CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
January 18, 2022 6:00 PM

The City of Sumner looks forward to welcoming members of the public to its meetings in-person, but until further notice will continue to conduct its meetings 100% virtually, using the ZOOM platform. The public is invited to attend using the ZOOM meeting access information below:

Please click the link below to join the webinar:
https://sumnerwa-gov.zoom.us/j/81196451279
Or One tap mobile :
US: +12532158782,,81196451279# or +16699006833,,81196451279#
Or Telephone:
Dial: +1 253 215 8782
Webinar ID: 811 9645 1279

CALL TO ORDER

Pledge of Allegiance

Invocation - Lance Schinkal

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

The following items are distributed to Councilmembers in advance for study and review, and the recommended actions will be accepted in a single motion. Any item may be removed for further discussion if requested by a Councilmember.

CONSENT AGENDA

1. Approval of checks and electronic payments in the amount of $987,571.99.
2. Approval of the minutes from the regular council meeting of January 3, 2022 and January 10, 2022, study session.
3. Resolution No. 1607 - Accept Pierce County LTAC Grant (Stay in Sumner Campaign)
4. Resolution No. 1609 - Accept Pierce County LTAC Grant (Sumner Main Street Design Project)
5. Associate Engineer Compensation Approval
6. WWTF Biosolids Equipment Modernization - Consultant Services Agreement
7. Water Rights Pilot Project - Consultant Amendment
8. Finance & Personnel Committee Members

PUBLIC HEARING

REGULAR BUSINESS

1. **Unfinished Business**
2. **Public Comment (Limit 3 minutes)**
   Members of the community who wish to give public comment are strongly encouraged to join the meeting via the ZOOM link or by telephone. If you are unable to join the meeting, please submit your

public comment in writing via email to the City Clerk at Michellec@sumnerwa.gov no later than 5:30pm on the date of the meeting. Any written comments received will be read into the record and provided to the City Council. Please contact the City Clerk at 253-299-5590 with any questions.

3. **New Business**

a. Ordinance No. 2804 - 2021/2022 Biennial Budget Amendment

b. Resolution No. 1610 - Puget Sound Acquisition and Restoration Grant Acceptance

c. Ordinance No. 2809 - Amending Sumner Municipal Code Chapter 1.18 - Public Records

4. **Reports**

   a. Council

   b. City Administrator

   c. Mayor

5. **Executive Session**

6. **Adjournment**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact the City Clerk at (253) 299-5590, 24 hours in advance.

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-1879

SUBJECT: Approval of checks and electronic payments in the amount of $987,571.99. **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
1. Voucher -Signature Page

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Checks and electronic payments in the amount of $987,571.99.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Approve as presented.

CITY OF SUMNER WASHINGTON

CLAIMS VOUCHER APPROVAL

City of Sumner Finance Department

The following check/electronic payments are approved for payment:

Accounts Payable Check #:	From: 27300	To: 27408	$195,491.48 *
AP Electronic (EFTs) Payments:	From: 311	To: 320	$22,702.99
AP Wire(s):	From: 15151	To: 15153	$658.75
Payroll DD Numbers:	From: 50316	To: 50443, 4083	$362,712.66
Payroll Check(s):	From: 46630	To: 46630	$7,931.56
Payroll Wire(s):	From: 4080 - 4082	To: 4084 - 4092	$398,074.55
		TOTAL	$987,571.99

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the service rendered, or the labor performed as described herein, and that the claim is a just, due, and unpaid obligation against the City of Sumner and I am authorized to authenticate and certify to said claim.

DocuSigned by: Kassandra Raymond
9A5D5E5EBAEC4A5...
Chief Financial Officer — Date: 12/29/2021 | 11:37 PM PST

We, the undersigned Finance & Personnel Committee of the Sumner City Council, Sumner, Washington, do hereby certify that the check numbers and electronic payments listed above are approved for payment in the amount of $987,571.99 this 20th day of December 2021.

DocuSigned by:
708BA263DF964E7...
Chair — Date: 1/8/2022 | 12:24 PM PST

DocuSigned by: Charla Neuman
33EBD031560F4F4...
Member — Date: 1/4/2022 | 2:05 PM PST

DocuSigned by: Barbara Bitetto
74E2EC62EDD845C...
Member — Date: 12/29/2021 | 3:51 PM PST

* Includes $180.71 in Use Tax and ($0.00) in Check Voids.

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-1880

SUBJECT: Approval of the minutes from the regular council meeting of January 3, 2022 and January 10, 2022, study session.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Regular Council Meeting minutes - January 3, 2022
2. Study Session Minutes - January 10, 2022

STAFF CONTACT:

SUMMARY BACKGROUND:

Meeing minutes from the previous two council meetings.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve as written.

CITY OF SUMNER
Council Meeting
Minutes – January 3, 2022

The Covid-19 pandemic continues to impact the health and safety of our community. In an effort to be diligent, the city is continuing to conduct all public meetings virtually, using the ZOOM platform. Access information can be located on the city's website, and on each meeting agenda. As the pandemic evolves, and when it is safe to do so, we look forward to welcoming everyone back to City Hall for in-person and hybrid meetings in our newly renovated council chambers.

CALL TO ORDER

The Sumner City Council met in regular session at 6:00pm, with Mayor Kathy Hayden presiding.

Staff present via electronic device: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community Development Director Ryan Windish, Administrative Services Director Jeff Steffens, Police Chief Brad Moericke, Deputy City Attorney Maili Barber, Communications Director Carmen Palmer, City Engineer Michael Kosa, Chief Financial Officer Kassandra Raymond, Development Services Director Doug Beagle, and City Clerk Michelle Converse

Mayor and Councilmembers present via electronic device: Mayor Kathy Hayden, Councilmembers Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

Mayor Hayden commented how we would administer the Oath of Office at the first regular meeting of the year, but this year we chose to conduct this late in in December to allow for the public and family members to attend. Mayor Hayden is pleased to be our new Mayor and welcomed back Councilmember Bitetto and newly elected Councilmembers Cole and Stuard. She also welcomed our new Municipal Court Judge, Krista Swain, who was confirmed by council at the December 6, 2021, regular meeting.

CONSENT AGENDA

MOVED BYHOCHSTATTER, SECONDED BY STUARD TO APPROVE THE CONSENT AGENDA CONSISTING OF:
1. Approval of the minutes of the December 6, 2021, regular council meeting
2. Approval of checks and electronic payments in the amount of $1,535,464.23
3. Sumner Tapps Guardrail Upgrade – Construction Contract

Passed by voice vote.

PUBLIC HEARING

There was no Public Hearing.

UNFINISHED BUSINESS

There was none tonight.

PUBLIC COMMENT

Rachel Oberg, acting chair of Sumner Healthy Neighborhood Association spoke against gas stations allowed within 500 feet of a residence.

Monica Hillard, 154th Avenue East. Concerned about the health impacts of gas stations within 500 feet of residences.

NEW BUSINESS

2022 Deputy Mayor Selection

Mayor Hayden called on City Administrator Jason Wilson to lead the selection process for Deputy Mayor.

Per the Council Rules Section 19. Below:

Section 19. Deputy Mayor Selection Process and Duties

19.1 The Deputy Mayor shall be elected to a one (1) year term at the first Regular Council meeting in January of each year. The Mayor shall conduct the election for the Deputy Mayor.

19.2 The Mayor shall preside at all meetings of the Council, and in the absence of the Mayor, the Deputy Mayor will act in that capacity, following established procedures and directives provided in Section 10 of the Council Rules for the Mayor. If both the Mayor and Deputy Mayor are absent, the Councilmembers present shall elect one of its members to serve as Presiding Officer until the return of the Mayor or Deputy Mayor.

For this action, the Mayor will accept nominations from the Council and those nominations will be voted upon.

COUNCILMEMBER STUARD NOMINATED COUNCILMEMBER HOCHSTATTER. With no additional nominations put forth, the MOTION TO CLOSE NOMINATIONS WAS MADE BY STUARD AND SECONDED BY BITETTO.

MAYOR HAYDEN THEN CALLED FOR A ROLL CALL VOTE, COUNCIL UNANIMOUSLY APPROVED COUNCILMEMBER HOCHSTATTER AS THE DEPUTY MAYOR FOR A TERM OF ONE YEAR ENDING DECEMBER 2022.

2022/2023 Committee Selection

Mayor Hayden called on City Administrator Jason Wilson to lead the selection process.

Per the Council Rules, Section 20 – City Council Committees, committee members are to be selected every two years, on even numbered years. Historically this has been accomplished by choosing committee assignments based on seniority. Seniority is as indicated below:

Councilmember	Took Office	Current Committees
Curt Brown	2004	Public Safety, Community Development, Public Works
Cindi Hochstatter	2008	Community Development, Finance & Personnel (Alt.), Public Works, American Rescue Plan
Patrick Reed	2016	Finance & Personnel, Public Safety (Alt.), American Rescue Plan

Barbara Bitetto	2018	Finance & Personnel, Public Safety, American Rescue Plan (Alt.)
Charla Neuman	2020	Finance & Personnel, Public Works
Earl Stuard	2022	
Pat Cole	2022	

As directed by the Mayor and based on the above seniority, Councilmembers will make their first selection for a committee then begin again with the most senior Councilmember, choosing either a second committee seat or an alternate position. The process will continue until all available seats on each Council committee and the alternate positions for each are filled. For Councilmembers Cole and Stuard who have equal seniority, a coin flip (at their request) determined the selection order. For 2022 the order was Stuard and then Cole. In 2024 it will switch to Cole then Stuard.

Meeting times and chair positions are agreed upon by committee members at their first meeting.

2022-2023 Committee Assignments are as followed:
American Rescue Plan – Neuman, Hochstatter, Reed, Alt. Bitetto
Finance and Personnel – Reed, Bitetto, Stuard, Alt. Cole
Public Works – Brown, Stuard, Neuman, Alt. Bitetto
Community Development – Brown, Neuman, Hochstatter, Alt. Cole
Public Safety – Cole, Reed, Bitetto, Alt. Brown
City Lodging Tax Advisory Committee – Hochstatter, Alt. Reed

Rainier Cable Commission Selection
Mayor Hayden called on City Administrator Jason Wilson to assist Council through the process.

Per the Council Rules Section 21 – Appointments to Regional Organizations (below).

Council can appoint representatives to regional organizations.

21.1(d) When the Council has the authority to make direct appointment to a regional committee, discussion shall take place with the full Council to determine interest. The Mayor or Councilmember receiving a majority vote will represent the City on that regional body.

21.1(e) Changes in representation to regional committees where the Council has the authority to make a direct appointment shall also be determined through full Council discussion and majority vote of the Council.

Meetings are held at 8:00am on the third Wednesday, bi-monthly - January, March, May, July, September and November. The term of office shall be for two years, and representatives may be reappointed or changed at the discretion of the City. The RCC also recommends appointing an alternate who would attend meetings on behalf of the City in the absence of the appointed representative.

MAYOR HAYDEN THEN CALLED FOR NOMINATIONS. COUNCILMEMBER NEUMAN NOMINATED COUNCILMEMBER COLE.

NOMINATIONS WERE CLOSED, AND THE VOTE WAS TAKEN. COUNCILMEMBER COLE WAS APPOINTED TO THE RAINIER CABLE COMMISSION WITH A ROLL CALL VOTE. Her term will end December 2023.

After discussion, Council opted not to appoint an alternate to the committee.

Pierce County Regional Council Representation Selection
City Administrator Jason Wilson spoke to the Council regarding the topic.

When the Growth Management Act (GMA) passed in 1990, it mandated that cities and counties plan for growth collaboratively. In 1991, Pierce County created the Growth Management Steering Committee consisting of elected officials from every city in the County. The Port of Tacoma and the Library District also participate. In 1998, the steering committee was changed to the Pierce County Regional Council (PCRC) and continued its role in maintaining countywide planning policies. The PCRC also makes recommendations on allocation of certain federal transportation grants.

The appointment is for two years. The member and alternate(s) must be elected officials representing the member agency. There is no limit to the number of alternates the City can appoint. A member jurisdiction can select its representative(s) and designated alternate(s) by its own appropriate process.

Per the Council Rules Section 21 – Appointments to Regional Organizations (below), Council can appoint representatives to regional organizations.

21.1(d) When the Council has the authority to make direct appointment to a regional committee, discussion shall take place with the full Council to determine interest. The Mayor or Councilmember receiving a majority vote will represent the City on that regional body.

21.1(e) Changes in representation to regional committees where the Council has the authority to make a direct appointment shall also be determined through full Council discussion and majority vote of the Council.

In the past, Sumner has chosen their representative and alternate through a selection process at the first Regular Council Meeting of the year.

MAYOR HAYDEN TOOK NOMINATIONS FOR THE REGIONAL COUNCIL REPRESENTATIVE.

COUNCILMEMBER HOCHSTATTER NOMINATED COUNCILMEMBER NEUMAN.
COUNCILMEMBER BITETTO NOMINATED COUNCILMEMBER REED.

MOVED BY COLE SECONDED BY BROWN.

MAYOR HAYDEN CALLED FOR A ROLL CALL VOTE.
COUNCILMEMBERS WHO VOTED FOR NEUMAN: NEUMAN, COLE AND HOCHSTATTER
COUNCILMEMBERS WHO VOTED FOR REED: REED, BROWN, BITETTO AND STUARD.

COUNCILMEMBER REED WILL REPRESENT SUMNER ON THE PIERCE COUNTY REGIONAL COUNCIL.

MAYOR HAYDEN THEN CALLED FOR NOMINATIONS FOR AN ALTERNATE.
COUNCILMEMBER BROWN NOMINATED NEUMAN, SECONDED BY BITETTO.
PASSED BY ROLL CALL VOTE.

COUNCILMEMBER NEUMAN WILL REPRESENT SUMNER ON THE PIERCE COUNTY REGIONAL COUNCIL AS THE ALTERNATE.

Principles of Conduct
MOVED BY NEUMAN SECONDED BY HOCHSTATTER TO ADOPT THE PRINCIPLES OF CONDUCT.

The Principles of Conduct were drafted in 2011 as an acceptable code of conduct for Councilmembers in and out of the Council meetings in relation to City business. It has been the practice of the Council to pass a motion to accept and sign the Principles of Conduct every two years or when new members are added to the Council.

Discussion ensued.

MOVED BY HOCHSTATTER TO REFER THIS ITEM TO THE STUDY SESSION OF JANUARY 10, 2022, FOR FURTHER DISCUSSION. SECONDED BY NEUMAN.

Discussion ensued.

PASSED BY ROLL CALL VOTE.

Ordinance No. 2805 - Amending Special Events Code - Sumner Municipal Code 12.52
MOVED BY HOCHSTATTER, SECONDED BY BROWN TO ADOPT ORDINANCE NO. 2805 AMENDING THE SPECIAL EVENTS PERMIT CODE SUMNER MUNICIPAL CODE -12.52.

Community Development Director Ryan Windish addressed the Council.

Special event permits are required for large community and public events that may impact traffic, businesses, residents and require city services such as street closures. A special event permit allows for the city to address potential negative impacts and coordinate services to have a successful event. Ordinance No. 2805 contains code amendments that would increase fees to address increases in city costs, amends the definition for a "special event" to include vehicle related events such as cruising events, and makes other minor amendments. Note: The Special Events Fee Schedule is approved administratively and not part of Ordinance No. 2805 and is for reference only.

Discussion ensued.

PASSED BY ROLL CALL VOTE.

Ordinance No. 2806 - Adding the Lucy V. Ryan Park as a City Park
MOVED BY BROWN SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2806 – ADDING THE LUCY V. RYAN PARK AS A CITY PARK.

Ryan Windish addressed the council.

The Lucy V. Ryan Park, which also contains the "Ryan House", was deeded to the city in 1926 with covenants and restrictions retaining it as a city park by the Ryan family. In accordance with the 1926 deed and its 1979 amendment, Lucy V. Ryan Park shall remain open and accessible for use by the public. The city works with public and private partners to establish short and long-term leases using the facility, in accordance with the deeds, and maximize its ability to remain open and accessible to the public for recreation and gathering, either through use agreements or as outlined by the Special Event Permit process. Ordinance No. 2806 would add Lucy V. Ryan Park to the list of city parks in the Sumner Municipal Code and establish specific rules for said park.

Discussion ensued.

COUNCILMEMBER NEUMAN MOVED TO REMOVE THE PRIORITIZATION LANGUAGE IN THE ORDINANCE. COUNCILMEMBER COLE SECONDED.

AFTER DISCUSSION AND CLARIFYING QUESTIONS, COUNCILMEMBER NEUMAN RESCINDED HER ORIGINAL MOTION AND MOVED TO RETURN THIS ITEM TO COMMITTEE. COUNCILMEMBER REED SECONDED.

PASSED BY ROLL CALL VOTE.

COUNCIL REPORTS

Councilmember Stuard thanked City staff for the prompt response of snow removal from the roads. He also thanked the citizens who spoke during Public Comment.

Councilmember Bitetto welcomed new Councilmembers.

Councilmember Reed echoed Bitetto's comments and wished everyone a happy new year!

Councilmember Cole is happy to be a part of the Council and is looking forward to it.

Councilmember Brown is tired of the white stuff and it was nice to see pavement.

Councilmember Neuman is looking forward to working with new Councilmembers. Everyone needs to keep being safe and protect themselves and others against COVID.

Councilmember Hochstatter welcomed new Councilmembers, they are joining a great team.

CITY ADMINISTRATOR

City Administrator Jason Wilson updated council with the following:

Upcoming Policy Issues:

- Next Week's Study Session:
  - Operations Facility Update

- Next Regular Council Meeting on Tuesday January 18th:

- Resolution approving an ILA with Bonney Lake for building inspector services
- Ordinance amending the Public Records Act Code
- Resolution accepting a PSAR Grant for the White River Restoration Project
- Ordinance amending the Contract Approval Code
- Resolution accepting a Pierce County Lodging Tax Grant Acceptance

Personnel Issues:

- **Recently hired:**

  Records Management Specialist – 1/18 Start Date
  Associate Engineer – pending council approval – 1/19 Start Date
  Information Systems Technician – 1/18 Start Date

- **Current openings:**

  Associate City Engineer
  WWTF Operator
  WWTF Electrician
  Police Officer

MAYOR REPORT

Mayor Hayden thanked everyone for bearing with her during what seemed to be the longest and most confusing meeting ever. It will get better, and she is looking forward to the next four years!

EXECUTIVE SESSION

There was no Executive Session tonight.

ADJOURNMENT

With no further business before the Council, the Mayor adjourned the meeting at 7:14pm. Councilmembers concurred.

ATTEST:

____
Kathy Hayden, Mayor

____
Michelle Converse, CMC City Clerk

SUMNER CITY COUNCIL
Minutes – Study Session
January 10, 2022

The Covid-19 pandemic continues to impact the health and safety of our community. In an effort to be diligent, the city is continuing to conduct all public meetings virtually, using the ZOOM platform. Access information can be located on the city's website, and on each meeting agenda. As the pandemic evolves, and when it is safe to do so, we look forward to welcoming everyone back to City Hall for in-person and hybrid meetings.

The Sumner City Council met in study session at 6:00pm, with Mayor Kathy Hayden presiding.

Councilmembers present: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

Staff present: City Administrator Jason Wilson, Administrative Services Director Jeff Steffens, City Attorney Andrea Marquez, Public Works Director Mike Dahlem, Community Development Director Ryan Windish, Development Services Director Doug Beagle, Chief Financial Officer Kassandra Raymond and Deputy City Attorney Maili Barber.

REGULAR BUSINESS

1. Operation Facility Update
2. Council Code of Conduct

CITY ADMINISTRATOR REPORT

AGENDA SETTING

EXECUTIVE SESSION

ADJOURNMENT
When there was no further business before the Council, the meeting adjourned at 7:33pm.

ATTEST:

______________________________ ______________________________
City Clerk Michelle Converse, CMC Mayor Kathy Hayden

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-27

SUBJECT: Resolution No. 1607 - Accept Pierce County LTAC Grant (Stay in Sumner Campaign)

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Resolution No. 1607 - Grant Acceptance 'Stay in Sumner'

STAFF CONTACT: Carmen Palmer, Communications Director

SUMMARY BACKGROUND:

Of the 7% lodging tax collected at Sumner properties, 2% comes to Sumner for allocation and spending through its shared Hotel-Motel Occupancy Tax while 5% goes to Pierce County for allocation and spending. Each year, Sumner participates in Pierce County's grant process to access a portion of these funds to drive future overnight stays in Sumner, generating future revenue and support for local businesses.

This item accepts one of two 2022 grants, utilizing funds that go to Pierce County. These grants were approved by the Pierce County Lodging Tax Advisory Committee in Spring 2021 and confirmed by the Pierce County Council as part of their budget process in Fall 2021.

This grant is in the Individual Leisure Marketing category for Pierce County tourism grants. It is to promote a marketing campaign to Stay in Sumner when visiting Mount Rainier. Geotracking data from Travel Tacoma shows that Mount Rainier is one of the main destinations for people already staying in Sumner. Using that data, this campaign will drive further visits, using the geotracking data to target specific markets with the goal of generating 900 room nights. When guests book two nights in a participating Sumner hotel, they receive the 7-day pass to visit Mount Rainier for free (one pass per booking, not individual guests, since the pass allows a full vehicle to enter). Partners for this campaign include Sumner's Holiday Inn Express & Suites, Travel Tacoma and Visit Rainier. This funding is for advertising, collateral and fulfillment. The Sumner Lodging Tax group allocated a companion $13,000 to purchase the passes, a cost that the Sumner City Council confirmed in the mid-biennial budget adjustment in December 2021.

COUNCIL COMMITTEE/STUDY SESSION: Finance and Personnel Committee
MEETING/STUDY SESSION DATE: 1/5/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion adopting Resolution No. 1607, accepting the 2022 Pierce County Lodging Tax Grant of $35,000 for the Stay in Sumner campaign and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the contract, substantially in a form as approved by the City Attorney.

RESOLUTION NO. 1607
CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY OF SUMNER, WASHINGTON, ACCEPTING A GRANT FROM PIERCE COUNTY

WHEREAS, Pierce County Lodging Tax grants help us use some of the funds collected in Sumner to encourage more overnight stays that support local businesses and the economy; and

WHEREAS, to help accomplish and fund the Stay in Sumner marketing campaign, the City of Sumner applied for Pierce County's Lodging Tax grant; and

WHEREAS, our application for $35,000 was submitted in April 2021, received approval by the Pierce County Lodging Tax Advisory Committee in May 2021, and was confirmed by Pierce County Council in their biennial budget in Fall 2021; and

WHEREAS, City Council acceptance of the grant and authorization for the Mayor to execute a grant agreement is required by law; and

WHEREAS, it is in the City's interests to accept the grant funds and enter into any necessary grant agreements regarding the same.

NOW, THEREFORE, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:**

Section 1. That the City Council of the City of Sumner, Washington, does hereby accept the Stay in Sumner grant and authorizes the Mayor to execute any necessary funding agreements, and any and all documents necessary to carry out and effectuate the grant acceptance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. Effective Date. This resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED AND APPROVED this January 18, 2022.

____
Kathy Hayden, Mayor

Attest:

Approved as to form:

____
Michelle Converse, City Clerk

____
Andrea J. Marquez, City Attorney

Title:	Stay in Sumner Campaign
Funding Source:	Tourism 170-00
Start Date:	January 1, 2022
End Date:	December 31, 2022
FY/$:	FY 22 $35,000
Contractor:	City of Sumner
Address:	1104 Maple St Sumner, WA 98390
Contact:	Carmen Palmer
Telephone:	(253) 299-5503
Email:	carmenp@sumnerwa.gov

PUBLIC BENEFIT AGREEMENT

City of Sumner, hereinafter called Contractor, and Pierce County, hereinafter called County**,** agree as set forth in this Agreement, including:

I. General Terms and Conditions,
II. Statement of Work, and
III. Compensation.

The term of this Agreement shall commence on January 1, 2022 and shall, unless terminated or renewed elsewhere in the Agreement, terminate on December 31, 2022.

The maximum consideration for the initial term of this Agreement or for any renewal term shall not exceed $35,000 (Thirty-Five Thousand dollars and 00/100).

Contractor acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs D, F, K, L, R, and AA of Section I, are totally and fully part of this Agreement and have been mutually negotiated by the parties.

I. GENERAL TERMS AND CONDITIONS

A. Scope of Contractor's Services.

The Contractor agrees to provide to the County services and any materials set forth in Section II, Statement of Work during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

B. Accounting and Payment for Contractor Services.

1. Payment to the Contractor for services rendered under this Agreement shall be as set forth in Section III, Compensation and Financial Requirements. Where this Agreement requires payments by Pierce County, payment shall be based upon billings, supported by documentation of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless approved in writing in advance by the official executing this Agreement for Pierce County, (hereinafter referred to as the "**Contracting Officer**") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this Agreement.
2. Where required, the County shall, upon receipt of appropriate documentation,

compensate the Contractor no more often than MONTHLY through the County voucher system for the Contractor's service as set forth in the Budget attached to and incorporated in this Agreement.

C. Assignment and Subcontracting.

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer.

D. Independent Contractor.

1. The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.
2. The Contractor acknowledges that the entire compensation for this Agreement is specified in Section III and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Pierce County employees. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this Agreement to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.
3. Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

E. No Guarantee of Employment.

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

F. Taxes.

1. The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.
2. The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's

gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

G. Insurance Requirements

1. Throughout the life of this Agreement the Contractor and its Subcontractors shall, at their own expense, maintain general liability insurance with an insurance carrier licensed to do business in the State of Washington, and with minimum coverage as follows: Bodily Injury Liability and Property Damage Liability Insurance, $1,000,000 each occurrence and $2,000,000 aggregate, with a deductible of not greater than $5,000.
2. Where automobiles are used in conjunction with the performance of this Agreement throughout the life of this Agreement the Contractor and its Subcontractors shall, at their own expense, maintain automobile liability insurance with an insurance carrier licensed to do business in the State of Washington and with minimum coverage as follows: Bodily Injury Liability and Property Damage Liability Insurance, $1,000,000 each occurrence or combined single limit coverage of $1,000,000.
3. General liability insurance and, if applicable, automobile liability insurance coverage shall be provided under a comprehensive general and automobile liability form of insurance, such as is usual to the practice of the insurance industry, including, but not limited to all usual coverage referred to as Personal Injury--including coverage A, B and C. If applicable, automobile liability insurance shall include coverage for owned, non-owned, leased or hired vehicles.
4. Pierce County shall be named as an additional insured on all required policies except automobile insurance and all such insurance as is carried by the Contractor shall be primary over any insurance carried by Pierce County. The Contractor shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution.
5. Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor; nor shall Pierce County have an obligation to pay premiums.
6. In the event of nonrenewal or cancellation of or material change in the coverage required, thirty (30) days written notice will be furnished Pierce County prior to the date of cancellation, change or nonrenewal, such notice to be sent to the Pierce County Risk Manager, 955 Tacoma Ave South, Suite 303, Tacoma, WA 98402.
7. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

H. Bond.

The Contractor shall maintain, throughout the life of this agreement, an annual fidelity or performance bond in an amount not less than 25 percent of the value of this Agreement. Coverage for employee dishonesty in the amount not less than 25 percent of the value of the Agreement may be maintained in lieu of bond.

I. Regulations and Requirement.

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. Unless specifically noted to the contrary, the Contractor shall obtain all permits, authorities and approvals necessary to implement this project.

J. Right to Review.

1. Whenever the value of this Agreement exceeds $25,000, the County may require that the Contractor obtain an agency-wide, or program-wide, basic financial audit. The results of that audit shall be immediately reported to the County.
2. This Agreement is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement.
3. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Pierce County, State of Washington, upon request.

K. Defense & Indemnity Agreement.

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and for damages to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the Contractor's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Contractor or the Contractor's agents or employees

It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

L. Industrial Insurance Waiver.

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

M. Withholding Payment.

In the event the Contracting Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Contracting Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Contracting Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

N. Future Non-Allocation of Funds.

Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payment for services or amounts after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to the County in the event this provision applies.

O. Contractor Commitments, Warranties and Representations.

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

P. Ownership of Items Produced.

All writings, programs, data, public records or other materials prepared by the Contractor and its subcontractors in connection with the performance of this Agreement shall be the sole and absolute property of the County.

Q. Property.

It is the County's policy that non-expendable property required for this project not be purchased with County funds. When specialized equipment is necessary and purchase of such equipment is approved by the Contracting Officer, it shall be detailed in the contract budget. Such property shall be properly accounted for and maintained.

R. Patent/Copyright Infringement.

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

1. That Contractor shall be notified promptly in writing by County of any notice of such claim.
2. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

S. Modifications.

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

T. Termination for Default.

1. If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.
2. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

U. Termination for Public Convenience.

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

V. Disputes.

1. General. Differences between the Contractor and the County, arising under and by

virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

2. Notice of Potential Claims. The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

3. Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

W. Equal Opportunity, Nondiscrimination & Affirmative Action.

The Contractor, its employees, its subcontractors and their employees, by acceptance of this Agreement, certify that they will not engage in any unlawful discrimination, in any work place, during the life of this Agreement.

The Contractor and its subcontractors should make a realistic, good faith effort to employ women, minorities, and Pierce County residents for any new job openings or positions for advancement or training that may become available during the life of this Agreement.

X. Waiver.

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

Y. Waiver of Non-Competition.

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to Pierce County, and Contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to Pierce County.

Z. Official Benefits Prohibited.

No federal, state or local elected or appointed official, nor members of their families, nor their business associates, shall be admitted to any share or part of the funds provided by this Agreement, nor to any benefit to arise therefrom.

The Contractor hereto shall maintain a Code of Conduct which shall govern his/her performance in the award and administration of this, or any other contracts or procurement actions funded in whole or in part by funds made available hereunder. The Contractor shall not participate in the selection, award, or administration of any such contract if a conflict of interest, real or apparent, would exist.

AA. Confidentiality.

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Pierce County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

BB. Notice.

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the contracting Officer and to the County Purchasing Agent, 615 S. 9th, Tacoma, WA 98405-4673. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected below. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

CC. Venue and Choice of Law.

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pierce. This Law of the State of Washington shall govern this Agreement.

DD. Severability.

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

EE. Survival.

The provisions of paragraphs D, E, F, I, J, K, L, M, N, O, P, R, T, U, V, X, Y, AA, and CC of Section I of this Agreement shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

FF. Entire Agreement.

This written Agreement represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

II. STATEMENT OF WORK

A. County Responsibilities.

To accomplish the intent of this agreement, the County:

1. May provide administrative and financial oversight and direction in accordance with established laws and regulations;
2. Shall monitor and evaluate program performance against performance criteria noted in Section B, below;
3. Shall pay, on a timely basis, all requests for payment which are eligible and appropriate for payment and which are supported by sufficient documentation.

B. Contractor Responsibilities.

1. **Scope of work.** The Pierce County Tourism Strategic Plan directs funding recipients to implement programs that support four key priorities: generates incremental overnight stays, leverages proven or identified demand generators, identifies specific target markets, and provides a balanced funding approach via specific funding allocation categories. The Contractor shall plan, administer, implement, and complete the following project(s) in 2022 which support these four priorities:

   - Individual Leisure Marketing: Stay in Sumner Campaign

   Specific budget detail for the project listed above is provided in Attachment 1.

2. If the event or activity related to any of the projects listed above is modified or canceled due to COVID-19 restrictions, Contractor will reduce expenditures or not expend any funds related to the event/project. The Contractor and Economic Development Department staff will communicate at least monthly regarding project and COVID-19 updates to make timely funding adjustments to the projects as necessary.

3. Comply with all noted regulations, requirements and conditions of the Agreement.

4. Evidence contract compliance by accomplishment of the above described project or program in the manner specified and in accordance with the project schedule.

5. Complete reports and provide information as required by the County to demonstrate compliance with regulations, eligibility, goals and objectives including:

   - **Contractor may be asked to provide an in-person presentation to the LTAC Committee regarding project progress; Contractor will be notified by the Economic Development Department regarding date and time of presentation if applicable.**
   - **Provide Quarterly Written Progress Reports using reporting template provided by Pierce County Economic Development Department:**
     - Due by the following dates:
       - April 15, 2022 (covering Jan 1-Mar 31)
       - July 15, 2022 (covering Apr 1-Jun 30)
       - October 15, 2022 (covering Jul 1-Sept 30)
       - January 15, 2023 (covering Oct 1-Dec 31), including a year-end

report card

- **<u>Provide Financial Reports</u>:** N/A
- **<u>State Reporting,</u>** Complete and submit the forms required by the Joint Legislative Audit and Review Committee (JLARC).

III. COMPENSATION AND FINANCIAL REQUIREMENTS

A. <u>Reimbursement.</u>

Contractor agrees to submit reimbursement requests to the County for services rendered under this agreement as follows:

1. Requests shall be submitted on the Contractor's letterhead, and
2. Shall include the Contract No., and
3. Be supported by appropriate documentation of amounts actually incurred, and
4. Where applicable, include actual hours or days worked, and
5. Include the total dollar amount requested.
6. Contractor shall submit payment requests by the 15th of each month following the month in which the expenditures were incurred.

B. <u>Use of Funds.</u>

It is expressly understood that Agreement funds may only be used for expenses, items, activities and costs which are included in the attached Budget. Line item adjustments to the Budget must be in writing and agreed to by the Contracting Officer and the Contractor. County funds shall not be obligated for:

1. Costs incurred prior to the date the Agreement becomes effective unless specifically authorized; or
2. Costs found to be ineligible or inappropriate pursuant to state law and/or applicable regulations.

C. <u>Refunds</u>.

The Contractor shall refund to the County any payment or partial payment expended by the Contractor or its Subcontractors which is subsequently found to be ineligible, inappropriate or illegal. Further, the Contractor shall refund to the County any funds remaining at the end of the period of performance.

D. <u>Multiple Source Funding</u>.

Projects funded by multiple sources, or from multiple funding years shall have relationships and procedures between funding sources clearly documented in the Budget.

IN WITNESS WHEREOF, the parties have executed this Agreement this____day of __________________, 2022.

Contractor must complete the tax status information for the business entity. Corporate name must exactly match that which is registered with the Internal Revenue Service.

☒ **CORPORATION:**

City of Sumner
Print Name of Corporation

____
Signature of Corporate Officer Date

Jason Wilson, City Administrator
Print name and Title of Authorized Signatory

91-6001282 — EIN
277-000-014 — UBI

☐ **PARTNERSHIP:**

____
Name of Partnership

____
Authorized Signatory Date

____
Print name and Title of Authorized Signatory

☐ **SOLE PROPRIETORSHIP**

____
Business Name

____
Print Owner Name

____
Signature of Owner Date

____
Owner SSN/EIN

PIERCE COUNTY:
Approved:

____
Department Director Date

Approved:

____
Finance Date

Approved:

____
County Executive (over $250,000) Date

Approved as to form only:

____
Deputy Prosecuting Attorney Date

ATTACHMENT 1

Public Benefit Agreement Budget
Agreement with: City of Sumner
Project: Stay in Sumner Campaign
FY22 AMOUNT: $35,000

ACTIVITY	**COUNTY**	OTHER	TOTAL
Personnel/Contract Staff (see budget detail on next page)	$ ---	$ ---	$ ---
Administration (see budget detail on next page) ***(insurance is not an eligible cost)***	$ ---	$ ---	$ ---
Marketing (see budget detail on next page)	$35,000	$13,000	$48,000
GRAND TOTAL	**$35,000**	**$13,000**	**$48,000**

Signature: Date: Phone:

Pierce County Lodging Tax
2022 Individual Leisure Marketing Budget Detail
For City of Sumner

Pierce County Lodging Tax (LTAC)	
2022 Individual Leisure Marketing Budget Detail	
For City of Sumner	
Item Description	**Stay in Sumner Campaign**
PERSONNEL:	
Salaries and benefits	-
ADMINISTRATION:	
Administration expenses	-
MARKETING:	
Advertising (social media, display, TV, radio, print, direct mail)	27,000
Collateral Material Design/Development	2,000
Stock photo/video	
Other (specify): Partner with Travel Tacoma for fulfillment/further detailed cell phone data tracking	3,000
Other (specify): Partner with Visit Rainier for fulfillment/promotion	3,000
MARKETING TOTAL:	**$ 35,000**
GRAND TOTAL:	**$ 35,000**

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-28

SUBJECT: Resolution No. 1609 - Accept Pierce County LTAC Grant (Sumner Main Street Design Project)

CATEGORY: Resolution

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Resolution No. 1609 - Grant Acceptance Alley Activation Design

STAFF CONTACT: Carmen Palmer, Communications Director

SUMMARY BACKGROUND:
Of the 7% lodging tax collected at Sumner properties, 2% comes to Sumner for allocation and spending through its shared Hotel-Motel Occupancy Tax while 5% goes to Pierce County for allocation and spending. Each year, Sumner participates in Pierce County's grant process to access a portion of these funds to drive future overnight stays in Sumner, generating future revenue and support for local businesses.

This item accepts the second of two 2022 grants, utilizing funds that go to Pierce County. These grants were approved by the Pierce County Lodging Tax Advisory Committee in Spring 2021 and confirmed by the Pierce County Council as part of their budget process in Fall 2021.

This grant is in the Asset Development category for Pierce County tourism grants and furthers the work done by UW Tacoma for the Main Street Vision by designing one of the three priorities set out by the Vision. When this application was due in April 2021, the Vision process was not yet complete, so the grant application/funding is vague as to which portion. Since then, we have identified that this funding will design the Alley Activation portion of the three recommendations. Most design processes are costing closer to $100,000 now, so Sumner Lodging Tax also allocated another $25,000 if needed to ensure funding was sufficient to complete this design project in 2022. Sumner Lodging Tax also allocated a companion $100,000 for the design of Heritage Park, another portion of the Main Street Vision. Both those allocations were confirmed by Sumner City Council as part of the mid-biennial budget adjustment in December 2021.

COUNCIL COMMITTEE/STUDY SESSION: Finance Committee
MEETING/STUDY SESSION DATE: 1/5/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion accepting the 2022 Pierce County Lodging Tax Grant of $75,000 for Main Street Design and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the contract, substantially in a form as approved by the City Attorney.

RESOLUTION NO. 1609
CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY OF SUMNER, WASHINGTON, ACCEPTING A GRANT FROM PIERCE COUNTY

WHEREAS, Pierce County Lodging Tax grants help us use some of the funds collected in Sumner to encourage more overnight stays that support local businesses and the economy; and

WHEREAS, to help design the alley activation and fund the asset development of the Main Street Vision, the City of Sumner applied for Pierce County's Lodging Tax grant; and

WHEREAS, our application for $75,000 was submitted in April 2021, received approval by the Pierce County Lodging Tax Advisory Committee in May 2021, and was confirmed by Pierce County Council in their biennial budget in Fall 2021; and

WHEREAS, City Council acceptance of the grant and authorization for the Mayor to execute a grant agreement is required by law; and

WHEREAS, it is in the City's interests to accept the grant funds and enter into any necessary grant agreements regarding the same.

NOW, THEREFORE, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:**

Section 1. That the City Council of the City of Sumner, Washington, does hereby accept the Pierce County Lodging Tax - Alley Activation Design grant and authorizes the Mayor to execute any necessary funding agreements, and any and all documents necessary to carry out and effectuate the grant acceptance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. Effective Date. This resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED AND APPROVED this 18th day of January, 2022.

____
Kathy Hayden, Mayor

Attest: Approved as to form:

____________________ ______________________________
Michelle Converse, City Clerk Andrea J. Marquez, City Attorney

Title:	Sumner Main Street Design Project
Funding Source:	Tourism 170-00
Start Date:	January 1, 2022
End Date:	December 31, 2023
FY/$:	FY 22 $75,000
Contractor:	City of Sumner
Address:	1104 Maple St Sumner, WA 98390
Contact:	Carmen Palmer
Telephone:	(253) 299-5503
Email:	carmenp@sumnerwa.gov

PUBLIC BENEFIT AGREEMENT

City of Sumner, hereinafter called Contractor, and Pierce County, hereinafter called County**,** agree as set forth in this Agreement, including:

I. General Terms and Conditions,
II. Statement of Work, and
III. Compensation.

The term of this Agreement shall commence on January 1, 2022 and shall, unless terminated or renewed elsewhere in the Agreement, terminate on December 31, 2023.

The maximum consideration for the initial term of this Agreement or for any renewal term shall not exceed $75,000 (Seventy-Five Thousand dollars and 00/100).

Contractor acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs D, F, K, L, R, and AA of Section I, are totally and fully part of this Agreement and have been mutually negotiated by the parties.

I. GENERAL TERMS AND CONDITIONS

A. Scope of Contractor's Services.

The Contractor agrees to provide to the County services and any materials set forth in Section II, Statement of Work during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

B. Accounting and Payment for Contractor Services.

1. Payment to the Contractor for services rendered under this Agreement shall be as set forth in Section III, Compensation and Financial Requirements. Where this Agreement requires payments by Pierce County, payment shall be based upon billings, supported by documentation of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless approved in writing in advance by the official executing this Agreement for Pierce County, (hereinafter referred to as the "**Contracting Officer**") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this Agreement.
2. Where required, the County shall, upon receipt of appropriate documentation,

compensate the Contractor no more often than MONTHLY through the County voucher system for the Contractor's service as set forth in the Budget attached to and incorporated in this Agreement.

C. Assignment and Subcontracting.

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer.

D. Independent Contractor.

1. The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.
2. The Contractor acknowledges that the entire compensation for this Agreement is specified in Section III and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Pierce County employees. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this Agreement to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.
3. Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

E. No Guarantee of Employment.

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

F. Taxes.

1. The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.
2. The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's

gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

G. Insurance Requirements

1. Throughout the life of this Agreement the Contractor and its Subcontractors shall, at their own expense, maintain general liability insurance with an insurance carrier licensed to do business in the State of Washington, and with minimum coverage as follows: Bodily Injury Liability and Property Damage Liability Insurance, $1,000,000 each occurrence and $2,000,000 aggregate, with a deductible of not greater than $5,000.
2. Where automobiles are used in conjunction with the performance of this Agreement throughout the life of this Agreement the Contractor and its Subcontractors shall, at their own expense, maintain automobile liability insurance with an insurance carrier licensed to do business in the State of Washington and with minimum coverage as follows: Bodily Injury Liability and Property Damage Liability Insurance, $1,000,000 each occurrence or combined single limit coverage of $1,000,000.
3. General liability insurance and, if applicable, automobile liability insurance coverage shall be provided under a comprehensive general and automobile liability form of insurance, such as is usual to the practice of the insurance industry, including, but not limited to all usual coverage referred to as Personal Injury--including coverage A, B and C. If applicable, automobile liability insurance shall include coverage for owned, non-owned, leased or hired vehicles.
4. Pierce County shall be named as an additional insured on all required policies except automobile insurance and all such insurance as is carried by the Contractor shall be primary over any insurance carried by Pierce County. The Contractor shall provide a certificate of insurance to be approved by the County Risk Manager prior to contract execution.
5. Pierce County shall have no obligation to report occurrences unless a claim is filed with the Pierce County Auditor; nor shall Pierce County have an obligation to pay premiums.
6. In the event of nonrenewal or cancellation of or material change in the coverage required, thirty (30) days written notice will be furnished Pierce County prior to the date of cancellation, change or nonrenewal, such notice to be sent to the Pierce County Risk Manager, 955 Tacoma Ave South, Suite 303, Tacoma, WA 98402.
7. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

H. Bond.

The Contractor shall maintain, throughout the life of this agreement, an annual fidelity or performance bond in an amount not less than 25 percent of the value of this Agreement. Coverage for employee dishonesty in the amount not less than 25 percent of the value of the Agreement may be maintained in lieu of bond.

I. Regulations and Requirement.

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. Unless specifically noted to the contrary, the Contractor shall obtain all permits, authorities and approvals necessary to implement this project.

J. Right to Review.

1. Whenever the value of this Agreement exceeds $25,000, the County may require that the Contractor obtain an agency-wide, or program-wide, basic financial audit. The results of that audit shall be immediately reported to the County.
2. This Agreement is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement.
3. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Pierce County, State of Washington, upon request.

K. Defense & Indemnity Agreement.

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elected officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and for damages to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, his/her Subcontractors, its successor or assigns, or its or their agent, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its appointed or elected officials or employees.

The preceding paragraph is valid and enforceable only to the extent of the Contractor's negligence where the damages arise out of services or work in connection with or collateral to, a contract or agreement relative to construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, a contract or agreement for architectural, landscape architectural, engineering, or land surveying services, or a motor carrier transportation contract and where the damages are caused by or result from the concurrent negligence of (i) the County or its agents or employees, and (ii) the Contractor or the Contractor's agents or employees

It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

L. Industrial Insurance Waiver.

With respect to the performance of this Agreement and as to claims against the County, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this Agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

M. Withholding Payment.

In the event the Contracting Officer determines that the Contractor has failed to perform any obligation under this Agreement within the times set forth in this Agreement, then the County may withhold from amounts otherwise due and payable to Contractor the amount determined by the County as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to termination or damages, provided that the County promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the Contracting Officer set forth in a notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The County may act in accordance with any determination of the Contracting Officer which has become conclusive under this clause, without prejudice to any other remedy under the Agreement, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due or to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the County under this clause.

N. Future Non-Allocation of Funds.

Notwithstanding any other terms of this Agreement, if sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payment for services or amounts after the end of the fiscal period through which funds have been appropriated and allocated, unless authorized by county ordinance. No penalty or expense shall accrue to the County in the event this provision applies.

O. Contractor Commitments, Warranties and Representations.

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

P. Ownership of Items Produced.

All writings, programs, data, public records or other materials prepared by the Contractor and its subcontractors in connection with the performance of this Agreement shall be the sole and absolute property of the County.

Q. Property.

It is the County's policy that non-expendable property required for this project not be purchased with County funds. When specialized equipment is necessary and purchase of such equipment is approved by the Contracting Officer, it shall be detailed in the contract budget. Such property shall be properly accounted for and maintained.

R. Patent/Copyright Infringement.

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

1. That Contractor shall be notified promptly in writing by County of any notice of such claim.
2. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement, is made, provided no reduction in performance or loss results to the County.

S. Modifications.

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

T. Termination for Default.

1. If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.
2. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

U. Termination for Public Convenience.

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

V. Disputes.

1. General. Differences between the Contractor and the County, arising under and by

virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

2. Notice of Potential Claims. The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

3. Detailed Claim. The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

W. Equal Opportunity, Nondiscrimination & Affirmative Action.

The Contractor, its employees, its subcontractors and their employees, by acceptance of this Agreement, certify that they will not engage in any unlawful discrimination, in any work place, during the life of this Agreement.

The Contractor and its subcontractors should make a realistic, good faith effort to employ women, minorities, and Pierce County residents for any new job openings or positions for advancement or training that may become available during the life of this Agreement.

X. Waiver.

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

Y. Waiver of Non-Competition.

Contractor irrevocably waives any existing rights which it may have, by contract or otherwise, to require another person or corporation to refrain from submitting a proposal to or performing work or providing supplies to Pierce County, and Contractor further promises that it will not in the future, directly or indirectly, induce or solicit any person or corporation to refrain from submitting a bid or proposal to or from performing work or providing supplies to Pierce County.

Z. Official Benefits Prohibited.

No federal, state or local elected or appointed official, nor members of their families, nor their business associates, shall be admitted to any share or part of the funds provided by this Agreement, nor to any benefit to arise therefrom.

The Contractor hereto shall maintain a Code of Conduct which shall govern his/her performance in the award and administration of this, or any other contracts or procurement actions funded in whole or in part by funds made available hereunder. The Contractor shall not participate in the selection, award, or administration of any such contract if a conflict of interest, real or apparent, would exist.

AA. Confidentiality.

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Pierce County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

BB. Notice.

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the contracting Officer and to the County Purchasing Agent, 615 S. 9th, Tacoma, WA 98405-4673. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected below. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

CC. Venue and Choice of Law.

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Pierce. This Law of the State of Washington shall govern this Agreement.

DD. Severability.

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

EE. Survival.

The provisions of paragraphs D, E, F, I, J, K, L, M, N, O, P, R, T, U, V, X, Y, AA, and CC of Section I of this Agreement shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

FF. Entire Agreement.

This written Agreement represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

II. STATEMENT OF WORK

A. County Responsibilities.

To accomplish the intent of this agreement, the County:

1. May provide administrative and financial oversight and direction in accordance with established laws and regulations;
2. Shall monitor and evaluate program performance against performance criteria noted in Section B, below;
3. Shall pay, on a timely basis, all requests for payment which are eligible and appropriate for payment and which are supported by sufficient documentation.

B. Contractor Responsibilities.

1. **Scope of work.** The Pierce County Tourism Strategic Plan directs funding recipients to implement programs that support four key priorities: generates incremental overnight stays, leverages proven or identified demand generators, identifies specific target markets, and provides a balanced funding approach via specific funding allocation categories. The Contractor shall plan, administer, implement, and complete the following project(s) in 2022 which support these four priorities:

   - Asset Development:
     Sumner Main Street Design Project

   Specific budget detail for the project listed above is provided in Attachment 1.

2. If the event or activity related to any of the projects listed above is modified or canceled due to COVID-19 restrictions, Contractor will reduce expenditures or not expend any funds related to the event/project. The Contractor and Economic Development Department staff will communicate at least monthly regarding project and COVID-19 updates to make timely funding adjustments to the projects as necessary.

3. Comply with all noted regulations, requirements and conditions of the Agreement.

4. Evidence contract compliance by accomplishment of the above described project or program in the manner specified and in accordance with the project schedule.

5. Complete reports and provide information as required by the County to demonstrate compliance with regulations, eligibility, goals and objectives including:

   - **Contractor may be asked to provide an in-person presentation to the LTAC Committee regarding project progress; Contractor will be notified by the Economic Development Department regarding date and time of presentation if applicable.**
   - **Provide Quarterly Written Progress Reports using reporting template provided by Pierce County Economic Development Department:**
     - Due by the following dates:
       - April 15, 2022 (covering Jan 1-Mar 31)
       - July 15, 2022 (covering Apr 1-Jun 30)
       - October 15, 2022 (covering Jul 1-Sept 30)

    - January 15, 2023 (covering Oct 1-Dec 31), including a year-end report card

- **Provide Financial Reports:** N/A
- **State Reporting,** Complete and submit the forms required by the Joint Legislative Audit and Review Committee (JLARC).

III. COMPENSATION AND FINANCIAL REQUIREMENTS

A. Reimbursement.

Contractor agrees to submit reimbursement requests to the County for services rendered under this agreement as follows:

1. Requests shall be submitted on the Contractor's letterhead, and
2. Shall include the Contract No., and
3. Be supported by appropriate documentation of amounts actually incurred, and
4. Where applicable, include actual hours or days worked, and
5. Include the total dollar amount requested.
6. Contractor shall submit payment requests by the 15th of each month following the month in which the expenditures were incurred.

B. Use of Funds.

It is expressly understood that Agreement funds may only be used for expenses, items, activities and costs which are included in the attached Budget. Line item adjustments to the Budget must be in writing and agreed to by the Contracting Officer and the Contractor. County funds shall not be obligated for:

1. Costs incurred prior to the date the Agreement becomes effective unless specifically authorized; or
2. Costs found to be ineligible or inappropriate pursuant to state law and/or applicable regulations.

C. Refunds.

The Contractor shall refund to the County any payment or partial payment expended by the Contractor or its Subcontractors which is subsequently found to be ineligible, inappropriate or illegal. Further, the Contractor shall refund to the County any funds remaining at the end of the period of performance.

D. Multiple Source Funding.

Projects funded by multiple sources, or from multiple funding years shall have relationships and procedures between funding sources clearly documented in the Budget.

IN WITNESS WHEREOF, the parties have executed this Agreement this____day of __________________, 2022.

Contractor must complete the tax status information for the business entity. Corporate name must exactly match that which is registered with the Internal Revenue Service.

☒ **CORPORATION:**

City of Sumner
Print Name of Corporation

____
Signature of Corporate Officer Date

Jason Wilson, City Administrator
Print name and Title of Authorized Signatory

91-6001282 — EIN
277-000-014 — UBI

☐ **PARTNERSHIP:**

____
Name of Partnership

____
Authorized Signatory Date

____
Print name and Title of Authorized Signatory

☐ **SOLE PROPRIETORSHIP**

____
Business Name

____
Print Owner Name

____
Signature of Owner Date

____
Owner SSN/EIN

PIERCE COUNTY:
Approved:

____
Department Director Date

Approved:

____
Finance Date

Approved:

____
County Executive (over $250,000) Date

Approved as to form only:

____
Deputy Prosecuting Attorney Date

ATTACHMENT 1

Public Benefit Agreement Budget
Agreement with: City of Sumner
Project: Sumner Main Street Design Project
FY22 AMOUNT: $75,000

Capital Projects Budget

FUNDING/TIMELINE	Responsible parties, methods, means	Begin (Dates or periods)	End (Dates or periods)	Amount requested from Lodging Funds	Other funds committed -or - proposed	TOTALS
Design & Inspection				$	$	$
Other Consultants	University of Washington Tacoma Urban Studies with KPG	10/01/20	6/15/2021	$ ---	$18,000	$18,000
Permits & Fees				$	$	$
Land Acquisition				$	$	$
Site Development & Landscape	City of Sumner to manage qualified consultant(s)	1/01/22	12/31/022	$75,000	$ ---	$75,000
Buildings (new construction)				$	$	$
Building Renovations (includes access)				$	$	$
Other (specify):				$	$	$
Other (specify):				$	$	$
Other (specify):				$	$	$
TOTAL				**$ 75,000**	**$18,000**	**$93,000**
Signature:			Date:		Phone:	

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-29

SUBJECT: Associate Engineer Compensation Approval **CATEGORY:** Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:

The City has engaged in an open recruitment process for an Associate City Engineer. This position was originally approved as an August 2021 budget amendment. The candidate will be tasked with leading several large Public Works projects, including the White River Restoration, Operations Facility and Stormwater Utility Budget. The top candidate for this position is currently a Resident Engineer for the Port of Seattle, and has worked there since 2013. The City has had difficulty recruiting qualified applicants for this position in what has become a highly competitive job market. To aid with that challenge, we instituted a hiring incentive bonus that matches the one previously established for lateral police applicants. The 2022 compensation schedule range (65) for Associate City Engineer is $8,614 (Step 1) to $10,764 (Step 5). The candidate's current Port of Seattle salary is above our hiring range (even when factoring in the hiring incentive) and the City desires to offer compensation that is commensurate with this candidate's background, education, and experience. Personnel Polices adopted by the Council (2.100.310) requires Council approval for any newly hired employee starting above step 3 in the respective range of the compensation schedule.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 1/5/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

Authorize the City to compensate the new Associate City Engineer at step 4 of the 2022 band 65 compensation rate.

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 21-1821

SUBJECT: WWTF Biosolids Equipment Modernization - Consultant Services Agreement

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: $79,600

Within Budget Allocation: Yes

ATTACHMENTS:

1. Contract with Scope and Fee

STAFF CONTACT: Michael Kosa, City Engineer

SUMMARY BACKGROUND:

The City of Sumner, in conjunction with the City of Bonney Lake, operates a Wastewater Treatment Facility (WWTF) that produces a Class A Biosolid that allows for a relatively cost effective disposal of biological waste materials from the WWTF process. The dryer used in the creation of the Class A biosolid is approaching the end of its service life. Staff advertised a Request for Qualifications to procure engineering services from a firm capable of assisting the City with design engineering to modernize the WWTF biosolids equipment process.

Gray and Osborne Inc., was selected to provide consulting services through a qualification-based selection process. The consultant prepared and staff reviewed and revised the scope and fee, which provides a technical memorandum and a proposed conceptual facility plan to submit to the Washington State Department of Ecology and receive approval. Once approved by Ecology,Gray and Osborne may be asked to continue work through a future addendum for Council to approve to advance the modernized equipment process to a final set of plans and specs for construction.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 1/4/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Gray and Osborne, Inc, in an amount not-to-exceed $79,600 for the WWTF Biosolids Equipment Modernization (CIP21-17), substantially in a form approved by the City Attorney.

PROFESSIONAL/CONSULTANT SERVICES CONTRACT
between the CITY OF SUMNER and

Gray & Osborne, Inc.

THIS CONTRACT is made between the CITY OF SUMNER, a Washington municipal corporation (hereinafter the "City"), and Gray & Osborne, Inc., organized under the laws of the State of Washington, located and doing business at 1130 Rainier Avenue S., Suite 300, Seattle, WA 98144, 206-284-0860 (hereinafter the "Consultant")(collectively, the "Parties").

I. DESCRIPTION OF WORK.

Consultant shall perform the following services for the City in accordance with the attached scope of work/engagement letter:

See Exhibit A. Should any provision of Consultant's scope of work/engagement letter conflict with any provision of this agreement, this agreement shall govern.

The Consultant further represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time those services are performed.

II. TIME OF COMPLETION. The Parties agree that work will begin on the tasks described in Section I above immediately upon the effective date of this Contract. Upon the effective date of this Contract, Consultant shall complete the work described in Section I by December 31, 2022.

III. COMPENSATION.

A. The City shall pay the Consultant a fee not to exceed $79,600.00 for the services described in this Contract. <u>This is the maximum amount to be paid under this Contract for the work described in Section I above, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed amendment to this Contract.</u>

B. The Consultant shall submit monthly invoices, unless otherwise agreed in writing by the City. The City shall, upon receipt of Consultant's monthly invoice, process payment in accordance with the City's standard payment schedules, but in no event less than forty-five (45) days after receipt of monthly invoice, unless it has provided a written dispute of the invoice (in whole or part) to the Consultant in a timely manner.

IV. INDEPENDENT CONTRACTOR. The Parties intend that an Independent Contractor-Employer Relationship will be created by this Contract and that the Consultant has the ability to control and direct the performance and details of its work, the City being interested only in the results obtained under this Contract.

V. TERMINATION. Either party may terminate this Contract, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Contract. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this project, which may be used by the City without restriction; provided, however, that the Consultant may retain copies of records and data for business records purposes. If the City's use of the Consultant's records or data is not related to this project, it shall be without liability or legal exposure to the Consultant.

VI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. INDEMNIFICATION. Consultant shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the Consultant's intentionally damaging, reckless or negligent performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

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

VIII. INSURANCE. The Consultant shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, and/or its agents, representatives, or employees.

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

A. Minimum Scope of Insurance. The Consultant shall obtain insurance of the types described below**:**

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent

contractors and personal injury and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession in the legal services industry.

Minimum Amounts of Insurance: The Consultant shall maintain the following insurance limits during the entire duration of this Contract:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $1,000,000 policy aggregate limit.

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance**:**

1. The Consultant's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

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

D. Verification of Coverage The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work hereunder.

IX. EXCHANGE OF INFORMATION. The City will provide its best efforts to provide reasonable accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Contract.

X. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS. Original documents, drawings, designs, reports, or any other records developed or created under this Contract shall belong to and become the property of the City; provided, however, the Consultant has the right, subject to confidentiality, to use the Consultant's work product for internal instructional and other purposes (including as an anonymized template for subsequent work product for the City or other clients). All records submitted by the City to the Consultant will be safeguarded by the Consultant. The Consultant shall make such data, documents, and files available to the City upon the City's request. The City's use or reuse of any of the documents, data and files created by the Consultant for this project by anyone other than the Consultant on any other project shall be without liability or legal exposure to the Consultant.

XI. CITY'S RIGHT OF INSPECTION. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Contract, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure satisfactory completion.

XII. PUBLIC RECORDS ACT. The City is required to comply with the Public Records Act, codified in Chapter 42.56 RCW. From time to time, the City will receive requests for public records regarding City business. When a public records request is made regarding work performed or documents created under this Contract, Consultant shall conduct a thorough search of any and all potentially responsive public records created or maintained in the course of completing this Contract, shall provide those documents to the City in a timely manner following the request for search, and shall retain all records in accordance with the retainage schedule as published by the Washington Secretary of State. Following completion of the work pursuant to this contract, Consultant shall provide to the City any and all documents prepared, created or maintained in the course of completing this contract.

XIII. WORK PERFORMED AT THE CONSULTANT'S RISK. The Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XIV. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. Notwithstanding, the foregoing, any claims alleging professional negligence are not subject to arbitration and shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to

this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of this Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

F. Entire Contract**.** The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, the terms of this Contract shall prevail.

G. Compliance with Laws. The Consultant agrees to comply with all applicable federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to the Consultant's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

H. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

I. Ratification. The parties agree to ratify and confirm any acts consistent with the authority and prior to the final approval of this contract.

J. Consultant's Employees – Employment Eligibility Requirements (E-Verify).
The Consultant and any subcontractors shall comply with E-Verify as set forth in Sumner Municipal Code Chapter 3.30. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Consultant shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Consultant shall continue participation in E-Verify throughout the course of the Consultant's contractual relationship with the City. If the Consultant uses or employs any subcontractor in the performance of work under this contract, or

any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Consultant. Upon execution of this Contract, the Consultant shall provide proof of compliance with this section by filling out and signing the attached Certification of Compliance with Sumner's Municipal Code 3.30 "E-Verify" attached hereto as Exhibit C.

K. Debarment. The Consultant must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Consultant or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

L. Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), 29 CFR 5.5 shall apply. See Exhibit D, attached, and its provisions which are incorporated as if fully set forth herein.

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

CONSULTANT: By:______________________________ *(signature)* Print Name:________________ Title: ______________________ *(Title)* DATE:___________________________	**CITY OF SUMNER:** By:______________________________ *(signature)* Print Name: Kathy Hayden Its Mayor *(Title)* DATE:___________________________ By:______________________________ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:___________________________ Approved as to Form: Attest: Approved as to form: __________________ __________________ City Clerk City Attorney DATE:___________ DATE:____________
NOTICES TO BE SENT TO: **CONSULTANT:** Doug Welch, P.E., Principal Gray & Osborne, Inc. 1130 Rainier Avenue S., Suite 300 Seattle, WA 98144 206-284-0860 dwelch@g-o.com	**NOTICES TO BE SENT TO:** **CITY OF SUMNER:** Michael Kosa, P.E., City Engineer City of Sumner 1104 Maple Street Sumner, WA 98390 253-299-5709 michaelk@sumnerwa.gov

EXHIBIT A

SCOPE OF WORK

CITY OF SUMNER
WASTEWATER FACILITIES PLAN ADDENDUM
WWTF BIOSOLIDS MODERNIZATION PROJECT
DECEMBER 22, 2021

INTRODUCTION

This document defines the scope of work, schedule, and budget for preparing a Wastewater Facilities Plan Addendum to support the objectives of the Wastewater Treatment Facility Biosolids Modernization Project. The Facilities Plan Addendum will evaluate the condition and performance of the existing solids treatment facilities, identify improvements that are needed to treat waste solids produced at the City's Wastewater Treatment Facility (WWTF), and provide a Capital Improvement Plan (CIP) to implement the recommended improvements. The Facilities Plan Amendment will amend the *1999 Final Comprehensive Facility Plan* (Kennedy Jenks) and the *2013 Addendum No. 2* (Gray & Osborne) and comply with the requirements for a Wastewater Facilities Engineering Report as defined in WAC 173-240-060 and with requirements for a federal Wastewater Facilities Plan as defined in 40 CFR 35.917.1. In addition, the Facility Plan Addendum will be prepared in accordance with the Washington State Department of Ecology (Ecology) guidance and regulations governing such plans. The Facility Plan Addendum will be submitted to Ecology for comment and approval, so the City can proceed with design and construction of the recommended improvements and be eligible for grant and loan programs sponsored by Ecology for design and construction of wastewater facilities.

The primary focus of this Engineering Report/Facility Plan Addendum will be the elements identified by the City for replacement or upgrade as part of the Biosolids Modernization Project; however, the capacity and design criteria for all elements of the solids treatment processes will be updated based on the operational characteristics of the updated process equipment selected. The more significant elements identified by the City for replacement/upgrade as part of this project are briefly described below.

- **Biosolids Dryer Replacement**

  This project will include an alternative analysis and selection of the preferred technology to replace the existing biosolids drying equipment with newer more efficient technology. This evaluation will also include alternative locations and the utilization of excess biogas for improved energy efficiency.

- **Dried/Dewatered Biosolids Conveyance and Haul Truck Loading Facility Modifications**

  The dried and dewatered biosolids conveyance facilities will be replaced/modified as required to accommodate the new drying equipment and improved haul truck loading discharge and automation. This could involve the construction of a new haul truck loading bay depending on the configuration of and space requirements for the other elements of the project.

- **Dissolved Air Floatation Thickener (DAFT) Replacement**

  The existing dissolved air floatation thickener will be replaced with a newer less energy intensive technology. The new technology is likely to be a rotary drum thickener, but other technologies will be considered and evaluated. The preferred location for the new thickening equipment will also be evaluated based on a number of factors.

- **Polymer System Improvements**

  The existing waste activated sludge thickening and digested sludge dewatering polymer system will be replaced as part of this project. The optimal system capacities and types (dry/emulsion or both) will be evaluated, as well as the optimal location, given the City's preference for consolidating the two polymer systems in a single location.

- **Digested Sludge Pumping System Improvements**

  The capacity of the existing digested sludge pumps will be increased to match the capacity of the new centrifuge. These improvements will also address the maintenance issues that plant staff have been encountering with regard to the accumulation of hair in the suction piping to the digested sludge pumps.

- **Waste Gas Burner Replacement**

  The existing waste gas burner will be replaced with a larger unit that is adequately sized for the design capacity of the plant as well as the variations in digester gas production that have been observed with the new primary anaerobic digester mixing regime.

- **Solids Handling Building Generator Replacement**

  The existing Solids Handling Building Generator is nearing the end of its service life and will be replaced with a new generator. The new generator will be adequately sized to operate all of the loads deemed essential by the operations staff. The location of the new generator will also be evaluated in conjunction with the location of the other project elements to determine the most cost effective and efficient use of existing building space.

- **Odor Control System Modifications**

  Modifications to the existing odor control system will be required to support the new drying equipment and thickening equipment. Ideally this work would only require modifications to the existing system, however, depending on the characteristics and volume of the ventilation required for the new drying equipment, a separate system serving the solids handling building may also need to be considered and evaluated.

SCOPE OF WORK

The scope of services for this project is broken down into a series of tasks to provide an organized approach and guide for completing this project within the defined schedule and budget. The following sections describe the work to be accomplished and the involvement of the City. Some tasks will require the active participation of City staff from the Planning, Finance, and Public Works Departments.

Task 1 – Project Management

Provide overall project management, monitor and manage budget, manage and oversee the schedule of deliverables, and manage the quality assurance/quality control (QA/QC) reviews. This task will include an initial project startup meeting with City staff and key project team members to discuss project approach, key issues, schedule, and anticipated work products. Progress meetings will also be held periodically to coordinate work activities and keep the City informed of progress to date. Meetings are anticipated to be approximately every 6 to 8 weeks; however, meetings may be held more or less frequently, depending on the project requirements at the time. Consultant will prepare agendas and meeting minutes for distribution to the project team. Assume a total of five project meetings over 10 months.

Task 2 – Background Information

The work of this task includes gathering and reviewing key information that is necessary for the Engineering Report/Wastewater Facilities Plan Addendum. Information developed in the *2013 Facility Plan Addendum No. 2* and the *2016 Wastewater Treatment Plant Phase III Feasibility Study*, along with data in the City's *2020 Sanitary Sewer Comprehensive Plan* (BHC Consultants), as well as other pertinent information including existing reports, design documents, operating reports, and City staffing levels, will be reviewed, adjusted, updated, and incorporated into this Facilities Plan Addendum.

Task 3 – Regulatory Requirements

This task includes Consultant coordination with regulatory authorities and preparation of an overview of the regulations that apply to the City's wastewater facilities established by the WAC, Ecology, DOH, Pierce County, Puget Sound Clean Air Agency (PSCAA), NEPA, SEPA, SERP, ESA, Cultural Resource Protection, and others.

Task 4 – Flow and Load Projections

Consultant will update wastewater flow and load projections based on the information presented in the *2020 Sanitary Sewer Comprehensive Plan* (BHC Consultants) and utilize these flow and load projections to estimate the design year the existing treatment facility will reach capacity, which is expected to be beyond the 20-year planning period.

Task 5 – Biosolids Treatment and Management Alternative Evaluation

<u>Subtask 5-A – Sludge Quantity Projections</u>

Project the quantity of biosolids produced from the existing wastewater treatment process over the 20-year planning cycle and beyond to the rated capacity of the existing WWTF.

<u>Subtask 5-B – Biosolids Dryer Alternative Analysis and Selection</u>

The work in this subtask includes identifying dryer technologies and manufactures capable of meeting capacity and operating schedule requirements. Alternative technologies will be evaluated based on a variety of monetary and non-monetary factors. The consultant will work with City staff to develop a matrix for selecting and weighting each of the criteria. These criteria may include, but are not limited to: capital cost, annual operation and maintenance cost including utilization of biogas to reduce natural gas demand, product quality, system complexity, operating experience, foot print, safety, ease of operation, odor control system requirements, and long-term availability of spare parts. Preliminary building layouts and site plans will be developed for each alternative being considered. Cost estimates will be based on cost curves where available, or site work, equipment, and structural cost with other costs estimated by percentage allowance. The preferred alternative will be selected based on the matrix of weighted criteria.

This subtask may include site visits to select facilities that are currently operating one of the more promising drying technologies. These visits are intended to allow WWTF staff to develop a level of comfort with prospective equipment and speak with other operators regarding their experience with the dryer performance and operation. Three days are assumed for these trips

Consultant will prepare a technical memorandum detailing the alternative analysis and preferred alternative selection. Upon completion the Biosolids Drying Equipment Alternative Analysis Technical Memorandum will be submitted as a draft to the City for review. The final technical memorandum will be appended to the Facility Plan Addendum.

Subtask 5-C – Biosolids Treatment System

This subtask will provide a detailed description of the recommended solids treatment system to meet the established project criteria. Viable alternatives for other project elements being evaluated and the preferred alternatives will be described in detail. As noted earlier, these project elements include, but are not limited to the following:

- Evaluation and selection or the preferred waste activated thickening equipment and location.

- Evaluation and selection of the preferred thickening dewatering equipment and location.

- Arrangement and configuration of the dewatered and dried sludge conveyance and haul truck loading facilities, including the potential relocation of the existing haul truck loading bay.

- Description of the necessary improvements to the existing odor control system, including addition equipment as required.

- Evaluation of the capacity and location of the new Solids Handling Building standby generator.

- Improvements to the digester gas handing system, including a digester gas compressor to reduce natural gas demands for drying, digester gas treatment and replacement of the existing waste gas burner.

Provide preliminary site layout, building layouts, cost estimates, process flow diagram, descriptions, and drawings to adequately describe the recommended alternative. Include preliminary design data and calculations in accordance with the requirements of WAC 173-240-060.

Describe proposed construction sequencing required to support the implementation of the recommended improvements, including identifying any temporary facilities and Class B biosolids disposal.

Task 6 – Capital Improvement Plan Summary and Financial Plan

This task includes preparation of a Capital Improvement Plan Summary and Financial Analysis. Incorporate analysis by the City of financing of recommended improvements. The project construction and operation and maintenance cost estimates developed in earlier tasks will be used. Describe the project financing plan, indicating sources of funding for the improvements.

Task 7 – Environmental Analysis and Permitting

Consultant will prepare a SEPA Environmental Checklist and SERP Environmental Report for the Facility Plan Addendum. The City will perform the public notification and distribution tasks. The Consultant will distribute both to all required parties for the review and incorporate any comments.

Task 8 – Quality Assurance/Quality Control

Conduct quality assurance/quality control reviews of the Biosolids Dryer Alternatives Analysis Technical Memorandum and Facility Plan Addendum.

Task 9 – Review Meetings

Consultant will attend three meetings with the City staff to present and discuss the Biosolids Dryer Alternative Analysis and the Facility Plan Addendum. Incorporate responses to review comments into each.

Task 10 - Submittals

Prepare copies of the draft Facility Plan Addendum for review by the City. Provide four hard copies and one electronic copy in PDF format to the City. Respond to review comments and incorporate revisions in the final Facility Plan Addendum for submittal to the regulatory agencies.

Submit two copies of the final Facility Plan Addendum to Ecology for review and approval. Respond to review comments and incorporate revisions in a final approved Facility Plan Addendum. Provide four hard copies and one electronic copy in PDF format to the City.

SCHEDULE

Assuming a notice to proceed in January 2022 we propose the following project schedule.

Notice to Proceed .... January 2022
Submit Draft Dryer Alternative Analysis Tech Memo .... May 2022
Submit Draft Facility Plan Addendum to City.................................Early August 2022
Draft Submitted to Ecology .... Late August 2022
Final Facility Plan Addendum ....October 2022

BUDGET

Based on the Scope of Work described above, the total estimated cost for completing these tasks is $79,600, as shown in the attached Exhibit B.

EXHIBIT B

ENGINEERING SERVICES
SCOPE AND ESTIMATED COST

City of Sumner
Wastewater Facilities Plan Addendum
WWTP - Biosolids Biosolids Modernization Project

	Tasks	Prinicpal	Project Manager Hours	Civil Eng. Hours	Structural Eng. Hours	Environmental Tech./ Specialist Hours	AutoCAD/ GIS Tech./ Eng. Intern Hours
1	**Project Management**	20					
2	**Background Information**	4	4	8			
3	**Regulatory Requirements**	2		8			
4	**Flow and Load Projections**	4	16	16			
5	**Biosolids Treatment and Management Alternative Evaluation**						
5-A	Sludge Quantity Projections	4	8	24			
5-B	Biosolids Dryer Alternative Analysis and Selection	24	28	56			12
5-C	Biosolids Treatment System	12	16	60	16		12
6	**Capital Improvement Plan Summary and Financial Plan**	6	8	12			
7	**Environmental Analysis and Permitting**	2		4		32	
8	**Quality Assurance/Quality Control**	8	8	8			
9	**Review Meetings**	6		6			
10	**Submittals**	4	8	8			
Hour Estimate:		96	96	210	16	32	24
Fully Burdened Billing Rate Range:*		$140 to $213	$130 to $213	$105 to $145	$110 to $171	$83 to $138	$50 to $140
Estimated Fully Burdened Billing Rate:*		$195	$175	$125	$170	$125	$135
Fully Burdened Labor Cost:		$18,720	$16,800	$26,250	$2,720	$4,000	$3,240

Total Fully Burdened Labor Cost:	$	71,730
Direct Non-Salary Cost:		
Mileage & Expenses (Mileage @ current IRS rate)	$	370
Subconsultant:		
Conley Engineering, Inc.	$	7,500
TOTAL ESTIMATED COST:	**$**	**79,600**

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

EXHIBIT C
CITY OF SUMNER

CERTIFICATION OF COMPLIANCE WITH SUMNER MUNICIPAL CODE CHAPTER 3.30
"E-VERIFY"

As the person duly authorized to enter into such commitment for

____,
Gray & Osborne, Inc.

I hereby certify that the Company or Organization named herein will

(check one box below)

☐ Be in compliance with all of the requirements of City of Sumner Municipal Code Chapter 3.30 for the duration of the contract entered into between the City of Sumner and the Company or Organization.

OR

☐ Hire no employees for the term of the contract between the City and the Company or Organization.

____
NAME

____
TITLE

____
DATE

EXHIBIT D

APPENDIX II TO PART 200---CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the City of Sumner under federal award(s) are subject to the following provisions, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

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

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of " federally assisted construction con- tract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-l.4(b), in accordance with Executive Order 11246, " Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S .C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the following language is hereby incorporated into the contract as if fully set forth therein:

Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), the following provisions (29 CFR, Subtitle A Part 5, Subpart A, § 5.5, subsections (a)(1) – (a)(10)) shall apply:

(1) <u>Minimum wages.</u>

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) <u>Withholding</u>. The City of Sumner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) <u>Payrolls and basic records.</u>

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) <u>Apprentices and trainees.</u>

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) <u>Compliance with Copeland Act requirements</u>. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) <u>Subcontracts</u>. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) <u>Contract termination: debarment</u>. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

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

(G) Clean Air Act (42 U.S .C. 7401-767lq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-767lq) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S .C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to par- ties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the 0MB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), " Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 21-1862

SUBJECT: Water Rights Pilot Project - Consultant Amendment **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: $15,052.00 Within Budget Allocation: Yes

ATTACHMENTS:
1. Robinson Noble - 2019-2020 Pilot Project (CIP 04-02) Amendment #2

STAFF CONTACT: Mike Dahlem, Public Works Director, Michael Kosa, City Engineer

SUMMARY BACKGROUND:
The City has identified the need to acquire additional water rights to add to its municipal water portfolio. To accomplish this, the City has retained hydrogeological services from Robinson Noble Inc. to prepare documentation supporting the water rights application. The duration of time required to complete this effort has greatly exceeded the timeframe originally envisioned in the previously approved agreement due to delays in the USGS's production of a regional hydrogeological model, which is required to be published before Robinson Noble Inc can run models and help finalize data for use in the City's Foster pilot project. City staff has negotiated an amendment to the consultant services agreement that allows for an inflationary adjustment to the balance of the fees remaining to be expended, along with an adjustment to the allowable professional billing rates included in the contract.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 1/4/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:
A motion approving a supplement to Robinson Noble's Consultant Services Contract for the Water Rights 2019-2020 Pilot Project (CIP 04-02), increasing the contract amount by $15,052 to a total authorized amount not-to-exceed $237,172, and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the amendment, substantially in a form as approved by the City Attorney.

CITY OF
SUMNER
WASHINGTON

AMENDMENT NO. 2

NAME OF CONSULTANT, CONTRACTOR OR VENDOR: **Robinson Noble**

CONTRACT NAME & PROJECT NUMBER: **2019-2020 Pilot Project (CIP 04-02)**

ORIGINAL AGREEMENT DATE: **April 23, 2019**

This Amendment is made between the City and the above-referenced Consultant, Contractor or Vendor and amends the original Contract/Agreement and all prior Amendments. All other provisions of the original Contract/Agreement or prior Amendments not inconsistent with this Amendment shall remain in full force and effect. For valuable consideration and by mutual consent of the parties, Consultant, Contractor or Vendor's work is modified as follows:

1. Section I of the Agreement, entitled "Description of Work," is hereby modified to add additional work or revise existing work as follows:

Allowable consultant billable rates shall be revised to the consultant's and subconsultant's 2022 standard rates as included in Exhibit A.

Increase by $15,052.00, the allowable compensation to reflect an increase of 9.5% on the unbilled portion of the compensation ($158,437.22 as of 12/1/2021) remaining on the original contract. This change is due to delays in undertaking the work of approximately two years through no fault of the consultant.

2. The contract amount and time for performance provisions of Section II "Time of Completion," and Section III, "Compensation," are modified as follows:

Original Contract Sum, *including applicable WSST*	**$222,120.00**
Net Change by Previous Amendments *including applicable WSST*	$ **0.00**
Current Contract Amount *including all previous amendments*	**$222,120.00**

Current Amendment Sum	**$15,052.00**
Applicable WSST Tax on this Amendment	**$N/A**
Revised Contract Sum	**$237,172.00**

Original Time for Completion *(insert date)*	**12/31/2021**
Revised Time for Completion under prior Amendments *(insert date)*	**12/31/2024**
Add'l Days Required (±) for this Amendment	**N/A**
Revised Time for Completion *(insert date)*	**N/A**

In accordance with Section XIII E of the Contract/Agreement, the Contractor, Consultant or Vendor accepts all requirements of this Amendment by signing below, by its signature waives any protest or claim it may have regarding this Amendment, and acknowledges and accepts that this Amendment constitutes full payment and final settlement of all claims of any kind or nature arising from or connected with any work either covered or affected by this Amendment, including, without limitation, claims related to contract time, contract acceleration, onsite or home office overhead, or lost profits. This Amendment, unless otherwise provided, does not relieve the Contractor, Consultant or Vendor from strict compliance with the guarantee and warranty provisions of the original Agreement.

All acts consistent with the authority of the Agreement, previous Amendments (if any), and this Amendment, prior to the effective date of this Amendment, are hereby ratified and affirmed, and the terms of the Agreement, previous Amendments (if any), and this Amendment shall be deemed to have applied.

The parties whose names appear below swear under penalty of perjury that they are authorized to enter into this Amendment, which is binding on the parties of this contract.

IN WITNESS, the parties below have executed this Amendment, which will become effective on the last date written below.

CONSULTANT, CONTRACTOR OR VENDOR: By:____________________ *(signature)* Print Name:________________ Its____________________ *(Title)* DATE:__________________	**CITY OF SUMNER:** By:____________________ *(signature)* Print Name: Kathy Hayden Its Mayor *(Title)* DATE:__________________
CITY OF SUMNER: By:____________________ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:__________________	**APPROVED TO FORM:** ____________________ City Attorney

EXHIBIT A

ROBINSON
NOBLE

General Fee Schedule — January 1, 2022 to December 31, 2022

Professional Positions		Fee per Hour
Principal Engineer, Hydrogeologist or Environmental Scientist		$210
Associate Engineer, Hydrogeologist or Environmental Scientist		$188
Senior Engineer, Hydrogeologist or Environmental Scientist		$161
Senior Project Engineer, Hydrogeologist or Environmental Scientist		$138
Project Engineer, Hydrogeologist or Environmental Scientist		$125
Staff Engineer, Hydrogeologist or Environmental Scientist		$112
Senior Field Staff		$100
Field Staff		$87
Legal Support/Expert Witness Services/Testimony		150% of above rates
Support Positions		
Senior GIS/CAD Specialist		$105
Senior Technician		$105
Senior Administrator		$90
GIS/CAD Specialist		$90
Technician		$90
Administrator		$80
Clerical Support		$80
Other Fees and Costs		
Subcontracts/ Management Fee	Professional services	15%
	Outside laboratory services	15%
	Construction subcontracts	15%
Other Costs	Travel (auto)	$0.64/mile
	Travel (other)	Cost +10%
	Per diem	Prevailing State rate +10%
	Other direct expenses	Cost +10%
	Field and laboratory testing/equipment rental	See following pages

This fee schedule is subject to change according to contract or Professional Services Agreement conditions. A surcharge fee of 2.3%, which is equal to our processing fees, will be applied to payments by credit card. There is no surcharge fee on debit cards.

Hydrogeologic Equipment Rental Schedule
January 1, 2022 – December 31, 2022

Equipment		Unit	Rate
Water Level Transducer and Data Logger		Per day	$25
Field Laptop Computer		Per day	$40
Electric Water Level Sounder(s)	0 to 300 ft	Flat fee per project	$30
	over 300 ft	Flat fee per project	$60
DC Submersible Purge Pump (Single Stage)		Per pump	List price + 10%
DC Submersible Purge Pump (Dual Stage)		Per pump	List price + 10%
Double-Ring Infiltrometer		Per day	$50
Schonstedt Gradient Magnetometer		Per day	$75
Geonics EM-61 Metal Detector		Per day	$500
Downhole Gamma/Resistivity/Temperature Logging Equipment		Per day	$500
Downhole Caliper Logging Equipment		Per day	$350
Draw Works		Per day	$600
Mechanical Sieve Sample Equipment		Flat fee per well	$50
2-inch Gasoline-powered Centrifugal Pump (includes hoses)		Per day	$100
2-inch Submersible Pump + Controller		Per day	$180
Generator & Fuel		Per day	$70
Hand Auger		Per day	$50
Survey Gear (laser level & rod)		Per day	$85
FlowTracker Acoustic Doppler Velocimeter Stream Gaging Equipment		Per day	$200
pH Field Meter		Per day	$25
GPS		Per day	$20
Other Equipment		Negotiated	Negotiated
Digital Camera		Per day	$10

This fee schedule is subject to change according to contract or Professional Services Agreement conditions. A surcharge fee of 2.3%, which is equal to our processing fees, will be applied to payments by credit card. There is no surcharge fee on debit cards.

Environmental Equipment Rental and Consumable Schedule
January 1, 2022

Equipment	Unit	Rate
Water Level Transducer and Data Logger	Per day	$50
Field Laptop Computer	Per day	$40
Electronic Water Level Sounder	Per day	$30
Electronic Interface Probe	Per day	$75
DC Operated Peristaltic Pump	Per day	$45
2-inch Gasoline-powered Centrifugal Pump (includes hoses)	Per day	$100
2-inch Submersible Pump + Controller	Per day	$350
Generator & Fuel	Per day	$70
Low-Flow Bladder Pump	Per day	$175
Photoionization Detector	Per day	$75
Combustible Gas Indicator	Per day	$65
GPS	Per day	$20
Water Quality Meter	Per day	$200
Teflon Water Bailer	Per day	$30
Soil Sampling Equipment (manual)	Per day	$25
Mechanical Sieve Sample Equipment	Flat fee per project	$50
Survey Gear (laser level & rod)	Per day	$85
pH Field Meter (soils)	Per day	$50
Soil Vapor Extraction System	Per month	$750
Digital Camera	Per day	$10
Hand Auger	Per day	$50
Other Equipment	Negotiated	Negotiated
Consumable Items:		
Polyethylene Purge/Sampling Tubing	Each 10 feet	$2.50
DC Submersible Purge Pump (Single stage)	Per pump	List price + 10%
DC Submersible Purge Pump (Dual Stage)	Per pump	List price + 10%
Silicone Peristaltic Pump Head Tubing	Each foot	$4.00
Bladders for Low-Flow Bladder Pump	Each	$5.00
Water Sample Bailer	Each	$10
Bailer Rope/String	Each 10 feet	$1.00
Personal Protection Equipment	Per day per person	$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions. A surcharge fee of 2.3%, which is equal to our processing fees, will be applied to payments by credit card. There is no surcharge fee on debit cards.

Geotechnical Field and Laboratory Testing Schedule
January 1, 2022

Test		Fee
Portable Nuclear Density Gauge	Per Hour	$5.00
Slope Inclinometer	Per day	$250
Direct Shear	Point	$200
Moisture-Density Relationship Curves:	Each Each	1 pt $120 Multiple pts $225
Sieve Analyses (Gradations-Wet Sieve)	Each	$150
Bulk Sieve (if gravelly or >10lb)	Add	$70
200 Wash	Each	$80
Hydrometer Analysis	Each	$175
Falling Head Permeability	Each	$165
Atterberg Limits (Liquid Limit and Plastic Limit)	Each	$220
Moisture Content	Each	$12
Dynamic Cone Penetrometer	Day	$225
Points	Each	$20
Resistivity 4-point Gauge	Day	$300
Hand Auger	Per day	$50
Consolidation Test Incremental Loading (9 loads, 0.125 TSF to 32 TSF, 4 unloads)		$550 $50/each additional load
Shelby Tube Extrusion/Sample Description		$40
Single-Ring Infiltrometer	Per day	$50

This fee schedule is subject to change according to contract or Professional Services Agreement conditions. A surcharge fee of 2.3%, which is equal to our processing fees, will be applied to payments by credit card. There is no surcharge fee on debit cards.

ESA NW Region Billing Rates
2021

ESA Labor Category	Tier	Hourly Rate
Administrative Assistant		$85.00
Air Quality & Acoustics Analyst IV-a	IV-A	$180.00
Air Quality & Acoustics Analyst IV-b	IV-B	$200.00
Biologist I		$105.00
Biologist II		$120.00
Biologist IV-a	IV-A	$160.00
Biologist IV-b	IV-B	$175.00
Biologist V		$245.00
Cultural Resource Specialist I		$95.00
Cultural Resource Specialist II		$120.00
Cultural Resource Specialist III		$140.00
Cultural Resources Specialist IV		$150.00
Editor		$160.00
Engineer I		$115.00
Engineer II-a	II-A	$130.00
Engineer II-b	II-B	$145.00
Engineer III		$160.00
Engineer IV-a	IV-A	$180.00
Engineer IV-b	IV-B	$190.00
Engineer V		$240.00
Engineer VI		$280.00
Environmental Scientist III		$140.00
Environmental Scientist IV		$165.00
Environmental Scientist V		$240.00
Environmental Technician		$95.00
GIS Analyst		$115.00
GIS/Geospatial Director		$250.00
GIS/Geospatial Services Manager		$150.00
Landscape Designer/Architect I		$115.00
Landscape Designer/Architect III		$140.00
Landscape Designer/Architect IV		$165.00
Landscape Designer/Architect V		$185.00
Lead Project Accountant		$125.00
Planner I		$95.00
Planner II-a	II-A	$110.00
Planner II-b	II-B	$130.00
Planner III		$150.00
Planner IV-a	IV-A	$175.00
Planner IV-b	IV-B	$190.00
Planner V		$210.00
Project Accountant		$110.00
Project Technician		$90.00
Regional Business Group Director		$240.00
Regional Director I		$290.00
Regional Office Manager		$135.00
Senior Administrative Assistant		$105.00
Senior Project Accountant		$115.00
Technical Expert		$240.00
Technical Specialist		$145.00
Technician		$95.00
Technician II		$105.00

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 22-1864

SUBJECT: Finance & Personnel Committee Members **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:
On January 3, 2022, the Sumner City Council chose committee assignments for 2022/2023. Doing so, Councilmember Stuard chose to be a member of the Finance & Personnel Committee and Councilmember Cole chose to be the alternate. Councilmember Stuard has since decided to step down from an active role on the Committee and has chosen to be an alternate instead. He has spoken to Councilmember Cole who has agreed to fill his spot for the duration of the committee assignment. Pursuant to the Council Rules, a majority vote of the Council is necessary to effect the swap of committee members.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Approve Councilmembers Stuard and Cole change of committee role assignments.

SUBJECT: Ordinance No. 2804 - 2021/2022 Biennial Budget Amendment **CATEGORY:** Ordinance

BUDGET IMPACT:
Expenditure Required: $147,000 Within Budget Allocation: Yes, as amended

ATTACHMENTS:
1. Ordinance No. 2804 - 2021/2022 Biennial Budget Amendment

STAFF CONTACT: Kassandra Raymond, Chief Financial Officer, Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
The COVID-19 pandemic has seriously affected Fleet Reserves, rising costs and limited inventory have necessitated a budget adjustment.
Our current bucket truck is a vital piece of equipment that is used by both the Parks and Shops departments. It was scheduled in the budget to be replaced in 2022 but with rising costs, we are $70k over the original estimate we received in the summer of 2020. With current supply shortages, it will take one year from the order to delivery, but it is important we move forward now to lock in our price.
The pandemic has also shifted the work location of many of our field staff. Rather than being all together in the Shops building, they are spread out throughout the city in various satellite locations. This change in location has made it necessary to purchase an additional water quality truck as it is no longer feasible for our two employees to share a single vehicle.
The city plans to increase staffing to specifically focus on additional storm maintenance this summer. This increased staffing will require an additional vehicle. We have the ability to purchase a remaining 2021 model now rather than wait until November for the 2022 models to arrive.

COUNCIL COMMITTEE/STUDY SESSION: Finance & Personnel Committee
MEETING/STUDY SESSION DATE: 1/5/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:
A motion to approve Ordinance No. 2804 amending the 2021/2022 Biennial Budget.

ORDINANCE NO. 2804
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING THE 2021-2022 BIENNIAL BUDGET AS ORIGINALLY ADOPTED IN ORDINANCE NO. 2758, APPROVED DECEMBER 7, 2020, AND PREVIOUSLY AMENDED IN ORDINANCE 2762, APPROVED FEBRUARY 16, 2021, ORDINANCE 2771, APPROVED APRIL 19, 2021, ORDINANCE 2786, APPROVED AUGUST 2, 2021, ORDINANCE 2790, APPROVED AUGUST 16, 2021, ORDINANCE 2791, APPROVED AUGUST 16, 2021, ORDINANCE 2797, APPROVED OCTOBER 18, 2021, ORDINANCE 2802, APPROVED DECEMBER 6, 2021, AND ORDINANCE 2803, APPROVED DECEMBER 6, 2021.

WHEREAS, The Sumner City Council approved Ordinance No. 2758 which adopted a biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2762 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2771 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2786 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2790 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2791 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2797 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2802 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2803 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, RCW 35A.34 provides procedures for adopting, managing, and amending a biennial budget; and

WHEREAS, RCW 35A.34.130 requires that the adopted biennial budget be subject to a mid-biennial review and modifications as needed; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **Amendment.** The biennial budget for the City of Sumner for the period January 1, 2021 through December 31, 2022 as contained in the adopted 2021-2022 Biennial Budget for total revenue/sources and expenditures/uses as approved by the City Council, is hereby amended by Total Revenue and Expenditures for each fund as shown on the attached Exhibit A.

Section 2. **Corrections by City Clerk or Code Reviser**. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. **Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

Section 4. **Effective Date.** This Ordinance shall become effective five (5) days from and after its passage, approval, and publication as provided by law.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 18th day of January, 2022.

____
Mayor Kathy Hayden

ATTEST:	**APPROVED AS TO FORM:**
_____________________________	_____________________________
City Clerk Michelle Converse, CMC	City Attorney Andrea Marquez

Funds	Beginning Fund Balance Adopted	Revenues Adopted	Revenues Previous	Revenues 01/18/22	Expenditures Adopted	Expenditures Previous	Expenditures 01/18/22	Ending Fund Balance Revised
001 General	$ 5,978,542	$ 31,643,467	$ 550,870	$ -	$ 31,919,065	924,385	$ 17,500	$ 5,311,929
002 General Fund Reserves	980,824	-	-	-	-	-	-	980,824
003 Building Reserves	475,000	200,000	-	-	80,000	150,000	-	445,000
103 Complete Streets	241,851	-	-	-	200,000	41,654	-	197
105 Drug Enforcement	63,457	-	-	-	4,500	-	-	58,957
106 Hotel/Motel	273,747	215,000	25,000	-	106,245	318,000	-	89,502
115 ARPA Funding	-	-	2,910,676	-	-	1,167,000	-	1,743,676
200 Debt Service	2,570,000	527,200	-	-	520,000	-	-	2,577,200
221 LID Guarantee	694,969	-	-	-	-	-	-	694,969
302 Sidewalk	477,769	4,308,069	(310,000)	-	3,524,069	(310,000)	-	1,261,769
305 Real Estate Excise Tax	1,093,200	1,600,000	-	-	-	326,000	-	2,367,200
307 LID Capital Project Fund	9,545	-	-	-	-	-	-	9,545
310 Parks & Trails Capital Fund	544,740	1,237,500	561,000	-	1,237,500	561,000	-	544,740
320 Street Capital Fund	826,206	6,709,520	2,430,700	-	7,679,245	1,131,700	-	1,155,481
325 Facilities Capital Fund	183,773	26,200,000	276,000	-	15,700,000	956,000	-	10,003,773
401 Water	13,477,844	11,104,747	25,000	-	15,719,366	666,490	50,500	8,171,234
402 Wastewater	20,996,349	15,706,582	91,050	-	18,404,296	993,246	17,500	17,378,938
403 Utility Bond Reserves	1,729,536	-	-	-	-	-	-	1,729,536
408 Stormwater	14,788,274	14,201,134	-	-	18,573,507	308,122	61,500	10,046,279
410 Cemetery Operations	31,493	1,352,800	-	-	1,358,895	2,260	-	23,138
415 Cemetery Development	-	-	40,000	-	-	25,000	-	15,000
440 Animal Control	12,239	1,496,319	121,184	-	1,460,055	114,855	-	54,832
501 Unemployment Insurance	43,989	-	-	-	3,055	-	-	40,934
550 Fleet Management	6,261	1,251,664	-	-	1,251,660	690	-	5,575
551 Information Technology	273,009	2,385,042	155,930	-	2,385,040	146,896	-	282,045
555 Equipment Reserve	1,013,749	1,297,245	168,000	147,000	790,000	226,000	147,000	1,462,994
601 Cemetery Endowment	1,472,385	60,000	-	-	-	-	-	1,532,385
603 Alder Ave Remediation	25,649	-	-	-	-	-	-	25,649
605 Development Impact Fees	7,026,351	700,000	-	-	3,397,200	835,000	-	3,494,151
611 Firemen's Pension	11,832	160,000	-	-	160,000	-	-	11,832
Total All Funds	$ 75,322,583	$ 122,356,289	$ 7,045,410	$ 147,000	$ 124,473,699	$ 8,584,298	$ 294,000	$ 71,519,285

CITY COUNCIL MEETING
DATE: January 18, 2022
AGENDA BILL: 21-1253

SUBJECT: Resolution No. 1610 - Puget Sound Acquisition and Restoration Grant Acceptance

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Resolution No. 1610 - PSAR Grant Acceptance
2. Grant Agreement
3. PSAR Fact Sheet

STAFF CONTACT: Robert Wright, Environmental & Sustainability Specialist

SUMMARY BACKGROUND:

As part of efforts to fully fund construction of the White River Restoration project, the City applied for grant funding from the State of Washington's Puget Sound Acquisition and Restoration (PSAR) Large Capital program. Our application was ranked 3rd and the State budget (approved in July 2021) included enough funding for the PSAR program to grant our full request of $14,641,123. This is the largest grant ever awarded by the program and the first one received by a project in Pierce County.

The project is currently in the permitting and final design phase. Funds are expected to be spent between Summer 2022 and Fall 2025.

COUNCIL COMMITTEE/STUDY SESSION: **Public Works Committee**
MEETING/STUDY SESSION DATE: 12/7/2021
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

A motion approving Resolution No. 1610 - authorizing the Mayor to enter into agreement with the Washington State Recreation and Conservation Office to receive grant funding in the amount of $14,641,123 for the Sumner White River Restoration Project (CIP14-10), substantially in a form approved by the City Attorney.

RESOLUTION NO. 1610

CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY OF SUMNER, WASHINGTON, ACCEPTING A GRANT FROM THE STATE OF WASHINGTON

WHEREAS, The City is completing construction to create habitat and reduce flood risk; and

WHEREAS, to help accomplish and fund the White River Restoration, the City of Sumner applied for the Puget Sound Acquisition and Restoration Large Capital grant program; and

WHEREAS, the City applied in 2021 for Puget Sound Acquisition and Restoration (PSAR) grant funding, and was awarded $14,641,123; and

WHEREAS, City Council acceptance of the grant and authorization for the Mayor to execute a grant agreement is required by law; and

WHEREAS, it is in the City's interests to accept the grant funds and enter into any necessary grant agreements regarding the same.

NOW, THEREFORE, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:**

Section 1. That the City Council of the City of Sumner, Washington, does hereby accept the Puget Sound Acquisition and Restoration grant and authorizes the Mayor to execute any necessary funding agreements, and any and all documents necessary to carry out and effectuate the grant acceptance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. Effective Date. This resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED AND APPROVED this _____ day of January, 2022.

____
Kathy Hayden, Mayor

Attest:

____
Michelle Converse, City Clerk

Approved as to form:

____
Andrea J. Marquez, City Attorney

Project Sponsor: City of Sumner **Project Number:** 20-1102R
Number: CIP 14-10

Project Title: White River LB RM 2.5-4.2 **Approval Date:** 07/01/2021

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant Agreement (Agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Sumner (Sponsor, and primary Sponsor), 1104 Maple St, Sumner, WA 98390, and shall be binding on the agents and all persons acting by or through the parties.

The Sponsor's Data Universal Numbering System (DUNS) Number is 070058144.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Prior to and during the Period of Performance, per the Applicant Resolution/Authorizations submitted by all Sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project identified above, including but not limited to, full authority to: (1) sign a grant application for grant assistance, (2) enter into this Agreement on behalf of the Sponsor(s), including indemnification, as provided therein, (3) enter any amendments thereto on behalf of Sponsor(s), and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all Sponsors, unless otherwise allowed in the AMENDMENTS TO AGREEMENT Section.

A. During the Period of Performance, in order for a Sponsor to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization the Sponsor must provide the RCO a new Applicant Resolution/Authorization signed by its governing body or a written delegation of authority to sign in lieu of originally authorized Representative/Agency(s). Unless a new Applicant Resolution/Authorization has been provided, the RCO shall proceed on the basis that the person who is listed as the Authorized Representative in the last Resolution/Authorization that RCO has received is the person with authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.

B. Amendments After the Period of Performance. RCO reserves the right to request and Sponsor has the obligation to provide, authorizations and documents that demonstrate any signatory to an amendment has the authority to legally bind the Sponsor as described in the above Sections.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (See PROJECT REIMBURSEMENTS Section).

PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the State Building Construction Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

DESCRIPTION OF PROJECT

Sumner proposes to construct the White River Left Bank River Mile 2.5 ??? 4.2 Restoration Project to restore 169 acres of floodplain, riparian, and wetland habitat in the Lower White River, including 3.5 miles of in-stream habitat. Restoring a functional floodplain corridor includes lowering the floodplain to substantially increase the frequency and duration of overbank flows inundation and allow for the creation of new channels. The project includes an anastomosed reach with multiple channels transitioning to a single thread reach that promotes backwater into broad wetland areas with perennial tributary channels. Floodplain connectivity will expand the river's potential to dynamically form and sustain new aquatic habitat throughout the reach. Wetland areas will be installed at elevations to allow development of forested areas that will provide: shade to cool water temperatures, filtration to increase water quality, detrital matter to support prey resources and trees for future wood recruitment. Engineered log jams and complex woody revetments will support formation of in-stream habitat and production of prey resources and provide bank stability during large flood events. In-stream structures will support diverse and complex in-stream habitat overtime to support spawning, migration and rearing. Sumner Link Trail will be rerouted onto the forested berm so it is mostly outside of the floodplain.

PERIOD OF PERFORMANCE

The period of performance begins on July 1, 2021 (project start date) and ends on June 30, 2025 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The RCO reserves the right to summarily dismiss any request to amend this Agreement if not made at least 60 days before the project end date.

STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office attached hereto are incorporated by reference as part of this Agreement.

LONG-TERM OBLIGATIONS

For this restoration project, the Sponsor's long-term obligations for the project area shall be for a minimum of ten (10) years, or more as specified in the Landowner Agreement, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

PROJECT FUNDING

The total grant award provided for this project shall not exceed $14,641,123.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
SRFB - PSAR Large Capital Projects	85.00%	$14,641,123.00	State
Project Sponsor	15.00%	$2,583,728.00	
Total Project Cost	100.00%	$17,224,851.00	

FEDERAL FUND INFORMATION

This project is match to the following federal funding source(s) and the same provisions apply as if this project were funded by the federal funding source(s) as a federal subaward:

Federal Agency: US Environmental Protection Agency
Catalog of Federal Domestic Assistance Number and Name: 66.456 - PSP
Federal Award Identification Number: CE-01J31901
Federal Fiscal Year: 2017
Federal Award Date: 09/08/2017
Total Federal Award: $17,438,600
Federal Award Project Description: This Base Grant is for the Puget Sound National Estuary Program. This backbone organization role includes: Program level financial management; researching funding opportunities; providing program match for local and tribal capacity grants; demonstrating sound fiscal management practices; Administering the Partnership's Boards and partners in the development of the Action Agenda; Supporting direct public engagement; Coordinating and implementing a strategic science program to support Puget Sound ecosystem recovery; Ecosystem Assessment and Monitoring; and Reporting on outputs and outcomes.

Sponsor's Indirect Cost Rate: 0.00% of All costs for this agreement

This funding is not research and development (R&D).

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

Sponsor shall comply with the federal "Omni-circular" (2 C.F.R. Part 200).

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved and/or amended as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with the Agreement, such information shall not be used to vary the terms of the Agreement, unless the terms in the Agreement are shown to be subject to an unintended error or omission. “Agreement” as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions.

AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of this Agreement will be effective unless set forth in writing signed by all parties. Exception: extensions of the Period of Performance and minor scope adjustments need only be signed by RCO’s director or designee and consented to in writing (including email) by the Sponsor’s Authorized Representative/Agent or Sponsor’s designated point of contact for the implementation of the Agreement (who may be a person other than the Authorized Agent/Representative), unless otherwise provided for in an amendment. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so.

Unless otherwise expressly stated in an amendment, any amendment to this Agreement shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone. However, any such amendment, unless expressly stated, shall not extend or reduce the long-term obligation term.

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, Exhibits, and any applicable federal program and accounting rules effective as of the date of this Agreement or as of the effective date of an amendment, unless otherwise provided in the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone unless otherwise expressly stated in the amendment.

For the purpose of this Agreement, WAC Title 420, SRFB policies shall apply as terms of this Agreement.

For the purpose of this Agreement, the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- Restoration Projects - Manual 5
- Salmon Recovery Grants - Manual 18

SPECIAL CONDITIONS

Special Condition #1: Federal Nexus

This project appears to be subject to the National Historic Preservation Act, Section 106, and therefore appears to be exempt from Governor’s Executive Order 05-05 Archaeological and Cultural Resources (EO 05-05) as described in the terms of this project agreement. In order for this project to be exempt from EO 05-05, the Section 106 Area of Potential Effect (APE) must include all ground-disturbing activities subject to this project agreement, including any staging area. The sponsor is encouraged to work with the federal permitting agency to align the Section 106 APE with the scope of work subject to this project agreement. If the APE does not include all ground-disturbing activities subject to this project agreement, promptly notify the RCO grant manager, as this will require RCO to initiate cultural resources consultation following EO 05-05 for those activities not included in the federal APE. RCO will withhold reimbursement of development or restoration expenditures until this requirement is met. For acquisition projects, final payment will be withheld until evidence of cultural resources review is provided. All cultural resources work must meet reporting guidelines outlined by the Department of Archaeology and Historic Preservation and Section 106 of the National Historic Preservation Act. In the event that archaeological materials or human remains are discovered within the project area, work in the immediate vicinity must stop, and the Sponsor must ensure compliance with the provisions found in this agreement and under state and federal law.

AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to either or both the mail address and/or the email address listed below:

Sponsor Project Contact
Robby Wright
Environmental Sustainability S
1104 Maple Street
Sumner, WA 98390
robertw@sumnerwa.gov

RCO Contact
David Caudill
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
Dave.Caudill@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Unless otherwise provided for in this Agreement, decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

ENTIRE AGREEMENT

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

EFFECTIVE DATE

Unless otherwise provided for in this Agreement, this Agreement, for Project 20-1102, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the STANDARD TERMS AND CONDITIONS OF THE RCO GRANT AGREEMENT. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

City of Sumner

By: ______________________ **Date:** ______________________

Name (printed): ______________________

Title: ______________________

State of Washington Recreation and Conservation Office
On behalf of the Salmon Recovery Funding Board (SRFB or funding board)

By: ______________________ **Date:** ______________________
Megan Duffy
Director
Recreation and Conservation Office

Pre-approved as to form:

By: David B. Merchant **Date:** 06/01/2021
Assistant Attorney General

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Restoration Metrics

Worksite #1, White River Left Bank between river mile 2.5-4.2

Targeted salmonid ESU/DPS (A.23):	Chinook Salmon-Puget Sound ESU, Chinook Salmon-unidentified ESU, Chum Salmon-Puget Sound/Strait of Georgia ESU, Coho Salmon-Puget Sound/Strait of Georgia ESU, Pink Salmon-Odd year ESU, Steelhead-Puget Sound DPS
Targeted species (non-ESU species):	Bull Trout
Miles of Stream and/or Shoreline Treated or Protected (C.0.b):	2.10
Project Identified In a Plan or Watershed Assessment (C.0.c):	Puyallup and Chambers Watersheds Salmon Recovery Lead Entity (Lead Entity). 2018. Salmon Habitat Protection and Restoration Strategy for Puyallup and Chambers Watersheds. June. https://www.co.pierce.wa.us/ArchiveCenter/ViewFile/Item/6075 Puget Sound Partnership. 2018. The 2018-2022 Action Agenda for Puget Sound. https://pspwa.box.com/s/osxaeqg19fevxu5n3k8xnjytzkwol512
Type Of Monitoring (C.0.d.1):	None

Instream Habitat Project

Total Miles Of Instream Habitat Treated (C.4.b):	1.40 In addition to 2.1 miles of mainstem channel treatment

Channel reconfiguration and connectivity (C.4.c.1)

Type of change to channel configuration and connectivity (C.4.c.2):	Channel Bed Restored, Creation of Instream Pools, Creation/Connection to Off-Channel Habitat, Levee removal/Alteration, Meanders Added
Miles of Stream Treated for channel reconfiguration and connectivity (C.4.c.3):	0.90
Miles of Off-Channel Stream Created or Connected (C.4.c.4):	0.50
Acres Of Channel/Off-Channel Connected Or Added (C.4.c.5):	168.6
Instream Pools Created/Added (C.4.c.6):	0 Not quantified as the target is not to create individual pools, but set up the hydraulic and geomorphic conditions such that pools can naturally form throughout the project area

Channel structure placement (C.4.d.1)

Material Used For Channel Structure (C.4.d.2):	Logs Fastened Together (Logjam), Other Engineered Structures, Rocks/Boulders (Unanchored), Stumps With Roots Attached (Rootwads) Log Jam structures, complex wood revetments
Miles of Stream Treated for channel structure placement (C.4.d.3):	3.50
Pools Created through channel structure placement (C.4.d.5):	0 not quantified as the target is not to create individual pools, but set up the hydraulic and geomorphic conditions such that pools can

	naturally form throughout the project area
Number of structures placed in channel (C.4.d.7):	177

Spawning gravel placement (C.4.f.1)

Miles of Stream Treated with spawning gravel placement (C.4.f.2):	1.40
Cubic Yards of spawning gravel placed (C.4.f.3):	16000

Riparian Habitat Project

Total Riparian Miles Streambank Treated (C.5.b.1):	3.50
Total Riparian Acres Treated (C.5.b.2):	153.0

Planting (C.5.c.1)

Acres Planted in riparian (C.5.c.3):	153.0
Miles of streambank planted (C.5.c.4):	3.50

Architectural & Engineering

Architectural & Engineering (A&E)

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
	Project Start	07/01/2021	
	Preliminary Design to RCO	07/08/2021	Completed prior to construction phase.
	Progress Report Due	12/01/2021	
	Cultural Resources Complete	12/31/2021	
	Final Design to RCO	12/31/2021	
	Permits Complete	12/31/2021	
	Special Conditions Met	12/31/2021	See special condition #1 - Federal Nexus
	Bid Awarded/Contractor Hired	03/01/2022	
	Progress Report Due	06/01/2022	
	Restoration Started	06/01/2022	
	Annual Project Billing Due	06/30/2022	
	Progress Report Due	12/01/2022	
	Progress Report Due	06/01/2023	
	Annual Project Billing Due	06/30/2023	
	Progress Report Due	12/01/2023	
	Progress Report Due	06/01/2024	
	Annual Project Billing Due	06/30/2024	
	Progress Report Due	12/01/2024	
	Restoration Complete	12/31/2024	
	Stewardship Plan to RCO	03/30/2025	
	Funding Acknowl Sign Posted	04/30/2025	
	RCO Final Inspection	05/31/2025	
	Agreement End Date	06/30/2025	
	Final Report Due	09/30/2025	
	Final Billing Due	09/30/2025	

Project Sponsor: City of Sumner

Project Number: 20-1102R
Number: CIP 14-10

Project Title: White River LB RM 2.5-4.2

Approval Date: 07/01/2021

Standard Terms and Conditions of the Recreation and Conservation Office

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STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 10/08/2021.

CITATIONS, HEADINGS AND DEFINITIONS

A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.

B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.

C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Agreement, terms of the Agreement, or project agreement – The document entitled "RCO GRANT AGREEMENT" accepted by all parties to the present project and transaction, including without limitation the Standard Terms and Conditions of the RCO Grant Agreement, all exhibits, attachments, addendums, amendments, and applicable manuals, and any intergovernmental agreements, and/or other documents that are incorporated into the Agreement subject to any limitations on their effect under this Agreement.

applicable manual(s), manual – A manual designated in this Agreement to apply as terms of this Agreement, subject (if applicable) to substitution of the "RCO director" for the term "board" in those manuals where the project is not approved by or funded by the referenced board, or a predecessor to the board.

applicable WAC(s) – Designated chapters or provisions of the Washington Administrative Code that apply by their terms to the type of grant in question or are deemed under this Agreement to apply as terms of the Agreement, subject to substitution of the "RCO director" for the term "board" or "agency" in those cases where the RCO has contracted to or been delegated to administer the grant program in question.

applicant – Any party, prior to becoming a Sponsor, who meets the qualifying standards/eligibility requirements for the grant application or request for funds in question.

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

Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor's signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

C.F.R. – Code of Federal Regulations

completed project or project completion – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.
- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

Cultural Resources – Archaeological or historic archaeological sites, historic buildings/structures, and cultural or sacred places.

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

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or $5,000 (2 C.F.R. Part 200 (as updated)).

funding board or board – The Washington State Recreation and Conservation Funding Board, or the Washington State Salmon Recovery Funding Board. Or both as may apply.

Funding Entity – the entity that approves the project that is the subject to this Agreement.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. 200 as updated).

long-term compliance period – The term of years, beginning on the end date of the agreement, when long-term obligations exist for the Sponsor. The start date and end date of the compliance period may also be prescribed by RCO per the Agreement.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and manuals and other exhibits as may apply.

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

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

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

Office – Means the Recreation and Conservation Office or RCO.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR 200 (as updated)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

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

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. Administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – The undertaking that is funded by this Agreement either in whole or in part with funds administered by RCO.

project area – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project.

project completion or completed project – The status of a project when all of the following have occurred:

- The grant funded project has been inspected by the RCO and the RCO has determined that all scopes of work to implement the project have been completed satisfactorily.
- A final project report is submitted to and accepted by RCO.
- Any needed amendments to the Agreement have been entered by the Sponsor and RCO and have been delivered to the RCO.
- A final reimbursement request has been delivered to and paid by RCO.

- Documents affecting property rights (including RCO's as may apply) and any applicable notice of grant, have been recorded (as may apply).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (see also 2 C.F.R. Part 200 (as updated)) for federally funded projects).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

RCO – Recreation and Conservation Office – The state agency that administers the grant that is the subject of this Agreement. RCO includes the director and staff.

RCW – Revised Code of Washington

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

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

restoration project – A project intended to bring a site back to its historic function as part of a natural ecosystem, or one intended to improve the ecological or habitat functionality or capacity of (or part of) a site, landscape, marine environment, or watershed.

restoration and/or enhancement project – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. Part 200 (as updated). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in the Project Funding Section.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. Part 200 (as updated)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

tribal consultation – Outreach, and consultation with one or more federally recognized tribes (or a partnership or coalition or consortium of such tribes, or a private tribal enterprise) whose rights will or may be significantly affected by the proposed project. This includes sharing with potentially-affected tribes the scope of work in the grant and potential impacts to natural areas, natural resources, and the built environment by the project. It also includes responding to any tribal request from such tribes and considering tribal recommendations for project implementation which may include not proceeding with parts of the project, altering the project concept and design, or relocating the project or not implementing the project, all of which RCO shall have the final approval of.

useful service life – Period during which a built asset, equipment, or fixture is expected to be useable for the purpose it was acquired, installed, developed, and/or renovated, or restored per this Agreement.

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the RCO (to include any RCO approved changes or amendments thereto). All submitted documents are incorporated by this reference as if fully set forth herein.

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

ASSIGNMENT

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

RESPONSIBILITY FOR PROJECT

While RCO administers the grant that is the subject of this Agreement, the project itself remains the sole responsibility of the Sponsor. The RCO and Funding Entity (if different from the RCO) undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement.

The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project has more than one Sponsor, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO, its employees, assigns, consultants and contractors, and members of any funding board or advisory committee or other RCO grant review individual or body, have no responsibility for reviewing, approving, overseeing or supervising design, construction, or safety of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO, its employees, assigns, consultants and contractors, and any funding board or advisory committee or other RCO grant review individual or body will act only to confirm at a general, lay person, and nontechnical level, solely for the purpose of project eligibility and payment and not for safety or suitability, that the project apparently is proceeding or has been completed as per the Agreement.

INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor’s agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

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

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor’s agents or employees, and (b) the State, or its employees or agents the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor’s negligence or its agents, or employees.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor’s own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51. Sponsor’s waiver of immunity under this provision extends only to claims against Sponsor by Indemnitee RCO, and does not include, or extend to, any claims by Sponsor’s employees directly against Sponsor.

Sponsor shall ensure that any agreement relating to this project involving any contractors, subcontractors and/or vendors of any tier shall require that the contracting entity indemnify, defend, waive RCW 51 immunity, and otherwise protect the State as provided herein as if it were the Sponsor. This shall not apply to a contractor or subcontractor is solely donating its services to the project without compensation or other substantial consideration.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

INDEPENDENT CAPACITY OF THE SPONSOR

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

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

CONFLICT OF INTEREST

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

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

COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.

C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.

2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

ARCHAEOLOGICAL AND CULTURAL RESOURCES

A. Project Review. RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.

1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.

B. Termination. RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.

C. Notice To Proceed. No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.

D. Compliance and Indemnification. At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

E. Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement. Costs that exceed the budget grant amount shall be the responsibility of the Sponsor Inadvertent Discovery Plan. The Sponsor shall request, review, and be bound by the RCO Inadvertent

Discovery Plan, and:

1) Keep the IDP at the project site.

2) Make the IDP readily available to anyone working at the project site.

3) Discuss the IDP with staff and contractors working at the project site.

4) Implement the IDP when cultural resources or human remains are found at the project site.

F. Discovery

1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.

2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.

   a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).

   b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

RECORDS

A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.

B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

A. **Authority**. This Agreement and funding is made available to Sponsor through the RCO.

B. **Additional Amounts**. The RCO or Funding Entity shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the RCO director and incorporated by written amendment into this Agreement.

C. **Before the Agreement**. No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by the RCO director, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.

D. **Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in the FEDERAL FUND INFORMATION Section are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).

E. **After the Period of Performance**. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the RCO or Funding Entity may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

PROJECT REIMBURSEMENTS

A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.

B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.

C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.

D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:

   1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.

   2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO;Grant related fiscal transactions are complete, and

   3) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

E. **Requirements for Federal Subawards:** Match. The Sponsor’s matching share must comply with 2 C.F.R. Part 200 (as updated). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor’s matching share when such contributions meet all of the following criteria:

   1) Are verifiable from the non-Federal entity's (Sponsor’s) records;

   2) Are not included as contributions for any other Federal award;

   3) Are necessary and reasonable for accomplishment of project or program objectives;

   4) Are allowable under 2 C.F.R. Part 200 as updated;

   5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be

applied to matching or cost sharing requirements of other Federal programs;

6) Are provided for in the approved budget when required by the Federal awarding agency identified in the FEDERAL FUND INFORMATION Section of this Agreement; and

7) Conform to other provisions of 2 C.F.R. Part 200 (as updated) as applicable.

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

1) Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.

2) Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

3) Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

4) Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

ADVANCE PAYMENTS

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

RECOVERY OF PAYMENTS

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

B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.

C. **Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement and to be reimbursed by Sponsor for any grant funds paid to Sponsor (even if such funds have been subsequently paid to an agent), without liability to RCO or, in RCO's discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

INCOME (AND FEES) AND USE OF INCOME

A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.

B. **Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon sequestration, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:

1) The Sponsor's matching resources;

2) The project's total cost;

3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;

4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;

5) Capital expenses for similar acquisition and/or development and renovation; and/or

6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.

C. **Fees**. User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:

1) Grant program laws, rules, and applicable manuals;

2) Value of any service(s) furnished;

3) Value of any opportunities furnished; and

4) Prevailing range of public fees in the state for the activity involved.

D. **Requirements for Federal Subawards.** Requirements for Federal Subawards. Sponsors must also comply with program income requirements (see 2 C.F.R. Part 200 (as updated) for federal awards).

PROCUREMENT REQUIREMENTS

A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:

1) Publish a notice to the public requesting bids/proposals for the project;

2) Specify in the notice the date for submittal of bids/proposals;

3) Specify in the notice the general procedure and criteria for selection; and

4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.

5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

   Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

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

B. **Requirements for Federal Subawards.**

1) For all Federal subawards, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).

TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in the applicable manuals, or approved by RCO in writing.

A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. **Loss or Damage.** The Sponsor shall be responsible for any loss or damage to equipment.

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

1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

4) Adequate maintenance procedures must be developed to keep the property in good condition.

5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement. If a landowner agreement or other form of control and tenure limits access to the project area, it must include (or be amended to include) the RCO's right to inspect and access lands acquired or developed with this funding assistance.

STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the applicable WACs and manuals, this Agreement, or as otherwise directed by RCO consistent with the existing laws and applicable manuals. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the RCO; provided that RCO does not represent that any monitoring it may recommend will be adequate to reasonably assure project performance or safety. It is the sole responsibility of the Sponsor to perform such additional monitoring as may be adequate for such purposes.

ACKNOWLEDGMENT AND SIGNS

A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.

B. **Signs.**

1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and

2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.

C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.

PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force:

A. **Operations and Maintenance**. Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.

B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.

   1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.

C. **Control and Tenure**. The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.

D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009", "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.

E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

A. **Long-Term Obligations**. This section applies to completed projects only.

B. **Perpetuity**. For acquisition and development projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.

C. **Conversion**. The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, and/or renovated pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, and/or renovated with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state of federal laws or regulation.

   1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement

or law.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

A. **Property and facility operation and maintenance**. Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:

   1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;

   2) In a reasonably safe condition for the project's intended use;

   3) Throughout its estimated useful service life so as to prevent undue deterioration;

   4) In compliance with all federal and state nondiscrimination laws, regulations and policies.

B. **Open to the public**. Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:

   1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.

   2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

   3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

PROVISIONS FOR FEDERAL SUBAWARDS

The following provisions shall be in force for this agreement:

A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 (as updated). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.

B. **Binding Official.** Per 2 CFR 200 (as updated), as updated, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

C. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200 (as updated).

   1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a "federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant,

contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

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

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

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

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

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

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

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

H. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

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

J. **Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).

K. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

L. **Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS

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

PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS

The following provisions shall be in force for this Agreement, funded in part or wholly from the Puget Sound Acquisition and Restoration program.

The Sponsor agrees to the following terms and conditions:

A. **Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 (as updated) as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 (as updated).

B. **Credit and Acknowledgement.** In addition to the ACKNOWLEDGEMENT AND SIGNS SECTION, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.

C. **Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ http://www.usfa.dhs.gov/applications/hotel to see if a property is in compliance or to find other information about the Act.

D. **Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.

E. **Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.

F. **Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

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

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

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

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

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

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

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

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

H. **Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.

I. **Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA’s Utilization of Small, Minority and Women’s Business Enterprises in procurements made under this award.

J. **Minority and Women’s Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows: Purchased Goods 8% MBE 4% WBE; Purchased Services 10% MBE 4% WBE; Professional Services 10% MBE 4% WBE.

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

1) Include qualified minority and women’s businesses on solicitation lists.

2) Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.

3) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

4) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

5) Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

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

1) There are any funds budgeted in the contractual/services, equipment or construction lines of the award; and/or $3,000 or more is included for supplies; or there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b). When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first. The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or $3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form. MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at http://www.epa.gov/osbp/contactpage.htm. The coordinators also can answer any questions. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

L. **Procurement involving an EPA Financial Assistance Agreement.** Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

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

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

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

4) Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.

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

6) If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

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

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

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

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

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

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

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

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

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

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

P. **International Travel (Including Canada).** All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.

Q. **Unliquidated Obligations (ULO).** Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

R. **Light Refreshments And/Or Meals.**

Unless the event(s) and all of its components are described n the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops, and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);

2) A description of the purpose, agenda, location, length and timing for the event; and,

3) An estimated number of participants in the event and a description of their roles.

Cost for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

S. **State grant cybersecurity.**

1) The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.

2) EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure.

3) The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in (b)(1) if the subrecipient' s network or information system is connected to EPA networks to transfer data to the AGecy using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange.

ORDER OF PRECEDENCE

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

A. Federal law and binding executive orders;

B. Code of federal regulations;

C. Terms and conditions of a grant award to the state from the federal government;

D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;

E. State Constitution, RCW, and WAC;

F. Agreement Terms and Conditions and Applicable Manuals;

G. Applicable deed restrictions, and/or governing documents.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

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

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may, at it's discretion, enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

A. **For Cause.**

1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:

a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;

b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or

c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;

2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.

3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. **For Convenience.** Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1) The Sponsor was not in default; or

2) Failure to perform was outside Sponsor’s control, fault or negligence.

C. **Rights and Remedies of the RCO.**

1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. **Non Availability of Funds.** The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO’s obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any

right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

DISPUTE HEARING

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

A. The disputed issues;

B. The relative positions of the parties;

C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

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

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

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

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

ATTORNEYS' FEES

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

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

SEVERABILITY

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

END OF STANDARD TERMS AND CONDITIONS

This is the end of the Standard Terms and Conditions of the Agreement.

RANKED #3 of 8

2021-2023 PSAR REGIONALLY SIGNIFICANT PROJECT

SUMNER WHITE RIVER RESTORATION

PSAR FUND

Puget Sound Acquisition and Restoration

FUNDING REQUEST
$15,244,337

CONGRESSIONAL DISTRICT
10

LEGISLATIVE DISTRICT
31

WRIA **10**

COUNTY **PIERCE**

PROJECT SPONSOR
City of Sumner

Sediment is building up in the Lower White River where the river flows through the City of Sumner, degrading habitat for endangered salmon and increasing flood risk to surrounding areas, even in normal storm events. This project will restore 170 acres of floodplain, riparian, and wetland habitat in the Lower White River, significantly increasing high quality habitat for salmon. Connected floodplains give the river room to spread out and slow down during high water, reducing flood risk for the surrounding community.

KEY BENEFITS

- ☑ Lowering the floodplain will reduce flooding in the area, which includes Pierce County's largest manufacturing and industrial center.
- ☑ Supports White River Spring Chinook salmon – the only remaining spring Chinook salmon stock found in South Puget Sound.
- ☑ Installing broad areas of forested wetlands to provide water quality and habitat benefits.
- ☑ Additional in-stream habitat will provide bank stability and refuge for fish during flood events.
- ☑ Restoring a contiguous patch of native riparian forest within an otherwise industrialized valley.

SUPPORT FOR THIS PROJECT

- ☑ Ranked #3 for PSAR 2021-2023 regionally significant projects.
- ☑ Project located in one of the 17 high priority rivers identified in the Puget Sound Floodplains Implementation Strategy.
- ☑ Included as a Near Term Action in the Action Agenda.
- ☑ This project supports tribal treaty rights by providing tribal fishing sites through collaboration and coordination with the Muckleshoot Indian Tribe and Puyallup Tribe of Indians.

PROJECT BY THE NUMBERS

3.5 miles
Stream habitat opened for salmonid use

170 acres
Connected floodplain and fish habitat restored and protected

153 acres
Riparian, wetland, forested wetland planted

21 log jams
Will provide refuge for fish which helps with provision of food, shade, and cools the water

UPDATED 9.18.2020

PUGET**SOUND** PARTNERSHIP

For more information about the PSAR Program please contact:

JEFF PARSONS
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CARRIE BYRON
PSAR PROGRAM MANAGER
360.515.6054 | carrie.byron@psp.wa.gov

INVESTING IN PUGET SOUND
FOR SALMON, ORCAS, AND PEOPLE

PSAR FUND
Puget Sound Acquisition and Restoration

WHAT IS PSAR?

The Puget Sound Acquisition and Restoration (PSAR) program was created in 2007 to help implement the most important habitat protection and restoration projects for Puget Sound. Funding is appropriated every two years by the Washington State Legislature and allocated through the Salmon Recovery Funding Board. The program has two parts, with $30 million provided as base funding for locally significant projects and remaining funds allocated to projects that are ranked as regionally significant.

A GOOD INVESTMENT

PSAR projects restore habitat critical to the survival of Puget Sound salmon populations.

Projects are thoroughly reviewed to ensure that they benefit salmon populations and local communities. The projects:

- ☑ Support recovery of Puget Sound salmon, a critical food source for endangered southern resident orcas
- ☑ Provide local jobs, public access, and recreational opportunities
- ☑ Align with the Puget Sound Salmon Recovery Plan and the Puget Sound Action Agenda
- ☑ Are informed by science and the NOAA-approved Chinook salmon recovery strategy
- ☑ Are endorsed by members of the public, cities, counties, tribes, non-profit organizations, and government agencies

PSAR projects make cost-effective use of public money.

PSAR supports local communities by **creating more than 3,400 jobs in the last 13 years**. PSAR has also **leveraged $157 million in federal and other matching funds** and **generated approximately $560 million in economic activity**.

PSAR investments have supported the work of our partners to **restore and protect more than 3,200 acres of estuary habitat, 140 river miles for fish passage, and 12,000 acres of watershed habitat.** Many projects support multiple benefits.

The Puget Sound Partnership manages the PSAR program; funds are administered through the Washington State Recreation and Conservation Office.

UPDATED 9.2.2020

PUGET**SOUND** PARTNERSHIP

For more information about the PSAR Program please contact:

JEFF PARSONS
LEGISLATIVE POLICY DIRECTOR
360.999.3803 | jeff.parsons@psp.wa.gov

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PSAR PROGRAM MANAGER
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SUBJECT: Ordinance No. 2809 - Amending Sumner Municipal Code Chapter 1.18 - Public Records

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2809 - Public Records Code

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:

The state legislature updated various sections of RCW 42.56 (Public Records) in 2019. While incorporating the legislative changes into our code, there was the need for clean-up and clarification in order to reflect our current method of fulfilling public records requests.

Some areas of significant adds/changes/deletions include:

- Refers the requestor to use the NextRequest portal on the City's website.
- Update the fee schedule (1.18.100). Updated inaccordance with RCW 42.56 to include Body Worn Cameras recording/footage redactions.
- Updated exceptions (1.18.120). These are now adopted by reference as outlined in RCW 42.56.

COUNCIL COMMITTEE/STUDY SESSION: Finance & Personnel Committee
MEETING/STUDY SESSION DATE: 1/5/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

Approve Ordinance No. 2809 - Amending Sumner Municipal Code 1.18 - Public Records

ORDINANCE NO. 2809

CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, **SUMNER MUNICIPAL CODE SECTIONS 1.18.040; 060; 070; 080; 090; 100; AND ADDING SECTION 1.18.120 RELATED TO THE CITY'S PUBLIC RECORDS.**

WHEREAS, in 2019, the state legislature updated various sections of The Public Records Act in an effort to improve public records administration, and

WHEREAS, as a result of these amendments or additions to the Revised Code of Washington, the Sumner Municipal Code requires updating in order to reflect those changes; and

WHEREAS, from time to time, it is also necessary to update and clean-up original ordinances to incorporate new technology, websites, and different and/or more efficient processes made necessary by world-wide pandemics, and;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption. Sumner Municipal Code Chapter 1.18 shall be amended as follows, including the addition of Section 1.18.120:

1.18.010 Findings.

A. RCW 42.56.070(1) requires all cities and public agencies to maintain and make available a current index of various public records.

B. RCW 42.56.070(4) provides that if maintaining such an index would be unduly burdensome, a city need not maintain such an index but it must issue and publish a formal order specifying the reasons why and the extent to which compliance would be unduly burdensome.

C. The City of Sumner is comprised of numerous departments, and their divisions and subdivisions, which maintain separate databases and/or record keeping systems and would makes it extremely difficult, if not physically impossible, and would interfere with city operations to compile an index.

D. Because the City has records which are diverse, complex and stored in multiple locations and in multiple computer systems and databases, it is unduly burdensome, if not physically impossible, to maintain a central index of records.

E. The City produces or receives an uncountable number of records each day and maintains an uncountable number of records in numerous City files.

F. The development and maintenance of a city index would be extremely costly and would provide little benefit to the public compared to the expense in maintaining the index.

G. The City's operations do not allow for the addition, revision, or reassignment of duties of existing personnel so that an index may be developed and maintained.

H. Anticipated City revenues do not allow for additional staff for the purpose of creating and maintaining such an index.

I. Pursuant to RCW chapter 42.56 the City of Sumner will disclose all public records, including any indexes that are maintained by the City, to the extent such records or indexes are not exempt from disclosure pursuant to RCW chapter 42.56 or other applicable laws. (Ord. 2228 § 1 (part), 2007)

1.18.020 Public records index – Order – Maintenance not required.
Pursuant to RCW 42.56.070(4), the City Council orders the following:

A. The City of Sumner is not required to maintain a current index of public records due to findings of the City Council that the requirement to do so is unduly burdensome and would interfere with city operations and such a list is nearly impossible to create and/or maintain; and

B. Pursuant to RCW chapter 42.56, the City of Sumner shall disclose all public records and any indexes of public records maintained by the City to the extent not exempt from disclosure pursuant to RCW chapter 42.56 or other applicable laws. (Ord. 2228 § 1 (part), 2007)

1.18.030 Public records disclosure – Purpose.

The purpose of this chapter is to establish the procedure for obtaining public records from the City of Sumner as required by RCW chapter 42.56 as currently enacted or hereafter amended. The City of Sumner will disclose all public records, as defined by state law, to the extent records are not exempt from disclosure pursuant to RCW chapter 42.56 or other applicable laws. (Ord. 2350 § 1, 2011: Ord. 2228 § 1 (part), 2007)

1.18.040 Public records officer.
A. The city clerk, who is the records management officer for the City, is hereby designated as the City's public records officer. The city administrator is authorized to establish and implement

policies and procedures for responding to requests for public records to be consistent with those set forth in this chapter.

B. Any person requesting public records of the City should contact the public records officer at:

City Clerk
City of Sumner
1104 Maple Street, Suite 200
Sumner, WA 98390
~~253-299-5500 (Ph)~~ 253-863-8300
253-299-5509 (Fax)
Information is also available at the City's web site at ~~www.ci.sumner.wa.us~~www.sumnerwa.gov.
(Ord. 2607, 2228 § 1 (part), 2007)

1.18.050 Production of public records – Generally.
A. Unless exempt from disclosure pursuant to RCW chapter 42.56, as currently enacted or hereafter amended, or other applicable federal or state law, public records shall be available for inspection and copying. The City may make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure. Failure of the City to fully comply with any provision of this chapter shall not result in any liability imposed upon the City other than that outlined in RCW chapter 42.56, as currently enacted or hereafter amended.

B. The City need only disclose records to the extent required by state or federal law and nothing in this policy shall be interpreted as requiring the disclosure of any record that is not subject to disclosure by state or federal law. Generally, any record, or portion thereof, which is exempt from disclosure, will not be disclosed, and information contained in the records may be removed to the extent necessary or permissible by law. The City is not required to create records or documents in response to a request for public records that do not exist at the time the request is made.

C. State law does not require the City to retain and/or maintain every public record it has ever created or used. The City of Sumner has adopted a retention schedule that has been approved by the State Records Committee. (Ord. 2228 § 1 (part), 2007)

D. The City is not required to retain records held by volunteers who (A) do not serve in an administrative capacity; (B) have not been appointed by the City to an agency board, commission, or internship; and (C) do not have a supervisory role or delegated City authority.

E. Third party notice. In the event that the requested records contain information that affects individuals named in the records and/or may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for the affected third party to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request. The requestor shall be notified that the City has issued notice to an affected third party.

1.18.060 Requests for public records.

A. In order to track and promptly respond to all requests for public records, such requests shall be made in writing and delivered in person, by fax, ~~or~~ by mail or through the records request portal, on the City's website. The City encourages requestors to send formal requests for public records by means other than general e-mail because of the risk that the e-mail will be misdelivered or screened out and the City cannot guarantee that an e-mail request for records will be received and processed properly.

B. A variety of records are available on the City's website at: www.sumner.wa.gov. To the extent practical, the City will store, maintain, and make its commonly requested records available electronically on its website. The City maintains an open public record portal at https://sumnerwa.nextrequest.com/ and will respond to most requests through the portal for those seeking responsive records in electronic format. The public records officer will work with the requestor to determine the most appropriate method for providing electronic copies of responsive records and may provide records through other means (ie, via email).

C. ~~The city will provide a public records request form that may be used by those requesting public records. The public records request form is available and can be downloaded from the city's website at www.ci.sumner.wa.us.~~ In lieu of submitting the request for public records on the C~~c~~ity's ~~form,~~website the request may also be submitted in other written format but must contain the following information:

1. The date of the request;

2. The name of the requestor;

3. The full address of the requestor;

4. The telephone number of the requestor or email address~~;~~

5. A complete description of the requested record;

6. The title and date of the requested record, if known;

7. The location of the requested record, if known; and

8. Whether the requestor intends to inspect the records or to obtain a copy of the records, at the cost set forth in SMC 1.18.100.

D~~C~~. Requests for public records shall be submitted to the city clerk, or to a designated city employee pursuant to subsection (E~~D~~) of this section. The city clerk may authorize other city employees to make the initial response pursuant to SMC 1.18.070 to a request for public records. All requests shall comply with subsections (A) and (C~~B~~) of this section.

E.~~D~~. The following designated city employees may receive public record requests directly for the specific records identified in this subsection for each designated employee.

1. The records clerk of the police department, if the request is to inspect and/or copy ~~a police or incident report~~records prepared and/or retained by the Sumner Police Department.

2. The records clerk of the Sumner Municipal Court if the request is to inspect and/or copy documents contained in a particular Sumner Municipal Court case file or other records prepared and/or retained by the ~~within the control of the~~ court.

If the record requested is not identified in subsections (E~~D~~)(1) and (E~~D~~)(2) of this section, or the requestor is unsure of where to file the request, the request shall be filed with the city clerk/public records officer. If a request for a police or municipal court document is made to the city clerk/public records officer, it will be redirected to the applicable department for processing. (Ord. 2350 § 2, 2011; Ord. 2228 § 1 (part), 2007)

F~~E~~. Over the counter records.

Each city department may designate within its own department certain "over the counter" records available to the public for immediate inspection without the requirement of a formal public records request as set forth in this section. In the event a copy of such "over the counter" records is requested, and if the requested record is an eight-and-one-half-by-14-inch page or smaller, the department may provide the first 25 pages free of charge. However, if the photocopies exceed 25 pages, a public disclosure request will then need to be completed and the applicable duplication cost paid.

1.18.070 Initial response to request.

A. The City shall make an initial response to the request for public records within five business days of receipt of the request, not including the day the request was received as provided by RCW 1.12.040.~~.~~ In the event a request for public records is received after 5:00 p.m., the request shall be deemed to have been received on the next business day. Depending upon the nature of the request, the City may respond initially by:

1. Producing the record after the payment of applicable fees, if any;

2. Acknowledging in writing the City's receipt of the request accompanied by an estimate of the time necessary for further response;

3. Denying the request in writing accompanied by an explanation of the basis for the denial;

4. Acknowledging in writing that the records responsive to the request are available for inspection; or copying, and that pursuant to SMC 1.18.100 a deposit is required for copies; or

5. Acknowledging that the City received the request and asking that the requestor provide clarification of a request that is unclear, accompanied by, to the greatest extent possible, a reasonable estimate of the time necessary for further response should the requestor not respond with clarification. City staff shall not be obligated to interpret such a broad, general request in order to decipher which specific documents may be of interest to the requestor and the Act does not allow a requestor to search through the City's files for records which cannot be identified or described to the City. ~~If the requestor fails to respond to an agency request for clarification, and the entire request is unclear, the city need not respond to the request.~~ If any portion of the request that is clear, the city must respond to that/those portions.

B. In the event that the requestor completes the City's standard public records request form, the City may return a copy of the request to the requestor with an estimation of time necessary to provide a final response to the request. This indication on the form of the estimation of time constitutes and satisfies the City's initial response required within five days of receipt of the public disclosure request. Records provided in response to a public records request shall be those documents of record available for disclosure as of the date of the request. (Ord. 2228 § 1 (part), 2007)

C. The City is not obligated to create a new record to satisfy a record request; however, the City may, in its discretion, create such a new record to fulfill the request where it may be easier for the City to create a record responsive to the request to collect and make available voluminous records that contain small pieces of information responsive to the request.

1.18.080 Final response to request.

A. A public disclosure request is not continuing in nature. In the event additional records are created after the date of the requestor's original public records request, the requestor will need to submit a new request. Any records or portions of records disclosed by the C~~c~~ity will be provided to the requestor in the same format as they are retained; provided, that any disclosable records contained on a computer or other electronic or mechanical device shall, at the discretion of the City, be provided in printed form, on ~~disk,~~ USBs, or in another format. Requestors shall not be permitted to access or 'plug into' city networks or systems or copy records using personal devices or equipment such as USBs or scanners, which must be connected to city equipment in order to copy records.

B. If the requestor specifies a format in which the records should be disclosed, the City will disclose the records in the requested format if:

1. It is determined that disclosable records exist;

2. The City is capable of providing the records in the format requested;

3. The format requested is reasonable and does not require additional staff time; and

4. The requestor pays all required fees, as specified in SMC 1.18.100 below.

C. The City's response to the request shall be deemed complete and final upon:

1. Requestor's inspection of the records;

2. In the event photocopies were requested, upon notification to the requestor that the photocopies requested are available for pickup and payment. (Ord. 2228 § 1 (part), 2007); or

3. In the event electronic records were requested, upon notification to the requestor that the electronic records have been emailed or otherwise transmitted to the requestor.

1.18.090 Inspection of records.

A. In the event a requestor chooses to inspect records, the City shall notify the requestor once the records which respond to the request are available for inspection. The records will be available for inspection during customary office hours. Records that have been pulled for inspection shall be made available to the requestor for a period of no more than 30 calendar days. In the event a requestor fails to contact the city clerk or designated records clerk within 30 calendar days of being notified that the records are available for inspection: (A) the records shall be returned to the originating department; and (B) the requester will need to submit a new request for the records and the process will begin anew. If an installment response to a records request is not viewed within 30 calendar days, the City is not obligated to fulfill the balance of the request. (Ord. 2228 § 1 (part), 2007)

B. In the event the requestor requests electronic records, the City shall email or otherwise utilize a secure file transfer site to electronically transmit the responsive records to the requestor for ~~viewing.The~~viewing. The electronic records will be available for a period of no more than 30 calendar days. In the event the requestor fails to contact the city clerk or designated records clerk within 30 calendar days of being notified that the electronic records have been transmitted: (A) the link to the records, if sent using the secure file transfer site, shall expire; and (B) the requestor will need to submit a new request for the records and the process will begin anew. If an installment response to a request for electronic records is not viewed or opened within 30 calendar days, the City is not obligated to fulfill the balance of the request.

C. The City, and its officials, agents, employees or custodians shall not be liable, nor shall a cause of action exist, for loss or damage based on release of a public record if the City, official, agent, employee or custodian acted in good faith in attempting to comply with the Public Records Act.

D. If, after the public records officer has informed the requestor that the City has provided all available records, the City then becomes aware of additional responsive documents that existed on the date of the request, the Public Records Office will promptly inform the requestor of the additional documents and provide them on an expedited basis.

1.18.100 Fees.

~~–~~There shall be no fee for inspecting public records or locating public documents and making them available for copying, except as follows:

A. **Paper Copies.** If the request exceeds ~~twenty-five~~25 pages, the City may charge up to fifteen cents ($0.15) per page (per side, if double-sided). If, at the City's discretion, materials need to be copied by an outside source either due to volume, current workload of city staff, or for any other reason, or if agency equipment must be used to fulfil the request, the requester will be charged the actual amount incurred and/or invoiced to the City in fulfilling such request,

B. **Scanned Documents**. The City may charge up to ten cents ($0.10) per page for all requests wherein public records are scanned into an electronic format, or for the use of agency equipment to scan the records into electronic format.

C. **Emailed Documents**. The City may charge up to five cents ($0.05) per every four electronic files or attachments uploaded to email, cloud-based data storage services, or other means of electronic delivery, except as explicitly described in subsection D below.

D. **Electronic Records**. The City may charge up to ten cents ($0.~~,~~10) per gigabyte for the transmission of public records in an electronic format or for the use of city equipment to send the records electronically. Fees under this section shall also include the actual cost of materials used to transmit the electronic records (CD, ~~thumb drive~~USBs, etc.). ~~Requestors shall not be permitted to supply their/its own copying material for use by the City.~~

E. **Customized Service Charge**. The City may charge requestor a customized service charge if the City estimates that the request will require the use of information technology expertise to prepare data ~~compilations, or~~compilations or provide customized electronic access services when such compilations and ~~cutomized~~customized access services are not used by the City for other city purposes. The customized service charge may reimburse the agency up to the actual cost of providing the services described in this section. Before assessing a customized service charge, the city clerk or designated public records officer shall notify the requestor of the customized service charge to be applied to the request, with an explanation of why the customized service charge applies, a description of the specific expertise, and a reasonable estimate of the cost of the charge, and must provide the requestor with an opportunity to amend the request in order to avoid or reduce the cost of the customized service charge.

F. Body Worn Camera Recordings/Footage (as defined by RCW 42.56.240(14)(g)(i) – redactions $0.60 per minute if video is to be provided. The City may charge the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure to the extent necessary to comply with the exemptions in this chapter or any applicable law. Based on the costs associated with redaction, including the software and staff time, the charge levied will be .60 per minute of recording requested. The City shall charge the actual cost of digital storage media or device for transmitting the requested recordings.

However, if a request for body camera footage pursuant to RCW 42.56.240(14) is made by:

- a person directly involved in an incident recorded by the requested body worn camera recording; or
- an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording; or
- a person or their attorney who requests a body worn camera recording relevant to a criminal case involving that person; or
- the executive director from either the Washington State Commission on African American Affairs, Asian Pacific American Affairs, or Hispanic Affairs; or
- an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States Department of Justice settlement agreement (subject to an explanation as to the relevancy of the requested body worn camera recording to the cause of action)

then, the requester shall not be subject to paying redaction costs.

G~~F~~. **Alternative Charge**. The City may charge a flat fee of up to two dollars ($2.00) for any request where the City reasonably estimates and documents that the costs outlined above are clearly equal to or more than two dollars. If the City elects to charge the flat fee for an initial installment of a request produced in installments, the City shall not charge any additional fee(s) for subsequent installments on the same request.

~~G~~H. **Deposit Required.~~; When~~.** In the event that it is estimated that the copying fees applicable to a particular records request exceed $25.00, or if the request requires the use of information technology expertise to prepare data compilations or provide customized electronic access services ~~,~~ the City, at its discretion, may require the requestor to deposit a sum equal to 10 percent of the estimated cost prior to copying of the records. In the event the City makes a response to a request available on a partial or installment basis, the City may charge for each part of the response as it is provided to the requestor. If an installment response to a records request is not claimed or paid for within 30 calendar days, the City is not obligated to fulfill the balance of the request~~.~~

I~~H~~. **Postage and Mailing Supplies**. Postage is charged at the actual postage costs of such postage, and envelopes and/or packaging are charged at the actual costs of those supplies.

~~I~~J. **Accepted Payments**. All payments shall be made by cash, debit or credit card, money order, or check payable to the City of Sumner or through the city's records portal, located on the city's website. The City has the authority to waive copying fees as described in this section. If the responsive documents are pages that are eight and one-half by 14 inches or smaller, the department may provide the first 25 pages free of charge. (Ord. 2228 § 1 (part), 2007)

1.18.105 Denial of request for all records or bot requests.

A public records request must be for identifiable records. The City may deny a request for all or substantially all records prepared, owned, used or retained by the City not relating to a particular topic. The City may also deny automatically generated (bot) requests received from the same requestor within a 24-hour period, if the request is deemed by the City to cause excessive interference with the other essential functions of the agency. For purposes of this section, "bot" shall mean a request that the City reasonably believes was automatically generated by a computer program or script.

1.18.110 Review of public records request denials.

A. Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for review of that decision. The petition shall include a copy or reasonably identify the written statement by the public records officer or designee denying the request.

B. The public records officer, in conjunction with the city administrator and city attorney, will consider the petition and will either affirm or reverse the denial of the public records request.

C. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550. (Ord. 2228 § 1 (part), 2007)

1.18.120 **Exemptions**

In addition to the exemptions authorized by and outlined in RCW 42.56, the City adopts by reference all other exemptions permitted by the Revised Code of Washington, and outlined in the list of exemptions kept by the City, including any future amendments thereto or recodification thereof, along with any other exemption or exception to the Public Records Act provided by law. Upon request the list is available from the records officer.

Section 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

Section 3. Effective Date. This ordinance shall be effective five (5) days from and after its passage approval and publication as provided by law.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 18th day of January, 2022.

____
Mayor Kathy Hayden

ATTEST:

____
City Clerk, Michelle Converse, CMC

APPROVED AS TO FORM:

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City Attorney, Andrea Marquez