE's systems for (i) security vulnerabilities, (ii) denial of service vulnerabilities and (iii) system access. FORTE will have processes that review and remediate vulnerabilities.

SCHEDULE 1

PRICING FEE SCHEDULE

Such Pricing Fee Schedule is executed and attached to AGENCY's "Merchant Application" and incorporated herein by reference.

"csgforte

PRICING FEE SCHEDULE Lynden, WA

Forte Payment Systems is proud to provide a robust processing platform and flexible pricing strategies:

- Service Fee Model in a service fee model approach, the citizen pays a service fee for processing their transaction. Your office absorbs no cost.
- Absorbed Model credit card/debit card Merchant Services, Electronic Check Services and the Secure Gateway are absorbed by your office.

Service (Convenience) Fee Pricing Option:

MasterCard, Visa, Discover and American Express cards

2.90% per transaction with a minimum fee of \$2.00 based on volume

Electronic check - online WEB payments

Includes Forte Verification for known accounts.

eCheck Transaction Tiers	Fees	Frequency
\$0.00 to \$50,000.00	\$1.75 w/Verification	Per Transaction
\$50,000.01 to \$75,000.00	\$3.00 w/Verification	Per Transaction
\$75,000.01 to \$100,000.00	\$6.00 w/Verification	Per Transaction
\$100,000.01 to \$150,000.00	\$10.00 w/Verification	Per Transaction
\$150,000.01 + \$250,000.00	\$15.00 w/Verification	Per Transaction

Absorbed Pricing Option:

Emerging Market and Public-Sector Rate Structure

Processing Costs:	Fees	Frequency
Option 1. Visa, MasterCard, Discover, American Express	From 2.85% + \$0.20	Per Transaction
Option 2. Visa, MasterCard, Discover	*Pass Thru pricing + \$0.20+ .45bpts*	Per transaction
Option 2. American Express	*Pass Thru pricing + \$0.20	Per Transaction
Forte Protect (End-2-End Encryption)	<mark>\$0.10</mark>	Per transaction
Forte Protect (Key Injection Fee)	\$25.00	One time Per Device
Account Updater (Optional)	\$0.35	Per Transaction
Account Updater (Optional)	\$25.00	Per Month
Credit Card Chargeback Fee	\$25. 00	Per Chargeback
Batch Fee	\$ 0.25	No Charge - Waived
ACH Fee-debits/credits	\$1.00 with Forte Verify	Per Transaction
ACH Return Fee	<mark>\$2.00</mark>	Per Return
Monthly Fee	<mark>\$5.00</mark>	Each Month per Merchant Account
Manual Billing (single bill for multiple merchant accounts)	\$75.00	Monthly

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*Pass Thru pricing includes the direct interchange dues, assessments and all other fees that are charged directly from the associations. Forte Payment Systems believes in transparent pricing, meaning that we utilize a *Pass-Thru Plus* pricing model. Interchange pass thru pricing is a form of credit card processing that allows the actual cost of the processing (*interchange fees & assessments) to be passed directly through to your office. The advantage of this pricing strategy is that it is transparent and, in most instances, provides the lowest processing costs.

Forte's fees include: Total volume processed multiplied by bpts Total # of transactions processed by per item fee

Gateway Only Pricing Option:

Fee Description	Fee	Frequency
Forte Gateway Fee	\$0.20	Per Transaction
Monthly Gateway Fee	\$19.95	Per Merchant ID

Equipment and Service Pricing:

The following table reflects our Equipment and Service Offerings

Standard Product	Description	Fees and Cost of Equipment
VeriFone V400c Terminal (Hybrid with cables)		\$399.00 per terminal plus shipping
MagTek eDynamo and Counter-Top Docking Station Bundle (recommended)		\$199/Device with Docking station plus shipping

Select pricing option(s) desired: Absorbed Pricing
Service Fee Pricing
Gateway Only Pricing

Option 1
Option2
Dual Bill
Image: Comparison of the service of

CITY OF LYNDEN

EXECUTIVE SUMMARY - City Council



Meeting Date:	April 17, 2023	
Name of Agenda Item:	Public Works Committee Meeting Minutes April 5, 2023	
Section of Agenda:	Other Business	
Department:	Public Works	
Council Committee Rev	<u>iew:</u>	Legal Review:
Community Development Development Development		□ Yes - Reviewed
□ Finance	🛛 Public Works	No - Not Reviewed
□ Parks	□ Other:	☑ Review Not Required
Attachments:		
April 5, 2023 Draft Public Works Committee Meeting Minutes.		
Summary Statement:		
Draft minutes for the April 5, 2023 Public Works Committee meeting.		
Recommended Action:		
For Review		

CITY OF LYNDEN

PUBLIC WORKS DEPARTMENT 360-354-3446



PUBLIC WORKS COMMITTEE MINUTES

4:00 PM April 5, 2023 City Hall 2nd Floor Large Conference Room

CALL TO ORDER

- Members Present: Mayor Scott Korthuis, Councilors Gary Bode, Ron De Valois
- Members Absent: Jerry Kuiken, with notice
- Staff Present: City Administrator John Williams; Public Works Director Steve Banham; Programs Manager Mark Sandal; and Sr. Admin. Assistant Jessica King
- Public Present: Gary Vis, Bill Stoelt, Tom Martin, Eric Kilcup, Thomas Schatte, Shane Bajema, Mary Lou Childs, John Mercer, Dakota Stranik, Lesa Kroontje

ACTION ITEMS

1. Approve Minutes from March 8, 2023 Kuiken motioned to approve the minutes and Bode seconded the motion.

Action

The minutes from March 8, 2023, were approved.

2. Duffner Mobile Home Park - Front Street Improvements

Banham summarized the amendment to the existing Duffner Mobile Home Park agreement for right of way and conditional use permit requirements.

Kroontje, representing Duffner Mobile Home Park, said that the agreement addresses the two concerns that they were most interested in: adding additional units and clarifying street improvement requirements. She was concerned about the agreement being confusing regarding the conditional use permit requirements. She suggested that the current amendment makes it difficult to enforce the road condition requirements at a later date, but they would accept the amendment changes.

<u>Action</u>

The Public Works Committee concurred to recommend forwarding the Duffner Mobile Home Park - Front Street Improvements Amendment to City Council for approval.

3. Schedule Public Works Committee Meeting for May 24

Banham explained that he would like to schedule a second Public Works Committee meeting for May 24. The Committee discussed making this a Special City Council Meeting to have the opportunity to introduce the full City Council to the Design-Build

contract and economics for the Wastewater Treatment Plant Maintenance Building project. The meeting will be used to discuss the number of storage bays and their potential use.

<u>Action</u>

The Public Works Committee concurred and recommended that staff schedule a Special City Council Meeting for May 24 to review the Design-Build contract and schedule for the Wastewater Treatment Plant Maintenance Building before bringing it to City Council for approval on June 5th.

4. Six Year Transportation Improvement Plan (STIP 2024-2029) to May 15 City Council Meeting to Set a June 5 Public Hearing Date

Banham briefly discussed an overview of the Six Year Transportation Improvement Plan (STIP 2024-2029). Banham noted that it did include Judson Street, Garden Drive pedestrian, and the FASST Planning Grant.

<u>Action</u>

The Public Works Committee concurred to recommend forwarding the Six Year Transportation Improvement Plan (STIP 2024-2029) to the May 15 City Council Meeting to set a June 5 Public Hearing Date.

5. Extend Interlocal Agreement with Whatcom County Rural Library District for Additional Ten-Year Term

Williams said the City attorney drafted an extension to the Interlocal Agreement with the Whatcom County Rural Library District. Williams further explained that the only changes were to the insurance provisions to increase them to meet the requirements of the City's insurer.

<u>Action</u>

The Public Works Committee concurred to recommend forwarding the Interlocal Agreement with the Whatcom County Rural Library District to City Council for approval.

6. Request to Bring Jim Kaemingk Sr. Trail - Depot to 8th Bids Directly to April 17 City Council Meeting

Sandal said that there has been good interest in this project and bidding opens on April 6 at 1:00 p.m. This will also be presented to the Parks Committee for review on April 17th. [Note: Bids were opened and the bid tabulation was forwarded to Public Works Committee on April 11.]

<u>Action</u>

The Public Works Committee concurred to recommend forwarding the Jim Kaemingk Sr. Trail - Depot to 8th bid directly to the April 17 City Council Meeting for approval upon review by the Public Works Committee.

7. Berthusen Water Association Wholesale Water Supply Agreement

Banham gave a small introduction to the changes and discussion that had been made with the City attorney regarding the Berthusen Water Association Wholesale Water Supply Agreement. He noted that the attorney added the following provisions to the agreement: fire flow, groundwater right transfer, and curtailment under water right adjudication or other flow restrictions. Kroontje said that although she appreciates the effort by Public Works staff to move this agreement forward, the Berthusen Water Association is not comfortable with the all the markups and changes.

She stated there needs to be clarification on three issues:

1. The way in which water rights works and the annexed rights gets turned over to the City (due to agricultural users),

2. Monthly maximum water use (annual versus monthly) due to significant fluctuations during the year due to agricultural use.

3. The term of the agreement being 25 years versus 60 years.

She requested a few more weeks to edit the agreement with the Berthusen Water association with the hopes of having this addressed before the end of June. Kroontje said a redline copy will be provided to Banham and the City attorney's office.

Action

The Public Works Committee concurred to delay forwarding this agreement to City Council until these issues can be resolved.

8. Lynden Farmers Market Request to Use 4th Street Parking Lot Use During Raspberry Festival

Banham introduced Dakota Stranik, representing the Lynden Farmer's Market. Banham explained that on the Lynden Farmers Market's special event application, there was a request to use the 4th Street parking lot in addition to Centennial Park or relocate to the Library parking lot during the Raspberry Festival. Banham said that the Raspberry Festival already has authorization to use Centennial Park and the 4th Street parking lot. The Library has control of their parking lot, so the Farmers Market would have to get an agreement from them to use their parking lot during the Raspberry Festival.

Stranik explained that the market is expanding and that's why she was hoping they could use the 4th Street parking lot in addition to Centennial Park. They are talking with the Library about their parking lot.

Stranik asked if the City offers a recurring permit instead of having to re-apply every year. Williams stated that annual renewals are required. Bode explained the need to be consistent when giving special events to private businesses.

<u>Action</u>

The Public Works Committee advised the Farmers Market that they would not be able to use Centennial Park or the 4th Street parking lot during the Raspberry Festival during the City Council's commitment to the Festival. They recommended checking with other sources for event space during the Raspberry Festival. The use of the 4th Street parking lot would be on a case-by-case basis on a separate application.

9. Downtown Restroom Security

Bode explained that one of his customers came to him to let him know that he had experienced some unsavory business propositions in the men's restroom during the day recently. Bode proposed that a security camera be installed outside the restroom area. Korthuis asked who would maintain the security camera records.

Williams explained that the camera records are accessible by law enforcement. Currently there is plain clothes policeman monitoring the restroom area. Williams is working with the police chief on this matter. Camera access can be made public or kept for law enforcement purposes.

Action

The Public Works Committee concurred to have staff work with the Police Department to obtain an estimate of the cost of security camera(s) to be located by the downtown restrooms.

INFORMATION ITEMS

10. Airport Related Development on Benson Road

Bode introduced Mary Lou Childs and Shane Bajema. Bajema presented a layout for 14 hangar homes on the five-acre property just north of the Runway Safety Area on the west side of Benson Road. To do this, he would need to create a taxiway across Benson Road. A gating system would need to be installed for the airplanes to cross Benson Road, similar to a pedestrian or railroad crossing. Martin added that crossings like this are at Merrill Field in Alaska and in Vancouver, B.C.

Bajema pointed out the opportunity for business growth related to his development.

Bajema wants to utilize the runway safety area for stormwater, recognizing that standing water will not be acceptable because it attracts waterfowl. This would need to be addressed in a development agreement along with the crossing.

Korthuis asked if houses could be built on the south side of the runway safety area. Bajema explained that houses would need to be built outside the runway safety zone.

The Committee expressed interest in the proposal and looks forward to reviewing the development agreement.

11. Downtown Stormwater NPDES Phase 2 Annual Report Submitted Online submission completed March 29, 2023

12. Projects Update

The Committee reviewed the current projects. Banham said a ribbon cutting is being planned for Friday, April 14 for the Main Street Bridge completed project.

NEW BUSINESS:

13. Rustlers' Front Street Grill Proposed Outdoor Dining Area – 405 Front Street

Schatte is requesting to use one parking space next to the gravel area on their property for outdoor dining. They would like to add outdoor dining on the east side in the 4th Street right-of-way along with an upgrade to the building's façade. Vis said that there is an increased demand for outdoor dining.

Bode asked how an agreement would be written, and staff said use of the parking space could be similar to what was done on the 7th Street parking lot for the Newsroom Pub.

The Committee expressed support, but also requested more detail from Rustlers'.

14. Cedar Drive Neighborhood Meeting Update

Committee members asked how the Cedar Drive neighborhood meeting went. Staff described the meeting and creation of a list of questions and answers provided to the neighborhood. The Committee requested a copy.

Staff also mentioned that materials for that meeting are available on the City's website.

ADJOURNMENT: The meeting was adjourned at 6:03 pm.

NEXT MEETING: May 3, 2023

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	April 17, 2023		
Name of Agenda Item:	Calendar		
Section of Agenda:	Other Business		
Department:	Administration	Administration	
Council Committee Review	w: Legal Review:		
□ Community Development	Public Safety	□ Yes - Reviewed	
Finance	Public Works	No - Not Reviewed	
□ Parks	⊠ Other: N/A	Review Not Required	
Attachments:			
Calendar			
Summary Statement:			
Calendar			
Recommended Action:			
Not an action item, informat	tion only.		

April 17, 2023 Monday		
I:00 PM - 5:00 PM	Copy: Parks Committee Meeting City Hall 1st Floor Large Conference Room	
7:00 PM - 9:00 PM	Copy: City Council Meeting Annex Council Chamber	
April 18, 2023 Tuesday		
9:00 AM - 11:00 AM	Small Cities Meeting City Hall 1st Floor Large Conference Room	
10:00 AM - 11:00 AM	Copy: Airport Board Meeting City Hall 2nd Floor Large Conference Room Welcome Board Members & Guests,	
	The Airport board meeting will be <u>in person</u> at City Hall, 2 nd Floor Conference room. The meeting takes place the third Tuesday of each month at 10:00 A.M.	
4:30 PM - 5:30 PM	Copy: Civil Service Meeting City Hall 1st Floor Large Conference Room	
April 19, 2023 Wednesday		
3:00 AM - 5:00 PM	Possible Jury Trial Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room	ce
4:00 PM - 6:00 PM	Community Development Committee City Hall 2nd Floor Large Conference Room	

April 25, 2023

Tuesday

9:00 AM - 10:00 AM

Leadership Team Meeting -- City Hall 1st Floor Large Conference Room

April 26, 2023 Wednesday	
8:30 AM - 5:00 PM	Court Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room
April 27, 2023 Thursday	
7:00 PM - 10:00 PM	Planning Commission Annex Council Chamber
May 1, 2023 Monday	
7:00 PM - 9:00 PM	Copy: City Council Meeting Annex Council Chamber

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