

Note: Times are approximate and subject to change.

**Town Hall Meeting Room
3715 Bridgeport Way West**

- 6:30 pm 1. **CALL REGULAR MEETING TO ORDER**
2. **ROLL CALL**
3. **FLAG PRESENTATION AND PLEDGE OF ALLEGIANCE**
• Pierce County Sheriff's Department Honor Guard
4. **APPROVAL OF MINUTES – April 18, 2016**
5. **APPROVAL OF AGENDA**
- 6:35 pm 6. **PUBLIC COMMENTS** – (At this time, citizens have three minutes to address the Council on any matter not scheduled for Public Hearing or Council Consideration. State law prohibits the use of this forum to promote or oppose any candidate for public office, or ballot measure. Public comments are limited to three minutes. Please provide your name and address for the record.)
- 6:40 pm 7. **PRESENTATION**
• Public Safety Officer Recognition – Police Chief Blair
- 6:45 pm 8A- **CONSENT AGENDA**
8B. **Motion: Approve or Amend the Consent Agenda as Proposed**

The Consent Agenda consists of items considered routine or have been previously studied and discussed by Council and for which staff recommendation has been prepared. A Councilmember may request that an item be removed for the Consent Agenda so that the Council may consider the item separately. Items on the Consent Agenda are voted upon as one block and approved with one vote.

A. **Receive and File: Payroll and Claims.**

B. **Pass an ordinance amending Ordinance No. 626, directing the City's administration to monitor actual development within the Planned Action Area against thresholds established in the Environmental Impact Statement.**

COUNCIL CONSIDERATION – (The following item(s) will require Council action.)

- 6:50 pm 9. **BRIDGEPORT WAY PHASE 5 PROJECT BID AWARD**
• Staff Report • Public Comment • Council Consideration
- 7:05 pm 10. **STATE RECREATION AND CONSERVATION OFFICE GRANT ACCEPTANCE FOR CIRQUE PARK LIGHTING IMPROVEMENT**
• Staff Report • Public Comment • Council Consideration
- 7:20 pm 11. **CITY MANAGER'S REPORT**
• Regional Growth Center Subarea Plan Update
• Commercial/Residential Development Update
- 7:30 pm 12. **COUNCIL COMMENTS/REPORTS**

RECESS TO STUDY SESSION – (At this time, Council will have the opportunity to study and discuss business issues with staff prior to its consideration. Citizen comment is not taken at this time; however, citizens will have the opportunity to comment on the following item(s) at future Council meetings.)

- 7:35 pm 13. **SEWER FRANCHISE FEE ORDINANCE**

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- 8:15 pm **14. CRITICAL AREAS AND SHORELINE MASTER PROGRAM AMENDMENTS**
- 9:00 pm **15. ADJOURNMENT**

*PRELIMINARY CITY COUNCIL AGENDA

May 2, 2016
Regular Council Meeting

May 16, 2016
Regular Council Meeting

June 6, 2016
Regular Council Meeting

June 20, 2016
Regular Council Meeting

Preliminary City Council Agenda subject to change without notice*
Complete Agendas will be available 24 hours prior to scheduled meeting.
To obtain Council Agendas, please visit www.cityofup.com.

American Disability Act (ADA) Accommodations Provided Upon Advance Request
Call the City Clerk at 253-566-5656

APPROVAL OF MINUTES

**CITY OF UNIVERSITY PLACE
DRAFT MINUTES
Regular Meeting of the City Council
Monday, April 18, 2016
City Hall, Windmill Village**

1. CALL REGULAR MEETING TO ORDER

Mayor Pro Tem Keel called the Regular Meeting to order at 6:30 p.m.

2. ROLL CALL

Roll call was taken by the City Clerk as follows:

Councilmember Belleci	Present
Councilmember Grassi	Present
Councilmember McCluskey	Excused
Councilmember Nye	Present
Councilmember Worthington	Present
Mayor Pro Tem Keel	Present
Mayor Figueroa	Excused

Staff Present: City Manager Sugg, City Attorney Victor, Public Works Director Cooper, Engineering and Capital Projects Director Ecklund, Police Chief Blair, Planning and Development Services Director Swindale and City Clerk Genetia.

MOTION: By Councilmember Grassi, seconded by Councilmember Belleci, to excuse the absences of Mayor Figueroa and Councilmember McCluskey.

The motion carried.

3. PLEDGE OF ALLEGIANCE

The University Place Cub Scout Pack 148, Dens 1 and 3, led the Pledge of Allegiance.

4. APPROVAL OF MINUTES

MOTION: By Councilmember Belleci, seconded by Councilmember Nye, to approve the minutes of April 4, 2016 as submitted.

The motion carried.

5. APPROVAL OF AGENDA

MOTION: By Councilmember Grassi, seconded by Councilmember Belleci, to approve the agenda.

The motion carried.

6. PUBLIC COMMENTS – The following individual provided public comment: *Dan Novogrodsky, 9415 Columbine Circle West.*

7. CONSENT AGENDA

Councilmember Worthington requested that Item 7B be pulled for separate consideration.

MOTION: By Councilmember Belleci, seconded by Mayor Pro Tem Keel, to approve the amended Consent Agenda as follows:

- A. Receive and File: Payroll for the period ending 03/15/16, dated 03/18/16, in the total amount of Two Hundred Twenty Thousand Seven Hundred Seventy-Six and 28/100 Dollars (\$220,776.28); Claims dated 03/31/16, check nos. 51977890 through 51977960 and wire no. 17716698, in the total amount of Five Hundred Eighty-Nine Thousand Eight Hundred Thirty and 70/100 Dollars (\$589,830.70).
- B. Approve an amendment to the March 18, 2014 Professional Services Agreement with Gray & Osborne, Inc. for storm water engineering and design for six SWM Funded Drainage Repair Projects, increasing the authorized expenditure by \$116,800. **(Pulled for separate consideration.)**

The motion carried.

Item 7B - Public Works Director Cooper presented an amendment to the 2014 Professional Services Agreement with Gray & Osborne, Inc. for the design and engineering services for six storm water drainage projects. He indicated that three of the six projects have been completed. The design for the remaining three projects are eighty percent (80%) completed. An increase in the amount of \$116,800.00 is requested for additional engineering services as well as for construction administration and inspection services, which was not included in the original scope of work to complete the remaining projects. The projects are funded by the Storm Water Management (SWM) Fund.

MOTION: By Councilmember Grassi, seconded by Councilmember Worthington, to approve an amendment to the March 18, 2014 Professional Services Agreement with Gray & Osborne, Inc. for storm water engineering and design for six SWM Funded Drainage Repair Projects, increasing the authorized expenditure by \$116,800.00.

The motion carried.

PUBLIC HEARING

8. SIX-YEAR TRANSPORTATION IMPROVEMENT PLAN AMENDMENTS

Staff Report – City Engineer Ecklund presented minor amendments to the City's Six-Year Transportation Improvement Plan (TIP) for years 2016-2021. This update will better position the City in competing for the upcoming County-wide grant application opportunities administered by the Puget Sound Regional Council. The proposed amendments primarily involve updates to project phasing, costs, and project schedules to align with the City's anticipated grant request.

The City of University Place is required by State law to adopt and annually update a Six-Year Transportation Improvement Plan (TIP). The approval of the Six-Year Transportation Improvement Plan does not commit the City to any financial expenditure; rather, each project is reviewed individually by the City Council in each relevant budget cycle as a component of the Capital Improvement Plan. Its approval, however, does create eligibility for the City to apply for various grant opportunities, and provides an indication of the City's planning direction for transportation needs.

Public Comment – None.

COUNCIL CONSIDERATION

9. SIX-YEAR TRANSPORTATION IMPROVEMENT PLAN ADOPTION

Council Consideration – **MOTION:** By Councilmember Belleci, seconded by Councilmember Grassi, to adopt a resolution approving the Six-Year Transportation Improvement Plan for years 2016 to 2021.

The motion carried. (RESOLUTION NO. 809)

10. COUNCIL COMMENTS/REPORTS

Councilmember Worthington stated that he attended the Pierce County Cities and Towns meeting. He reported on the update he received regarding the Puget Sound Gateway Project SR167.

Mayor Pro Tem Keel reported that he attended a JBLM dinner function, hosted by the 16th Combat Aviation Brigade.

The Council concluded its business meeting at 6:49 p.m. and recessed to study session.

STUDY SESSION

11. PLANNED ACTION ORDINANCE

Planning and Development Services Director Swindale provided background of the Planned Action for the Town Center development project. The City originally adopted the Planned Action Ordinance in 2004 upon the completion of an Environmental Impact Statement (EIS). He explained that the EIS identifies appropriate mitigation for any significant adverse environmental impacts associated with the planned scope of development. Within the scope of the EIS, the City looked at the impacts from 750 dwelling units and 543,000 sq. ft. of retail, dining, recreational, commercial and office uses. It also analyzed the relocation of the City Hall and the library. He noted that the Planned Action Ordinance included a provision that requires the document to be reviewed every two years to ensure that any mitigation measure called for within the EIS will continue to be valid to mitigate any anticipated impacts associated with the proposals in the Planned Action area. City Attorney Victor stated that this review period is optional and not driven by the EIS or any State statutes.

Director Swindale indicated that currently, development progress in the Town Center area is still consistent with the uses mentioned in the EIS, and is below the mitigation framework threshold of the Planned Action Ordinance. He also affirmed that the model-assumed and planned-for traffic growth rate of 1% has slowed to 0.5%, reducing the level of impacts associated with the development of the City's Town Center, further supporting the continued validity of the EIS.

Based upon the review of the Environment Impact Statement, the amount of development in the Planned Action area, the associated traffic models, and the review of the environmental conditions of the Planned Action area and vicinity, staff recommends that Council consider extending a longer review period of the Planned Action Ordinance.

12. MARIJUANA ORDINANCE REVIEW

City Attorney Victor updated Council on new movements on marijuana legislation on both federal and state levels. He discussed the potential impact on the City's ordinance once the Drug Enforcement Administration (DEA) decides whether or not to reclassify marijuana under federal law. He indicated that the City's marijuana ordinance was created to provide effective zoning and regulatory control over licensed marijuana stores in the event marijuana is removed from the Controlled Substances Act.

13. KIDDER MATHEWS BROKERAGE AGREEMENT

City Attorney Victor presented the proposed agreement for brokerage services with Jeff Kraft of Kidder Mathews for the marketing of Town Center's Lot 12. He recommended that Council consider extending the agreement through December 2018. Mr. Kraft was under contract with the City from 2010 through the end of 2015 and has been responsible for bringing in SEB, Inc. and Verus Partners, LLC developers.

MOTION: By Councilmember Belleci, seconded by Councilmember Nye, to suspend Council Rules to allow consideration of this item tonight.

The motion passed 4 to 1. Councilmember Grassi voted no.

MOTION: By Mayor Pro Tem Keel, seconded by Councilmember Belleci, to adopt a resolution approving an Exclusive Brokerage Agreement with Jeff Kraft of Kidder Mathews, for a term through December 2018.

The motion passed 3 to 2. Mayor Pro Tem Keel and Councilmember Grassi voted no.

The meeting adjourned at 7:40 p.m. No other action was taken.

Submitted by,

Emy Genetia
City Clerk

APPROVAL OF CONSENT AGENDA

**City of University Place
Voucher Approval Document**

Control No.: 57	Agenda of: 05/02/16	PREPAY
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Claim of: Payroll for Pay Period Ending 04/20/2016

Check #	Date	Amount	Check #	Date	Amount
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04/20/16 **115,422.48** **Direct Deposit**
EMPLOYEE NET 115,422.48

318640	4/20/2016	155.00	MALAIER, TRUSTEE, MICHAEL G.
318641	4/20/2016	250.00	NATIONWIDE RETIREMENT SOLUTION
WIRE	4/20/2016	22,139.88	BANK OF AMERICA
WIRE	4/20/2016	18,067.85	- 106006, VANTAGEPOINT TRANSF
WIRE	4/20/2016	6,655.51	- 304197, VANTAGEPOINT TRANSF
WIRE	4/20/2016	4,109.35	- 800263, VANTAGEPOINT TRANSF
WIRE	4/20/2016	27,380.01	WA STATE DEPT OF RETIREMENT SY
WIRE	4/20/2016	736.25	PACIFIC SOURCE ADMINISTRATORS
WIRE	4/20/2016	254.17	- 705544, VANTAGEPOINT TRANSF
WIRE	4/20/2016	2,980.62	- 106006 LOAN, VANTAGEPOINT
WIRE	4/20/2016	79.90	AFLAC INSURANCE
WIRE	4/20/2016	890.30	WA ST DEPT OF RETIREMENT SYS
WIRE	4/20/2016	538.21	- 304197 LOAN, VANTAGEPOINT TR

BENEFIT/DEDUCTION AMOUNT 84,237.05

TOTAL AMOUNT 199,659.53

Preparer Certification:

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the claim is a just, due and unpaid obligation against the above-named governmental unit, and that I am authorized to authenticate and certify to said claim

Signed: _____ **(Signature on file.)**
 Steve Sugg, City Manager

_____ **Date**

Bank : bofa BANK OF AMERICA

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
4222016	4/29/2016	001058	ICMA RC RETIREMENT TRUST	LOAN REPAYMEN	4/19/2016	LOAN REPAYMENT/L. HANDS	3,937.54	3,937.54
		Voucher: 40475						
17936553	4/22/2016	002072	WA STATE DEPT OF REVENUE	MAR16	4/21/2016	MAR16/B&O TAX/SWM FEES	2,012.42	2,012.42
		Voucher: 40520						
51978034	4/19/2016	001109	PIERCE COUNTY BUDGET & FIN/CI-213758		3/1/2016	2016 BILLING FOR ONLINE SERV	22,725.00	22,725.00
		Voucher: 40496						
51978035	4/19/2016	001109	PIERCE COUNTY BUDGET & FIN/CI-213665		3/18/2016	FEB16/ANIMAL CONTROL & SHE	8,527.53	8,527.53
		Voucher: 40497						
51978036	4/19/2016	001109	PIERCE COUNTY BUDGET & FIN/CI-213715		3/23/2016	MARCH16/POLICE SERVICES	273,381.56	273,381.56
		Voucher: 40495						
51978037	4/19/2016	001109	PIERCE COUNTY BUDGET & FIN/ROW		3/25/2016	ROW ACQUISITION/PARCEL #02	133.16	133.16
		Voucher: 40498						
51978038	4/25/2016	022031	SEESZ, LINDA	APR16/WATOA	4/25/2016	PER DIEM/WATOA CONF/CHELAI	46.00	46.00
		Voucher: 40506						
51978039	4/29/2016	025917	2 WATCH MONITORING INC	21633	4/12/2016	ALCOHOL & DRUG TESTING/INM	1,348.43	1,348.43
		Voucher: 40442						
51978040	4/29/2016	002661	AIR SYSTEMS ENGINEERING INC000207427		4/4/2016	HVAC MAINTENANCE/CIVIC BUIL	4,061.75	
		Voucher: 40443		000207426	4/4/2016	HVAC MAINTENANCE/TOWN HAI	1,901.92	5,963.67
51978041	4/29/2016	002350	BALLEW'S HITCH, TRUCK & RV	48398	3/31/2016	12 HOLE ADJ SHANK/BALL COME	273.75	273.75
		Voucher: 40444						
51978042	4/29/2016	022761	BEACON ATHLETICS	0456367-IN	4/7/2016	BASE SET/RUBBER PLUG	302.40	302.40
		Voucher: 40445						
51978043	4/29/2016	025956	BEST BAG COMPANY	1155	4/4/2016	BLUE/SCENTED BAGS	3,455.00	3,455.00
		Voucher: 40446						
51978044	4/29/2016	001182	BIG JOHN'S TROPHIES	131488	3/30/2016	COMMUNITY SERVICE EXCELLE	134.69	134.69
		Voucher: 40447						
51978045	4/29/2016	022628	BRISKE, KEVIN	MAY16/ICSC CON	4/5/2016	MAY16/ICSC SPRING CONVENTI	212.72	212.72
		Voucher: 40448						
51978046	4/29/2016	024437	BUILDERS EXCHANGE OF WA. IN1050106		4/7/2016	PUBLISH PROJECTS ONLINE/BP	224.05	224.05
		Voucher: 40449						
51978047	4/29/2016	001187	BUNCE RENTAL, INC.	160066-1	4/7/2016	AERATOR RENTAL/KOBAYASHI T	80.97	80.97
		Voucher: 40450						
51978048	4/29/2016	025573	CANON FINANCIAL SERVICES	15997553	4/12/2016	APRIL16/CONTRACT CHARGE	311.67	311.67
		Voucher: 40451						

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<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>	
51978049	4/29/2016	001152	CENTURYLINK	253-564-1992	4/11/2016	PHONE/SR CENTER	246.48	
	Voucher:	40452		253-565-9558	4/14/2016	PW PUMP CALLOUT LINE	39.34	285.82
51978050	4/29/2016	003056	CITY OF LAKEWOOD	MC-00079	4/6/2016	MAR16 & APR16/COURT SERVIC	24,608.00	
	Voucher:	40453		0013	4/6/2016	CREDIT MEMO/2015, JAN16, FEB	-23,679.50	928.50
51978051	4/29/2016	001108	CITY OF UNIVERSITY PLACE	1STQTR16	4/15/2016	1STQTR16/PETTY CASH FUND R	161.47	161.47
	Voucher:	40454						

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978053	4/29/2016	001024 CITY TREASURER	100101783	4/11/2016	POWER/5520 GRANDVIEW DR W	100.84	
	Voucher:	40455	100094683	4/19/2016	POWER/4758 BRISTONWOOD DF	98.06	
			100905391	4/11/2016	POWER/9313 56TH ST W	90.79	
			100781041	4/14/2016	WATER/4600 BECKONRIDGE DR	67.24	
			100668502	4/13/2016	WATER/7820 CIRQUE DR W	67.24	
			100890035	4/14/2016	WATER/8399 CIRQUE DR W	67.24	
			100895144	4/15/2016	POWER/8300 CIRQUE DR W	60.74	
			100933758	4/21/2016	POWER/7203 44TH ST W	60.32	
			100185134	4/21/2016	POWER/4401 67TH AVE W	49.98	
			100089560	4/13/2016	POWER/4317 GRANDVIEW DR W	49.03	
			100079031	4/5/2016	POWER/3715 BP WAY W, #D4	46.99	
			100895151	4/18/2016	POWER/7901 CIRQUE DR W	45.29	
			100346073	4/13/2016	WATER/7250 CIRQUE DR W	42.78	
			100344745	4/13/2016	POWER/6810 CIRQUE DR W	40.91	
			100306924	4/6/2016	POWER/8900 CHAMBERS CK RD	38.85	
			100306925	4/6/2016	POWER/8020 CHAMBERS CK RD	38.69	
			100093125	3/28/2016	POWER/8513 33RD ST W #A	38.00	
			100315888	4/6/2016	POWER/7401 CHAMBERS LN W	38.00	
			100089578	4/13/2016	POWER/4116 GRANDVIEW DR W	36.77	
			100131881	4/20/2016	POWER/4523 97TH AVE W	35.86	
			100820972	4/8/2016	POWER/2700 SUNSET DR W	34.08	
			100089528	4/13/2016	POWER/3912 GRANDVIEW DR W	30.64	
			100357178	4/12/2016	POWER/2620 BP WAY W	30.22	
			100089555	4/13/2016	POWER/4526 GRANDVIEW DR W	24.52	
			100057075	4/13/2016	POWER/4100 GRANDVIEW DR W	23.74	
			100089583	4/13/2016	POWER/4016 GRANDVIEW DR W	18.39	
			100358203	4/13/2016	POWER/7150 CIRQUE DR W	840.41	
			100657111	4/5/2016	WATER/3626 DREXLER DR W	405.20	
			100083325	4/19/2016	POWER/4910 BRISTONWOOD DF	329.26	
			100077160	4/14/2016	POWER/5202 67TH AVE W	247.71	
			100775637	4/13/2016	POWER/7001 CIRQUE DR W	234.05	
			100668537	4/13/2016	WATER/7150 CIRQUE DR W	225.01	
			100092335	4/8/2016	POWER/3050 BP WAY W	211.75	
			100673072	4/12/2016	WATER/8300 40TH ST W	201.75	
			100664578	4/11/2016	WATER/5300 GRANDVIEW DR W	201.75	

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
			100664580	4/11/2016	WATER/6000 GRANDVIEW DR W	201.75	
			100668520	4/19/2016	WATER/4200 GRANDVIEW DR W	201.75	
			100081728	4/12/2016	POWER/6701 BP WAY W	193.25	
			100032203	4/8/2016	POWER & WATER/2534 GRANDV	193.19	
			100263915	4/13/2016	WATER & POWER/7250 CIRQUE	192.50	
			100101775	4/7/2016	POWER/5250 GRANDVIEW DR W	176.33	
			100101800	4/6/2016	POWER/6318 GRANDVIEW DR W	169.93	
			100333844	4/19/2016	WATER/4951 GRANDVIEW DR W	162.67	
			100172057	4/19/2016	POWER & WATER/3920 GRANDV	159.75	
			100080586	4/19/2016	POWER/4951 GRANDVIEW DR W	157.00	
			100611293	4/13/2016	WATER/5200 BP WAY W	131.38	
			100668517	4/18/2016	WATER/4300 BP WAY W	131.38	
			100679491	4/12/2016	POWER/8002 40TH ST W	126.14	
			100940204	4/18/2016	WATER/7299 44TH ST W	125.28	
			100324281	4/13/2016	POWER/7820 CIRQUE DR W	117.53	
			100798512	4/20/2016	POWER/4402 97TH AVE W H1 ST	101.97	
			100077151	4/13/2016	POWER/4000 OLYMPIC BLVD W	10.10	
			100109710	4/12/2016	POWER/8902 40TH ST W	9.19	
			100077140	4/13/2016	POWER/2900 GRANDVIEW DR W	8.63	
			100072286	4/13/2016	POWER/8501 40TH ST W	8.63	
			100072268	4/13/2016	POWER/8901 40TH ST W	8.63	
			100072254	4/13/2016	POWER/8417 40TH ST W	8.63	
			100939530	4/5/2016	POWER/3555 MARKET PL W	1,308.75	
			100089550	4/13/2016	POWER/4704 GRANDVIEW DR W	18.39	8,094.85
51978054	4/29/2016	001140 CITY TREASURER	90686246	4/4/2016	HYDRANT USE PERMIT/SINGLE	332.99	332.99
		Voucher: 40456					
51978055	4/29/2016	002171 CITY TREASURER	90687234	4/10/2016	MAINTENANCE/LABOR/CITY VE-	24,159.80	24,159.80
		Voucher: 40457					
51978056	4/29/2016	025161 CITY TREASURER	130297	4/7/2016	DTA RECEIVERS/CITY HALL	84.35	
		Voucher: 40458	129335	4/7/2016	DTA RECEIVERS/SR CENTER	8.27	92.62
51978057	4/29/2016	024565 COMCAST	849835010094487	4/15/2016	APR25-MAY24/INTERNET/CITY H	140.79	
		Voucher: 40459	849835010944363	4/10/2016	APR19-MAY18/INTERNET/PW SH	137.56	
			849835010094441	4/10/2016	APR19-MAY18/ INTERNET/SR CE	97.56	
			849835010073571	4/10/2016	MODEMS/REMOTE SURVEILLAN	80.84	
			849835010073570	4/10/2016	MODEMS/REMOTE SURVEILLAN	80.84	537.59

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978058	4/29/2016	023782	COMPLETE OFFICE SOLUTIONS,	1355653-0	4/5/2016	PAPER	198.78
	Voucher:	40460		1351393-0	3/28/2016	INKCART/IT	176.11
				1355637-0	4/5/2016	FOLDER/RISER MONITOR/FILE F	156.42
				1358550-0	4/12/2016	PAPER/CHAIRMAT/PW	127.37
				1358554-0	4/12/2016	CHAIR MAT	82.62
				1348373-0	3/18/2016	CARD STOCK/NAME TENTS	27.61
				1351599-0	3/28/2016	TAPE	12.73
				C1352307-0	4/8/2016	CREDIT/SUPPLIES	-82.71
				C1346055-0	3/31/2016	CREDIT/INKCART/IT	-149.66
51978059	4/29/2016	001196	COOPER, GARY	MAY16/RECON	3/28/2016	RECON/ICSC2016/PER DIEM/G.C	236.00
	Voucher:	40461					549.27
51978060	4/29/2016	024347	COPIERS NORTHWEST, INC.	INV1369102	4/15/2016	MAR14-APR13/CONTRACT OVEF	97.28
	Voucher:	40462		INV1367520	4/12/2016	MAR9-APR8/OVERAGE CHARGE	59.50
				INV1367521	4/12/2016	APR11-MAY10/COPIER LEASE/RE	32.31
				INV1367522	4/12/2016	MAR11-APR10/OVERAGE CHARG	9.26
51978061	4/29/2016	022207	CRAIG, MARIZA	MAY16/RECON	4/5/2016	RECON/ICSC2016/PER DIEM/M. C	180.00
	Voucher:	40463					180.00
51978062	4/29/2016	001307	DAILY JOURNAL OF COMMERCE,	3311757	4/5/2016	BID AD/BP WAY W PH5	542.10
	Voucher:	40464					542.10
51978063	4/29/2016	025974	DAVID, CASANDRA	REFUND	4/14/2016	REFUND/T-BALL/#5008	55.00
	Voucher:	40465					55.00
51978064	4/29/2016	002431	DIANE DEMARS	APR16	4/13/2016	APR16/YOGA CLASSES/#5167, #1	519.60
	Voucher:	40466					519.60
51978065	4/29/2016	025899	DRISCOLL, CHRIS	REIMB	4/15/2016	REIMB/PESTICIDE LICENSE & TE	58.00
	Voucher:	40467					58.00
51978066	4/29/2016	024855	EWING IRRIGATION PRODUCTS	11257144	4/14/2016	TURFACE MOUND BRICKS/RED	89.70
	Voucher:	40468					89.70
51978067	4/29/2016	023889	FIRESTONE TIRE, CO.	137018	4/19/2016	TIRES/PW TRUCK	324.46
	Voucher:	40469		137019	4/19/2016	TIRES/PW TRUCK	324.46
51978068	4/29/2016	002198	FIRST AMERICAN TITLE INSUR.	C865-426950561	4/6/2016	RECORD EASEMENT/2650 BP W,	527.50
	Voucher:	40470					527.50
51978069	4/29/2016	001398	GILCHRIST CHEVROLET CORP.	219389C	4/11/2016	LAMP/PW FLEET	228.34
	Voucher:	40471		CM219389C	4/20/2016	CREDIT/CORE RETURN/PART #2	-54.80
51978070	4/29/2016	025936	GRAY CPA CONSULTING, PC	10080	4/7/2016	CASEWARE IMPLEMENTATION/C	16,957.80
	Voucher:	40472		CREDIT	3/16/2016	CREDIT/INVOICE#10062/DUPLIC,	-11,499.00
							5,458.80

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(Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
51978071	4/29/2016	001221	HOLROYD COMPANY, INC.	284906	4/7/2016	BUILDING SAND/PARK MAINT	120.06	120.06
		Voucher:	40473					
51978072	4/29/2016	001223	HUMANE SOCIETY OF TACOMA	IVC0001618	4/1/2016	APR16/BOARDING CONTRACT	100.00	100.00
		Voucher:	40474					
51978073	4/29/2016	003197	INT'L ASSN OF CHIEFS OF POLICEMBERSHIP		4/22/2016	IACP MEMBERSHIP APPLICATION	150.00	150.00
		Voucher:	40476					
51978074	4/29/2016	023246	KELLY-SAGE, DEBRA	MAY16/RECON	4/21/2016	RECON/ICSC2016/PER DIEM/D.K	236.00	236.00
		Voucher:	40477					
51978075	4/29/2016	001072	KLOSOWSKI, DEBBIE	REIMB	3/16/2016	REIMB/WEBSITE HOSTING/DOM	88.48	88.48
		Voucher:	40478					
51978076	4/29/2016	025142	KPG, INC PS	30416	4/8/2016	MILDRED & 67TH IMPROVEMEN	3,173.24	3,173.24
		Voucher:	40479					
51978077	4/27/2016	025833	LAKERIDGE PAVING COMPANY LI4/FINAL		3/31/2016	CIRQUE DRIVE OVERLAY PROJE	26,498.00	26,498.00
		Voucher:	40480					
51978078	4/29/2016	001987	LAKEWOOD IRON WORKS	040416	4/4/2016	RAILING PER DRAWING	2,680.30	2,680.30
		Voucher:	40481					
51978079	4/29/2016	025971	LASKY, JENNIFER	REFUND	4/4/2016	REFUND/#5005 - SOFTBALL FAS	90.00	90.00
		Voucher:	40482					
51978080	4/29/2016	001243	LLOYD ENTERPRISES INC	194598	4/5/2016	TRUCK RENTAL/WASTE DISPOS	975.00	975.00
		Voucher:	40483					
51978081	4/29/2016	001797	LOWE'S BUSINESS ACCOUNT/GE874-3507-900095-		4/17/2016	MISC REPAIR & MAINTENANCE	707.57	707.57
		Voucher:	40484					
51978082	4/29/2016	024718	MARQUAM GROUP LTD.	13291	4/18/2016	SHAREPOINT MIGRATION ASSE	2,000.00	2,000.00
		Voucher:	40485					
51978083	4/29/2016	024217	MAYES TESTING ENGINEERS,INC0316T16088		4/21/2016	TESTING & INSPECTION/SOIL S	134.00	134.00
		Voucher:	40486					
51978084	4/29/2016	022585	METCALF, REBECCA	REIMB	4/18/2016	REIMB/MEAL/TRAINING/LAND U	12.59	12.59
		Voucher:	40487					
51978085	4/29/2016	001352	MILES RESOURCES, LLC	256009	4/11/2016	HMA/CLASS/MODIFIED	1,387.68	
		Voucher:	40488	256047	4/11/2016	TACK COAT	389.37	1,777.05
51978086	4/29/2016	001095	NEWS TRIBUNE	I02317494-030820	3/8/2016	BID AD/MILDRED ST	966.07	
		Voucher:	40489	I02293386-022920	2/29/2016	RFP/UP REG GROWTH	193.65	
				I02348817-032420	3/24/2016	DNS/5714 64TH ST W	161.49	
				I02346167-032320	3/23/2016	ORDINANCE PUBLICATION/ORD	107.89	
				I02322213-031420	3/14/2016	MTG NOTICE/MTG 3-21	102.53	1,531.63

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
51978087	4/29/2016	001096	NORTHWEST CASCADE, INC. 2-1617887	4/5/2016	PORTA POTTY RENTAL/SKATE P.	72.00	
	Voucher:	40490	2-1620198	4/6/2016	PORTA POTTY RENTAL/CURRAN	72.00	144.00
51978088	4/29/2016	002272	NORTHWEST STEEL AND PIPE 875234	4/1/2016	2X2X.120 SQ TUBE/CUT IN HALF	78.47	78.47
	Voucher:	40491					
51978089	4/29/2016	024139	P.C.COMMUNITY NEWSPAPER GI8189	4/8/2016	APR 8 ISSUE/UP PRESS CONTR	1,846.15	1,846.15
	Voucher:	40492					
51978090	4/29/2016	002051	PCRCO,LLC 5457	3/31/2016	SOIL DISPOSAL	1,856.88	1,856.88
	Voucher:	40493					
51978091	4/29/2016	023438	PETORAK, LISA MAY16/LRI	4/6/2016	PER DIEM/LABOR RELATIONS IN	231.88	231.88
	Voucher:	40494					
51978092	4/29/2016	001109	PIERCE COUNTY BUDGET & FIN/CI-215106	4/14/2016	APRIL16/POLICE SERVICES	273,164.27	
	Voucher:	40499	CI-215141	4/15/2016	MARCH16/SPECIAL OVERTIME	13,752.09	
			CI-215174	4/19/2016	MAR16/ANIMAL CONTROL & SHE	8,527.53	
			CI-210542	1/6/2016	NOV15/TRAFFIC MAINTENANCE	3,433.74	
			CI-214833	4/6/2016	I-NET CHARGES/UPTV/MAY16	253.00	299,130.63
51978093	4/29/2016	024698	PIERCE COUNTY SECURITY, INC.309310	4/6/2016	#9205/MAR16/CIRQUE PARK	150.00	
	Voucher:	40500	309371	4/6/2016	#9206/MAR16/KOBAYASHI	150.00	300.00
51978094	4/29/2016	001114	PITNEY BOWES GLOBAL FIN. SV/MAR16	1/19/2016	MAR16/ACCT19533470/POSTAGE	850.00	850.00
	Voucher:	40501					
51978095	4/29/2016	022955	PLUMB SIGNS, INC. IV-15620	4/13/2016	NON ILLUMINATED SIGN/INSTAL	461.42	461.42
	Voucher:	40502					
51978096	4/29/2016	025445	PUGET PAVING AND CONSTRUCT	4/21/2016	ELWOOD SAFE ROUTES	232,647.20	232,647.20
	Voucher:	40503					
51978097	4/29/2016	025854	QUALYS 77071	7/5/2015	VULNERABILITY MANAGEMENT	3,271.06	3,271.06
	Voucher:	40504					
51978098	4/29/2016	021712	SARCO SUPPLY 1093765	4/19/2016	RESTROOM SUPPLIES	198.82	198.82
	Voucher:	40505					
51978099	4/29/2016	001328	SHELL FLEET CARD SERVICES 8147100120604	4/5/2016	81-471-0012-0/SHELL	41.31	41.31
	Voucher:	40507					
51978100	4/29/2016	025815	SIGNATURE LANDSCAPE SERVIC102180	4/12/2016	APR16/LANDSCAPE MAINTENAN	11,056.10	11,056.10
	Voucher:	40508					
51978101	4/29/2016	003008	SPRAGUE PEST SOLUTIONS INC2841793	4/5/2016	PEST CONTROL/WMV	98.46	
	Voucher:	40509	2841794	4/8/2016	PEST CONTROL/SR. CENTER	43.76	142.22
51978102	4/29/2016	002613	SUPERIOR LINEN SERVICE,INC. 40895	4/6/2016	OFFICE MAT RENTAL/PW SHOP	89.00	
	Voucher:	40510	43794	4/20/2016	OFFICE MAT RENTAL/PW SHOP	89.00	178.00

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Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
51978103	4/29/2016	025311	TACOMA WINSUPPLY, INC.	026259-00	4/4/2016	SUPPLIES	179.85	179.85
	Voucher:	40511						
51978104	4/29/2016	024542	TESTAMERICA LABORATORIES, INC	58094325	4/18/2016	VACTOR WASTE TESTING	191.00	191.00
	Voucher:	40512						
51978105	4/29/2016	002823	THOMPSON ELECTRICAL CONST	0416-8433CV	4/12/2016	INSTALL/LED LIGHTS/PARKING C	7,089.12	
	Voucher:	40513		0316-8384CG	3/31/2016	CIVIC CENTER/GOLF CART CHAI	1,308.10	
				0416-8460CG	4/13/2016	RACEWAYS/SECURITY CAMERA	1,125.10	
				0416-8428-2	4/20/2016	REPAIRS/WIRE THEFT/CIRQUE F	563.41	
				0416-8085CG	4/14/2016	REPAIR/CIVIC CENTER PARKING	261.03	
				0416-8426CG	4/13/2016	BP WAY FLOODLIGHT REPAIR/TF	164.26	10,511.02
51978106	4/29/2016	001636	THOMSON REUTERS - WEST	833725317	4/1/2016	MAR16/WEST INFORMATION CH.	653.09	653.09
	Voucher:	40514						
51978107	4/29/2016	025376	UNIVERSAL FIELD SERVICES, INC	47516	3/31/2016	BP WAY PH 5/ROW & AQUISITION	1,091.76	
	Voucher:	40515		47515	3/31/2016	BP WAY PHASE 5/ROW & ACQUI	1,046.82	
				47496	3/31/2016	BP WAY PH 4A/ROW & ACQUISIT	936.97	3,075.55
51978108	4/29/2016	025336	US BANK	745000006	3/31/2016	CUSTOMER #745000006/MAR16/	64.00	64.00
	Voucher:	40516						
51978109	4/29/2016	001153	VERIZON WIRELESS,LLC.	9763062805	4/1/2016	MAR16/CELL PHONES/CITYWIDE	1,573.49	
	Voucher:	40517		9763725889	4/12/2016	CELL PHONES/PW & PARKS MAI	811.40	2,384.89
51978110	4/29/2016	001032	WA STATE	2016030077	4/1/2016	MAR16/TELECOMMUNICATIONS	196.60	196.60
	Voucher:	40518						
51978111	4/29/2016	001664	WA STATE DEPT OF REVENUE	1STQTR16	4/25/2016	1ST QTR 16/LEASEHOLD EXCISE	609.69	609.69
	Voucher:	40519						
51978112	4/29/2016	001389	WA STATE PATROL	04-01-2016	4/1/2016	MAR16/BACKGROUND CHECKS	252.00	252.00
	Voucher:	40521						
51978113	4/29/2016	025975	WILLIAMS, KEVIN	REFUND1	4/14/2016	REFUND/SOFTBALL/#5005	85.00	
	Voucher:	40522		REFUND	4/14/2016	REFUND/TBALL/#5007	70.00	155.00
51978114	4/29/2016	025976	WYSONG, AMBER	REFUND	4/12/2016	REFUND/GIRLS FASTPITCH/#500	80.00	80.00
	Voucher:	40523						

Sub total for BANK OF AMERICA: 977,961.73

82 checks in this report.

Grand Total All Checks: 977,961.73

**Business of the City Council
City of University Place, WA**

Proposed Council Action:

Pass an ordinance amending Ordinance No. 626, directing the City's administration to monitor actual development within the Planned Action Area against the thresholds established in the Environmental Impact Statement.

Agenda No: 8B
Dept. Origin: Planning & Development Services
For Agenda of: May 2, 2016
Exhibits: Proposed Ordinance
Ordinance No. 626

Concurred by Mayor: _____
Approved by City Manager: _____
Approved as to Form by City Atty.: _____
Approved by Finance Director: _____
Approved by Dept. Head: _____

Expenditure Required: \$0.00	Amount Budgeted: \$0.00	Appropriation Required: \$0.00
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SUMMARY / POLICY ISSUES

The City originally adopted the Planned Action Ordinance in 2004 upon completion of an Environmental Impact Statement (EIS) that adopted an "east side" preferred alternative and also identified and provided appropriate mitigation for any significant adverse environmental impacts from the planned level of development within the preferred alternative.

In 2006, the City revisited the EIS, issuing an addendum finding that no additional adverse environmental impacts beyond those identified in the 2004 EIS existed from certain proposed changes to make height and density changes to the design standards and adopt an "east-side and west-side" alternative as the preferred alternative.

Section 4 of Ordinance 469 mandated that the City's Town Center Planned Action be reviewed no later than December 1, 2008 to determine its continuing validity with respect to environmental conditions within the planned action area. Subsequently, the City Council has reaffirmed the continued validity of the EIS and extended review dates in 2008 (Ord 532), 2010 (Ordinance 577), 2011 (Ord 601) and 2013 (Ord 601). Ordinance 626 provided for a review of the Town Center planned action no later than December 1, 2015.

The traffic model used in the EIS assumed and planned for a background traffic growth rate of 1%. This growth rate was determined based upon the Pierce County regional traffic model. This rate has slowed to 0.5% reducing the level of impacts associated with development of the City's Town Center.

Based upon the review of the EIS and associated models and upon the environmental conditions of the planned action area and the vicinity, the City staff recommends that the City Council acknowledge the continued validity and adequacy of the Planned Action Ordinance and the associated environmental mitigation required. Staff also recommends amending Ordinance No. 626 to provide that, rather than reviewing this matter at set intervals, Staff would instead monitor actual development within the Planned Action Area against the thresholds established in the Environmental Impact Statement, and then recommend additional process and/or amendments as are appropriate.

RECOMMENDATION / MOTION

MOVE TO: Pass an ordinance amending Ordinance No. 626, directing the City's administration to monitor actual development within the Planned Action Area against the thresholds established in the Environmental Impact Statement.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON RELATING TO LAND USE AND PLANNING; AFFIRMING THE CONTINUED VALIDITY OF THE TOWN CENTER PLANNED ACTION; AND AMENDING ORDINANCE NO. 626

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

Section 1. Recitals. The City Council finds that:

A. The City adopted its Planned Action for the City of University Place Town Center by Ordinance 409 (March 2004). That ordinance also adopted Town Center Design Standards and Guidelines, and other measures to implement the City's Comprehensive Plan. Ordinance 409 adopted an "east side" preferred alternative, one of the alternatives evaluated in the University Place Town Center Environmental Impact Statement (February 10, 2004) ("EIS"); and, also identified and provided for appropriate mitigation for any significant adverse environmental impacts from the planned level of development within the preferred alternative.

B. In 2006, the City revisited the EIS, issuing an EIS Addendum (March 10, 2006). That EIS Addendum found, in part, that no additional adverse environmental impacts beyond those identified in the EIS existed from certain proposed changes to make height and density changes to the Town Center design standards and to revise the preferred alternative to an "east-side and west-side" alternative, also as evaluated in the EIS.

C. The EIS and EIS Addendum anticipated and predicted a certain level of background growth and factored that growth into the model used to establish the appropriate level of mitigation for the identified significant adverse environmental impacts associated with Town Center development.

D. The model assumed and planned for a background traffic growth rate of 1%. This growth rate was determined based upon the Pierce County regional traffic model. This rate has decreased to approximately 0.5%, effectively reducing the level of expected impacts associated with the City's Town Center Development.

E. Consistent with the EIS and EIS Addendum, the City adopted Ordinance 469 (March 20, 2006). Ordinance 469 amended in part Ordinance 409; adopted the "east-side and west-side" alternative; and, directed review of the Town Center Planned Action no later than December 1, 2008 to determine its continuing validity with respect to the environmental conditions within the Planned Action area and in the vicinity and adequacy of the Planned Action requirements and mitigation.

F. In January 2008, the City terminated a development agreement. That agreement had provided for the purchase and development of certain City-owned parcels within the Town Center Planned Action area. The termination of that agreement and the economic recession led to an unanticipated delay in the implementation of the planned development of Town Center.

G. On September 8, 2008 the City Council passed ordinance 532 affirming the continued validity of the Town Center planned action and amending ordinance 469. Ordinance 532 provided for a review of the Town Center planned action no later than December 1, 2010. On November 29, 2010 the City Council affirmed the continued validity of the Town Center planned action and amended ordinance 532. Ordinance 577 provided for a review of the Town Center planned action no later than December 1, 2011. On September 14, 2011 the City Council reaffirmed the continued validity of the Town Center planned action and amended ordinance 577. Ordinance 601 provided for a review of the Town Center planned action no later than December 1, 2013. Subsequently, the City Council reaffirmed the continued validity of the Town

Center planned action and amended ordinance 601. Ordinance 626 provided for a review of the Town Center planned action no later than December 1, 2015,

H. Based upon the review of the EIS, EIS Addendum, associated traffic and other modeling for the Town Center Planned Action and the reduction in growth rates within the Planned Action area and the vicinity, the City Council hereby determines and acknowledges the continuing validity and adequacy of the Planned Action and the environmental mitigation associated therewith.

Section 2. Ordinance 626 Amended. Section 2 of Ordinance 626 is hereby amended to read as follows:

The City's administration shall monitor actual development within the Planned Action Area against the thresholds established in the EIS. Should future development trends within the Planned Action Area indicate that there is real potential that development will occupy seventy percent (70%) of any EIS threshold, or otherwise require revision of the Planned Action, the administration will recommend additional process and/or amendments to this ordinance as appropriate for consideration by the City Council.

Section 3. Severability. Should any section, sentence, clause or phrase of this Ordinance or its application be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation.

Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON MAY 2, 2016.

Javier H. Figueroa, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

Published: XX/XX/XX

Effective Date: XX/XX/XX

ORDINANCE NO. 626

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON RELATING TO LAND USE AND PLANNING; AFFIRMING THE CONTINUED VALIDITY OF THE TOWN CENTER PLANNED ACTION; AND AMENDING ORDINANCE 601.

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

Section 1. Recitals. The City Council finds that:

A. The City adopted its Planned Action for the City of University Place Town Center by Ordinance 409 (March 2004). That ordinance also adopted Town Center Design Standards and Guidelines, and other measures to implement the City's Comprehensive Plan. Ordinance 409 adopted an "east side" preferred alternative, one of the alternatives evaluated in the University Place Town Center Environmental Impact Statement (February 10, 2004) ("EIS"); and, also identified and provided for appropriate mitigation for any significant adverse environmental impacts from the planned level of development within the preferred alternative.

B. In 2006, the City revisited the EIS, issuing an EIS Addendum (March 10, 2006). That EIS Addendum found, in part, that no additional adverse environmental impacts beyond those identified in the EIS existed from certain proposed changes to make height and density changes to the Town Center design standards and to revise the preferred alternative to an "east-side and west-side" alternative, also as evaluated in the EIS.

C. The EIS and EIS Addendum anticipated and predicted a certain level of background growth and factored that growth into the model used to establish the appropriate level of mitigation for the identified significant adverse environmental impacts associated with Town Center development.

D. The model assumed and planned for a background traffic growth rate of 1%. This growth rate was determined based upon the Pierce County regional traffic model. This rate has decreased to approximately 0.5%, effectively reducing the level of expected impacts associated with the City's Town Center Development.

E. Consistent with the EIS and EIS Addendum, the City adopted Ordinance 469 (March 20, 2006). Ordinance 469 amended in part Ordinance 409; adopted the "east-side and west-side" alternative; and, directed review of the Town Center Planned Action no later than December 1, 2008 to determine its continuing validity with respect to the environmental conditions within the Planned Action area and in the vicinity and adequacy of the Planned Action requirements and mitigation.

F. In January 2008, the City terminated a development agreement. That agreement had provided for the purchase and development of certain City-owned parcels within the Town Center Planned Action area. The termination of that agreement and the current economic recession has led to an unanticipated delay in the implementation of the planned development of Town Center.

G. On September 8, 2008 the City Council passed ordinance 532 affirming the continued validity of the Town Center Planned Action and amending ordinance 469. Ordinance 532 provided for a review of the Town Center Planned Action no later than December 1, 2010. On November 29, 2010 the City Council affirmed the continued validity of the Town Center Planned Action and amending ordinance 532. Ordinance 577 provided for a review of the Town Center Planned Action no later than December 1, 2011. On November 14, 2011, the City Council affirmed the continued validity of the Town Center Planned Action and amending ordinance 577. Ordinance 601 provided for a review of the Town Center Planned Action no later than December 1, 2013.

H. Based upon the review of the EIS, EIS Addendum, associated traffic and other modeling for the Town Center Planned Action and the reduction in growth rates within the Planned Action area and the vicinity, the City Council hereby determines and acknowledges the continuing validity and adequacy of the Planned Action and the environmental mitigation associated therewith.

I. Based upon a review of the background traffic and growth conditions in the Planned Action area and vicinity, the City Council further determines to specify another review period in approximately two years, prior to December 2015, for further review of the Planned Action, consistent with Ordinance 601.

Section 2. Ordinance 601 Amended. Section 1 (H) of Ordinance 601 is hereby amended to read as follows:

This Planned Action Ordinance shall be reviewed no later than December 1, 2015 by the City to determine its continuing validity with respect to the environmental conditions of the Planned Action area and the vicinity and adequacy of the Planned Action requirements and mitigation. Based upon this review, this Ordinance may be amended as needed, and another review period may be specified.

Section 3. Severability. Should any section, sentence, clause or phrase of this Ordinance or its application be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation.

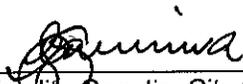
Section 4. Effective Date. This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

PASSED BY THE CITY COUNCIL ON SEPTEMBER 16, 2013.



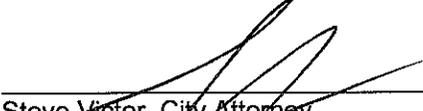
Ken Grassi, Mayor

ATTEST:



Emelita Genetia, City Clerk

APPROVED AS TO FORM:



Steve Victor, City Attorney

Published: 09/18/13
Effective Date: 09/23/13

Memo

DATE: May 2, 2016
TO: City Council
FROM: David Swindale, Director, Planning and Development Services
SUBJECT: Town Center Planned Action Ordinance

A Planned Action is a development project whose impacts have been addressed by an Environmental Impact Statement (EIS) associated with a specific development project in a defined geographic area before individual projects are proposed. This up-front analysis of potential impacts and mitigation measures then facilitates environmental review of subsequent individual projects in the development project. Planned Actions are authorized by the State Environmental Policy Act (WAC197-11-164).

The City adopted a Planned Action Ordinance in 2004 for the Town Center Project. The accompanying EIS identifies appropriate mitigation for any significant adverse environmental impacts associated with the planned scope of development. The scope of development studied in the EIS includes up to 750 dwelling units and 543,000 square feet of retail, dining, recreational, commercial, and office uses. The EIS also analyzed the relocation of the City Hall and Public Library.

Section 4 of the original Planned Action Ordinance stated that the Town Center Planned Action will be reviewed no later than December 1, 2008 to determine its continuing validity with respect to environmental conditions within the planned action area. Since the original adoption the City Council has determined its continuing validity in 2008, 2010, 2011 and 2013.

The Town Center Project EIS, examined a much larger and more extensive project than is built today. Of the 750 dwelling units proposed only 200 have been built and an additional 67 units are in construction. The impacts associated with the built units and proposed units are much less than contemplated in the EIS. Likewise, less than 150,000 square feet of new commercial and office use has been built and the majority of that is unoccupied. Unoccupied space does not contribute to environmental impacts such as traffic.

The traffic model used to assess traffic impacts assumed a background traffic growth rate of 1%. This growth rate was determined based upon the Pierce County regional traffic model. This rate has slowed to 0.5% reducing the level of impacts associated with development of the City's Town Center.

Memo

Based upon a review of the EIS, the amount of development in the planned action area today, associated traffic impact model and the environmental conditions in the planned action staff recommends that the City Council acknowledge the continued validity and adequacy of the Planned Action Ordinance and associated mitigation required. Also, based upon a review of the background traffic and growth conditions, Staff recommends Section 2 of Ordinance 626 be amended to read:

The City's administration shall monitor actual development within the Planned Action Area against the thresholds established in the EIS. Should future development trends within the Planned Action Area indicate that there is real potential that development will occupy seventy percent (70%) of any EIS threshold, or otherwise require revision of the Planned Action, the administration will recommend additional process and/or amendments to this ordinance as appropriate for consideration by the City Council.

COUNCIL CONSIDERATION

**Business of the City Council
City of University Place, WA**

Proposed Council Action:

Authorize the City Manager to award the Bridgeport Way Phase 5 project to Miles Resources, LLC in the amount of \$2,807,959.42 and execute all necessary contract documents.

Agenda No: 9
Dept. Origin: Engineering
For Agenda of: May 2, 2016
Exhibits: Bid Tabulation Sheet
Concurred by Mayor: _____
Approved by City Manager: _____
Approved as to form by City Atty.: _____
Approved by Finance Director: _____
Approved by Department Head: _____

Expenditure Required: \$2,807,959.42	Amount Budgeted: \$3.1M	Appropriation Required: \$0.00
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SUMMARY / POLICY ISSUES

The bid opening for the Bridgeport Way West Phase 5 project was held on April 19, 2016. Four bids were received. Miles Resources has submitted the lowest responsive, responsible bid in the amount of \$2,807,959.42. The project includes construction of curbs, gutters, sidewalks, bike lanes, storm drainage improvements, street lights, traffic signal, irrigation, and landscaping on Bridgeport Way West from 27th Street West to South 19th Street. The project also includes construction of a new water main that will be paid for by Tacoma Public Utilities.

This project is funded through an FHWA grant that covers 86.5% of the cost of Schedule A. The costs associated with Schedule B will be reimbursed by Tacoma Public Utilities.

ALTERNATIVES CONSIDERED

Company	Schedule A - Street	Schedule B - Water	Total Bid
<i>Miles Resources</i>	<i>2,266,993.10</i>	<i>540,966.32</i>	<i>\$2,807,959.42</i>
Tucci & Sons	2,474,262.50	658,553.21	\$3,132,815.71
Pivetta Brothers Construction	2,441,922.00	736,831.43	\$3,178,753.43
RW Scott Construction	2,708,964.00	874,973.00	\$3,583,937.00
<i>Engineers Estimate</i>	<i>2,326,564.90</i>	<i>594,667.77</i>	<i>\$2,921,233.00</i>

BOARD OR COMMITTEE RECOMMENDATION

Representatives from WSDOT have reviewed and approved the low bid proposal. Tacoma Public Utilities has reviewed the bids and concurs award to Miles Resources.

RECOMMENDATION / MOTION

MOVE TO: Authorize the City Manager to award the Bridgeport Way Phase 5 project to Miles Resources, LLC in the amount of \$2,807,959.42 and execute all necessary contract documents.

City of University Place
 Bridgeport Way West Phase 5
 Bid Analysis for Tuesday, April 19, 2016 Bid Opening

Item No.	Item Description Schedule A	Plan		Engineer's Estimate		Miles Resources		Tucci & Sons		Pivetta Brothers		RW Scott	
		Quantity	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
1	Mobilization, Cleanup and Demobilization	1	LS	\$211,505.90	211,505.90	168,000.00	168,000.00	258,000.00	258,000.00	60,000.00	60,000.00	250,000.00	250,000.00
2	Roadway Surveying	1	LS	\$30,000.00	30,000.00	35,200.00	35,200.00	23,000.00	23,000.00	26,000.00	26,000.00	30,000.00	30,000.00
3	Locate Existing Utilities	1	LS	\$5,000.00	5,000.00	31,000.00	31,000.00	1,000.00	1,000.00	7,500.00	7,500.00	7,500.00	7,500.00
4	Project/Temporary Traffic Control	1	LS	\$100,000.00	100,000.00	160,000.00	160,000.00	208,000.00	208,000.00	230,000.00	230,000.00	275,000.00	275,000.00
5	Clearing & Grubbing	1	LS	\$50,000.00	50,000.00	30,000.00	30,000.00	31,000.00	31,000.00	42,000.00	42,000.00	60,000.00	60,000.00
6	Removal of Structures and Obstructions	1	LS	\$40,000.00	40,000.00	36,275.00	36,275.00	44,000.00	44,000.00	50,000.00	50,000.00	95,000.00	95,000.00
7	Sawcutting	10,000	LF	\$3.00	30,000.00	1.15	11,500.00	2.85	28,500.00	2.70	27,000.00	2.50	25,000.00
8	Excavation, Backfill, Compaction and Grading for Roadway	2,580	CY	\$25.00	64,500.00	35.00	90,300.00	24.50	63,210.00	40.00	103,200.00	37.00	95,460.00
9	Crused Surfacing Top Course	1389	TN	\$30.00	41,670.00	25.00	34,725.00	56.50	78,478.50	38.00	52,782.00	36.00	50,004.00
10	Crushed Surfacing Base Course	1263	TN	\$30.00	37,890.00	27.00	34,101.00	31.65	39,973.95	37.00	46,731.00	34.00	42,942.00
11	Hot Mix Asphalt PG 64-22	813	TN	\$150.00	121,950.00	90.00	73,170.00	105.60	85,852.80	116.00	94,308.00	100.00	81,300.00
12	Hot Mix Asphalt for Approach PG 64-22	91	TN	\$175.00	15,925.00	250.00	22,750.00	193.00	17,563.00	127.00	11,557.00	250.00	22,750.00
13	Temporary Commercial HMA	100	TN	\$150.00	15,000.00	100.00	10,000.00	190.00	19,000.00	150.00	15,000.00	250.00	25,000.00
14	Cold Mix Asphalt Concrete	50	TN	\$160.00	8,000.00	80.00	4,000.00	220.00	11,000.00	250.00	12,500.00	250.00	12,500.00
15	Under Drain Pipe 4" Diam	895	LF	\$5.00	4,475.00	12.00	10,740.00	2.25	2,013.75	8.00	7,160.00	20.00	17,900.00
16	Gravel Backfill for Drains	60	TN	\$20.00	1,200.00	14.25	855.00	20.00	1,200.00	42.00	2,520.00	40.00	2,400.00
17	Solid Wall PVC Storm Sewer Pipe 8 In. Diam.	63	LF	\$30.00	1,890.00	136.25	8,583.75	120.00	7,560.00	81.00	5,103.00	75.00	4,725.00
18	Solid Wall PVC Storm Sewer Pipe 12 In. Diam.	733	LF	\$35.00	25,655.00	51.50	37,749.50	67.00	49,111.00	78.00	57,174.00	60.00	43,980.00
19	Corrugated Polyethylene Storm Sewer Pipe 18 In. Diam.	427	LF	\$50.00	21,350.00	53.00	22,631.00	73.00	31,171.00	82.00	35,014.00	70.00	29,890.00
20	Ductile Iron Storm Sewer Pipe 12 In. Diam.	4	LF	\$100.00	400.00	300.00	1,200.00	250.00	1,000.00	330.00	1,320.00	200.00	800.00
21	Detention Pipe	1	LS	\$150,000.00	150,000.00	22,500.00	22,500.00	31,000.00	31,000.00	42,000.00	42,000.00	45,000.00	45,000.00
22	Catch Basin Type 1	25	EA	\$1,000.00	25,000.00	1,220.00	30,500.00	2,700.00	67,500.00	1,260.00	31,500.00	1,400.00	35,000.00
23	Catch Basin Type 2, 48"	2	EA	\$3,500.00	7,000.00	2,650.00	5,300.00	5,100.00	10,200.00	4,240.00	8,480.00	4,200.00	8,400.00
24	Catch Basin Type 2, 54" w/ Control Structure	1	EA	\$5,500.00	5,500.00	5,485.00	5,485.00	9,500.00	9,500.00	6,300.00	6,300.00	6,000.00	6,000.00
25	Storm Filter Catch Basin	2	EA	\$8,500.00	17,000.00	11,350.00	22,700.00	13,200.00	26,400.00	13,500.00	27,000.00	13,000.00	26,000.00
26	Remove Catch Basin	17	EA	\$300.00	5,100.00	185.00	3,145.00	500.00	8,500.00	460.00	7,820.00	750.00	12,750.00
27	Adjust Catch Basin and Install Solid Lid	13	EA	\$500.00	6,500.00	650.00	8,450.00	550.00	7,150.00	1,100.00	14,300.00	750.00	9,750.00
28	Connect to Existing Drainage Structure	15	EA	\$500.00	7,500.00	430.00	6,450.00	500.00	7,500.00	2,000.00	30,000.00	500.00	7,500.00
29	Trench Excavation Safety Systems	1	LS	\$5,000.00	5,000.00	300.00	300.00	1,000.00	1,000.00	4,800.00	4,800.00	5,500.00	5,500.00
30	Temporary Water Pollution/Erosion Control	1	LS	\$15,000.00	15,000.00	13,250.00	13,250.00	3,000.00	3,000.00	17,000.00	17,000.00	14,000.00	14,000.00
31	Seeding, Fertilizing & Mulching	500	SY	\$5.00	2,500.00	0.75	375.00	0.65	325.00	6.00	3,000.00	2.00	1,000.00
32	Top soil Type A	267	CY	\$40.00	10,680.00	43.50	11,614.50	39.55	10,559.85	51.00	13,617.00	62.00	16,554.00
33	Sod Lawn	1039	SY	\$15.00	15,585.00	7.35	7,636.65	6.65	6,909.35	13.00	13,507.00	8.00	8,312.00
34	Bark or Wood Chip Mulch	10	CY	\$25.00	250.00	60.50	605.00	55.00	550.00	60.00	600.00	62.00	620.00
35	Seeding, Fertilizing & Mulching	50	SY	\$5.00	250.00	11.00	550.00	10.00	500.00	20.00	1,000.00	2.00	100.00
36	Fraxinus Americana 'Skyline' - Skyline White Ash (2 1/2" Cal)	36	EA	\$600.00	21,600.00	440.00	15,840.00	400.00	14,400.00	485.00	17,460.00	500.00	18,000.00
37	Mount Vernon Laurel	288	EA	\$10.00	2,880.00	20.65	5,947.20	18.75	5,400.00	14.00	4,032.00	14.25	4,104.00
38	24" Root Barrier	720	LF	\$10.00	7,200.00	6.75	4,860.00	6.10	4,392.00	15.00	10,800.00	15.00	10,800.00
39	Modifications to Private Property	1	FA	\$1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00	1,000.00
40	Irrigation System	1	LS	\$65,000.00	65,000.00	51,590.00	51,590.00	46,900.00	46,900.00	48,000.00	48,000.00	45,000.00	45,000.00
41	Cement Conc. Curb & Gutter	5,280	LF	\$15.00	79,200.00	11.60	61,248.00	14.25	75,240.00	10.00	52,800.00	12.00	63,360.00
42	Cement Conc. Extruded Curb	500	LF	\$10.00	5,000.00	11.00	5,500.00	12.80	6,400.00	11.00	5,500.00	15.00	7,500.00
43	Cement Conc. Driveway Approach	1,709	SY	\$45.00	76,905.00	34.50	58,960.50	40.35	68,958.15	34.00	58,106.00	36.00	61,524.00
44	Cement Conc. Driveway Repair	561	SY	\$50.00	28,050.00	36.50	20,476.50	41.45	23,253.45	34.00	19,074.00	39.00	21,879.00
45	Concrete Wheel Stops	13	EA	\$100.00	1,300.00	88.00	1,144.00	85.00	1,105.00	86.00	1,118.00	110.00	1,430.00
46	Bollards	2	EA	\$50.00	100.00	87.50	1,750.00	500.00	1,000.00	1,200.00	2,400.00	650.00	1,300.00
47	4' Black Vinyl Chain Link Fence	500	LF	\$35.00	17,500.00	29.50	14,750.00	26.90	13,450.00	30.00	15,000.00	29.00	14,500.00
48	Cement Conc. Sidewalk	1,824	SY	\$40.00	72,960.00	24.50	44,688.00	56.50	103,056.00	67.00	122,208.00	44.00	80,256.00
49	Red Cement Conc. Sidewalk	268	SY	\$50.00	13,400.00	30.00	8,040.00	57.65	15,450.20	39.00	10,452.00	46.00	12,328.00
50	Cement Concrete Bus Stop Shelter Pad	66	SY	\$50.00	3,300.00	40.25	2,656.50	59.90	3,953.40	41.00	2,706.00	46.00	3,036.00
51	Mailbox Support Type 2	12	EA	\$500.00	6,000.00	300.00	3,600.00	245.00	2,940.00	160.00	1,920.00	300.00	3,600.00
52	Illumination	1	LS	\$400,000.00	400,000.00	418,000.00	418,000.00	400,000.00	400,000.00	425,000.00	425,000.00	406,000.00	406,000.00
53	Traffic Signal System @ 27th Street West	1	LS	\$315,774.00	315,774.00	467,700.00	467,700.00	400,000.00	400,000.00	430,000.00	430,000.00	455,000.00	455,000.00
54	Permanent Signage	1	LS	\$10,000.00	10,000.00	14,500.00	14,500.00	4,400.00	4,400.00	10,800.00	10,800.00	9,000.00	9,000.00
55	Remove and Relocate Commercial Signs	1	LS	\$10,000.00	10,000.00	4,025.00	4,025.00	13,800.00	13,800.00	16,000.00	16,000.00	26,000.00	26,000.00
56	Paint Line, Incl. RPM's	1,000	LF	\$1.00	1,000.00	0.25	250.00	0.22	220.00	0.50	500.00	0.90	900.00
57	Painted Wide Line	7,000	LF	\$1.00	7,000.00	0.75	5,250.00	0.75	5,250.00	0.75	5,250.00	0.40	2,800.00
58	Plastic Crosswalk Line	400	SF	\$2.00	800.00	4.40	1,760.00	4.50	1,800.00	4.50	1,800.00	5.10	2,040.00
59	Plastic Stop Line	150	SF	\$2.50	375.00	5.50	825.00	5.60	840.00	5.50	825.00	7.50	1,125.00
60	Plastic Bike Lane Symbol	8	EA	\$110.00	880.00	82.50	660.00	84.00	672.00	81.00	648.00	130.00	1,040.00
61	Plastic Traffic Arrow	10	EA	\$110.00	1,100.00	123.00	1,230.00	125.00	1,250.00	121.00	1,210.00	110.00	1,100.00
62	Removing Paint Line	500	LF	\$2.00	1,000.00	2.20	1,100.00	2.25	1,125.00	2.00	1,000.00	2.75	1,375.00
63	Removing Plastic Traffic Markings	12	EA	\$50.00	600.00	60.50	726.00	62.00	744.00	60.00	720.00	110.00	1,320.00

City of University Place
 Bridgeport Way West Phase 5
 Bid Analysis for Tuesday, April 19, 2016 Bid Opening

Item	Plan	Engineer's Estimate	Miles Resources	Tucci & Sons	Pivetta Brothers	RW Scott							
No.	Item Description Schedule A	Quantity	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
64	Modular Block Retaining Wall	2685	SF	\$25.00	67,125.00	27.00	72,495.00	20.46	54,935.10	20.00	53,700.00	26.00	69,810.00
65	Gravel Backfill for Walls	180	TN	\$18.00	3,240.00	14.25	2,565.00	20.00	3,600.00	45.00	8,100.00	40.00	7,200.00
66	Record Drawings	1	LS	\$2,000.00	2,000.00	7,215.00	7,215.00	2,500.00	2,500.00	1,000.00	1,000.00	1,000.00	1,000.00
67	Minor Changes	1	FA	\$5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00
Total Schedule A					2,326,564.90		2,266,993.10		2,474,262.50		2,441,922.00		2,708,964.00

Schedule B

B1	Mobilization (1-09.7)	1	LS	\$ 35,000.00	35,000.00	7,900.00	7,900.00	35,000.00	35,000.00	12,000.00	12,000.00	20,000.00	20,000.00
B2	Project Temporary Traffic Control. (See Special Provisions) (1-10)	1	LS	\$ 45,000.00	45,000.00	26,500.00	26,500.00	32,000.00	32,000.00	26,000.00	26,000.00	40,000.00	40,000.00
B3	Removal and disposal of existing pavement, sidewalks, curbs, and	1985	SY	\$ 10.00	19,850.00	7.00	13,895.00	7.70	15,284.50	14.00	27,790.00	47.00	93,295.00
B4	Planing Bituminous Pavement (5-04.3(14))	3518	SY	\$ 3.00	10,554.00	5.00	17,590.00	5.75	20,228.50	3.25	11,433.50	7.50	26,385.00
B5	Temporary HMA Class ½" PG64-22, 2-inch minimum depth, insta	1324	SY	\$ 17.00	22,508.00	16.50	21,846.00	17.25	22,839.00	22.00	29,128.00	26.00	34,424.00
B6	HMA CI ½", PG64-22 (5-04 & 9-03.8)	868	TN	\$ 100.00	86,800.00	66.00	57,288.00	71.40	61,975.20	116.00	100,688.00	76.00	65,968.00
B7	Trench Excavation & Disposal (7-09.3(7))	1609	CY	\$ 17.00	27,353.00	17.00	27,353.00	21.50	34,593.50	17.00	27,353.00	36.00	57,924.00
B8	Trench Shoring (7-09.3(7))	2978	LF	\$ 1.00	2,978.00	0.50	1,489.00	0.50	1,489.00	1.00	2,978.00	2.00	5,956.00
B9	8-inch Ductile Iron Pipe, Push-On Joint, ANSI/AWWA, C151, Spe	2619	LF	\$ 35.00	91,665.00	38.00	99,522.00	52.50	137,497.50	47.00	123,093.00	56.00	146,664.00
B10	6-inch Ductile Iron Pipe, Push-On Joint, ANSI/AWWA, C151, Spe	344	LF	\$ 35.00	12,040.00	32.75	11,266.00	44.00	15,136.00	43.00	14,792.00	60.00	20,640.00
B11	4-inch Ductile Iron Pipe, Push-On Joint, ANSI/AWWA, C151, Spe	15	LF	\$ 30.00	450.00	55.75	836.25	180.00	2,700.00	61.00	915.00	150.00	2,250.00
B12	Trench Compaction Test (as directed by the Inspector). (7-09.3(11))	60	EA	\$ 110.00	6,600.00	41.75	2,505.00	500.00	30,000.00	108.00	6,480.00	100.00	6,000.00
B13	Test Holes (See Special Provisions). (7-09.3(6))	1	LS	\$ 5,000.00	5,000.00	5,750.00	5,750.00	4,000.00	4,000.00	14,500.00	14,500.00	16,000.00	16,000.00
B14	Crushed Surfacing Top Course for trench backfill per Section 9-03.	2497	TN	\$ 17.00	42,449.00	15.25	38,079.25	18.50	46,194.50	20.00	49,940.00	32.00	79,904.00
B15	Topsoil Type A (8-02)	20	TN	\$ 25.00	500.00	44.00	880.00	100.00	2,000.00	50.00	1,000.00	75.00	1,500.00
B16	8-inch Ductile Iron Tee, 3-B, M.J., installed. (7-09. & 9-30.2(1))	5	EA	\$ 265.00	1,325.00	360.00	1,800.00	346.00	1,730.00	700.00	3,500.00	450.00	2,250.00
B17	8-inch x 6-inch Ductile Iron Tee, 3-B, M.J., installed. (7-09. & 9-30	9	EA	\$ 260.00	2,340.00	301.00	2,709.00	313.00	2,817.00	360.00	3,240.00	350.00	3,150.00
B18	6-inch Ductile Iron Tee, 3-B, M.J., installed. (7-09. & 9-30.2(1))	1	EA	\$ 260.00	260.00	258.00	258.00	253.00	253.00	350.00	350.00	300.00	300.00
B19	8-inch x 4-inch Ductile Iron Reducer, 2-B, M.J. with concrete anch	1	EA	\$ 225.00	225.00	302.00	302.00	200.00	200.00	600.00	600.00	225.00	225.00
B20	8-inch Ductile Iron Ell, M.J., 45°, installed. (7-09. & 9-30.2(1))	3	EA	\$ 225.00	675.00	207.00	621.00	203.00	609.00	250.00	750.00	265.00	795.00
B21	4-inch Ductile Iron Ell, M.J., 45°, installed. (7-09. & 9-30.2(1))	1	EA	\$ 125.00	125.00	108.50	108.50	107.00	107.00	200.00	200.00	200.00	200.00
B22	8-inch Ductile Iron Cap, M.J., tapped 2", installed (7-09. & 9-30.2)	1	EA	\$ 100.00	100.00	140.00	140.00	136.00	136.00	200.00	200.00	300.00	300.00
B23	8-inch Ductile Iron Cap, M.J., tapped 2", installed and removed (7-	4	EA	\$ 100.00	400.00	139.00	556.00	300.00	1,200.00	200.00	800.00	625.00	2,500.00
B24	6-inch Ductile Iron Cap, M.J., tapped 2", installed and removed (7-	5	EA	\$ 100.00	500.00	106.00	530.00	104.00	520.00	200.00	1,000.00	530.00	2,650.00
B25	4-inch Ductile Iron Cap, M.J., tapped 2", installed and removed (7-	1	EA	\$ 100.00	100.00	89.00	89.00	250.00	250.00	200.00	200.00	400.00	400.00
B26	8-inch Ductile Iron Solid Sleeve(Long), M.J., installed (9-30.2(1))	5	EA	\$ 265.00	1,325.00	204.00	1,020.00	200.00	1,000.00	250.00	1,250.00	400.00	2,000.00
B27	6-inch Ductile Iron Solid Sleeve(Long), M.J., installed (9-30.2(1))	5	EA	\$ 225.00	1,125.00	161.00	805.00	150.00	750.00	200.00	1,000.00	300.00	1,500.00
B28	6-inch Transition Coupling with 7-inch center ring, epoxy coating, a	1	EA	\$ 400.00	400.00	313.50	313.50	230.00	230.00	400.00	400.00	500.00	500.00
B29	4-inch Transition Coupling with 7-inch center ring, epoxy coating, a	1	EA	\$ 300.00	300.00	249.00	249.00	185.00	185.00	400.00	400.00	500.00	500.00
B30	Temporary 2-inch Blow-Off Assembly, installed & removed. (Dwg	11	EA	\$ 350.00	3,850.00	1,460.00	16,060.00	250.00	2,750.00	500.00	5,500.00	275.00	3,025.00
B31	6-inch Mechanical Joint Restraining Glands, installed. (7-09 & 9-30	25	EA	\$ 65.00	1,625.00	40.00	1,000.00	40.00	1,000.00	50.00	1,250.00	80.00	2,000.00
B32	6-inch Push on Joint Restraining Gasket, installed. (7-09 & 9-30.2)	5	EA	\$ 65.00	325.00	70.00	350.00	100.00	500.00	100.00	500.00	125.00	625.00
B33	Temporary Concrete Thrust Anchor, installed and removed. (7-09.3	9	EA	\$ 150.00	1,350.00	250.00	2,250.00	500.00	4,500.00	400.00	3,600.00	500.00	4,500.00
B34	Concrete Thrust Anchor, installed. (7-09.3(21))	16	EA	\$ 150.00	2,400.00	167.00	2,672.00	300.00	4,800.00	400.00	6,400.00	400.00	6,400.00
B35	6-inch Tapping Sleeve, installed (7-09 & 9-30.3)	1	EA	\$ 2,500.00	2,500.00	4,440.00	4,440.00	1,000.00	1,000.00	3,800.00	3,800.00	4,000.00	4,000.00
B36	6-inch Tapping Gate Valve, M.J., ANSI/AWWA, C509/515, with C.I. Valv	1	EA	\$ 850.00	850.00	316.50	316.50	2,000.00	2,000.00	300.00	300.00	1,500.00	1,500.00
B37	8-inch Gate Valve, M.J., ANSI/AWWA, C509/515, with C.I. Valve	21	EA	\$ 1,200.00	25,200.00	1,527.00	32,067.00	1,150.00	24,150.00	1,800.00	37,800.00	1,600.00	33,600.00
B38	6-inch Gate Valve, M.J., ANSI/AWWA, C509/515, with C.I. Valve	10	EA	\$ 850.00	8,500.00	1,145.50	11,455.00	785.00	7,850.00	1,300.00	13,000.00	1,500.00	15,000.00
B39	4-inch Gate Valve, M.J., ANSI/AWWA, C509/515, with C.I. Valve	1	EA	\$ 500.00	500.00	1,030.00	1,030.00	680.00	680.00	1,000.00	1,000.00	1,200.00	1,200.00
B40	6-inch Hydrant, M.J., 5-ft bury, with 4-inch Tacoma Standard Thre	2	EA	\$ 3,250.00	6,500.00	3,200.00	6,400.00	3,300.00	6,600.00	5,700.00	11,400.00	5,500.00	11,000.00
B41	6-inch Hydrant, M.J., 4½-ft bury, with 4-inch Tacoma Standard Th	3	EA	\$ 3,000.00	9,000.00	3,200.00	9,600.00	3,300.00	9,900.00	4,200.00	12,600.00	5,000.00	15,000.00
B42	Storm, Sanitary, Side Sewer Restoration (7-04, 7-17, & 7-18)	27	EA	\$ 500.00	13,500.00	500.00	13,500.00	500.00	13,500.00	2,200.00	59,400.00	500.00	13,500.00
B43	Temporary Pavement Markings, Installed and Removed (8-23)	1	LS	\$ 4,000.00	4,000.00	560.00	560.00	1,500.00	1,500.00	1,000.00	1,000.00	600.00	600.00
B44	Paint Line (8-22)	2775	LF	\$ 1.00	2,775.00	0.65	1,803.75	0.74	2,053.50	0.80	2,220.00	0.50	1,387.50
B45	Street cleaning with powered sweeper vacuum equipment. (5-04.3)	34	HR	\$ 100.00	3,400.00	110.00	3,740.00	140.00	4,760.00	180.00	6,120.00	150.00	5,100.00
B46	Inlet Protection (8-01)	29	EA	\$ 50.00	1,450.00	60.00	1,740.00	75.00	2,175.00	100.00	2,900.00	75.00	2,175.00
B47	SPCC Plan (1-07.15(1))	1	LS	\$ 500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	1,500.00	1,500.00
B48	Storm Water Pollution Prevention Plan (SWPPP) (8-01)	1	LS	\$ 500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	1,500.00	1,500.00
B49	Erosion and Sediment Control (ESC) Specialist (8-01)	1	LS	\$ 500.00	500.00	500.00	500.00	1,000.00	1,000.00	4,000.00	4,000.00	1,500.00	1,500.00
B50	Asbestos cement Pipe removal and disposal plan (7-09.3)	1	LS	\$ 500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	1,000.00	1,000.00
B51	Removal and disposal of abandoned AC pipe all sizes (7-09.3)	45	LF	\$ 20.00	900.00	140.00	6,300.00	85.00	3,825.00	50.00	2,250.00	100.00	4,500.00
B52	Force Account - Erosion/Water Pollution Control (1-09.6 & 8-01)	1	EST	\$ 5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00	5,000.00
B53	Force Account (1-09.6)	1	EST	\$ 30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00	30,000.00
Sub-total					543,572.00		494,484.75		601,968.20		673,520.50		799,792.50
Sales tax @ 9.4%					51,095.77		46,481.57		56,585.01		63,310.93		75,180.50
Total Schedule B					594,667.77		540,966.32		658,553.21		736,831.43		874,973.00

City of University Place
 Bridgeport Way West Phase 5
 Bid Analysis for Tuesday, April 19, 2016 Bid Opening

Item No.	Plan		Engineer's Estimate		Miles Resources		Tucci & Sons		Pivetta Brothers		RW Scott	
	Quantity	Unit	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
				2,921,232.67		2,807,959.42		3,132,815.71		3,178,753.43		3,583,937.00
Total Schedule A & B												

**Business of the City Council
City of University Place, WA**

Proposed Council Action:

Adopt a Resolution approving and accepting the State Recreation and Conservation Office grant award and the expenditure of Park Impact Fee funds for the local match for the Cirque Park Lighting improvement project.

Agenda No: 10
Dept. Origin: Public Works & Parks
For Agenda of: May 2, 2016
Exhibits: Resolution
RCO Letter of Award
Memo

Concurred by Mayor: _____
Approved by City Manager: _____
Approved as to Form by City Atty.: _____
Approved by Finance Director: _____
Approved by Dept. Head: _____

Expenditure Required: \$200,000	Amount Budgeted: \$250,000	Appropriation Required: \$0.00
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SUMMARY / POLICY ISSUES

On August 10, 2015, City Council directed Staff to move forward with the application for grant funding assistance from the State Recreation and Conservation Office for improvements at Cirque Park. These improvements included lighting at the softball field and synthetic all-weather surfacing for the softball infield.

Staff has received notice that the City was successful with the grant application and has secured funding for both improvement projects at Cirque Park. This grant requires a 50% match from the City. The required matching funds are in the 2016 budget and funded by Park impact fees.

Subsequent to submitting our grant application, questions and concerns have been raised regarding potential health concerns regarding Synthetic Turf Surfacing. As the safety and well-being of our residents is our paramount concern, Staff submitted a request to the State Recreation and Conservation Office requesting to modify the grant request to eliminate the synthetic surfacing and increase the lighting, allowing the completion of lighting all fields at the Park.

Staff has received notice from the State Recreation and Conservation Office that they have approved our request allowing the modification and recommends moving forward with the Lighting Improvement project with 50% grant assistance from the State Recreation and Conservation Office.

ALTERNATIVES CONSIDERED

- 1) Accept the RCO Grant Funding for both the Lighting and Synthetic Turf Improvement Projects.
- 2) Decline the RCO Grant Funding for both the Lighting and Synthetic Turf Improvement Projects.
- 3) Accept the modified RCO Grant Funding to allow completion of Lighting Improvements at Cirque Park.

BOARD OR COMMITTEE RECOMMENDATION

These improvements are on the Parks Commission's Capital Improvement list of priorities.

RECOMMENDATION / MOTION

MOVE TO: Adopt a Resolution approving and accepting the State Recreation and Conservation Office grant award and the expenditure of Park Impact Fee funds for the local match for the Cirque Park Lighting improvement project.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE
AUTHORIZING ACCEPTANCE OF THE STATE RECREATION AND CONSERVATION
OFFICE GRANT THAT IS FOR THE CIRQUE PARK LIGHTING IMPROVEMENT
PROJECT, INCLUDING EXPENDITURE OF PARK IMPACT FEES FOR THE LOCAL
MATCH**

WHEREAS, on August 10, 2015, City Council authorized, by Resolution No. 786, an application for grant funding assistance from the State Recreation and Conservation Office (RCO) for improvements at Cirque Park. These improvements are on the Parks Commission's Capital Improvement list of priorities and include lighting at the softball field and synthetic all-weather surfacing for the softball infield; and

WHEREAS, this grant requires a 50% match from the City, which funds are in the 2016 budget and are funded by Park impact fees; and

WHEREAS, the City has received notice that it was successful with the grant application and has secured funding for both improvement projects at Cirque Park; and

WHEREAS, because there are safety concerns regarding the health effects of crumb rubber surfaces that are not resolved at this time, the City Council deems it is in the best interests of the City and its residents to proceed only with that portion of the RCO grant that is for the Cirque Park Lighting improvement project; and

WHEREAS, due to unresolved safety concerns, RCO has agreed to delete the synthetic all-weather surfacing, to be replaced with additional lighting at Cirque Park.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF UNIVERSITY PLACE,
WASHINGTON, AS FOLLOWS:**

1. Incorporation. The recitals are hereby incorporated herein as if set forth in full.
2. Acceptance of Grant. The City hereby accepts the State Recreation and Conservation Office grant award for the Cirque Park Lighting improvement project.
3. Expenditure of Park Impact Fees. The expenditure of Park impact fees for the mandatory local match for the Cirque Park Lighting improvement project is hereby authorized.
4. Effective Date. This Resolution shall be effective immediately upon adoption by the City Council.

ADOPTED BY THE CITY COUNCIL ON MAY 2, 2016.

Javier H. Figueroa, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

Funding Board Project Agreement

Project Sponsor: University Place City of

Project Number: 15-1394D

Project Title: Cirque Park Athletic Field Improvements

Approval Date: 11/18/2015

A. PARTIES OF THE AGREEMENT

This Project Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office, P.O. Box 40917, Olympia, Washington 98504-0917 and University Place City of (sponsor), 3715 Bridgeport Way W, University Place, WA 98466 and shall be binding on the agents and all persons acting by or through the parties.

B. 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) to the sponsor for the project named above per the director's authority granted in RCW 79A.25.020.

C. DESCRIPTION OF PROJECT

The City of University Place will use this grant to renovate community athletic facilities on approximately 6.3 acres in the city at Cirque Park, located at 7150 Cirque Drive W. This project will allow University Place to expand its capacity for baseball, softball, football, lacrosse, soccer, and sports camps. The primary recreation opportunity provided by the project will be youth sports. This will be created by adding lighting to existing baseball and multipurpose fields to increase the number of hours the fields are available.

D. PERIOD OF PERFORMANCE

The period of performance begins on January 8, 2016 (project start date) and ends on February 28, 2017 (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 WAC Titles 286, 420; or RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement.

The sponsor must request extensions of the period of performance at least 60 days before the project end date.

The sponsor has obligations beyond this period of performance as described in Section E: On-going Obligations.

E. ON-GOING OBLIGATIONS

For this development and renovation project, the sponsor's on-going obligations shall be for 20 years from the date of final reimbursement from RCO or the date RCO accepts the project as complete per the Project Agreement, whichever is later and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as approved by the funding board.

F. PROJECT FUNDING

The total grant award provided by the funding board for this project shall not exceed \$200,000.00. The funding board shall not pay any amount beyond that approved for grant funding of the project and within the funding board's 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
RCFB - YAF - Renovation	50.00%	\$200,000.00	State
Project Sponsor	50.00%	\$200,000.00	
Total Project Cost	100.00%	\$400,000.00	

G. FEDERAL FUND INFORMATION

This Agreement is not a federal subaward. This Agreement is funded with a grant from the State of Washington.

H. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement shall be interpreted in light of the information provided in the sponsor's application and the project summary under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities and milestones report incorporated herein by reference. Provided, to the extent that information contained in such documents is inconsistent with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definition of the Standard Terms and Conditions.

I. AMENDMENTS MUST BE SIGNED IN WRITING

Except as provided herein, no amendment/deletions of any of the terms or conditions of this Agreement will be effective unless provided in writing and signed by both parties. Except, extensions of the period of performance and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

J. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES

This agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including any applicable RCFB and/or SRFB policies published in RCO manuals as of the effective date of this agreement, all of which are incorporated herein by this reference as if fully set forth.

K. SPECIAL CONDITIONS

None

L. AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Project Contact

Name: Todd Smith
Title: Recreation Manager
Address: Parks and Recreation
3715 Bridgeport Way W
University Place, WA 98467
Email: tsmith@cityofup.com

RCFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

M. 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.

N. EFFECTIVE DATE

This Agreement, for project 15-1394D, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the sponsor and the RCO, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: Period of Performance 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. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

University Place City of

By: _____

Date: _____

Name: (printed) _____

Title: _____

State of Washington, Recreation Conservation Office

On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)

By: _____

Date: _____

Kaleen Cottingham
Director
Recreation and Conservation Office

Pre-approved as to form:

By: /s/

Assistant Attorney General

Date: July 20, 2015

Standard Terms and Conditions of the Project Agreement

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Standard Terms and Conditions of the Project Agreement

Project Sponsor: University Place City of
Project Title: Cirque Park Athletic Field Improvements

Project Number: 15-1394D
Approval Date: 11/18/2015

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version at the date of project Agreement and/or any revisions in the future.
- 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:

acquisition project - A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

Agreement or Project Agreement - The document entitled "Project Agreement" accepted by all parties to the present transaction, including without limitation these Standard Terms and Conditions, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Project Agreement subject to any limitations on their effect.

applicant - Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

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.

C.F.R. - Code of Federal Regulations

contractor - An entity that receives a contract from a sponsor. A contract is a legal instrument by which a non-Federal entity (sponsor) purchases property or services to carry out the project or program under a Federal award. A contractor is not the same as the sponsor or subrecipient. A contract is for the purpose of obtaining goods and services for the non-Federal entity's (sponsor's) own use and creates a procurement relationship with the contractor (2 C.F.R. § 200.23 (2013)).

development project - A project that results in the construction of or work resulting in new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

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

education project - A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

education and enforcement project - A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

equipment - Tangible personal property (including information technology systems) having a useful 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. § 200.33 (2013)).

funding board - The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under chapter 79A.25.110 RCW, or the Salmon Recovery Funding Board (SRFB) created under chapter 77.85.110 RCW.

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. § 200.56 (2013)).

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.

maintenance project - A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreationists.

maintenance and operation project - A project that maintains existing areas and facilities through repairs, upkeep, and routine servicing for the benefit of outdoor recreationists.

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.

pass-through entity - A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C.F.R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance - The time during which the sponsor may incur new obligations to carry out the work authorized under this Agreement (2 C.F.R. § 200.77 (2013)).

planning (RCFB projects only) - A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

planning (SRFB projects only) - A project that results in a study, assessment, project design, or inventory.

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

project - An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

project cost - The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

RCO - Recreation and Conservation Office - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.

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 original expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

restoration project - A project that brings a site back to its historic function as part of a natural ecosystem or improves the ecological functionality of a site.

RCW - Revised Code of Washington

RTP - Recreational Trails Program - A federal grant program administered by RCO that allows for the development and maintenance of backcountry trails.

secondary sponsor - one of two or more eligible organizations that sponsors a grant-funded project. Of these two sponsors, only one - the primary sponsor - may be the fiscal agent.

sponsor or primary sponsor - The eligible applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees, agents and successors. For projects funded with federal money, the sponsor is a subrecipient, which is a non-Federal 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. § 200.93 (2013)).

subaward - An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal 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 program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract (2 C.F.R. § 200.92 (2013)). 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. § 200.330 (2013)). If this Agreement is a Federal subaward, the subaward amount is the grant program amount in Section F: Project Funding.

subrecipient - Subrecipient means a non-Federal 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. § 200.93 (2013)). If this Agreement is a Federal subaward, the sponsor is the subrecipient.

WAC - Washington Administrative Code.

SECTION 2. PERFORMANCE BY THE SPONSOR

The sponsor and secondary sponsor where applicable, shall undertake the project as described in this Agreement, the sponsor's application, 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 funding board. All submitted documents are incorporated by this reference as if fully set forth herein. Also see Section 36: Order of Precedence.

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.

SECTION 3. ASSIGNMENT

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

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, a secondary 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 is sponsored by more than one entity, any and all sponsors are equally responsible for the project and all post-completion stewardship responsibilities.

SECTION 5. 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 of, 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 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, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the sponsor's negligence or the negligence of the sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the sponsor may be legally liable.

This provision shall be included in any Agreement between sponsor and any contractors, subcontractors and vendors, of any tier.

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 State, its agents, officers and employees pursuant to the Agreement; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to 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 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.

The RCO is included within the term State, as are all other agencies, departments, boards, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board 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 Chapters 41.06 or 28B RCW.

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.

SECTION 7. 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.

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

The sponsor will implement the Agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies regardless of whether the sponsor is a public or non-public organization.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

- 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 Act. 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 funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.
- B. **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 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 39.12.040. The sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

- C. Archaeological and Cultural Resources. The RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The sponsor must assist RCO in compliance with Executive Order 05-05 or the National Historic Preservation Act before initiating ground-disturbing activity. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.
- 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 the "Contractors not Allowed to Bid on Public Works Projects" list.

SECTION 9. RECORDS

- A. Maintenance. The sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: Project Reimbursements. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- B. 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.
- C. Public Records. Sponsor acknowledges that the funding board 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. Additionally, in compliance with RCW 77.85.130(8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. 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.

SECTION 10. PROJECT FUNDING

- A. Authority. This agreement is funded through a grant award from the recreation and conservation funding board per WAC 286-13-050 and/or the salmon recovery funding board per WAC 420-04-050. The director of RCO enters into this agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. Additional Amounts. The funding board 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 funding board or 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 funding board policy, 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-agreements costs before the federal award date in Section F: Project Funding 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 funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. PROJECT REIMBURSEMENTS

- A. Reimbursement Basis. This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. The sponsors may only request reimbursement for eligible and allowable costs incurred during the period of performance. The sponsor may only request reimbursement 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 Section F: Project Funding. 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, which the sponsor may use as part of its percentage. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. Reimbursement Request Frequency. Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are 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 recently published/adopted RCO policies and procedures 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 by the sponsor.
- D. Retainage Held Until Project Complete. RCO reserves the right to withhold disbursement of up to the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
1. All approved or required activities outlined in the Agreement are done;
 2. On-site signs are in place (if applicable);
 3. A final project report is submitted to and accepted by RCO;
 4. Any other required documents are complete and submitted to RCO;
 5. A final reimbursement request is submitted to RCO;
 6. The completed project has been accepted by RCO;
 7. Final amendments have been processed; and
 8. Fiscal transactions are complete.
 9. RCO has accepted a final boundary map, if required for the project, 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. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must 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, Subpart E-Cost Principles (2013);
 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 Section G: Federal Fund Information of this Agreement; and
 7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D-Post Federal Award Requirements (2013), 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).

SECTION 12. 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. See WAC 420-12.

SECTION 13. 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, or meet its percentage of the project total, 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. Overpayment Payments. 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 that payment becomes due and owing.
- C. Requirements for Federal Subawards. The pass-through entity (RCO) 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).

SECTION 14. 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 without liability or, in its 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.

SECTION 15. INCOME AND USE OF INCOME

- A. RCFB Projects. See WAC 286-13-110 for additional requirements for projects funded from the RCFB.
- B. Income.
 - 1. 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.
 - 2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunities furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.
 - (d) Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
- C. Use of income. Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state or federal law, the revenue may only 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 funding board grant;
 - 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
 - 5. Capital expenses for similar acquisition and/or development and renovation.
- D. Requirements for Federal Subawards. Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

SECTION 16. PROCUREMENT REQUIREMENTS

- A. Procurement Requirements. If Sponsors have a procurement process that follows applicable state and/or required federal procurement principles, it must be followed. 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. Comply with the same legal standards regarding unlawful discrimination based upon race, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

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 other 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 except RTP projects, non-Federal entities (sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT

- A. Discontinued Use.** Equipment shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the equipment for the purpose for which it was funded, RCO will require the sponsor to deliver the equipment to RCO, dispose of the equipment according to RCO policies, or return the fair market value of the equipment to RCO. Equipment shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by RCO in writing.
- B. Loss or Damage.** The sponsor shall be responsible for any loss or damage to equipment which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that equipment in accordance with sound management practices.
- C. Requirements for Federal Subawards.** Except RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):
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 FAIN), 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.
- D. Requirements for RTP Subawards.** The subrecipient (sponsor) shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award (2 C.F.R § 1201.313 (2013)).

SECTION 18. 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, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 22.B: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 19. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 20. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the funding board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 21. 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.** The sponsor also shall post signs or other appropriate media during the project period of performance and in the future at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.

- 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.
- D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
 1. The fund source;
 2. The percentage of the total costs of the project that is financed with federal money;
 3. The dollar amount of federal funds for the project; and
 4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

- A. Document Review and Approval. The sponsor agrees to submit one copy of all construction plans and specifications to RCO for review prior to implementation or as otherwise identified in the milestones. Review and approval by RCO will be for compliance with the terms of this Agreement. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- B. Control and Tenure. The sponsor must provide documentation that shows appropriate tenure (landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement.
- C. Nondiscrimination. 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."

- D. Use of Best Management Practices. Sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "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.

SECTION 23. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition project:

- A. Evidence of Land Value. Before disbursement of funds by RCO as provided under this Agreement, the sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title. The sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this project Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the Agreement before final payment.
- D. Conveyance of Rights to the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
 1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. See WAC 420-12 or 286-13. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
 2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 3. Easements and Leases. The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance

1. Federal Acquisition Policies. When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
2. State Acquisition Policies. When state funds are part of this Agreement, the sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.

F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with Section 8.C.: Archaeological and Cultural Resources before structures are removed or demolished.

G. Hazardous Substances.

1. Certification. The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
 - a. No hazardous substances were found on the site, or
 - b. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
2. Responsibility. Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. Hold Harmless. The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the sponsor is acquiring.

H. Requirements for Federal Subawards. The non-Federal entity (sponsor) must submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or the pass-through entity (RCO), at its option, may require the sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or RCO may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years) (2 C.F.R. § 200.329 (2013)).

SECTION 24. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES

The sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this Agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. Also see WAC Title 286 or 420. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed, renovated, and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the Agreement or as approved by the funding board. Determination of whether a conversion has occurred shall be based upon applicable law and RCFB/SRFB policies.

For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

SECTION 25. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation or restoration project:

- A. Property and facility operation and maintenance. Sponsor must ensure that properties or facilities assisted with funding board 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. Facilities open and accessible to the general public must:
1. Be constructed and maintained to meet or exceed the minimum requirements of the most current 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 updated.
 2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 3. Be available for use by the general public without reservation at reasonable hours and times of the year, according to the type of area or facility.

SECTION 26. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate sponsor, including any nonprofit sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO prior to corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.
- C. Sites or facilities open to the public may not require exclusive use, (e.g., members only).

SECTION 27. PROVISIONS FOR FEDERAL SUBAWARDS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section G: Federal Fund Information.

- A. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. 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. 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. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Federally assisted construction contract means 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. (41 C.F.R. § 60-1.3)

Construction work means 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. (41 C.F.R. § 60-1.3)

- B. 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. 3141-3144, and 3146-3148) 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 Section G: Federal Fund Information.

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 G: Federal Fund Information.

- C. 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.

- D. 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.
- E. 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 G: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- F. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- G. 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.
- H. 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)).
- I. Debarment and Suspension (Executive Orders 12549 and 12689). The sponsor must not award a contract (see 2 C.F.R § 180.220) 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.

SECTION 28. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

- A. **Liability Insurance.** The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. **Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
- C. **Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this Agreement in Section E: On-going Obligation.
- D. **Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.
- E. **Government Agencies.** The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. **Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

SECTION 29. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Land and Water Conservation Fund.

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the LWCF State Assistance Program Federal Financial Assistance Manual are also made part of this Agreement and incorporated herein. The sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 30. PROVISIONS FOR FARMLAND PRESERVATION ACCOUNT PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Washington Wildlife and Recreation Program Farmland Preservation Account.

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement:

- A. Section 15 - Income and Income Use;
- B. Section 19 - Stewardship and Monitoring;
- C. Section 21 - Acknowledgement and Signs;
- D. Section 23 - Provisions applying to Acquisition Projects, Sub-sections D, F, and G;
- E. Section 24 - Restriction on Conversion of Real Property and/or Facilities to Other Uses; and
- F. Section 25 - Construction, Operation and Maintenance of Assisted Projects.

SECTION 31. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded by the SRFB.

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 project Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

SECTION 32. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded 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.** Sub-Recipient (sponsor) will comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement and in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Sub-recipient (sponsor) shall meet the provisions in Office of Management and Budget (OMB) Guidance, Subpart F, §200.501 (Audit Requirements),** if the sponsor expends \$750,000 or more in total Federal funds in a fiscal year. The \$750,000 threshold for each year is a cumulative total of all federal funding from all sources. The sponsor shall forward a copy of the audit along with the sponsor's response and the final corrective action plan to RCO within ninety (90) days of the date of the audit report. For complete information on how to accomplish the single audit submissions, visit the Federal Audit Clearinghouse Web site:<http://harvester.census.gov/facweb>
- C. **Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, 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.
- D. **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.
- E. **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. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at: <http://ecfr.gpoaccess.gov>.
- F. **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 which 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.
- G. **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."

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.

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.

- H. **Lobbying.** The chief executive officer of this recipient agency (sponsor) shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient (sponsor) shall abide by their 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 U. S. 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.

- I. 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.
- J. Disadvantaged Business Enterprise Requirements. 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.
- K. 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 the 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 persons 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.
- L. 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;
 2. \$3,000 or more is included for supplies; or
 3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
 4. 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 can also 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.

- M. SIX GOOD FAITH EFFORTS, 40 C.F.R., Part 33, Subpart C. Pursuant to 40 C.F.R. § 33.301, the sponsor agrees to make the following 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 (1) through (5) of this section.

- N. 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 assistance 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, 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:
Certification Regarding Lobbying, EPA Form 6600-06: http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf
Disclosure of Lobbying Activities, SF LLL: http://www.epa.gov/ogd/AppKit/form/sfillin_sec.pdf

Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

- O. 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 their normal travel reimbursement practices).

Subagreements with firms for services which 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.

- P. 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.

SECTION 33. PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM - EPA AND MARINE SHORELINE

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program - EPA or the Marine Shoreline Protection program.

The sponsor shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

A. Administrative Conditions

1. Cost Principles. The sponsor agrees to comply with the cost principles of 2 C.F.R Part 200 (2013). Unless otherwise indicated, the Cost Principles apply to the use of funds provided under this Agreement and In-kind matching donations. The applicability of the Cost Principles depends on the type of organization incurring the costs.
2. Audit Requirements. The sponsor shall fully comply with requirements of 2 C.F.R. Part 200, Subpart F- Audit Requirements (2013), if applicable. See also Section F: Project Funding.
3. Hotel-Motel Fire Safety Act. Pursuant to 40 C.F.R. 30.18, if applicable, and 15 U.S.C 2225a, sponsor agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). The sponsor may search the Hotel-Motel National Master List at: <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.
4. Recycled Paper
 - a. Institutions of Higher Education Hospitals and Non-Profit Organizations. In accordance with 40 C.F.R. 30.16, sponsor agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

- b. State Agencies and Political Subdivisions. In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchases of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 C.F.R. 247.
 - c. State and Local Institutions of Higher Education and Non-Profit Organizations. In accordance with 40 C.F.R. § 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.
 - d. State Tribal and Local Government Recipients. In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the sponsor agrees to use recycled paper and double sided printing for all reports which are prepared a part of this Agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.
5. Lobbying. The sponsor agrees to comply with Title 40 C.F.R. Part 34, New Restrictions on Lobbying. The 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 recipient who makes a prohibited expenditure under Title 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. See also Section 11: Compliance with Applicable Federal Laws.

- a. Part 30 Recipients. All contracts awarded by the sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the 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.

- b. Lobbying and Litigation. The sponsor's chief executive officer 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 Appendix in 2 C.F.R. Part 200, which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.
6. Suspension and Debarment. The sponsor shall fully comply with Subpart C of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Responsibilities of Participants Regarding Transaction (Doing Business with Other Persons)'. The sponsor is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 C.F.R. Part 180 and 2 C.F.R. Part 1532, entitled 'Covered Transactions', includes a term or condition requiring compliance with Subpart C. The sponsor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The sponsor acknowledges that failing to disclose the information as required at 2 C.F.R. § 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

The sponsor may access the Excluded Parties List System at: <http://www.epls.gov>. This term and condition supersedes EPA Form 5700-49, 'Certification Regarding Debarment, Suspension, and Other Responsibility Matters'. See also Section 27: Provisions for Federal Subawards Only.

- 7. Drug-Free Workplace Certification. The sponsor must 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 sponsor must identify all known workplaces under its federal award; and keep this information on file during the performance of the award.
 - a. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C.
 - b. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E. The sponsor can access 2 C.F.R. Part 1536 at <http://ecfr.gpoaccess.gov>.
- 8. 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 expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.
- 9. Reimbursement Limitation. If the sponsor expends more than the grant amount in this Agreement in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse the sponsor for costs incurred in excess of the approved budget. See also Section 11: Project Reimbursements.

10. Trafficking in Persons. The following prohibition statement applies to the sponsor, and all sub-awardees of the sponsor. The sponsor must include this 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."

11. Disadvantaged Business Enterprise Requirements, General Compliance. The sponsor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 C.F.R. Part 33.
12. Sub-Awards. If the sponsor makes sub-awards under this Agreement, the sponsor is responsible for selecting its sub-awardees and, if applicable, for conducting sub-award competitions. The sponsor agrees to:
- Establish all sub-award agreements in writing;
 - Maintain primary responsibility for ensuring successful completion of the approved project (SPONSORS CANNOT DELEGATE OR TRANSFER THIS RESPONSIBILITY TO A SUB-AWARDEE);
 - Ensure that any sub-awards comply with the standards in 2 C.F.R. Part 200, and are not used to acquire commercial goods or services for the sub-awardee;
 - Ensure that any sub-awards to 501(c)(4) organizations do not involve lobbying activities;
 - Monitor the performance of sub-awardees, and ensure sub-awardees comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
 - Obtain RCO's consent before making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
 - Obtain approval from RCO for any new sub-award work that is not outlined in the approved work plan in accordance with 40 C.F.R. Parts 30.25 and 31.30, as applicable.
13. Federal Employees. No Subcontract or grant funds may be used to provide any Federal Employee transportation assistance, reimbursement, and any other expense.
14. Fly America Act. The sponsor agrees to comply with 49 U.S.C. 40118 (the "Fly America" act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The sponsor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The sponsor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
15. Recovered Materials. The sponsor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247. See also Section 27: Provisions for Federal Subawards Only.
16. Copeland "Anti-Kickback" Act. All contracts and subgrants in excess of \$2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.
17. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7). When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency. See also Section 27: Provisions for Federal Subawards Only.

18. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under Section 102 of the Act, each contractor shall 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 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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. See also Section 27: Provisions for Federal Subawards Only.
19. Rights to Inventions Made Under a Contract or Agreement. Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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. See also Section 27: Provisions for Federal Subawards Only.
20. FY12 APPR ACT: Unpaid Federal Tax liabilities and Federal Felony Convictions. This Agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under and Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to such action is not necessary to protect the Government's interests. If the recipient fails to comply with these provisions, EPA will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.

B. Programmatic Conditions:

1. Semi-Annual FEATS Performance Reports. The sponsor is required to submit performance reports every six months, unless a different reporting frequency is outlined in the Scope of Work, using the reporting tool supplied by RCO. The sponsor agrees to include brief information on each of the following areas:
 - a. Comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
 - b. The reasons for slippages if the established outputs/outcomes were not met; AND
 - c. Additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

Reporting periods are from October 1 to March 31 and April 1 to September 30. Performance reports are due to RCO 15 days after the end of each reporting period.

2. Final Performance Report. In addition to the periodic performance reports, the sub-recipient will submit a final performance report to RCO within 60 calendar days after the expiration or termination of the award. The report shall be submitted to the RCO Grant Manager and must be provided electronically. The report shall generally contain the same information as in the periodic reports, but should cover the entire project period.
3. Recognition of EPA Funding. Reports, documents, signage, videos, or other media, developed as part of projects funded by this Agreement shall contain the following statement:

"THIS PROJECT HAS BEEN FUNDED WHOLLY OR IN PART BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER ASSISTANCE AGREEMENT TO WASHINGTON DEPARTMENT OF FISH AND WILDLIFE. 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."

4. Copyrighted Material. EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

RCO acknowledges that EPA may authorize another grantee to use copyrighted works or other data developed under this Agreement as a result of: a) the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or; b) termination or expiration of this agreement.

5. Peer Review. The results of this project may affect management decisions relating to Puget Sound. 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 RCO Grants Manager prior to releasing any final reports or products resulting from the funded study.

6. Quality Assurance Requirements. Acceptable Quality Assurance documentation must be submitted to the Grant Program within 30 days of acceptance of this agreement or another date as negotiated with the RCO Grants Manager. The National Estuary Program (NEP) Quality Coordinator supports quality assurance for EPA-funded NEP projects. No work involving direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology shall be initiated under an agreement until RCO or the NEP Quality Coordinator has approved the quality assurance document. The sponsor will submit all Quality Assurance documentation to the following address. Please copy the Grant Program on all correspondence with the NEP Quality Coordinator. Thomas H. Gries, NEP Quality Coordinator Department of Ecology Tgri460@ecy.wa.gov 360.407.6327.
7. Environmental Data and Information Technology. Sub-recipients are required to institute standardized reporting requirements into their work plans and include such costs in their budgets. All environmental data will be required to be entered into the EPA's Storage and Retrieval data system (STORET). The best method (local or state consolidated) for reporting will be determined on a project-by-project basis between the DFW grant manager and sub-recipient. More information about STORET can be found at <http://www.epa.gov/STORET>.

SECTION 34. PROVISIONS FOR ESTUARY AND SALMON RESTORATION PROGRAM - EPA PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Estuary and Salmon Restoration Program - EPA.

A. DUNS and CCR Requirements

1. Unless otherwise exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the CCR until submission of its final financial report required under this Agreement or receive the final payment, whichever is later.
2. The sponsor may not make a sub-award to any entity unless the entity has provided its DUNS number to the sponsor.

B. FY2011 ACORN Funding Restriction. No funds provided under this Agreement may be used for sub-awards/sub-grants or contracts to the Association of Community Organizations for Reform NOW (ACORN) or any of its subsidiaries.

SECTION 35. PROVISIONS FOR MARINE SHORELINE PROTECTION PROGRAM PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Marine Shoreline Protection program.

The Sub-Recipient shall comply with all applicable federal, State, and local laws, rules, and regulations in carrying out the terms and conditions of this Agreement.

- A. Federal Finance Report (FFR). Recipients (sponsor) shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at www.epa.gov/ocfo/finservices/forms.htm. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, 4220 S. Maryland Pkwy Bldg C, Rm 503, Las Vegas, NV 89119, or by FAX to: 702-798-2423. The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients (sponsor) will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement. EPA may take enforcement actions in accordance with 40 C.F.R. § 30.62 and 40 C.F.R. § 31.43 if the recipient does not comply with this term and condition.
- B. Reimbursement Limitation. If the sponsor expends more than the amount of federal funding in its approved budget in anticipation of receiving additional funds, it does so at its own risk. The Federal Government and RCO is not legally obligated to reimburse Sub-Recipient for costs incurred in excess of the approved budget.
- C. DUNS and CCR Requirements
 1. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless the sponsor is exempted from this requirement under 2 C.F.R. § 25.110, the sponsor must maintain the currency of its information in the SAM until the sponsor submits the final financial report required under this award or receive the final payment, whichever is later. This requires that the sponsor review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.
 2. Requirement for Data Universal Numbering System (DUNS) numbers. If the sponsor is authorized to make subawards under this award, the sponsor:
 - a. Must notify potential subrecipients that no entity may receive a subaward from the sponsor unless the entity has provided its DUNS number to the sponsor.
 - b. May not make a subaward to an entity unless the entity has provided its DUNS number to the sponsor.

3. Definitions. For purposes of this award term:

- a. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.
- b. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
- c. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. Part 25, subpart C:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization; and
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- d. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. -- 210 of the attachment to OMS Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- e. Subrecipient means an entity that:
 - i. Receives a subaward from you under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.

D. CIVIL RIGHTS OBLIGATIONS

1. General. This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 4248 or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.
2. Statutory Requirements. In carrying out this agreement, the recipient must comply with:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 - b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving
 - d. Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

3. Regulatory Requirements. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 - a. For Title IX obligations, 40 C.F.R. Part 5; and
 - b. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
 - c. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

4. Title VI - LEP, Public Participation and Affirmative Compliance Obligation.

- a. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
- b. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

E. Additional Term and Condition for Agricultural Landowners - Riparian Buffer Term for Agricultural Landowners. To be eligible for NEP implementation funding, provided directly or through a subaward, a private agricultural land owner whose property borders fresh or estuarine waters must establish and maintain a riparian buffer on all water courses on the property consistent with the National Marine Fisheries Service (NMFS) guidelines for Riparian Buffers Along Agricultural Water Courses in NW Washington and NRCS guidance on the NMFS guidelines. A land owner may be excluded from meeting this requirement if the funding is used solely for removal of shoreline armoring, onsite sewage system repair or replacement, engineered dike setbacks, or culvert or tide-gate replacements that provide for fish passage at all life stages. In some cases, the NJ 1FS recommendations are framed in terms of ranges of buffer widths rather than point estimates, and expressed as probabilities of achieving desired outcomes. Local conditions and local circumstances matter, and may affect the choice of the riparian buffer most effective at achieving salmon recovery. Buffer widths may be less than specified in the table in cases where there is a scientific basis for doing so and all affected tribes in the watershed agree to deviations from the NMFS guidelines or where there are physical constraints on an individual parcel (e.g. transportation corridors, structures, naturally occurring).

SECTION 36. 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 an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency 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;
- E. State law;
- F. Washington Administrative Code;
- G. Project Agreement;
- H. Board policies and procedures.

SECTION 37. AMENDMENTS

Amendments to this Agreement shall be binding only if in writing and signed by personnel authorized to bind each of the parties except period of performance extensions and minor scope adjustments need only be signed by RCO's director or designee, unless the consent of the sponsor to an extension or scope adjustment is required by its auditing policies, regulations, or legal requirements, in which case, no extension shall be effective until so consented.

SECTION 38. LIMITATION OF AUTHORITY

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by RCO.

SECTION 39. 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 to the original Agreement.

SECTION 40. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board 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.

SECTION 41. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project 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 funding board or RCO shall be deemed exclusive. The funding board or 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.

SECTION 42. TERMINATION

The funding board and RCO will require 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 all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

- A. For Cause. The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this Agreement:
 - 1. In the event of any breach by the sponsor of any of the sponsor's obligations under this Agreement; or
 - 2. If the sponsor fails to make progress satisfactory to the funding board or 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

In the event this Agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

- B. 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.
- C. 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. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 43. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the sponsor and the funding board, 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 third person shall be chosen by the funding board's chair.

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 decision of the disputes panel, unless the remedy directed by that panel shall be without 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.

SECTION 44. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 45. 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 a county where the project is situated. The sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

SECTION 46. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR

In the cases where this Agreement is between the funding board (State) and a federally recognized Indian Tribe, the following governing law/venue applies, but only between those parties:

- A. Notwithstanding the above venue provision, if the State of Washington intends to initiate a lawsuit against a federally recognized Indian tribe relating to the performance, breach or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such a lawsuit in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such lawsuit in federal court; otherwise the State may sue the Tribe in the Thurston County Superior Court. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from a lawsuit arising out of this agreement, including any third party claims relating to any work performed under this agreement, shall be binding and enforceable on the parties. Any money judgment or award against a tribe, tribal officers and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F - Project Funding of the Agreement in order to satisfy the judgment.
- C. The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purpose of allowing the State to bring such actions as it determines necessary to give effect to this section and to the enforcement of any judgment relating to the performance, or breach of this Agreement. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the RCO and any other state agencies that may be assigned or otherwise obtain the right of the RCO to enforce this Agreement.

SECTION 47. 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.

Eligible Scope Activities

Project Sponsor: University Place City of
Project Title: Cirque Park Athletic Field Improvements
Program: YAF - Renovation

Project Number: 15-1394
Project Type: Development
Approval: 11/18/2015

Project Metrics

Sites Improved

Project acres renovated:

6.30

Multipurpose Field 2.6 acres, Baseball field 3.7 acres

Development Metrics

Worksite #1, Cirque Bridgeport Park

Athletic Fields

Baseball field development

Number of baseball fields:

0 new, 1 renovated

Number of baseball fields with lighting:

0 new, 0 renovated

Number of baseball fields by surface type:

Synthetic

0

Natural

1

Multi-purpose field development

Number of multi-purpose fields:

0 new, 1 renovated

Number of multi-purpose fields with lighting:

0 new, 1 renovated

Milestone Report By Project

Project Number: 15-1394 D
Project Name: Cirque Park Athletic Field Improvements
Sponsor: University Place City of
Project Manager: Karl Jacobs

X	!	Milestone	Target Date	Comments/Description
X	!	Cultural Resources Complete	12/15/2015	RCO has completed cultural resources consultation with Native American tribes and the Department of Archaeology and Historic Preservation. No further cultural resource investigation is required at this time. DAHP Log No: 121515-02-RCFB
X		Project Start	01/08/2016	
X		Design Initiated	02/12/2016	
		60% Plans to RCO	04/30/2016	
		Applied for Permits	05/31/2016	
		All Bid Docs/Plans to RCO	05/31/2016	
	!	Progress Report Submitted	06/30/2016	
		Bid Awarded/Contractor Hired	06/30/2016	
	!	Annual Project Billing	07/31/2016	
	!	Construction Started	08/01/2016	
		50% Construction Complete	09/30/2016	
		Funding Acknowl Sign Posted	11/30/2016	
		RCO Final Inspection	11/30/2016	
		Construction Complete	11/30/2016	
		Final Billing to RCO	12/31/2016	
		Final Report in PRISM	01/31/2017	
	!	Agreement End Date	02/28/2017	

X = Milestone Complete

! = Critical Milestone



Public Works & Parks Operations
MEMORANDUM

DATE: April 18, 2016
TO: Steve Sugg, City Manager
FROM: Gary Cooper, Director of Public Works, Parks & Recreation
SUBJECT: State RCO Grant for Cirque Park Lighting Improvements

Steve,

Staff received notice from the State Recreation and Conservation Office that our grant application was successful for both of the Cirque Park improvement project funding requests.

Project #1- Softball field lighting, \$250,000; and Project #2- All weather synthetic surfacing for the softball infield, \$225,000. The grant requires a 50% match from the City, funds are in the 2016 budget and funded by Park impact fees. These improvements are on the Park Master Plan and on the Parks Commission's Capital Improvement list of priorities.

Concurrent with submitting our grant application, the subject of the safety of "all weather synthetic surfacing," also known as "crumb rubber," made from recycled tires, was raised as it has been in the national news and was the subject of debate and questions regarding its safety and potential for the occurrence of health issues related to exposure to crumb rubber.

Staff has performed due diligence on these concerns, reviewing available studies and reports including those from Washington State Department of Health. While many studies conclude that based on available data, such synthetic surfaces do not pose a significant risk, all reports limit that conclusion to currently available data.

Because these safety concerns are not resolved at this time, Staff appealed to the State Recreation and Conservation Office, requesting to modify the grant request, eliminating the synthetic surfacing and increasing the lighting request. If approved, this would provide funding to complete the lighting of all fields at the Park.

On April 11, 2016 Staff received notice that the State Recreation and Conservation Office had approved our request to modify the original request and scope of work.

While still requiring a 50% match, the lighting project cost total is lower, \$400,000.

Staff recommends moving forward with the Cirque Park Lighting improvement project with assistance from the RCO grant.

CITY MANAGER'S REPORT

CITY of UNIVERSITY PLACE
3715 Bridgeport Way West ♦ University Place, WA 98466
Phone (253) 566-5656 ♦ FAX (253) 460-2541

PLANNING & DEVELOPMENT SERVICES DEPARTMENT
STAFF REPORT TO THE CITY COUNCIL
May 2, 2016

REGIONAL GROWTH CENTER SUBAREA PLAN UPDATE

SUBJECT: Regional Growth Center Subarea Plan Update

INTRODUCTION: On December 10, 2014 the Puget Sound Regional Council designated an existing 465-acre commercial, multifamily and mixed use area within University Place a “Provisional Regional Growth Center”. In order to obtain a non-provisional designation as a Regional Growth Center, the City is required to adopt a subarea plan for the Regional Growth Center within two years of provisional designation.

BACKGROUND: The City Council identified the development of a subarea plan for the Regional Growth Center as a 2015-2016 City Council Goal. Further, Policy LU12B of the 2015 Comprehensive Plan update directs the City to develop and implement a subarea plan for the Regional Growth Center, focusing on three districts: the Town Center District, the 27th Street Business District and the Northeast Mixed Use District.

On November 2, 2015 the City Council adopted Resolution 796 establishing a nine member Regional Growth Center Ad-Hoc Advisory Committee. Resolution 796 directed the ad-hoc committee to develop the project scope, conduct community outreach, develop a draft subarea plan and provide recommendations to the Planning Commission. On March 7, 2016 the City Council adopted Resolution 804 appointing the nine ad-hoc committee members.

SUBAREA AD-HOC COMMITTEE MEETINGS:

The Regional Growth Center Subarea Plan Ad-Hoc Committee has held two meeting since their appointment. The first meeting was held on March 24 with 7 committee members in attendance and with two excused. Following introductions, Steve Victor, City Attorney, informed the Committee of the Public Trust Doctrine and Appearance of Fairness. The Committee voted to use Roberts Rules of Order for their proceedings.

The Committee discussed a proposed scope of work beginning with the selection of a consultant to assist the Committee with plan development. The Committee also set regular dates for monthly committee meetings. The Committee will meet on the 2nd Tuesday of each month beginning at 6:00 pm in Town Hall.

The second committee meeting was held on April 12, 2016. City Manager Steve Sugg presented the City’s vision for development of the Regional Growth Center and the progress made to implement the vision. Mayor Figueroa and Mayor Pro-Tem Keel were in attendance for Mr. Sugg’s presentation. Mayor Figueroa remarked on the importance of their work and thanked the Committee for their volunteerism.

The Committee discussed boundaries for the three subarea plan districts. Although final consensus was not reached, the possibility of dividing the Regional Growth Center into four districts was introduced.

SUBAREA PLAN CONSULTANT SELECTION:

A Request for Proposals (RFP) was published in the Seattle Daily Journal of Commerce and the News Tribune on February 24, 2016. The deadline to submit proposals was March 25, 2016. The City received proposals from Berk, Beckwith Consulting Group and OTAK. Following review of the proposals and presentations by all three companies, staff selected the OTAK proposal. A summary of OTAK’s proposal is provided in the following table.

Stage	Outcome/Deliverable
1. Analyze and Evaluate	A market analysis that summarizes demographics and real estate data to forecast potential demand for housing, employment, commercial and other uses
2. Envision and Engage	Engage key stakeholders and the community in visioning and place making workshops. Draft and final vision and policy framework. Preliminary design concepts and renderings
3. Plan and Design	Develop Subarea Plan and supporting maps, renderings and illustrations of preferred land use scenario. Develop a “Chart for Change” implementation strategy.
4. Review and Adopt	Facilitation of the final public review process and City Council study. Final draft Subarea Plan for City Council consideration with supporting material.

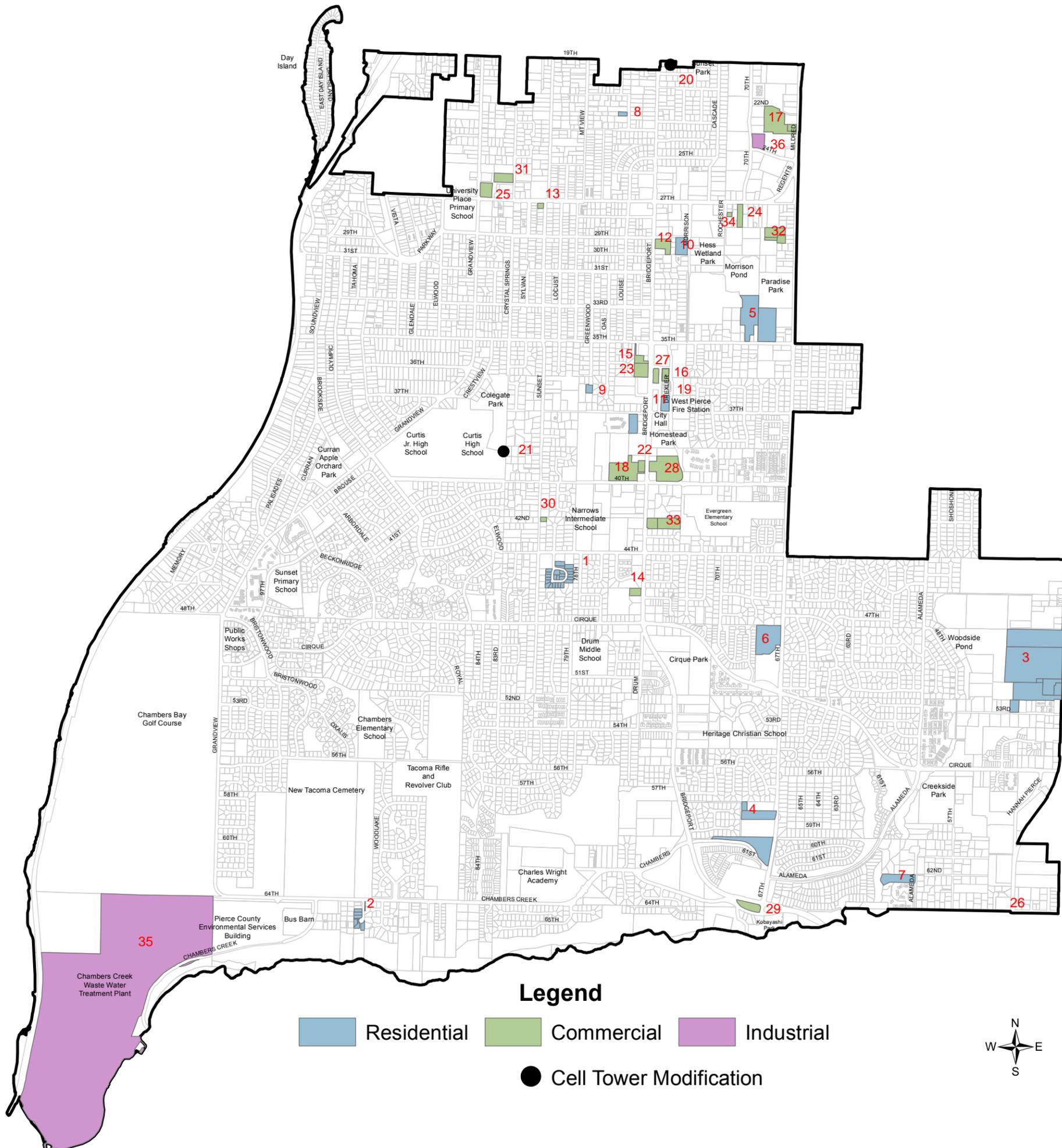
The City will now negotiate a professional services agreement with OTAK to include specific deliverables, costs and schedules.

OUTREACH:

- 1) The City has met with Sheila Ruhland, President, Tacoma Community College, and Timothy Gould, Vice President of Administrative Services.
- 2) Staff has presented the Regional Growth Center and discussed the Subarea Planning effort with the City’s Economic Development Commission and the West Side Branch of the Tacoma-Pierce County Chamber of Commerce.
- 3) The City has reached out to Tacoma Public Utilities and Pierce Transit who have assigned representatives. Staff will continue to reach out to key stakeholders including but not limited to the school, fire, and library districts and commercial property owners.
- 4) An article introducing the regional growth center was published in the UP Press and staff is developing information to be posted on the city’s web page.



MAY 2016 CURRENT DEVELOPMENT MAP



Legend

- Residential
- Commercial
- Industrial
- Cell Tower Modification



CITY OF UNIVERSITY PLACE - DEVELOPMENT SERVICES
 CURRENT PLANNED & PROPOSED DEVELOPMENTS *
 RESIDENTIAL / COMMERCIAL / INDUSTRIAL
 4/27/2016

	Project Name	Street Address	Project Description	Permit Status
	Residential			
1	VILLAGE AT UNIVERSITY PLACE - PLAT (FORMERLY SUNSET SOUTH)	7908 44th St W	Subdivide 4.76 Acres Of Land Into 21 Lots For Future Residential Construction To Be Served By Public Streets And Utilities.	Final Plat Recorded Initial Site Development Permit Work Completed Additional Site Development work In Progress Two Single-Family Residential Permits Issued
2	CREEK VISTA - PLAT	9020 Chambers Creek Rd W	Subdivide 6.07 Acres Of Land Into 9 Lots For Future Residential Construction To Be Served By Public Streets And Utilities.	Plat Recorded Site Development Permit Work in Progress Utility Work Completed Three Single-Family Residential Permits Completed
3	THE KNOLLS AT UNIVERSITY PLACE - PLAT (FORMERLY WOODSIDE CREEK- 123 LOTS & ORCHARD RIDGE- 42 LOTS)	5020 Orchard St W	Preliminary Plat And Planned Development District To Subdivide 31.6 Acres Of Land Into 165 Lots For Future Residential Construction To Be Served By Public Streets And Utilities.	Preliminary Plat Approved Site Development Permit Work In Progress Utility Work In Progress Final Plat In Review
4	CASCADE POINT - PLAT	5802 & 5812 67th Ave W	Preliminary Plat And Planned Development District To Subdivide 4.14 Acres Of Land Into 16 Lots For Future Residential Construction.	Final Plat In Review Site Development Permit Work In Progress Utility Work In Progress
5	SUMMER LANE - PLAT	3317 69th Ave Ct W	Minor Amendment To Summer Lane - A Preliminary Plat And Planned Development District To Merge The Approved Preliminary Plat And Development Plan With The Adjoining Johnson Estates Preliminary Plat And Planned Development District Creating A 40 Lot Residential Subdivision.	Minor Amendment Approved Site Development Permit In Review (Waiting For Revisions)
6	CIRQUE RIDGE - PLAT	49XX 67th Ave W	Applicant Proposes A Preliminary Plat To Subdivide 5.23 Acres Of Land Into 17 Lots For Future Detached Single-Family Homes To Be Served By Public Streets And Utilities.	Preliminary Plat On-Hold Possible Cancellation of Plat And Replacement With Small Lot Development Or Alternative Plat Design.
7	MCCORMICK - SHORT PLAT	6208 62nd St W	Applicant Proposes A Short Plat To Divide One Parcel Of Land Into Four Parcels For The Future Construction Of Three New Single-Family Residences. The Existing Residence Will Remain	Short Plat In Review Site Development Permit In Review

CITY OF UNIVERSITY PLACE - DEVELOPMENT SERVICES
CURRENT PLANNED & PROPOSED DEVELOPMENTS *
RESIDENTIAL / COMMERCIAL / INDUSTRIAL
4/27/2016

	Project Name	Street Address	Project Description	Permit Status
8	KIM - SHORT PLAT	2138 Willow Ln W	Applicant Proposes A Short Plat To Divide One Parcel Of Land With Two Existing Duplex Condos (4 Units) Into Two Parcels Of Land With One Duplex Condo (2 Units) On Each Parcel	Short Plat Approved
9	KASER - SHORT PLAT	7833 & 7839 37th St W	Applicant Proposes A Two (2) Lot Short Plat For The Future Construction Of Two (2) New Single-Family Residences.	Short Plat In Review (Waiting For Revisions)
10	MORRISON TOWNHOMES	30XX Morrison Rd W	Administrative Design Review And Construction Of A 34 Unit Townhome Development.	Design Review Approved Site Development Permit for Clearing and Grading Work In Progress Final Site Development Plans Ready To Issue (Waiting For Financial Guarantees) Building Permit Ready To Issue
11	LATITUDE 47 MIXED USE BUILDING	3633 Market Pl W	Construct A New Mixed-Use Building With Commercial Spaces Located On Market Place Street Level And Living Units Above. (Phase 1 - 98 Units / Phase 2 - 72 Units)	Design Review Approved Building Construction In Progress
	Commercial			
12	CHI FRANCISCAN HOSPICE ADDITION	2901 Bridgeport Way W	Construct An Addition And Remodel To The Existing Franciscan Hospice Facility.	Building Permit in Review
13	32 PEARLS DENTAL OFFICE ADDITION	8100 27th St W	Addition, Remodel And Roof Modification To An Existing Commercial Building And Tenant Improvement For A New Dental Office.	Building Permit In Review (Revisions Received)
14	PHYSICAL THERAPY ASSOC - FIRE REPAIR	4606 Bridgeport Way W Ste C	Fire Damage Repair Of An Existing Commercial Building.	Building Permit In Review
15	ALLSTATE - TI	3560 Bridgeport Way W Ste 2B	Expand Existing Insurance Office Into An Adjacent Space.	Building Permit Ready To Issue
16	T-MOBILE TI	3555 Market Pl W Ste 2	Tenant Improvement In A New Mixed-Use Building For T-Mobile.	Building Permit Ready To Issue
17	AMC NARROWS 8 TI	2208 Mildred St W	Tenant Improvement Of The Existing AMC Narrows 8 Movie Theater.	Building Permit Ready To Issue
18	SAFEWAY - FRUIT ROOM TI	3842 Bridgeport Way W	Remodel A Portion Of The Rear Stock Room Into A Fruit Preparation Area.	Building Permit In Review (Letter Sent to Applicant)

CITY OF UNIVERSITY PLACE - DEVELOPMENT SERVICES
 CURRENT PLANNED & PROPOSED DEVELOPMENTS *
 RESIDENTIAL / COMMERCIAL / INDUSTRIAL
 4/27/2016

	Project Name	Street Address	Project Description	Permit Status
19	MEDITERRANEAN GYRO GRILL TI	3555 Market Pl W Ste 6	Tenant Improvement To Construct A New Restaurant In An Existing Shell Building.	Building Permit In Review (Letter Sent to Applicant)
20	T-MOBILE ANTENNA MODIFICATION	1905 Bridgeport Way W	Replace Three (3) Panel Antennas, Add Three (3) Rrh'S And Remove Five (5) Tma'S And 14 Runs Of Coax On An Existing Cell Tower.	Building Permit Ready To Issue
21	AT&T ANTENNA REPLACEMENT	8425 40th St W	Replace Three (3) Panel Antennas, Add Ancillary Rru'S Behind The Antennas And A New Handrail Kit On An Existing Cell Tower.	Building Permit Issued
22	HAND & STONE TI	3904 Bridgeport Way W Ste A	Tenant Improvement For A New Spa.	Building Permit Issued
23	FAST YETI TI	3560 Bridgeport Way W Ste 3B	Tenant Improvement For A Software Design Business.	Building Permit Issued
24	WEST 27TH LLC TI	7012 27th St W	Tenant Improvement To Demo Interior Walls To Return Office To A Warehouse Space.	Building Permit Issued Revisions Received
25	GRANDVIEW SENIOR LIVING APARTMENTS/MIXED-USE BUILDING	8427 27th ST W	Administrative Design Review For A New Five (5) Story Plus Basement Mixed-Use Building With 142 Senior Apartment Units, Six (6) Live/Work Units, And Structured Parking.	Design Review Approved Demo Permit Issued Site Development Permit Ready To Issue Building Permit Ready To Issue
26	UNIVERSITY PLACE SPECIAL CARE COMMUNITY	5417 64th St W	Applicant Is Proposing A New Memory Care Campus For Dementia Patients Comprising Of Three (20 Bed) Residential Cottages And One Administration Building.	Demo Permit Issued Four Building Permits in Review Site Development Permit in Review
27	VERUS RETAIL BUILDING	3626 Market Pl W	Applicant Is Proposing to Construct A Mixed Use Building - 25,000 sq. ft. Retail and 10,000 Sq. Ft. Office.	Design Review Pending
28	1440 FITNESS	3905 Bridgeport Way W	Applicant Is Proposing To Convert The Old Albertson's Grocery Store To A New Gymnasium	City Business License Submitted
29	CREEK CORNER/MC GUIRE	67th Ave W & Bridgeport Way W	Applicant Is Requesting Permitting Information Regarding Design Regulations And Code Requirements Associated With The Development Of A Parcel Consisting Of Three Commercial Structures. (Two Structures Are Proposed Drive-Throughs.	Technical Committee Meeting Held

CITY OF UNIVERSITY PLACE - DEVELOPMENT SERVICES
 CURRENT PLANNED & PROPOSED DEVELOPMENTS *
 RESIDENTIAL / COMMERCIAL / INDUSTRIAL
 4/27/2016

	Project Name	Street Address	Project Description	Permit Status
30	GRACE LUTHERAN CHURCH	4719 Sunset Dr W	Applicant Is Requesting Permitting Requirements Regarding The Proposed Construction Of A New Two-Story 4,992 Sq. Ft. Church And Preschool.	Technical Committee Meeting Held
31	GRANDVIEW LODGE	8313 - 8315 27th St W	Applicant Is Proposing A 108 Bed Assisted Living & Dementia Care Facility.	Technical Committee Meeting Held
32	BOSNICK STORAGE UNIT FACILITY	2915 68th Ave W	Applicant Is Proposing To Demolish Three (3) Structures (Bosnick Roofing) And Construct A 293 Unit Storage Facility.	Technical Committee Meeting Held
33	COMMUNITY CONNECTION PLACE	4201- 4205 Bridgeport Way W	Applicant Is Proposing To Construct A 13,948 Sq. Ft Community Youth Center (Phase 1) And A 18,207 Sq. Ft. Indoor Soccer Field/Sports Complex (Phase 2).	Technical Committee Meeting Held
34	WESTMARK CONSTRUCTION STORAGE BUILDING	2723 Rochester Rd	Applicant Requested Permitting Information To Demolish And Replace A Storage/Warehouse Building.	Three Technical Committee Meetings Held
	Industrial			
35	PIERCE COUNTY WASTE WATER TREATMENT PLANT	10311 Chambers Creek Rd W	Waste Water Treatment Plant Expansion To Include 54 Building, Fire Suppression & Site Development Permits.	Approximately Two-Thirds of Work Completed and Inspected
36	PROJECT BUCKWHEAT	6919 24th St W	Applicant Requested Permitting Information And Requirements Regarding A Proposed Buckwheat Manufacturing Company.	Technical Committee Meeting Held

* Does Not Include New SFR Residences, Additions or Remodels.

STUDY SESSION

Memo

DATE: May 2, 2016
TO: City Council
FROM: Steve Victor, City Attorney
CC: Steve Sugg, City Manager
SUBJECT: University Place Utility Surcharges

Background

Eight types of utilities operate within University Place rights-of-way. The City adds a surcharge calculated on the utility's gross revenues to every utility that operates in University Place, public and private, except Pierce County Sewer. The surcharges on electric power and water are collected through the franchises with Tacoma Power and Water, and the other surcharges are imposed through the City's existing utility tax ordinance (University Place Municipal Code 4.35). Pierce County Sewer was not included in the City's utility tax code and the existing sewer franchise has no fee.

Proposed County Sewer Franchise

County Sewers operate under a special State law (RCW 36.94.170) that allows counties to operate a countywide system of sewerage without regard to any jurisdictional boundaries. Shortly after its incorporation, the City of Lakewood attempted to impose a franchise fee on Pierce County Sewer. After years of litigation, the County prevailed on its argument that such a fee could not be unilaterally imposed under State law. *Lakewood v. Pierce County*, 106 Wn. App. 63 (2001). Subsequently, Lakewood and Pierce County negotiated, and by 2005 mutually agreed to, a franchise agreement within which Lakewood receives a percentage of the gross earnings of the Sewer Utility collected in Lakewood in exchange for a non-compete covenant, and a requirement that the City pay the cost of any City-mandated relocation of sewer infrastructure. For the last year, we have been engaged in negotiation with the County on a similar agreement, resulting in the draft franchise ordinance before you for consideration.

Surcharge Uniformity Legal Considerations

As shown in the introductory paragraph, all utilities operating in the City rights-of-way, except Pierce County Sewer, pay a surcharge to the City based on a percentage of their gross revenue. Both Tacoma Power and Tacoma Water pay this as a franchise fee (rather than being directly labeled as a tax) in exchange for a non-compete clause, on the same basis that Pierce County Sewer pays a fee to Lakewood. Other U.P. utilities are calculated and paid in the same manner. The fact that Pierce County Sewer Utility, alone among all utilities in the City's rights-

of-way, pays no surcharge in U.P., creates a potential legal issue involving Washington State's rules regarding uniformity of taxation.

Beginning with the 1853 Organic Act establishing the government of the Washington Territory, the U.S. Congress imposed a strong requirement for uniformity in taxation in order to prevent the territory's residents from imposing a disproportionate share of taxes on nonresidents. Uniformity of taxation continued as a fundamental principle in the State Constitution adopted in 1889. The State Constitution includes a uniformity clause, which provides that "taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax...." Many other states have differential tax rates or different value standards that depend upon the separate classifications of property. Such systems are not constitutional in Washington.

The Washington Constitution (art. VII, § 1) requires that taxation of property be uniform, a clause that was added to the constitution in 1930 by Amendment 14: "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax and shall be levied and collected for public purposes only. The word 'property' as used herein shall mean and include everything, whether tangible or intangible, subject to ownership." (Emphasis added). One of the first cases to interpret this constitutional section was Culliton v. Chase (1933), in which the Washington State Supreme Court analyzed whether a graduated income tax, adopted by initiative the year before, was constitutional.

The Culliton court analyzed the constitutional definition of property in Article VII, and found, "It would certainly defy the ingenuity of the most profound lexicographer to formulate a more comprehensive definition of property. It is everything, whether tangible or intangible, subject to ownership." With this expansive definition of property, the court held that income, a form of revenue, fell within that classification, and, therefore, the graduated income tax was held unconstitutional.

There is little question that utility income would be considered "property" within the meaning of the State constitutional uniformity requirement. That Pierce County Sewer pays uniformly with other utilities operating in Lakewood, but in U.P. pays nothing, in contrast to all other utilities operating in the City, raises potential legal uniformity issues which could in the future potentially play out in a number of ways adverse to the City.

Features of the Franchise

While the proposed franchise is largely a standard utility right-of-way franchise, it has two special features that merit mention.

1. Annual review of opportunities to promote full sewerage of the City (Paragraph 12.2).

The City is not fully sewerage, and unlike neighboring cities such as Tacoma and Lakewood, U.P. has neither a full mandatory sewer connection ordinance, nor an in-lieu-of sewer charge paid by unsewered properties to go to a sewer extension fund. However, the long-term goal of both parties is to extend the sewer system to be readily available to all properties in the City. As material consideration to the County, the City would agree in the franchise, that at least once each calendar year for the term of the franchise, the City will consult with the County on sewer extension opportunities and options, and the City Council will study in a public meeting potential programs, policies, and then-available opportunities to extend the sewer system to be readily available to all properties in the City. There is no obligation on the City beyond the annual study, and no impact on the City's ordinances or on existing homes served by septic systems.

2. City responsible for costs of City-directed sewer relocation (Paragraph 3).

As a material part of the consideration for the County's agreement to pay to the City a franchise fee, the City is required to reimburse the County for costs to relocate, adjust or remove from any public right-of-way any of its installations when required to do so by the City because of any City public works project. This is the opposite of a standard franchise, but is a material term of the Pierce County Agreement with Lakewood, and is not negotiable here. In practical terms, the likelihood of a City-mandated relocation of sewer infrastructure is quite remote.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, GRANTING TO PIERCE COUNTY THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWENTY YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A SANITARY SEWER SYSTEM IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY; AGREEING NOT TO ESTABLISH A CITY-OWNED SEWER UTILITY IN COMPETITION WITH PIERCE COUNTY SUBJECT TO MONTHLY COMPENSATION; AND SETTING AN EFFECTIVE DATE

WHEREAS, the City of University Place (the "City") has authority to grant franchises for the use of its public streets and other public properties pursuant to Chapter 35A.47.040 RCW; and

WHEREAS, Pierce County, a political subdivision of the State of Washington (the "County"), through its Department of Public Works and Utilities owns, operates and maintains a sanitary sewer system, which includes a wastewater treatment plant, throughout portions of Pierce County, as well as within the City, pursuant to Chapter 36.94 RCW; and

WHEREAS, the County provides sewer service in the City; and

WHEREAS, the County and the City have negotiated the contractual requirements contained within the franchise and desire to enter into a franchise agreement substantially as set forth in the attached Sewer Franchise Agreement to install, operate and maintain the County's system of sewerage in the public rights-of-way of the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Granting a Sewer Franchise to Pierce County. Pierce County is hereby granted a franchise to construct, operate, maintain, remove, replace and repair all necessary facilities for a sanitary sewer system in, under, on, across, over, through, along or below the public rights-of-way located in the City, as approved under City permits issued pursuant to applicable City codes and regulations, as set forth in the Sewer Franchise Agreement between the City of University Place and Pierce County, substantially in the form attached hereto and incorporated herein by reference.

Section 2. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 3. Completion of Transaction. The City Manager is authorized to take and execute any additional measures or documents that may be necessary to complete this transaction, which are consistent with the approved form of documents attached, and the terms of the Franchise Agreement.

Section 4. Publication and Effective Date. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED BY THE CITY COUNCIL ON _____, 2016.

Javier H. Figueroa, Mayor

ATTEST:

Emelita Genetia, City Clerk

APPROVED AS TO FORM:

Steve Victor, City Attorney

Published: xx/xx/xx
Effective Date: xx/xx/xx

DRAFT

**SEWER FRANCHISE AGREEMENT
BETWEEN
PIERCE COUNTY AND THE CITY OF UNIVERSITY PLACE**

WHEREAS, the City of University Place (the "City") has authority to grant franchises for the use of its public streets and other public properties pursuant to Chapter 35A.47.040 RCW; and

WHEREAS, Pierce County, a political subdivision of the State of Washington (the "County"), through its Department of Public Works and Utilities owns, operates and maintains a sanitary sewer system, which includes a wastewater treatment plant, throughout portions of Pierce County, as well as within the City, pursuant to Chapter 36.94 RCW; and

WHEREAS, the County provides sewer service in the City; and

WHEREAS, the County and the City have negotiated the contractual requirements contained within the franchise and desire to enter into a franchise agreement substantially as set forth in the attached Sewer Franchise Agreement to install, operate and maintain the County's system of sewerage in the public rights-of-way of the City; now therefore, the County and the City agree as follows:

This franchise grants to the County the right, privilege and authority to construct, operate, maintain, remove, replace and repair all necessary facilities for a sanitary sewer system in, under, on, across, over, through, along or below the public rights-of-way located in the City, as approved under City permits issued pursuant to applicable City codes and regulations. Public "rights-of-way" means all public streets, roads, alleys, highways, and easements of the City as now or hereafter laid out, platted, dedicated or improved. Whenever the City vacates a public right-of-way in which County facilities are located, the City shall reserve to the County an easement for access to its facility for operation, maintenance, repair, and replacement, which said width thereof shall be in accordance with County standards as subject to and limited by the boundaries of the right-of-way being vacated.

1. Non-Exclusive Franchise.

This franchise is non-exclusive, and the City reserves the right to grant other or further franchises in, along, over, through, under, below or across any of its public rights-of-way. This franchise shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement and dedication of same, including the dedication, establishment, maintenance and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

2. Cooperative Administration.

The County and the City each recognize its respective obligation to plan in accordance with the laws of the State. In furtherance of that obligation, the County will prepare its Unified Sewer Plan pursuant to RCW Chapter 36.94, both substantively and procedurally, so that it is compatible with City planning documents and the planning documents of other jurisdictions that are served by the County's sewerage system. To assure such compatibility, the County will solicit input from the City with regard to County's sewerage planning activities early in the planning process, so that City comments may be considered by the County and, if appropriate, incorporated into the Unified Sewer Plan. To facilitate the County's efforts to comply with Growth Management Act requirements to provide urban government services in urban growth areas, the City will supply the County with requested information in a timely manner.

3. Relocation of Sanitary Sewer System Facilities.

3.1 As consideration for the County's agreement to pay to the City the monthly compensation stated in Section 12, the City shall fully reimburse the County for all costs and expenses to protect, support, temporarily disconnect, relocate, adjust or remove from any public right-of-way within the City's corporate

limits as it exists now or in the future, any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction within the right-of-way by the City of any public works project provided that, with City approval, the County may temporarily bypass, in the authorized portion of the same street, any section or portion of its sanitary sewer system required to be temporarily disconnected or removed. The County shall invoice the City for such costs and expenses each calendar month and the City shall pay such costs and expenses within thirty (30) days from the billing date, after which time the payment of such respective costs and expenses shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

3.2 Any condition or requirement imposed by the City upon any person or entity which reasonably necessitates the relocation of the County's facilities within the franchise area shall be subject to full reimbursement to the County for all costs and expenses for such utility relocation and the County's right to establish terms for such utility relocation with such person or entity; provided, such arrangements do not unduly delay a City construction project. The County shall invoice the person or entity for such costs and expenses each calendar month and the person or entity shall pay such costs and expenses within thirty (30) days from the billing date, after which time the payment of such respective costs and expenses shall be delinquent. Delinquent charges shall accrue interest on the unpaid balance from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

3.3 Except as stated in section 3.5 herein, if the City determines that a project necessitates the relocation of County facilities, the City shall:

A. At least ninety (90) days before commencement of the improvement project, provide the County with written notice requiring a utility relocation; provided that the City shall notify the County of a relocation required by a City capital improvement project as soon as the City, acting with reasonable diligence, learns that relocation of utilities are required; and

B. Provide the County with copies of pertinent portions of thirty percent (30%) plans for such improvement project and a proposed location for County facilities so that the County may relocate its facilities in other City rights-of-way in order to accommodate such improvement project; and

C. The City and County shall work cooperatively during the design process to resolve conflict issues between existing City/County facilities; and

D. After receipt of such notice and such plans, and unless the City agrees that the relocation should occur in conjunction with the City's project, the County shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's project. Relocation shall be accomplished in such a manner as to accommodate the City's project. The County shall not be considered in breach of this Section if the City fails to give the required notice or if it is delayed by the time required:

(i) to comply with state bid law requirements for contracting out any of the relocation work and the County has diligently pursued the award of the necessary contract; or

(ii) to obtain or comply with any permits necessitated by environmental or endangered species requirements; or

(iii) to obtain sole source materials necessary for the relocation work.

3.4 The County may submit to the City written alternatives to any requested relocation, to which the City shall give full and fair consideration. The County shall submit additional information requested by the City in a timely manner as necessary to aid the City's evaluation. The City shall advise the County in

writing if one or more of the alternatives is acceptable. If the City determines that no other reasonable or feasible alternative exists, the County shall relocate its facilities as otherwise provided in this Agreement.

3.5 Where the City has relied upon the as-built maps, plans, and/or the best available information submitted by the County to determine that the County's pipe and/or facilities (live/or abandoned) will not be affected by a proposed City improvement project, and subsequently during the construction of the City improvement project, the City finds that the County's pipe and/or facilities are in the construction area, the City shall notify the County, and the County shall expeditiously remove and relocate its facilities.

3.6 The County may establish terms for any utility relocation that is requested by a third party if the utility is not being relocated at the direction of the City; provided such arrangements do not unduly delay a City construction project or unduly impact sewer services.

4. Maps and Records.

After construction of new facilities in the City rights-of-way, the County shall provide to the City, upon request and at no cost, a copy of all as-built plans, maps, and records detailing the location and condition of its facilities within the public rights-of-way and public places.

5. Abandonment of Sanitary Sewer Pipe, Manholes and System Facilities.

The County shall not abandon in place any County property located in any right-of-way without the written consent of the City, which shall not be unreasonably withheld; provided that the County must provide the City with (1) as-built drawings showing the location of the facilities to be abandoned; and (2) if the County property is composed in whole or in part of hazardous material (i.e. asbestos), the County shall provide the City with written documentation showing its plans for compliance with all applicable regulations pertaining to abandonment of said hazardous materials.

Unless the County has conveyed the abandoned property to the City, and the City accepts such conveyance, the County, when so directed by the City, shall, at the County's expense, remove abandoned County property located in the right-of-way composed in whole or in part of materials containing hazardous materials. In removing such material, the County shall conform to all local, state, and federal regulations applicable to such abatement and shall be responsible for all costs of remediation.

Whenever the direction to remove County facilities is associated with a City project, the parties shall comply with section 3 of this Agreement. The County shall comply expeditiously, subject to permitting requirements, engineering necessity, and laws governing public contracts. The parties working together shall develop a schedule for removal that is reasonable under the circumstances. If the County fails to comply with the agreed schedule, the City may, at the County's expense, remove the County's facilities.

6. Excavations.

All work performed by the County or its contractors shall be accomplished in a safe and workmanlike manner and in a manner that will minimize interference with traffic and the use of adjoining property. The County shall post and maintain proper barricades and comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

The County shall submit to the City's Director of Public Works or his/her designee ("Director") for review and approval the requested number of plan sets drawn to an accurate scale showing the location, character, position, dimension, depth, and height of the work to be done. The plans shall provide sufficient detail, as determined by the Director, with respect to the relative position and location of all pipes, conduits, mains, manholes, facilities, and appurtenances to be constructed, laid, relaid, installed, replaced, repaired, connected or disconnected, and the existing street, avenue, alley, highway, right-of-way or property line, including the local improvements therein.

Except as otherwise provided herein, the County shall apply for and secure all necessary City permit(s) to work in the public rights-of-way and, in addition, shall give the City at least five (5) working days' notice of its intent to commence work in the public rights-of-way.

If either party plans to excavate in the public rights-of-way, then upon a written request from the other, that party may share such excavation upon mutually agreed terms and conditions.

7. Restoration.

After completion of work in a public right-of-way, the County shall restore the surface of the right-of-way to the same condition as existed immediately prior to the work and to the standards established on the approved plans or permit conditions, whichever is greater; however, if such work is to be followed by a City capital improvement project, then the City shall be responsible for any restoration work. The City's Public Works Director shall have final approval of the condition of such streets and public places after restoration, and such approval will not be unreasonably withheld. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state, and local standards and specifications. The County shall complete all restoration work promptly and shall promptly repair any damage caused by such work.

8. Emergency Work (Permit Waiver).

Whenever a County facility located in a right-of-way endangers property, health or safety, the County shall immediately take proper emergency measures, without first obtaining a permit as required by this franchise. However, the County shall notify the City of the work no later than the next succeeding business day and apply for a right-of-way permit within forty-eight (48) hours.

9. Dangerous Conditions, Authority for City to Abate.

If work related to facilities authorized by this franchise endangers property or the public's health and safety, the Public Works Director may direct the County, at the County's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the County, the City shall notify the County as follows:

Contact Person: Pierce County Wastewater Utility Manager
Phone number: 253-798-4050
Cell/pager number: 253-377-8271

If the County does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the County shall be liable to the City for the costs thereof.

10. Indemnification.

The County shall release, indemnify, and defend the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the County, its agents, servants, officers, or employees, performed under authority of this franchise; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the County and the City, its officers, employees, and agents, the County's obligation shall be only to the extent of the County's negligence. This indemnification includes claims by the County's own employees for which the County might otherwise be immune under Title 51 RCW, and the County waives its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The foregoing obligation and waiver shall also extend to any claims, costs, judgments, awards, fines or penalties or liability to any person for injury or death of any person or damage to property caused by or arising out of the County's abandonment or removal of hazardous material under section 5.

Inspection or acceptance by the City of any work performed by the County at the time of completion of construction shall not relieve the County of any of its obligations under this section.

If a court or other tribunal agreed upon by the parties determines that the County wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the County shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

The City shall defend, indemnify, and hold the County harmless from and against any and all claims, suits, actions or liabilities (including litigation costs and attorney's fees) arising from the execution of this Agreement in any way related to the imposition of any fee, compensation or surcharge, the collection of any fee, compensation or surcharge from ratepayers, or the County's payment of any fee, compensation or surcharge to the City.

11. Insurance.

The County shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to the County, its agents, representatives, or employees. The County shall provide an insurance endorsement, naming the City as an additional insured, to the City for its inspection prior to the adoption of this Franchise Agreement, and such endorsement shall evidence a policy of insurance that includes:

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

The County's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the County to coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. The County may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing coverage substantially the same as set forth above.

12. Agreement not to Compete (Non-Assumption) and Mutual Consideration.

12.1 During the term of this franchise, the County agrees to pay to the City compensation in an amount equal to six percent (6%) of the regular rates and charges for the furnishing of service, collected by the County on all sewer accounts located within the City. This compensation is consideration for the City's agreement not to establish a City-owned sewer utility in competition with the County system, and the City's promise not to exercise its statutory authority under Chapter 36.94.180, as currently written or as may be hereafter amended or modified, to assume jurisdiction over that portion of the County's sanitary sewer system lying within the City's corporate boundaries and provide services to properties within said boundaries or any part thereof during the term of this franchise. The County shall disburse funds collected pursuant to this section to the City on a monthly basis with the first payment being made the first full month after this amount of compensation is collected. This payment may be recovered from ratepayers and reflected on said customers' monthly bills as a separate line item. As consideration for the County's agreement to pay such compensation to the City, the City shall fully reimburse the County for all costs and expenses for any relocation of County sewer facilities as stated in Section 3. The percentage rate of compensation shall not be increased without the consent and agreement of the City and the County.

12.2 The City and County acknowledge and agree that all properties in the City are not served by sewer and that the long-term goal of both parties is to extend the sewer system to be readily available to all properties in the City. Therefore, as additional material consideration to the County, the City agrees that at least once each calendar year for the term of this franchise, the City will consult with the County on sewer extension opportunities and options, and the City Council will study in a public meeting potential programs, policies, and then-available opportunities to extend the sewer system to be readily available to all properties in the City.

12.3 Upon the City's request, the County shall within thirty (30) days make available to the City for examination, audit and review, the County's books and records pertaining to all revenue and charges derived by the County by virtue of this franchise, to verify the accuracy of payments. The City shall maintain the confidentiality of the information the County provides to the extent permitted by law when the County has notified the City of the confidential nature of said information. Should such a review result in the discovery of an error in payment (over or under payment), the City shall notify the County in writing of its findings and the error shall be mitigated by the County in the next monthly payment cycle.

13. Modification.

The terms and conditions of this franchise may be modified only upon written agreement of the parties.

14. Forfeiture and Revocation.

If the County willfully fails to comply with any provision of this franchise, or through willful misconduct or gross negligence fails to comply with any notice given the County by the City under the provisions of this franchise, then the City may revoke this franchise after a hearing is held upon notice to the County.

15. Remedies to Enforce Compliance.

In addition to any other remedy, the City may obtain a superior court order compelling the County to comply with the provisions of this Franchise Agreement and seek to recover damages and costs incurred by the City by reason of the County's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under section 14.

16. City Ordinances and Regulations.

This franchise shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers. While the design and construction of the County's sewer facilities shall be in accordance with County standards, the City retains its authority to control by reasonable regulations the location of County's system of sewerage in the public rights-of-way, and the County shall conform with all such regulations, unless compliance would cause the County to violate other requirements of law.

17. Cost of Publication.

The cost of the publication of the Ordinance approving this Franchise Agreement shall be borne by the City.

18. Acceptance.

Unless extended by Ordinance, the County shall have sixty (60) days after the passage and approval of the Ordinance approving this Franchise Agreement to file with the City Clerk its unconditional written acceptance of this franchise; otherwise, the County shall be deemed to have rejected this franchise.

19. Survival.

Section 3 (Relocation of Sanitary Sewer System Facilities), Section 5 (Abandonment of Sanitary Sewer Pipe, Manholes and System Facilities), Section 6 (Excavation), Section 7 (Restoration), Section 9

(Dangerous Conditions, Authority for City of Abate) and Section 10 (Indemnification) shall be in addition to any and all other obligations and liabilities the County may have to the City at common law, by statute, or by contract, and shall survive the City's franchise with the County for the use of the City rights-of-way. The Ordinance approving this Franchise Agreement is binding upon the successors and assigns of the County and all privileges, as well as all obligations and liabilities of the County, shall inure to its successors and assigns.

20. Assignment.

This franchise may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld.

21. Notice.

Any notice required or permitted by this franchise may be sent to the following addresses unless otherwise specified in writing:

CITY OF UNIVERSITY PLACE
Public Works Director

University Place, WA

Pierce County Public Works and Utilities Public
Works Director
9850 64th Street West
University Place, WA 98467-1078

22. Severability.

If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

23. Franchise Term.

This Franchise Agreement is and shall remain in full force and effect for a period of twenty (20) years from and after the effective date of the Ordinance approving same; provided, however, the County shall have no rights under this Franchise Agreement, nor shall the County be bound by the terms and conditions of this Franchise Agreement, unless the County shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Franchise Agreement.

24. Effective Date.

This Agreement will take effect when both parties have executed below.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as follows.

CITY OF UNIVERSITY PLACE

By: _____
Stephen P. Sugg, City Manager

Date: _____

Approved as to form:

Steve Victor, City Attorney

ACCEPTANCE OF FRANCHISE

Pierce County accepts the nonexclusive franchise with the City of University Place approved by the University Place City Council on _____, 2016, by the adoption of University Place City Ordinance No. _____.

DATED this ___ day of _____, 2016.

PIERCE COUNTY

By: _____
County Executive

CITY of UNIVERSITY PLACE
3715 Bridgeport Way West ♦ University Place, WA 98466
Phone (253) 566-5656 ♦ FAX (253) 460-2541

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT
STAFF REPORT TO THE CITY COUNCIL
May 2, 2016**

**CRITICAL AREAS &
SHORELINE MASTER PROGRAM
AMENDMENTS**

SUBJECT: Critical Areas and Shoreline Master Program Amendments

INTRODUCTION: The May 2, 2016 study session will provide opportunity for initial Council review of proposed critical areas and shoreline master program amendments recommended by the Planning Commission. Once Council has reviewed the amendments and possible revisions thereto, consideration of the amendments and final action may be scheduled for a subsequent meeting.

BACKGROUND: University Place's critical area regulations were last updated in a comprehensive fashion, in 2013, as part of the City's Shoreline Master Program (SMP) Update process. The 2013 amendments were intended to ensure that the code would be consistent with state laws that had been amended subsequent to the City's previous periodic review and update of these regulations, which occurred in 2002. Council subsequently approved an additional amendment, in 2015, to satisfy an Ecology requirement to gain that agency's final approval of the City's SMP Update.

Wetland Regulations. Ecology informed the City in 2015 that the agency had repealed the state wetland delineation manual and that municipalities should amend their code language as it pertains to wetland delineation reports. The new language must require wetland delineation reports to comply with the "approved federal wetland delineation manual and applicable regional supplements" -- consistent with WAC 173-22-035. Additional code amendment review comments recently submitted by Ecology have prompted the preparation of additional wetland code amendments.

Geologically Hazardous Area Regulations. The City has become aware of a provision in its geologically hazardous area regulations that is proving problematic for developers designing residential projects in a couple of locations. Current code allows modifications to steep slope buffers and buffer setbacks but prohibits any modification of the steep slope itself.

On one site, modifications to the steep slope could actually reduce the potential hazard it presents, while on another site, the slope in question is the result of past mining activity – and modifications to this slope to accommodate a more rational and beneficial project design should be possible without increasing geological hazards on or adjacent to this site. The proposed amendment would bring the City’s provisions in line with those administered by other jurisdictions that have been reviewed.

PLANNING COMMISSION REVIEW AND RECOMMENDATION: The Planning Commission reviewed proposed amendments to critical areas regulations at its January 20, 2016 meeting and offered suggestions for minor edits to the draft. On March 16, 2016, the Planning Commission conducted a public hearing to consider the revised draft critical areas amendments and an associated amendment to the SMP. The Commission voted unanimously to recommend to Council the approval of the draft amendments to Title 17 Critical Areas and Title 18 Shoreline Master Program described below and provided in their entirety in attachment 1 to this report.

PROPOSED AMENDMENTS AND RECOMMENDATIONS:

GEOLOGICALLY HAZARDOUS AREAS

PAGES 1-3 SECTION 17.15.055

REGULATION

This section currently allows modifications to steep slope buffers and buffer setbacks but prohibits any modification of the steep slope itself. The proposed amendments would permit limited modifications to steep slopes where it can be demonstrated through geotechnical analysis that geological hazards would not be increased on or adjacent to a site as a result of such modifications. The practical implication would be that for a limited number of sites where certain geological conditions exist, slope modification, and therefore greater site design flexibility, would be permitted.

WETLANDS

PAGES 4-17 CHAPTER 17.35

VARIOUS SECTIONS

This chapter would be amended to reflect the latest Department of Ecology technical guidance – which is based on the *Best Available Science* (a Growth Management Act requirement). *Section 17.35.025 Delineation and Wetland Analysis Requirements* would be amended to require wetland delineation reports to be prepared in accordance with the approved federal wetland delineation manual and applicable regional supplements. *Section 17.35.035 Establishing Buffers* would be updated to reflect the latest *Best Available Science*. Additional sections would be amended to ensure more consistent use of terminology. The practical ramifications of the proposed amendments are limited in that there are few undeveloped properties constrained by wetlands in University Place where the revised standards would apply.

SHORELINE MASTER PROGRAM

PAGE 20 CHAPTER 18.15

ADMINISTRATION

Sections 18.15.100 and 18.15.110 would be revised to ensure internal municipal code consistency with respect to code enforcement provisions.

PAGE 20 SECTION 18.25.070

SHORELINE ECOLOGICAL PROTECTION AND MITIGATION

This section would be amended by revising the effective date of the critical area regulations that are incorporated into the SMP – reflecting the critical area amendments described above.

PROCEDURAL COMPLIANCE: The City published a Notice of Public Hearing for the Planning Commission’s March 16, 2016 hearing in the Tacoma News Tribune on February 25, 2016 in accordance with UPMC requirements. The City submitted a Notice of Intent to Adopt Amendment to the Department of Commerce on February 25, 2016 to initiate the mandatory 60-day state agency comment period, which ended April 25, 2016. No state agency comments or other public comments were received in response to these notices.

The City issued a Determination of Nonsignificance and Environmental Checklist on February 25, 2016 with a 14-day comment period, which ended March 9, 2016. Comments were received from the Department of Ecology on March 9, 2016, and the Planning Commission’s recommended amendments include edits prepared by staff in response to these comments.

Attachment:

1. Planning Commission-recommended Critical Areas and SMP amendments

City of University Place
Critical Area and Shoreline Master Program
Code Amendments
Planning Commission Recommended Draft -- March 16, 2016

UPMC Title 17 -- Critical Areas

GEOLOGICALLY HAZARDOUS AREAS

17.15.055 Regulation.

A. Department Approval. The development proposal may be approved, approved with conditions, or denied based on the Department's evaluation of the geotechnical report, including, but not limited to:

1. The ability of the proposed mitigation or engineering measures to reduce risks to the proposed structure and risks to the erosion or landslide hazard area; and adjacent property; and
2. The proposed development's conformance with the following performance standards.

a. Location and extent of development:

1. Development shall be located to minimize disturbance and removal of vegetation; and
2. Structures shall be clustered where possible to reduce disturbance and maintain natural topographic character; and
3. Structures shall conform to the natural contours of the slope and foundations should be tiered where possible to conform to existing topography of the site.

b. Design of development:

1. All development proposals shall be designed to minimize the building footprint and other disturbed areas; and
2. All development shall be designed to minimize impervious lot coverage; and
3. Roads, walkways and parking areas shall be designed to parallel the natural contours; and
4. Access shall be in the least sensitive area of the site, as feasible.

B. Buffer Requirement. A buffer, consisting of undisturbed natural vegetation and measured (as shown in Figure 15-1) in a perpendicular direction from all landslide and erosion hazard areas, shall be required. The buffer shall be required from the top of slope and toe of slope of all landslide or erosion hazard areas that measure 10 feet or more in vertical elevation change from top to toe of slope. The minimum buffer distance requirements from the top of slope and toe of slope of landslide or erosion hazard areas shall be the same as for setbacks from slopes as identified in the Uniform-International Building Code, as amended from time to time. Regulated uses/activities that occur outside the buffer required by this subsection, the setback

required by subsection (C), and any potential landslide run-out do not require a geotechnical report. The other provisions of this chapter shall apply.

C. Building Setback and Construction Adjacent to Buffer. Eight-foot minimum setback lines (as shown in Figure 15-2) shall be required from the buffer area required in this section for construction of any impervious surface(s) greater than 120 square feet of base coverage. Clearing, grading, and filling within the eight foot setback shall only be allowed when the applicant can demonstrate that vegetation within the buffer will not be damaged. The setback is required in addition to the buffer regardless of buffer width, except as provided in subsection (D) below.

D. Modifications ~~and Flexibility to Buffer Width.~~ Alteration of a geologically hazardous area or an associated buffer or buffer setback may occur where:

1. A geotechnical report has been submitted showing, to the satisfaction of the City, that the proposal will have no adverse impact on the stability or erosion susceptibility of the adjacent hazardous slope area. ~~When the geotechnical report demonstrates that a lesser or eliminated buffer and/or setback, together with design and engineering solutions, will meet the intent of this chapter, such reduced or eliminated buffer and/or setback and design and engineering solutions may be permitted. A modified slope, a R~~reduced or eliminated buffer, and/or a reduced or eliminated setback width shall not be permitted unless the proposed design, engineering and mitigation ~~measures~~provisions pertaining to any modifications within a landslide or erosion hazard area adequately reduce risk to proposed structures, and to or from landslide and erosion hazard areas, and to adjacent areas. Should the geotechnical report indicate that a greater buffer than that required by this section is needed to meet the intent of this chapter, the greater buffer shall be required.

2. The impacted area of disturbance totals no more than 20 percent of the project site;

3. The modification will not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions;

4. The activity will not adversely impact other critical areas as regulated in UPMC Title 17 or shorelands as regulated in UPMC Title 18;

5. The development will not decrease slope stability on adjacent properties;

6. Stormwater runoff from any new impervious surface is managed and accommodated through LID design to the extent practicable. Where LID design will not fully manage and accommodate this stormwater, at the discretion of the City it shall be directed to the City's storm drainage system or collected in a detention system and directed to an enclosed drainage system; and

7. For slopes of 40 percent or greater, the following conditions also apply:

a. The disturbed area is not connected to or associated with a larger ravine system, the Puget Sound shoreline or Chambers Creek Canyon bluffs; and

b. The slope is the result of human-caused activities, including regrading through mining, excavation and or filling.

E. Buffer protection. To increase the functional attributes of the buffer, the department may require that the buffer be enhanced through planting of indigenous species. The edge of the

buffer area shall be clearly staked, flagged, and/or fenced prior to any site clearing or construction. The buffer boundary markers shall be clearly visible, durable, and permanently affixed to the ground. Site clearing shall not commence until the applicant has submitted written notice to the department that buffer requirements of this chapter are met. Field marking shall remain until all construction and clearing phases are completed, and the department has granted final project approval. Prior to final approval for subdivisions, short subdivisions binding site plans, planned development districts and commercial developments the buffer and slope shall be placed in a separate critical area tract or tracts, protective easement, public or private land trust dedication, or similarly preserved through an appropriate permanent protective mechanism as determined by the department. All protected areas identified above shall remain undeveloped in perpetuity, except as they may be altered pursuant to this title.

F. Temporary erosion and sedimentation control plan. Temporary erosion and sedimentation control plans shall be required for all regulated activities in landslide and erosion hazard areas. The temporary erosion and sedimentation control plan shall be consistent with the City's Public Works Standards and must be implemented prior to the start of development activity on-site.

UPMC Title 17 -- Critical Areas

WETLANDS

17.10.010 Acronyms.

“BMP” means best management practices.

“~~ECYDOE~~” means Department of Ecology.

“EIA” means Environmental Impact Assessment.

“EIS” means Environmental Impact Statement.

“ESA” means Endangered Species Act.

“FEIS” means Final Environmental Impact Statement.

“SEPA” means State Environmental Policy Act.

“TPCHD” means Tacoma Pierce County Health Department.

“UPMC” means University Place Municipal Code.

“WDF&W” means Washington Department of Fish and Wildlife.

17.35.020 Wetland categories.

Wetland categories shall be determined based upon the *Washington State Wetland Rating System for Western Washington*, current edition. Wetlands shall be generally categorized as follows:

A. Category I wetlands are:

1. Relatively undisturbed estuarine wetlands larger than one acre;
2. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR ~~as high-quality wetlands~~;
3. Bogs;
4. Mature and old-growth forested wetlands larger than one acre;
5. Wetlands in coastal lagoons; and
6. Wetlands that perform many functions well (scoring 2370 points or more).

These wetlands:

1. Represent unique or rare wetland types;
2. Are more sensitive to disturbance than most wetlands;
3. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
4. Provide a high level of functions.

B. Category II wetlands are:

1. Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre; or

~~2. Interdunal wetlands larger than one acre; or~~

~~23.~~ Wetlands with a moderately high level of functions (scoring between ~~2054~~ and ~~2269~~ points).

C. Category III wetlands are:

1. Wetlands with a moderate level of functions (scoring between ~~1630~~ and ~~1950~~ points); or

2. Wetlands that often can be adequately replaced with a well-planned mitigation project. ~~and~~

~~2. Interdunal wetlands between 0.1 and one acre.~~

Wetlands scoring between ~~1630~~ and ~~1950~~ points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

D. Category IV wetlands have the lowest levels of functions (scoring less than ~~1630~~ points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases to be improved upon. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

17.35.025 Delineation and wetland analysis requirements.

Regulated activities shall comply with the following requirements:

A. The Department may require a delineation report ~~per~~ prepared in accordance with the approved federal wetland delineation manual and applicable regional supplements ~~Washington State Wetland Identification & Delineation Manual, latest edition,~~ to determine if a regulated wetland is present on the site or to determine if the proposed activity is within 200 feet of a wetland. All areas within the City meeting the wetland designation criteria in this procedure are hereby designated critical areas and are subject to the provisions of this chapter. A wetland delineation report shall be prepared by a qualified wetland specialist. The delineation report shall ~~indicates~~ wetland and/or buffer boundaries that may extend onto the site. While the delineation report shall discuss all wetland areas within 200 feet of the site, only those boundaries within the site property lines need be marked in the field. A preliminary site inspection may be required by the Department to determine whether a delineation report is needed.

B. If, on the basis of a delineation report, the Department determines that a regulated wetland is on the site, or within 200 feet of the site so that a wetland buffer boundary may extend onto the site, then the Department shall require a wetland analysis report. A wetland analysis report must be prepared by a qualified wetland specialist. A wetland analysis report shall include the following:

1. Vicinity map;

2. When available, a copy of a National Wetland Inventory Map (U.S. Fish and Wildlife Service) and/or a City wetland inventory map identifying the wetlands on or adjacent to the site;
3. A site map setting forth all of the following:
 - a. Surveyed wetland boundaries based upon a delineation by a wetland specialist;
 - b. Site boundary property lines and roads;
 - c. Internal property lines, rights-of-way, easements, etc.;
 - d. Existing physical features of the site including buildings, fences, and other structures, roads, parking lots, utilities, water bodies, etc.;
 - e. Contours at the smallest readily available intervals, preferably at two-foot intervals;
 - f. Hydrologic mapping showing patterns of surface water movement and known subsurface water movement into, through, and out of the site area;
 - g. Location of all test holes and vegetation sample sites, numbered to correspond with flagging in the field and field data sheets;
 - h. The Department may require an air photo with overlays displaying the site boundaries and wetland delineation;
4. A report that includes the following:
 - a. Location information (legal description, parcel number and address);
 - b. Delineation report. The wetland boundaries on the site established by the delineation shall be staked and flagged in the field. If the wetland extends outside the site, the delineation report shall discuss all wetland areas within 200 feet of the site, but need only delineate those wetland boundaries within the site;
 - c. General site conditions including topography, acreage, and surface areas of all wetlands identified in the City wetland atlas and water bodies within one-quarter mile of the subject wetland(s);
 - d. Hydrological analysis, including topography, of existing surface and known significant subsurface flows into and out of the subject wetland(s);
 - e. Analysis of functional values of existing wetlands, including vegetative, faunal, and hydrologic conditions;
5. A summary of proposed activity and potential impacts to the wetland(s);
6. Recommended wetland category, including rationale for the recommendation;
7. Recommended buffer boundaries, including rationale for boundary locations;
8. Proposed on-site residential density transfer from wetlands and/or buffers to upland areas;
9. Site plan of proposed activity, including location of all parcels, tracts, easements, roads, structures, and other modifications to the existing site. The location of all wetlands and buffers shall be identified on the site plan.

C. The Department shall review and approve the wetland analysis report to determine the appropriate wetland category and buffer, and shall include the wetland in the City wetland maps and inventory if not already included. The Department shall approve the report's findings and proposals unless specific, written reasons are provided which justify not doing so.

17.35.035 Establishing buffers.

A. ~~Buffers shall be measured perpendicularly to the wetland edge.~~ Buffer widths shall be determined according to Table 3 and the provisions of this section.

Table 3 – Wetland Buffer Widths

	Category I	Category II	Category III	Category IV
High Impact Land Use	200' Buffer	150' Buffer	75' Buffer	50' Buffer
Low Impact Land Use	150' Buffer	100' Buffer	50' Buffer	35' Buffer

The standard buffer widths in Table 3 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.

1. The use of the standard buffer widths requires the implementation of the measures in Table 4, where applicable, to minimize the impacts of the adjacent land uses.
2. If an applicant chooses not to apply the mitigation measures in Table 4, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.
3. The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is un-vegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.
4. Additional buffer widths are added to the standard buffer widths. For example, a Category I wetland scoring 9 points for habitat function would require a buffer of 225 feet (75 + 150).

Table 3 -- Wetland Buffer Requirements

<u>Wetland Category</u>	<u>Buffer Width (in feet) Based on Habitat Score</u>			
	<u>3-4</u>	<u>5</u>	<u>6-7</u>	<u>8-9</u>
<u>Category I:</u> <u>Based on total score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I:</u> <u>Bogs and Wetlands of</u> <u>High Conservation Value</u>	<u>190</u>			<u>225</u>
<u>Category I:</u> <u>Coastal Lagoons</u>	<u>150</u>		<u>165</u>	<u>225</u>
<u>Category I:</u> <u>Forested</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category I:</u> <u>Estuarine</u>	<u>150</u> <u>(buffer width not based on habitat scores)</u>			
<u>Category II:</u> <u>Based on score</u>	<u>75</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category III (all)</u>	<u>60</u>	<u>105</u>	<u>165</u>	<u>225</u>
<u>Category IV (all)</u>	<u>40 ft</u>			

Table 4 -- Required Measures to Minimize Impacts to Wetlands

<u>Disturbance</u>	<u>Required Measures to Minimize Impacts</u>
<u>Lights</u>	<ul style="list-style-type: none"> • <u>Direct lights away from wetland</u>
<u>Noise</u>	<ul style="list-style-type: none"> • <u>Locate activity that generates noise away from wetland</u> • <u>If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</u> • <u>For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</u>
<u>Toxic runoff</u>	<ul style="list-style-type: none"> • <u>Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</u> • <u>Establish covenants limiting use of pesticides within 150 ft of wetland</u> • <u>Apply integrated pest management</u>
<u>Stormwater runoff</u>	<ul style="list-style-type: none"> • <u>Retrofit stormwater detention and treatment for roads and existing adjacent development</u> • <u>Prevent channelized flow from lawns that directly enters the buffer</u> • <u>Use Low Intensity Development techniques (per the <i>Low Impact Development Technical Guidance Manual for Puget Sound</i>, prepared by the Washington State University Extension and Puget Sound Partnership)</u>
<u>Change in water regime</u>	<ul style="list-style-type: none"> • <u>Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</u>
<u>Pets and human disturbance</u>	<ul style="list-style-type: none"> • <u>Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</u> • <u>Place wetland and its buffer in a separate tract or protect with a conservation easement</u>
<u>Dust</u>	<ul style="list-style-type: none"> • <u>Use best management practices to control dust</u>
<u>Disruption of corridors or connections</u>	<ul style="list-style-type: none"> • <u>Maintain connections to offsite areas that are undisturbed</u> • <u>Restore corridors or connections to offsite habitats by replanting</u>

B. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

1. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.

2. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.

3. The total area of the buffer after averaging is equal to the area required without averaging.

4. The buffer at its narrowest point is never less than either 75% of the required width or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater. See Figure 35-1.

C. Buffer averaging to allow reasonable use of a parcel may be permitted when all of the following are met:

1. There are no feasible alternatives to the site design that could be accomplished without buffer averaging.

2. The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical areas report from a qualified wetland professional.

3. The total buffer area after averaging is equal to the area required without averaging.

4. The buffer at its narrowest point is never less than either 75% of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater. See Figure 35-1.

~~B. The Director shall determine that a use is either high impact or low impact based upon the following performance standards. A proposed use must satisfy five of the following seven criteria to be considered low impact. All other uses shall be considered high impact.~~

~~1. No more than 30 percent of the site may be covered with impervious surfacing.~~

~~2. Pier, piling or pin foundation systems or other measures that reduce on-site soil compaction shall be used where appropriate.~~

~~3. A minimum of 60 percent of the site shall be retained in an undisturbed naturally vegetated state.~~

~~4. Permeable paving systems shall be implemented where appropriate.~~

~~5. Measures shall be taken to ensure that use of pesticides, herbicides and fertilizers incompatible with wetland functions does not occur.~~

~~6. Bio-retention features shall be employed. Examples include rain gardens, roof gardens, tree filter boxes and similar vegetated systems.~~

~~7. Roads, driveways and parking areas shall be minimized. Roads and driveways shall primarily run perpendicular to the wetland edge. Parking areas shall be located the maximum distance feasible from the buffer edge.~~

~~C. An applicant may propose an alternative plan for achieving low impact development. The Director and the City wetland specialist shall review the plan. If the alternative plan is determined to provide greater than or equal benefit to wetland functions than could be achieved by following the provisions of subsection (B) of this section, development activity implemented~~

subject to such plan shall be considered low impact and a low impact buffer, per Table 3, shall be permitted.

D. Buffer widths may be modified by averaging or reducing. Buffer averaging and buffer reduction shall not be applied to the same wetland.

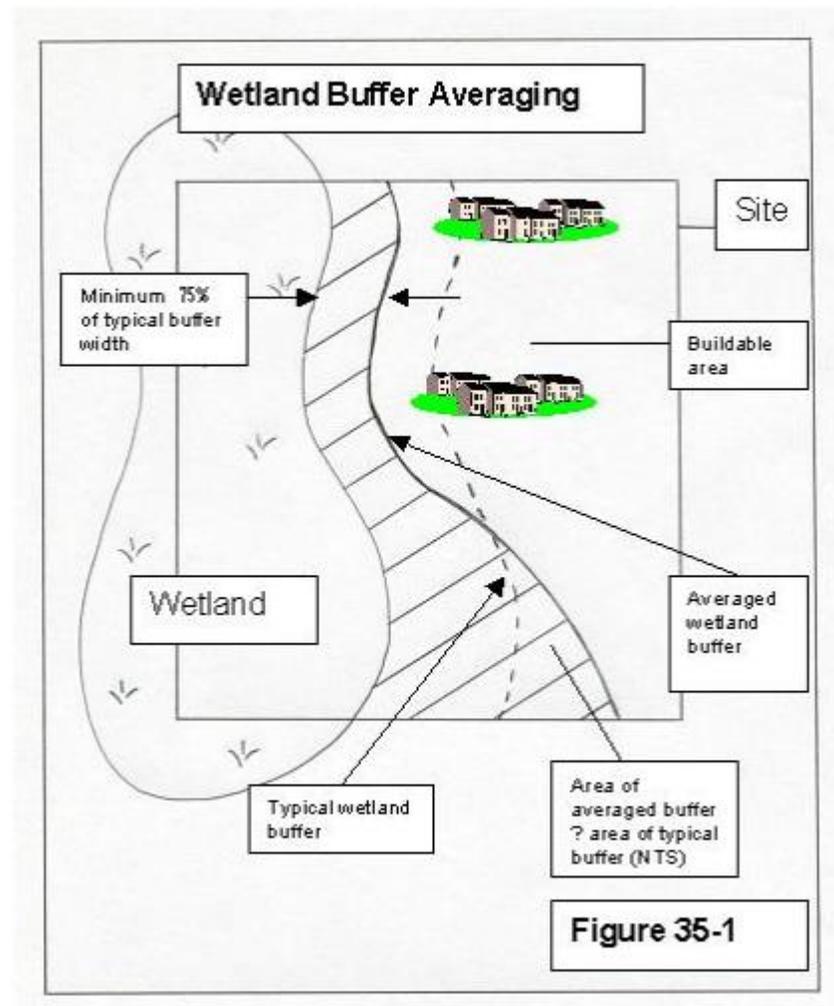
1. Buffer width averaging may be allowed only where the applicant demonstrates the following:

a. The wetland contains variations in sensitivity due to existing physical characteristics; and

b. Width averaging will not adversely impact the wetland; and

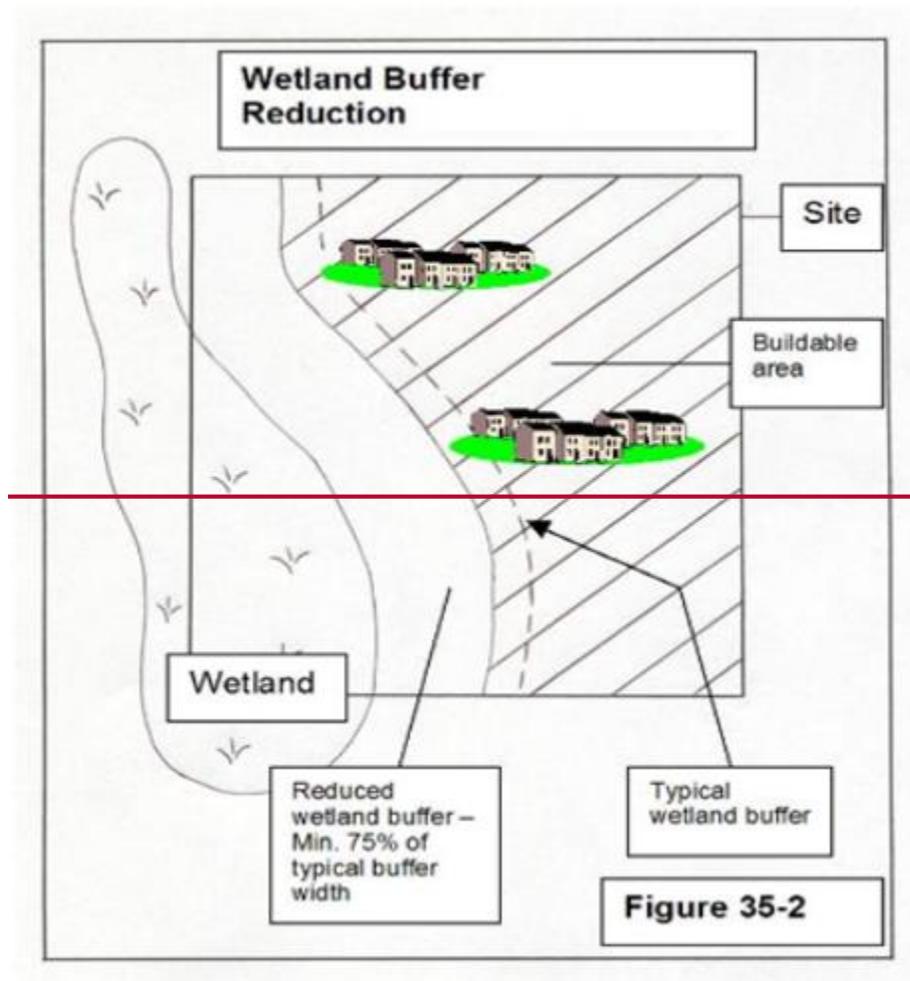
c. The total buffer area after averaging is no less than the buffer area prior to averaging; and

d. The minimum buffer width will not be less than 75 percent of the width established in subsection (A) of this section. See Figure 35-1.



2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a 25 percent reduction in the buffer width established in subsection (A) of this section. See Figure 35-2.

- a. ~~The proposed buffer area is extensively vegetated and has less than 15 percent slopes, and the reduction will not result in adverse impacts to the wetland; or~~
- b. ~~The project includes a buffer enhancement plan, as part of the mitigation required by UPMG 17.35.045. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or~~
- c. ~~The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan that ensures the reduction will not result in adverse impacts to the wetland.~~



~~DE.~~ The Department may require increased buffer width on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

- 1. ~~A larger buffer is necessary to maintain viable populations of existing species; or~~

12. The wetland is used by a plant or animal species listed by the Federal government or the State as endangered, or threatened, candidate, sensitive, monitored or documentary priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sitespotential sites such as heron rookeries or raptor nesting treesareas; or

23. The adjacent land is susceptible to severe erosion, and erosion control measures will not effectively prevent adverse wetland impacts; or

34. The adjacent land has minimal vegetative cover or slopes greater than 3045 percent.

E. To facilitate long-range planning using a landscape approach, the Department may identify and pre-assess wetlands using the rating system and establish appropriate wetland buffer widths for such wetlands. The Department will prepare maps of wetlands that have been pre-assessed in this manner.

F. Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.

G. Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this Chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

H. Buffer Maintenance. Except as otherwise specified or allowed in accordance with this Chapter, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the financial guarantee required in UPMC 17.35.045.

I. Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

17.35.045 Mitigation.

Regulated activities within wetlands and buffers shall be mitigated pursuant to this chapter. Where SEPA environmental review is required, a threshold determination may not be made prior to Department review of the mitigation plan.

A. All activities in wetlands and/or buffers shall be mitigated according to this section and the Department of Ecology manual: *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (Version 1, Publication No. 06-06-011a, March 2006) and *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication No. 06-06-011b, March 2006). Except as specifically exempted, regulated activities shall not be permitted within wetlands and/or buffers unless an applicant demonstrates that all reasonable attempts have been made to avoid impacts to the wetland and/or buffer. Mitigation is considered in order of preference as noted below with (1) being most preferable and (5) being the least preferable. Applicants must establish that mitigation has been considered in order of preference prior to permit issuance. There may be circumstances when an alternative mitigation strategy is preferable.

1. Avoiding the impact altogether by not taking a certain action or parts of actions within the wetland and/or buffer;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments;
6. Monitoring the required compensation and taking remedial or corrective measures when necessary.

Mitigation for individual actions may include a combination of the above measures. Monitoring may be a part of one or more of the above measures.

B. Regulated activities which occur in buffers, and which will not eliminate wetland habitat, shall be mitigated according to a mitigation plan approved by the Department. A mitigation plan for regulated activities in buffers shall contain the following components:

1. General goals of the mitigation plan;
2. Approximated site topography before and after alteration;
3. Location of proposed mitigation area;
4. General hydrologic patterns on the site before and after construction;
5. General plant selection and justification, planting instructions, and approximate planting sequencing and schedule;
6. A maintenance plan;
7. A monitoring and contingency plan;
8. A financial guarantee to ensure maintenance and/or implementation of the contingency plan. The financial guarantee must be equal to or greater than 20 percent of the estimated cost of the mitigation work, but in no case shall be less than is necessary to implement the contingency plan.

C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands. Compensatory mitigation shall be accomplished per the Department of Ecology manual: *Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals*, current edition. The above-referenced document was developed jointly by six agencies including the Washington State Department of Ecology and Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These agencies, together with the City, have regulatory authority over wetland filling and related mitigation. Consistency with the above-referenced document will ensure that submitted plans are adequately detailed for review by all responsible agencies. Replacement ratios for compensatory mitigation shall be pursuant to the subsection below.

1. When regulated activities occur in wetlands, the applicant shall preserve, restore, create, or enhance equivalent areas of wetlands. Equivalent areas shall be determined according to acreage, functional value, type, location, time factors, and projected success. No overall net losses shall occur in wetland acreage, functions and/or values, and any restored, created, or enhanced wetland shall be as persistent as the wetland it replaces. Buffers pursuant to UPMC [17.35.035](#) shall be provided for created, restored or enhanced wetlands.

2. When an applicant proposes to alter or eliminate wetland, the applicant shall replace, restore and/or enhance acreage at the following ratios:

Table 54 – Wetland Mitigation Replacement Ratios*

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement	Preservation
Category I: Bog, Natural Heritage site	Not considered possible	6:1	Case by case	10:1
Category I: Mature Forested	6:1	12:1	24:1	24:1
Category I: Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

*Ratios read as follows: Acreage replaced: Acreage lost

3. Ratios provided are for proposed projects with in-kind replacement that occurs prior to regulated activities on the site. Replaced, restored or enhanced wetlands must be located within the same drainage basin as the filled wetland, but are not required to be located on the same property. The Department may increase the ratios under the following circumstances:

- a. Uncertainty as to the probable success of the proposed restoration, enhancement or creation; or
- b. Significant period of time between destruction and replication of wetland functions; or
- c. Projected losses in wetland functional value; or
- d. Out-of-kind compensation.

4. The Department may allow the minimum acreage replacement ratio to be decreased if the applicant provides findings of special studies coordinated with agencies with expertise, which demonstrate that no net loss of wetland function or value results from the decreased ratio. In no case shall the Department approve a ratio less than 1:1.

5. In-kind compensation shall be provided except where the applicant demonstrates that:
 - a. Greater functional and habitat values can be achieved through out-of-kind mitigation; or
 - b. The wetland system is already significantly degraded; or
 - c. Problems such as the presence of exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation infeasible; or
 - d. Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).

D. Credit/Debit Method. To more fully protect functions and values, and as an alternative to the mitigation ratios found in the joint guidance “Wetland Mitigation in Washington State Parts I and II” (Ecology Publication No. 06-06-011a-b, Olympia, WA, March, 2006), the Department Administrator may allow mitigation based on the “credit/debit” method developed by the Department of Ecology in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Operational Draft,” (Ecology Publication No. 10-06-011, Olympia, WA, February 2011, or as revised).

E. Financial Guarantees. Mitigation shall be accomplished prior to the start of any regulated activity that impacts wetland area.

1. If development permits are issued prior to completion of mitigation work, financial guarantees shall be required to ensure mitigation is completed. Financial guarantees shall be 125 percent of the estimated cost of implementation of the mitigation plan.
2. Appropriate financial guarantees shall be in place to ensure that maintenance, monitoring and/or contingency plans shall be accomplished. Financial guarantees for contingency plans should be 20 percent of the cost of implementation of the mitigation plan.

F. Wetland mitigation banking may be permitted as a flexible alternative to standard compensatory mitigation. Wetland mitigation banking shall be conducted per the requirements of Chapter [173-700](#) WAC.

1. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:
 - a. The bank is certified under State rules;
 - b. The Department Administrator determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
 - c. The proposed use of credits is consistent with the terms and conditions of the bank’s certification.
2. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank’s certification.
3. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank’s certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.

G. In-Lieu Fee. To aid in the implementation of off-site mitigation, the City may develop a program which prioritizes wetland areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with State and Federal rules. The program should address:

1. The identification of sites within the City that are suitable for use as off-site mitigation. Site suitability shall take into account wetland functions, potential for wetland degradation, and potential for urban growth and service expansion; and
2. The use of fees for mitigation on available sites that have been identified as suitable and prioritized.

H. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to State and Federal rules.

I. Alternative Mitigation Plans. The ~~Department Administrator~~ may approve alternative critical areas mitigation plans that are based on best available science, such as priority restoration plans that achieve restoration goals identified in the SMP. Alternative mitigation proposals must provide an equivalent or better level of protection of critical area functions and values than would be provided by the strict application of this chapter.

The ~~Department Administrator~~ shall consider the following for approval of an alternative mitigation proposal:

1. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology Publication No. 09-06-32, Olympia, WA, December 2009);
2. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;
3. Mitigation according to subsection (E) of this section is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;
4. There is clear potential for success of the proposed mitigation at the proposed mitigation site;
5. The plan shall contain clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions in subsection (J) of this section;
6. The plan shall be reviewed and approved as part of overall approval of the proposed use, Wetlands Guidance for Small Cities Western Washington Version Page A-23;
7. A wetland of a different type is justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative;
8. Mitigation guarantees shall meet the minimum requirements as outlined in subsection (B)(8) of this section;
9. Qualified professionals in each of the critical areas addressed shall prepare the plan;

10. The City may consult with agencies with expertise and jurisdiction over the resources during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

J. Monitoring Program and Contingency Plan.

1. If the wetland mitigation plan includes compensatory mitigation, a monitoring program shall be implemented to determine the success of the compensatory mitigation project.

2. Specific criteria shall be provided for evaluating the mitigation proposal relative to the goals and objectives of the project and for beginning remedial action or contingency measures. Such criteria may include water quality standards, survival rates of planted vegetation, species abundance and diversity targets, habitat diversity indices, or other ecological, geological or hydrological criteria.

3. A contingency plan shall be established for compensation in the event that the mitigation project is inadequate or fails.

4. Requirements of the monitoring program and contingency plan are as follows:

a. During monitoring, use scientific procedures for establishing the success or failure of the project;

b. For vegetation determinations, permanent sampling points shall be established;

c. Vegetative success equals 80 percent per year survival of planted trees and shrubs and 80 percent per year cover of desirable understory or emergent species;

d. Submit monitoring reports of the current status of the mitigation project to the Department Administrator. The reports are to be prepared by a qualified wetland specialist and shall include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, and shall be produced on the following schedule:

(1) At time of construction;

(2) Thirty days after planting;

(3) Early in the growing season of the first year;

(4) End of the growing season of first year;

(5) Twice the second year;

(6) Annually;

e. Monitor a minimum of three and up to 10 growing seasons, depending on the complexity of the wetland system. The time period will be determined and specified in writing prior to the implementation of the site plan;

f. If necessary, correct for failures in the mitigation project;

g. Replace dead or undesirable vegetation with appropriate plantings;

h. Repair damages caused by erosion, settling, or other geomorphological processes;

- i. Redesign mitigation project (if necessary) and implement the new design;
- j. Correction procedures shall be approved by a qualified wetland specialist and the City's environmental official.

UPMC Title 18 -- SHORELINE MASTER PROGRAM

GENERAL POLICIES AND REGULATIONS

18.15.100 Inspections.

Pursuant to RCW [90.58.200](#), the Administrator or authorized representatives may enter land or structures to enforce the provisions of this Shoreline Program. ~~Such entry shall follow the provisions set forth in Chapter [1.20](#) UPMC.~~

18.15.110 Penalties and enforcement.

B. Enforcement action may be taken by the City or Department of Ecology whenever a person has violated any provision of the Shoreline Management Act or this Shoreline Program or other regulation promulgated under the Act. Enforcement action by the City shall be in accordance with Chapter [1.20](#) UPMC ~~and/or Chapter [1.30](#) UPMC~~ for enforcement procedures and penalties.

18.25.070 Shoreline ecological protection and mitigation.

D. Regulations – Critical Areas.

1. The City's critical areas regulations, codified under UPMC Title [17](#), apply to critical areas in the shoreline jurisdiction. Chapters [17.05](#), [17.10](#), [17.15](#), [17.20](#), [17.25](#), [17.30](#) and [17.35](#) UPMC are herein incorporated into this SMP, except as noted in subsection (D)(5) of this section. The critical areas regulations being incorporated into the SMP are those referenced in Ordinance No. 630, effective October 28, 2013 ~~and Ordinance No. _____, effective month day, 2016~~. In the event these regulations are amended, the edition referenced herein will still apply in shoreline jurisdiction. Changing this reference to recognize a new edition will require a master program amendment.

2. If there are any conflicts or unclear distinctions between this Shoreline Program and the critical areas regulations, the requirements that are the most specific shall apply.

3. All uses and development occurring within the shoreline jurisdiction shall comply with the City's critical area regulations as adopted herein.

4. Nonconforming structures and uses within critical areas that are within shoreline areas shall be subject to the provisions of this Shoreline Program.

5. Critical areas provisions that are not consistent with the SMA, Chapter [90.85](#) RCW, and supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction, as follows:

a. Critical area provisions do not extend shoreline jurisdiction beyond the limits specified in this Shoreline Program. For regulations addressing critical area buffer areas that are outside shoreline jurisdiction, see UPMC Title [17](#).

b. Provisions relating to variance procedures and criteria in Chapter [17.10](#) UPMC do not apply in shoreline jurisdiction. Variance procedures and criteria have been established in UPMC [18.15.050](#) and in WAC [173-27-170](#).

c. Reasonable uses exceptions in Chapter [17.10](#) UPMC are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.

d. Provisions relating to the substitution of Army Corps of Engineers Section 404 individual permits for City of University Place wetland reviews do not apply in shoreline jurisdiction, as the Section 404 individual permit review process may not fully address requirements of this Shoreline Program.

e. In shoreline jurisdiction, identification of wetlands and delineation of their boundaries shall be done in accordance with the approved Federal wetland delineation manual and applicable regional supplements, per WAC [173-22-035](#). Specifically, the delineation and wetland analysis requirements in UPMC [17.35.025](#)(A) do not apply.

f. In shoreline jurisdiction, the wetland point scale used to separate wetland categories in UPMC [17.35.020](#)(A) through (D) does not apply. Category I wetlands are those that score 23 or more points, category II wetlands are those that score between 20 and 22 points, category III wetlands are those that score between 16 and 19 points, and category IV wetlands are those that score between nine and 15 points.

g. In shoreline jurisdiction, fish and wildlife habitat areas as defined in UPMC [17.10.005](#) shall not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.