



WORK SESSION AGENDA

BOARD OF CLALLAM COUNTY COMMISSIONERS

223 East 4th Street Room 160

Port Angeles, Washington

Monday, September 18, 2023 – 9:00 a.m.

Board of Clallam County Commissioner meetings will also be available virtually at:

If you would like to participate in the meeting via Zoom audio only, call 253-215-8782 and use meeting ID: 875 561 7844 and passcode: 12345

If you would like to participate in the meeting via Zoom video conference, visit <https://zoom.us/j/8755617844> and use meeting ID: 875 561 7844 and passcode: 12345

This meeting can be viewed on a live stream at this link: <https://www.clallamcountywa.gov/669/Live-Archived-Meetings-Online>

Public comment can be directed to the Clerk of the Board at 360-417-2256 or Loni.Gores@clallamcountywa.gov

Administration ? 9 a.m.

1. [Calendar/Correspondence](#)

2. [Olympic National Park update](#)

[Update](#) 

3. [Pre-application questionnaire with Washington State Department of Agriculture to renovate the fairgrounds Dog Barn and show arena](#)

[Pre-application questionnaire](#) 

4. [Pre-application questionnaire with Washington State Department of Agriculture to perform safety upgrades to the fairgrounds rodeo arena and pins](#)

[Pre-application questionnaire](#) 

5. [Agreement with Recreation and Conservation Office for Lake Pleasant Dock Renovation Project](#)

[Agreement](#) 

6. [Victim Witness Coordinator Division presentation](#)

[Presentation](#) 

Public Works

7. Special Lease to extend Blue Mountain Transfer Site Lease with the WA. State Dept. of Natural Resource (4b)*

Special lease 

Board of Commissioners

8. Climate Action Plan review and next steps

Discussion 

Presentation added on 9-18-23 

9. Resolution appointing Ronnie Meldrum to the Olympic Area Agency on Aging Advisory Council

Resolution 

10. Presentation of new Cable Television Franchise Agreement with WaveDivision I, LLC and WaveDivision III, LLC dba Astound Broadband

Agreement 

General Discussion/Items for Future Agendas

- a. Conservation District yearly update (September 25)
- b. Department of Transportation Highway 101 Project Discussion (October 9 at 9 a.m.)
- c. Joint Meeting with the Port of Port Angeles (October 23 at 11 a.m. at BOCC)
- d. Department of Natural Resources Quarterly Report Meeting (November 20 at 1 p.m.)
- e. Department of Transportation Highway 101 Project Discussion (December 11 at 9 a.m.)

EXECUTIVE SESSION

The Board may recess into Executive Session to consider employment or dismissal of personnel, to review the performance of a public employee, to consult with legal counsel, to consider the position to be taken in collective bargaining, to consider acquisition or sale of real estate, or other matters per RCW 42.30.110

- Other items may be added at the discretion of the Board and additional Work Sessions may be scheduled if more time is needed to allow for adequate discussion.
- Written testimony presented by members of the public during the Board meeting is considered a public document and must be submitted to the Clerk of the Board.
- Copies of public documents from Board meetings are available by contacting the Public Records Department.



2
SEP 18 2023

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ **Meeting Date: 9-18-23 – 9 a.m.**

REGULAR AGENDA ☐ **Meeting Date:**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|---|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other - update |

Documents exempt from public disclosure attached: ☐

Executive summary:

Olympic National Park (ONP) Update:

ONP Superintendent Sula Jacobs will attend the meeting to provide an update on Hurricane Ridge and the Park's ability to provide winter access.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Olympic National Park (ONP) Update on Hurricane Ridge winter access.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners, Sula Jacobs – Olympic National Park Superintendent

Relevant Departments: Board of Commissioners

Date submitted: 9-5-23

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Olympic National Park (ONP) Update 9-18-23
Revised: 3-04-2019



3
SEP 18 2023

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Parks, Fair, & Facilities

WORK SESSION ☒ **Meeting Date: 9.18.2023**

REGULAR AGENDA ☐ **Meeting Date:**

Required originals approved and attached? ☐
Will be provided on:

Item Summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☒ Other: Grant Application |

Documents exempt from public disclosure are attached: ☐

Executive summary: A Washington State Department of Agriculture (WSDA) grant application to renovate the fairgrounds Dog Barn and adjacent show arena

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

This will provide funding to complete the work without impact to the county

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please approve the Grant Application.

County Official signature & print name:  Don Crawford, Director

Name of Employee/Stakeholder attending meeting:

Relevant Departments: Board of Commissioners, Parks, Fair & Facilities Department

Date submitted: 9.13.2023

* Work Session Meeting - Submit 1 single sided/not stapled copy

** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Clallam County

Grant Application Information

DEPARTMENT: **Parks, Fair, & Facilities**

DATE SUBMITTED TO W/S: **9.18.2024**

GRANT NAME: **Fairground Capital**
Improvement Grant

APPLICATION DEADLINE: **Oct 2**

ISSUING AGENCY: **WSDA**

IS THIS A RENEWAL? **no**

LENGTH OF GRANT: **18 month**

RENEWAL POSSIBLE? **sometimes**

TOTAL AWARD: **\$150,000**

ANNUAL AMOUNT :

MATCH REQUIRED? **No**

MATCH AMOUNT: **In-kind labor**

DESCRIPTION OF GRANT AND PURPOSE:

Biennial Fairground Capital Improvement grant for Health and Safety Upgrades

EXPLAIN HOW THIS GRANT WILL BE USED FOR THE GOOD OF CLALLAM COUNTY CITIZENS:

The Dog barn and arena need renovations so exhibitors and dogs are not injured

**DOES THE GRANT ACTIVITY FURTHER THE DEPARTMENT'S MISSION OR CORE FUNCTIONS?
HAS IT BEEN A PART OF LONG TERM DEPARTMENT OR COUNTY GOALS?**

Yes, dog events are a popular attraction of the fair

**DOES THE GRANT ACTIVITY INCREASE AN EXISTING SERVICE OR ADD A NEW SERVICE? TO WHAT
DEGREE? IF THE GRANT WERE NOT AVAILABLE, WOULD THE SERVICE HAVE BEEN NECESSARY?**

If it is approved the dog arena will be slightly larger which will help make events more entertaining.

**WHAT MEASUREMENTS (PERFORMANCE MEASURES) WILL BE USED TO EVALUATE THE SUCCESS
OF THE ACTIVITIES PROVIDED BY THE GRANT? WILL PERFORMANCE MEASURES BE DEVELOPED?**

The exhibitor's and dogs will remain safe

**DOES THE GRANT ACTIVITY CREATE A NEW SERVICE OR LEVEL OF SERVICE WHICH IS EXPECTED
TO BE CONTINUED FROM LOCAL FUNDING AT THE END OF THE GRANT PERIOD?**

No

**IF MATCHING FUNDS ARE REQUIRED, WHERE WILL THEY COME FROM? DOES THE DEPARTMENT
HAVE EXISTING RESOURCES TO COVER MATCH REQUIREMENTS? FROM WHERE?**

N/a

**WILL THE ACTIVITY IN THIS GRANT HAVE IMPACTS ON OTHER DEPARTMENTS? HAS THIS BEEN
DISCUSSED? DO OTHER DEPARTMENTS HAVE SUFFICIENT RESOURCES TO DEAL WITH
ADDITIONAL IMPACTS?**

It will also benefit WSU Extension's 4-H program

WILL NEW POSITIONS BE ADDED? IF SO, HOW MANY AND WHAT TYPE ARE EXPECTED? ARE ALL WAGES AND BENEFITS PAID IN THE GRANT? WHAT WILL HAPPEN TO THE POSITIONS WHEN THE GRANT PERIOD ENDS?

No

DOES YOUR DEPARTMENT HAVE SUFFICIENT RESOURCES TO ADMINISTER THE GRANT? PROVIDE FOR TIMELY REIMBURSEMENT AND ACTIVITY REPORTS?

Yes

ARE THERE IMPACTS TO THE COUNTY IF THE GRANT IS NOT RECEIVED? WHAT ARE THEY?

The dog barn has upgrades that need to be completed in order to continue to house dogs.

ARE INDIRECT COSTS ALLOWABLE ON THIS GRANT? IF SO, ARE THERE LIMITATIONS? WILL THEY BE CHARGED AND ALLOCATED AS INDIRECT?

n/a

ARE THERE OTHER ACTIVITIES (GRANT OR OTHERWISE) THAT ARE BUDGETED FOR THIS YEAR THAT WILL NOT BE COMPLETED IF THIS GRANT IS APPROVED?

no

WHAT BUDGET CHANGES ARE NECESSARY? INCLUDE REVENUES AND EXPENDITURES.

N/A

OTHER COMMENTS



ELECTED OFFICIAL/DEPARTMENT HEAD SIGNATURE

TODD MIELKE, ADMINISTRATOR

APPROVAL

Submit in **duplicate** to the Board of Commissioners for Work Session discussion and approval by the Administrator prior to application for any grant. The approved form must be included with the grant contract when it is submitted to the Board for approval. Refer to Administrative Policies 120 and 562.



STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • <http://agr.wa.gov> • (360) 902-1800

July 17, 2023

TO: Washington State Agricultural Fairs

FROM: Tracey Keller, Fairs Program Administrator (fairs@agr.wa.gov)

RE: Grant Applications for Capital Improvement Grant Funds

The Washington State Legislature, via the state building construction account, provided grant funds of up to \$8 million to be distributed to Washington State fairs for health or safety improvements on fairgrounds. This enables us to provide capital funding to local governments and nonprofit organizations to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities. Projects will need to be completed by **May 31, 2025**.

Enclosed you will find a grant application form, including the eligibility requirements, to submit a grant application to the Washington State Department of Agriculture (WSDA). Applications are also accessible online at: <https://agr.wa.gov/washington-agriculture/agricultural-fairs/forms>. Please review the applications process found on page two of the form. Applications and supporting documentation are to be **submitted by email in PDF format** to fairs@agr.wa.gov.

If you are a county fair, please make sure you have approval from county commissioners or the public works director to submit the application. If you are an area fair or a community fair, please ensure you have approval from your fair board or fair foundation.

After the application submission deadline, grant applications will be screened and prioritized by Washington State Fairs Commissioners. You will be notified if additional information is needed. Once the Fairs Commissioners have completed their review, they will make recommendations to the Director of the Washington State Department of Agriculture and he will make the final decision regarding grant awards.

Grant applications are due to the Department no later than 5:00 PM on October 2, 2023.

Grant awards for each project will not exceed \$250,000 and will be paid out as a reimbursement upon receiving properly completed invoices and submission of supporting documents. If you submit more than one grant application, use one application per request and prioritize your requests (#1 being the most important, etc.). If your project is chosen for funding, WSDA will work with you on entering into a grant agreement that documents the conditions of the grant award.

Please note: Certain projects involving historic buildings or substantial digging may require consultation with the Department of Archaeology and Historic Preservation.

If you have questions, please contact me at (360) 902-2043 or at fairs@agr.wa.gov.

Enclosures



Application for Capital Improvement Grant Funds

Application deadline: **October 2, 2023**

(See reverse for eligibility requirements & application process)

Applicant					
Name of Fair Clallam County Fairgrounds				Application Date 10/01/2023	
Street Address 1608 W. 16th St			Mailing Address		
City Port Angeles	State WA	Zip Code 98363	Mailing City	State	Zip Code
Name of Requesting Officer (please print) Don Crawford		Phone Number 360.797.8283	Email Address donald.crawford@clallamcountywa.gov		
If you submit more than one Application for Capital Improvement Grant Funds, what priority is this application (1 being the highest priority)? This application is priority number <u>1</u> of the <u>2</u> grant applications we intend to submit for this fair.					
Capital Improvement Detail					
Description of Capital Improvement (use additional pages if necessary) Safety Upgrades to Dog barn and agility arena listed in order of necessity: 1) Rebuild dog benching area where they were not built correctly and are unsafe for weight of a dog 2) Enclose the office so superintendents' supplies including computers remain safe 3) Reinforce rafters where they are failing 4) Air vents in ceilings for healthier ventilation 5) New walls/windows as many of the windows don't close and the interior walls were built with exterior materials. 6) Re-fence agility arena to appropriate fence height and size, releveling ground to remove hidden hole hazards. 7) Upgrades to old and outdated electricity wiring and fixtures					
Amount Requested from WSDA \$ 150,000.00		Total Project Amount \$ 150,000.00		Type of Match ☐ Monetary ☒ In-Kind ☐ Both Monetary & In-Kind ☐ No Match	
Has the owner of the facility approved this grant application? ☐ Yes ☐ No					
Description of Match Volunteers or maintenance staff may help with some of the workload.					
How does the project meet the health or safety legal requirement of the capital funding? The barn is currently not safe for dogs. We need major renovations to ensure dogs and 4-H'ers are not injured by a failing building that was not built with safe benches; they are hollow underneath a dog will fall through one day. In the Agility arena dogs can currently jump over the 2.5' fence and it is not a large enough or level space to safely perform agility. Remove trees that drop berries poisonous to dogs.					
What is the impact if you were to receive a grant award less than requested? We couldn't complete this project without it.			Can the project be completed by <u>May 31, 2025</u> ? ☒ Yes ☐ No		
Applicant Certification					
I hereby certify under penalty of perjury that the foregoing information is true and correct to the best of my knowledge.					
_____ Signature of Officer Completing Application			_____ Date Signed		

Application for Capital Improvement Grant Funds – Instructions

Eligibility Requirements

Based on availability of funds, capital funding may be provided to local governments and nonprofit organizations to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public. ([RCW 15.76.165](#))

The project for which funding is being sought must be completed by May 31, 2025.

All applicants who receive grant funds must follow applicable procurement procedures.

All applicants must have approval from the owner of the fair facilities.

Grant awards will not exceed \$250,000.00 each.

Certain projects may require consultation with the Department of Archaeology and Historic Preservation.

Application Process

1. Complete one application per project. Multiple smaller projects may be included in one application, but must not total more than \$60,000.
2. Attach supporting documentation (i.e., copies of bids, bid proposals, estimates, pictures, etc.).
3. Submit your documents electronically in PDF format to fairs@agr.wa.gov. **The deadline for submitting applications is 5:00 p.m. on October 2, 2023.** Applications received after 5:00 p.m. on October 2, 2023, will not be considered.
4. You may submit no more than three applications. If submitting more than one application, rank your application submissions (#1 being the most important, #2 the next most important, etc.).

Review Process

1. Applications will be reviewed and ranked by the Washington State Fairs Commission.
2. The Fairs Commission encourages applicants to provide a monetary match or an in-kind match, such as donated material or labor.
3. Preference will be given to applicants who will use the money towards a capital improvement to address:
 - a safety and/or health situation, or
 - a legal or statutory requirement.
4. Once grant applications are approved for funding, the Department of Agriculture will execute an agreement with the grantee specifying the terms and conditions of the grant.



4

AGENDA ITEM SUMMARY

SEP 18 2023

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Parks, Fair, & Facilities

WORK SESSION ☒ **Meeting Date: 9.18.2023**

REGULAR AGENDA ☐ **Meeting Date:**

Required originals approved and attached? ☐
Will be provided on:

Item Summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☒ Other: Grant Application |

Documents exempt from public disclosure are attached: ☐

Executive summary: A Washington State Department of Agriculture (WSDA) grant application to perform safety upgrades to the fairgrounds Rodeo Arena and adjacent pins.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

This will provide funding to complete the work without impact to the county.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Please approve the Grant Application.

County Official signature & print name:  Don Crawford, Director

Name of Employee/Stakeholder attending meeting:

Relevant Departments: Board of Commissioners, Parks, Fair & Facilities Department

Date submitted: 9.13.2023

Clallam County

Grant Application Information

DEPARTMENT: **Parks, Fair, & Facilities**

DATE SUBMITTED TO W/S: **9.18.2024**

GRANT NAME: **Fairground Capital**
Improvement Grant

APPLICATION DEADLINE: **Oct 2**

ISSUING AGENCY: **WSDA**

IS THIS A RENEWAL? **no**

LENGTH OF GRANT: **18 month**

RENEWAL POSSIBLE? **sometimes**

TOTAL AWARD: **\$250,000**

ANNUAL AMOUNT :

MATCH REQUIRED? **No**

MATCH AMOUNT: **In-kind labor**

DESCRIPTION OF GRANT AND PURPOSE:

Biennial Fairground Capital Improvement grant for Health and Safety Upgrades

EXPLAIN HOW THIS GRANT WILL BE USED FOR THE GOOD OF CLALLAM COUNTY CITIZENS:

Safety upgrades to the rodeo equipment will improve the rodeo experience for fair goers

**DOES THE GRANT ACTIVITY FURTHER THE DEPARTMENT'S MISSION OR CORE FUNCTIONS?
HAS IT BEEN A PART OF LONG TERM DEPARTMENT OR COUNTY GOALS?**

Yes, the rodeo is a popular attraction at the fair.

DOES THE GRANT ACTIVITY INCREASE AN EXISTING SERVICE OR ADD A NEW SERVICE? TO WHAT DEGREE? IF THE GRANT WERE NOT AVAILABLE, WOULD THE SERVICE HAVE BEEN NECESSARY?

It would increase the potential size of the rodeo event.

WHAT MEASUREMENTS (PERFORMANCE MEASURES) WILL BE USED TO EVALUATE THE SUCCESS OF THE ACTIVITIES PROVIDED BY THE GRANT? WILL PERFORMANCE MEASURES BE DEVELOPED?

The animals will be safe and fairgoers will enjoy the rodeo. The performance measure is lack of injury.

DOES THE GRANT ACTIVITY CREATE A NEW SERVICE OR LEVEL OF SERVICE WHICH IS EXPECTED TO BE CONTINUED FROM LOCAL FUNDING AT THE END OF THE GRANT PERIOD?

The rodeo will hopefully be bigger, but it is not clear if that would require additional funding.

IF MATCHING FUNDS ARE REQUIRED, WHERE WILL THEY COME FROM? DOES THE DEPARTMENT HAVE EXISTING RESOURCES TO COVER MATCH REQUIREMENTS? FROM WHERE?

Matching funds will be in – kind. The group who put in volunteer hours this summer have agreed to do the bulk of the work.

WILL THE ACTIVITY IN THIS GRANT HAVE IMPACTS ON OTHER DEPARTMENTS? HAS THIS BEEN DISCUSSED? DO OTHER DEPARTMENTS HAVE SUFFICIENT RESOURCES TO DEAL WITH ADDITIONAL IMPACTS?

n/a

WILL NEW POSITIONS BE ADDED? IF SO, HOW MANY AND WHAT TYPE ARE EXPECTED? ARE ALL WAGES AND BENEFITS PAID IN THE GRANT? WHAT WILL HAPPEN TO THE POSITIONS WHEN THE GRANT PERIOD ENDS?

no

DOES YOUR DEPARTMENT HAVE SUFFICIENT RESOURCES TO ADMINISTER THE GRANT? PROVIDE FOR TIMELY REIMBURSEMENT AND ACTIVITY REPORTS?

Yes

ARE THERE IMPACTS TO THE COUNTY IF THE GRANT IS NOT RECEIVED? WHAT ARE THEY?

No

ARE INDIRECT COSTS ALLOWABLE ON THIS GRANT? IF SO, ARE THERE LIMITATIONS? WILL THEY BE CHARGED AND ALLOCATED AS INDIRECT?

n/a

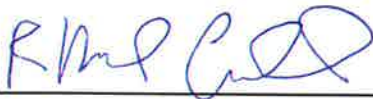
ARE THERE OTHER ACTIVITIES (GRANT OR OTHERWISE) THAT ARE BUDGETED FOR THIS YEAR THAT WILL NOT BE COMPLETED IF THIS GRANT IS APPROVED?

no

WHAT BUDGET CHANGES ARE NECESSARY? INCLUDE REVENUES AND EXPENDITURES.

none

OTHER COMMENTS



ELECTED OFFICIAL/DEPARTMENT HEAD SIGNATURE

TODD MIELKE, ADMINISTRATOR

APPROVAL

Submit in **duplicate** to the Board of Commissioners for Work Session discussion and approval by the Administrator prior to application for any grant. The approved form must be included with the grant contract when it is submitted to the Bo



STATE OF WASHINGTON
DEPARTMENT OF AGRICULTURE

P.O. Box 42560 • Olympia, Washington 98504-2560 • <http://agr.wa.gov> • (360) 902-1800

July 17, 2023

TO: Washington State Agricultural Fairs

FROM: Tracey Keller, Fairs Program Administrator (fairs@agr.wa.gov)

RE: Grant Applications for Capital Improvement Grant Funds

The Washington State Legislature, via the state building construction account, provided grant funds of up to \$8 million to be distributed to Washington State fairs for health or safety improvements on fairgrounds. This enables us to provide capital funding to local governments and nonprofit organizations to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities. Projects will need to be completed by **May 31, 2025**.

Enclosed you will find a grant application form, including the eligibility requirements, to submit a grant application to the Washington State Department of Agriculture (WSDA). Applications are also accessible online at: <https://agr.wa.gov/washington-agriculture/agricultural-fairs/forms>. Please review the applications process found on page two of the form. Applications and supporting documentation are to be **submitted by email in PDF format** to fairs@agr.wa.gov.

If you are a county fair, please make sure you have approval from county commissioners or the public works director to submit the application. If you are an area fair or a community fair, please ensure you have approval from your fair board or fair foundation.

After the application submission deadline, grant applications will be screened and prioritized by Washington State Fairs Commissioners. You will be notified if additional information is needed. Once the Fairs Commissioners have completed their review, they will make recommendations to the Director of the Washington State Department of Agriculture and he will make the final decision regarding grant awards.

Grant applications are due to the Department no later than 5:00 PM on October 2, 2023. Grant awards for each project will not exceed \$250,000 and will be paid out as a reimbursement upon receiving properly completed invoices and submission of supporting documents. If you submit more than one grant application, use one application per request and prioritize your requests (#1 being the most important, etc.). If your project is chosen for funding, WSDA will work with you on entering into a grant agreement that documents the conditions of the grant award.

Please note: Certain projects involving historic buildings or substantial digging may require consultation with the Department of Archaeology and Historic Preservation.

If you have questions, please contact me at (360) 902-2043 or at fairs@agr.wa.gov.

Enclosures



Application for Capital Improvement Grant Funds

Application deadline: October 2, 2023

(See reverse for eligibility requirements & application process)

Applicant					
Name of Fair Clallam County Fair				Application Date	
Street Address 1608 W 16th St			Mailing Address 1608 W 16th St		
City Port Angeles	State WA	Zip Code 98363	Mailing City Port Angeles	State WA	Zip Code 98362
Name of Requesting Officer (please print)		Phone Number	Email Address		
If you submit more than one Application for Capital Improvement Grant Funds, what priority is this application (1 being the highest priority)? This application is priority number <u>2</u> of the <u>2</u> ~~x~~ grant applications we intend to submit for this fair.					
Capital Improvement Detail					
Description of Capital Improvement (use additional pages if necessary) See additional page.					
Amount Requested from WSDA \$ 250,000.00	Total Project Amount \$ 250,000.00	Type of Match ☐ Monetary ☒ In-Kind ☐ Both Monetary & In-Kind ☐ No Match			
Has the owner of the facility approved this grant application? ☐ Yes ☐ No					
Description of Match In-Kind Volunteering to complete the entire project with the exception of adding lighting which would need to be done by licensed electricians.					
How does the project meet the health or safety legal requirement of the capital funding? See additional page.					
What is the impact if you were to receive a grant award less than requested? See additional page.			Can the project be completed by <u>May 31, 2025</u> ? ☒ Yes ☐ No		
Applicant Certification					
I hereby certify under penalty of perjury that the foregoing information is true and correct to the best of my knowledge.					
_____ Signature of Officer Completing Application			_____ Date Signed		

Application for Capital Improvement Grant Funds – Instructions

Eligibility Requirements

Based on availability of funds, capital funding may be provided to local governments and nonprofit organizations to support capital projects that make health or safety improvements to agricultural fairgrounds or fair facilities in order to benefit participants and the fair-going public. ([RCW 15.76.165](#))

The project for which funding is being sought must be completed by May 31, 2025.

All applicants who receive grant funds must follow applicable procurement procedures.

All applicants must have approval from the owner of the fair facilities.

Grant awards will not exceed \$250,000.00 each.

Certain projects may require consultation with the Department of Archaeology and Historic Preservation.

Application Process

1. Complete one application per project. Multiple smaller projects may be included in one application, but must not total more than \$60,000.
2. Attach supporting documentation (i.e., copies of bids, bid proposals, estimates, pictures, etc.).
3. Submit your documents electronically in PDF format to fairs@agr.wa.gov. **The deadline for submitting applications is 5:00 p.m. on October 2, 2023.** Applications received after 5:00 p.m. on October 2, 2023, will not be considered.
4. You may submit no more than three applications. If submitting more than one application, rank your application submissions (#1 being the most important, #2 the next most important, etc.).

Review Process

1. Applications will be reviewed and ranked by the Washington State Fairs Commission.
2. The Fairs Commission encourages applicants to provide a monetary match or an in-kind match, such as donated material or labor.
3. Preference will be given to applicants who will use the money towards a capital improvement to address:
 - a safety and/or health situation, or
 - a legal or statutory requirement.
4. Once grant applications are approved for funding, the Department of Agriculture will execute an agreement with the grantee specifying the terms and conditions of the grant.

DESCRIPTION OF CAPITAL IMPROVEMENTS:

1. Layout and holding capacity of the stock holding area.
2. Improve Grandstand lighting to LED to conserve energy and improve visibility, as well as outer edge of the far side of the arena. We are seeking to add lighting to the holding pen area as well as the timed events area.

The Clallam County Fair has been hosting a Rodeo for the past 50+ years and has been utilizing the existing stock yard holding pens, loading chutes, etc. The volunteers of Clallam County Rodeo have utilized their skills and finances to keep these areas up to date and safe for both the volunteers that operate the event and the stock that are used during the events. With the 2023 Fair and Rodeo finishing with great success and the 225 contestants that enrolled in the 2-day event, it has become clear that it is now time to invest in the replacement of the stockyard. The stock holding area was at full capacity and pushing the boundaries of safety when it comes to the storage and movement of the livestock. Over the past 50 years, this area has been maintained via volunteers by way of Welding fences, panels, closures, etc., By painting to keep the areas from rusting, by working the ground for safety of animals and many other inputs. Currently, the integrity of the enclosures that we must work with are failing to be safe for the stock that we hire in for the event, and the layout has become unsafe for the volunteers and stock contractors to safely move the livestock from location to location. We are looking to fully reinvent the layout of the Rodeo holding area.

In addition to the layout and safety features of the new proposed livestock holding area, our committee of volunteers have noted that events that run into the evening are lacking appropriate lighting to keep the volunteers, Stock contractors and animals safe during the evening hours. We are looking to add adequate lighting to the side of the arena opposite the grandstands. This will light up the stock holding area and all areas that animals must move from point to point allowing for the safety of animal movement throughout the facility. With adding this lighting whether movable temporary lighting fixtures or permanent, this is proposed to benefit both the county fairgrounds as well as the city ballfields that are adjacent to the arena area. This will merge the cohesiveness of the county and city and grant both the value of working safety equipment. We are also seeking to improve the quality and energy efficiency of the lights that will be utilized. LED is what we are looking to add, and to also replace the existing lighting on the grandstands with LED to best conserve cost.

Included in this proposal for funding are photos of the stockyard area at prior to the 2023 Clallam County Fair and Rodeo as well as photos and documentation of the Rodeo holding and operating area immediately following 6 weeks of volunteer work to update the safety prior to the rodeo commencing. If granted, this volunteer committee will continue in-kind man hours to complete all projects necessary.

HOW DOES THE PROJECT MEET HEALTH AND SAFETY REQUIREMENTS?

The planned layout for the movement of animals utilizing the stock holding facility with the planned upgrades will allow for safe loading and unloading of stock animals as they enter the Clallam County Fairgrounds for use in the Clallam County Rodeo (and other local County livestock events). Adequate space to accommodate the livestock for future years of this event is necessary to keep the animals in a safe environment while they stay the 2-4 days at our location. The current layout allows for a maximum of 9 Bulls, approx. 20 Horses, and 50 calves. With the contestant involvement the rodeo had for 2023, this reached capacity. The goal is to add additional holding spaces, update and improve the loading ramps, and adjust layout of the event to best create a safe working environment for the volunteers moving the stock as well as the livestock.

WHAT IS THE IMPACT IF YOU WERE TO RECEIVE A GRANT LESS THAN REQUESTED?

At this time in our quest to make overall improvements to the establishment, we are ready to break down the project into mini projects deciding which area of impact would create the greatest correction to the safety of Animals and the people handling them during the events.

The mini list of major improvement needs is as follows and will be used to focus our funds and energy in the event we are unable to complete the full replacement of our holding areas and lighting.

1. Holding pens is of our greatest concern. The area that is available currently to hold large animal stock as well as small animal stock is needing expansion to safely hold animals and sort animals. Currently we are utilizing all areas to hold the animals with no safe way to sort and move them during events or overnight. The committee is looking to increase the number of spaces available to accommodate our livestock guests.
2. Along with adding the holding pens, our committee is also looking to improve the sorting pens (increase the number) so that the movement and sorting of livestock can be done safely and efficiently for both the protection of the animal and the volunteers that are handling the livestock. With inadequate space, the volunteers are put in the pens with animals that are out of their element adding to the stress that they take on while on our grounds, this opens the opportunity for injury to the volunteers and adds undue stress to the animal.
3. Lighting is of high priority as we will be looking to both change out our existing lights to LED to conserve cost and energy while adding lighting over the top of the Timed events at the far side of the arena to be used to identify and sort animals safely, and also adding lighting to the large animal holding areas near the announcer stand. Adding lighting will allow for safe feeding and care of animals during the evening and morning hours as well as assist in safe identification of livestock and safe maneuvering throughout the holding pens and alleyways during the dusk hours.

Timed event boxes before & after paint job summer of 2023.



Rough Stock Pens before during and after work done summer of 2023.

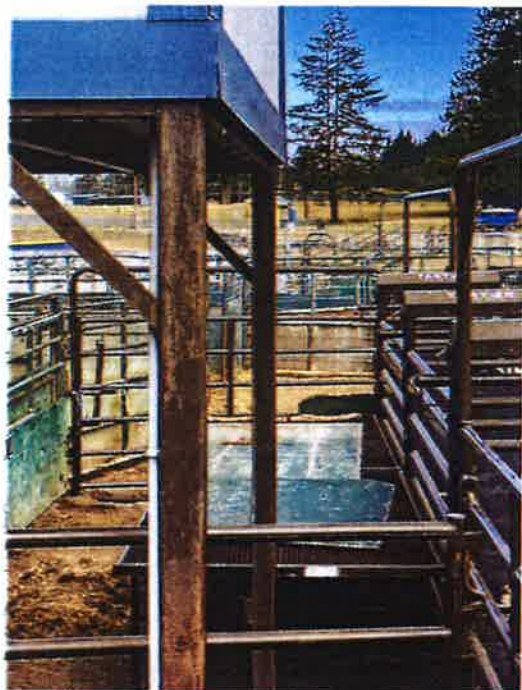




Rough Stock stripping chute before & after painting summer of 2023.



Alley way where times event stock gets run through to timed event chute where rough stock also gets run through at same time.



Stock holding pens filled to capacity during 2023 rodeo.





AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

5
SEP 18 2023

Department: Parks, Fair, & Facilities

WORK SESSION ☒ **Meeting Date: 9.18.2023**

REGULAR AGENDA ☒ **Meeting Date: 9.26.2023**

Required originals approved and attached? ☐
Will be provided on:

Item Summary:

- | | | |
|---|--|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 305-23-006 | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other: |

Documents exempt from public disclosure are attached: ☐

Executive summary: RCO Grant Agreement # 22-2063D Lake Pleasant Dock Renovation- to remove and replace 6ea. existing damaged wood pilings with 6ea. new stainless-steel pilings.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

Reimbursable grant to cover 74.75% or \$110,625.00 of project cost. County to cover 25.50% or \$37,375.00 from existing capital funds (59419.62.2245)

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Sign the RCO Grant Agreement 22-2063D

County Official signature & print name:  Don Crawford, Director

Name of Employee/Stakeholder attending meeting:

Relevant Departments: Board of Commissioners, Parks, Fair & Facilities Department

Date submitted: 9.11.2023

* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda item summary-RCO Grant Lk Pleasant Dock Reno.
 ** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies) Revised: 3-04-2019

Project Sponsor: Clallam County Parks, Fair and Facilities Division
Project Title: Lake Pleasant Dock Renovation

Project Number: 22-2063D
Approval Date: 07/10/2023

PARTIES OF THE AGREEMENT

This Recreation and Conservation Office Grant 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 (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and by and through the Clallam County Parks, Fair and Facilities Division (Sponsor, and primary Sponsor), 223 East 4th Street Ste 7, Port Angeles, WA 98362-3015, and shall be binding on the agents and all persons acting by or through the parties.

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

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

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

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

PURPOSE OF AGREEMENT

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

DESCRIPTION OF PROJECT

Clallam County Park, Fair & Facilities will use this grant to replace pilings to renovate and refloat the boat dock structure at Lake Pleasant County Park. The boat launch is the only public access to Lake Pleasant. The primary recreation opportunity provided by this grant is motorized boating.

PERIOD OF PERFORMANCE

The period of performance begins on July 15, 2023 (project start date) and ends on February 28, 2025 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

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

STANDARD TERMS AND CONDITIONS INCORPORATED

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

LONG-TERM OBLIGATIONS

For this development project, the Sponsor's long-term obligations for the project area shall be in perpetuity, beginning at project completion, unless otherwise identified in the Agreement or as approved by the funding board or RCO.

PROJECT FUNDING

The total grant award provided for this project shall not exceed \$110,625.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
RCFB - Boating Facilities - Local	74.75%	\$110,625.00	State
Project Sponsor	25.25%	\$37,375.00	
Total Project Cost	100.00%	\$148,000.00	

RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

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

AMENDMENTS TO AGREEMENT

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

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

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

COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

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

For the purpose of this Agreement, WAC Title 286, RCFB policies shall apply as terms of this Agreement.

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

- Boating Facilities Program (BFP) - Manual 9
- Development Projects - Manual 4
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8

SPECIAL CONDITIONS

None

SPECIAL CONDITIONS - CULTURAL RESOURCES

CONDITION APPLIES TO THE FOLLOWING AREA(S): Clallam County Parks Department

State - RCO Lead: Proceed under an IDP: This project has been reviewed in compliance with Executive Order 21-02. No cultural resources work required for this scope of work (in-water). Work may proceed in accordance with RCO's Inadvertent Discovery Plan. If the scope of work changes or any upland ground disturbance is added, then a survey will be required. Future projects actions may require cultural resources review and survey.

AGREEMENT CONTACTS

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

Sponsor Project Contact

Don Crawford
Director
223 East Fourth Street, Suite 7
Port Angeles, WA 98362
donald.crawford@clallamcountywa.gov

RCO Contact

Andrea Hood
Outdoor Grants Manager
PO Box 40917
Olympia, WA 98504-0917
andrea.hood@rco.wa.gov

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

ENTIRE AGREEMENT

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

EFFECTIVE DATE

Unless otherwise provided for in this Agreement, this Agreement, for Project 22-2063, shall become effective and binding on the date signed by both the sponsor and the RCO's authorized representative, whichever is later (Effective Date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in the PERIOD OF PERFORMANCE Section are allowed only when this Agreement is fully executed and an original is received by RCO.

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

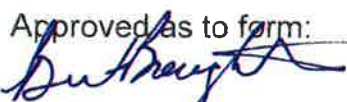
Clallam County Parks, Fair and Facilities Division

By: _____

Date: _____

Name (printed): _____

Title: _____

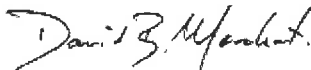
Approved as to form:

Bert D. Boughton
Deputy Prosecuting Attorney

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

By: _____
Megan Duffy
Director
Recreation and Conservation Office

Date: _____

Pre-approved as to form:

By:  _____
Assistant Attorney General

Date: 05/01/2023

Project Sponsor: Clallam County Parks, Fair and Facilities Division

Project Number: 22-2063D

Project Title: Lake Pleasant Dock Renovation

Approval Date: 07/10/2023

Eligible Scope Activities

ELIGIBLE SCOPE ACTIVITIES

Development Metrics

Worksite #1, Lake Pleasant Community Beach dock

Boating Infrastructure

Boarding float installation

Number of boarding floats:

0 new, 5 renovated

5 ea. renovated 20' floating docks installed on new pilings

General Site Improvements

Install pilings

Number of and piling type:

Galvanized steel

6

Select the structures supported by piling:

Boarding float

Site Preparation

General site preparation

Cultural Resources

Cultural resources

Permits

Obtain permits

Architectural & Engineering

Architectural & Engineering (A&E)

Project Sponsor: Clallam County Parks, Fair and Facilities Division

Project Number: 22-2063D

Project Title: Lake Pleasant Dock Renovation

Approval Date: 07/10/2023

Project Milestones

PROJECT MILESTONE REPORT

Complete	Milestone	Target Date	Comments/Description
X	Design Initiated	01/06/2023	
X	Applied for Permits	05/24/2023	
X	SEPA/NEPA Completed	05/24/2023	
X	Project Start	07/15/2023	
	Cultural Resources Complete	08/31/2023	Cultural Resources Complete: Inadvertent Discovery Plan Required; See Special Conditions - Cultural Resources
	60% Plans to RCO	09/15/2023	
	All Bid Docs/Plans to RCO	11/15/2023	
	Progress Report Due	12/31/2023	
	Bid Awarded/Contractor Hired	01/15/2024	
	RCO Notice to Proceed	01/31/2024	
	Construction Started	02/15/2024	
	Progress Report Due	06/30/2024	
	50% Construction Complete	07/31/2024	
	Annual Project Billing Due	07/31/2024	
	Construction Complete	10/31/2024	
	Funding Acknowl Sign Posted	11/08/2024	
	RCO Final Inspection	11/15/2024	
	Final Billing Due	12/31/2024	
	Final Report Due	01/31/2025	
	Agreement End Date	02/28/2025	

Project Sponsor: Clallam County Parks, Fair and Facilities Division**Project Number:** 22-2063D**Project Title:** Lake Pleasant Dock Renovation**Approval Date:** 07/10/2023

Standard Terms and Conditions of the Recreation and Conservation Office

Table of Contents

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE	8
CITATIONS, HEADINGS AND DEFINITIONS	8
PERFORMANCE BY THE SPONSOR	11
ASSIGNMENT	11
RESPONSIBILITY FOR PROJECT	11
INDEMNIFICATION	11
INDEPENDENT CAPACITY OF THE SPONSOR	12
CONFLICT OF INTEREST	12
COMPLIANCE WITH APPLICABLE LAW	12
ARCHAEOLOGICAL AND CULTURAL RESOURCES	13
RECORDS	14
PROJECT FUNDING	14
PROJECT REIMBURSEMENTS	15
RECOVERY OF PAYMENTS	15
COVENANT AGAINST CONTINGENT FEES	15
INCOME (AND FEES) AND USE OF INCOME	16
PROCUREMENT REQUIREMENTS	16
TREATMENT OF EQUIPMENT AND ASSETS	16
RIGHT OF INSPECTION	17
STEWARDSHIP AND MONITORING	17
PREFERENCES FOR RESIDENTS	17
ACKNOWLEDGMENT AND SIGNS	17
PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS	17
LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS	18
CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS	18
ORDER OF PRECEDENCE	19
LIMITATION OF AUTHORITY	19
WAIVER OF DEFAULT	19
APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH	19
SPECIFIC PERFORMANCE	19
TERMINATION AND SUSPENSION	20
DISPUTE HEARING	21
ATTORNEYS' FEES	21
GOVERNING LAW/VENUE	21
SEVERABILITY	21
END OF STANDARD TERMS AND CONDITIONS	21

STANDARD TERMS AND CONDITIONS EFFECTIVE DATE

This document sets forth the Standard Terms and Conditions of the Recreation and Conservation Office as of 07/10/2023.

CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

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

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

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

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

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

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

C.F.R. – Code of Federal Regulations

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

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

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

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

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

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. A development project may also involve activities that redevelop or renovate an existing facility, and these may occur exclusively in the project or in combination with new construction. For projects in the Boating Facilities Program, the term "development project" includes all of the above and may also include those activities that are defined as maintenance in 50 C.F.R. 86.

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

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

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

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

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

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

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

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

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

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

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

Office – Means the Recreation and Conservation Office or RCO.

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

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

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

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

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

project area - A geographic area that delineates a grant assisted site which is subject to project agreement requirements.

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

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

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

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

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

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

RCFB – Recreation and Conservation Funding Board

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

RCW – Revised Code of Washington

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

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

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

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

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

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

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

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

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

WAC – Washington Administrative Code.

PERFORMANCE BY THE SPONSOR

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

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

ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written approval of the RCO. Sponsor shall not sell, give, or otherwise assign to another party any property right, or alter a conveyance (see below) for the project area acquired with this grant without prior approval of the RCO.

RESPONSIBILITY FOR PROJECT

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

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

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

INDEMNIFICATION

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

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

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

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

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

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or

communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

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

INDEPENDENT CAPACITY OF THE SPONSOR

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

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

CONFLICT OF INTEREST

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

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

COMPLIANCE WITH APPLICABLE LAW

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

- A. **Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Employment Act (if applicable). In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the RCO or Funding Entity. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project: "During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- B. **Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. **Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.40. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.
 - 1) Pursuant to RCW 39.12.040(1)(a), all contractors and subcontractors shall submit to Sponsor a statement of intent to pay prevailing wages if the need to pay prevailing wages is required by law. If a contractor or subcontractor intends to pay other than prevailing wages, it must provide the Sponsor with an affirmative statement of the contractor's or subcontractor's intent. Unless required by law, the Sponsor is not required to investigate a statement regarding prevailing wage provided by a contractor or subcontractor.
 - 2) Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130). If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization

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

- D. **Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature. No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.
- E. **Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

ARCHAEOLOGICAL AND CULTURAL RESOURCES

- A. **Project Review.** RCO facilitates the review of projects for potential impacts to archaeology and cultural resources, except as those listed below. The Sponsor shall follow RCO guidance and directives to assist it with such review as may apply.
 - 1) **Projects occurring on State/Federal Lands:** Archaeological and cultural resources compliance for projects occurring on State or Federal Agency owned or managed lands, will be the responsibility of the respective agency, regardless of sponsoring entity type. Prior to ground disturbing work or alteration of a potentially historic or culturally significant structure, or release of final payments on an acquisition, the Sponsor must provide RCO all documentation acknowledging and demonstrating that the applicable archaeological and cultural resources responsibilities of such state or federal landowner or manager has been conducted.
- B. **Termination.** RCO retains the right to terminate a project due to anticipated or actual impacts to archaeology and cultural resources.
- C. **Notice To Proceed.** No work shall commence in the project area until RCO has provided a notice of cultural resources completion. RCO may require on-site monitoring for impacts to archaeology and cultural resources during any demolition, construction, land clearing, restoration, or repair work, and may direct that work stop to minimize, mitigate, or avoid impacts to archaeology and cultural resource impacts or concerns. All cultural resources requirements for non ground disturbing projects (such as acquisition or planning projects) must be met prior to final reimbursement.
- D. **Compliance and Indemnification.** At all times, the Sponsor shall take reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic resources in the project area, and comply with any RCO direction for such minimization and mitigation. All federal or state cultural resources requirements under Governor's Executive Order 21-02 and the National Historic Preservation Act, and the State Environmental Policy Act and the National Environmental Policy Act, and any local laws that may apply, must be completed prior to the start of any work on the project site. The Sponsor must agree to indemnify and hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the project funded under this Agreement. Sponsor shall comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.
- E. **Costs associated with project review and evaluation of archeology and cultural resources are eligible for reimbursement under this agreement.** Costs that exceed the budget grant amount shall be the responsibility of the Sponsor.
- F. **Inadvertent Discovery Plan.** The Sponsor shall request, review, and be bound by the RCO Inadvertent Discovery Plan, and:
 - 1) Keep the IDP at the project site.
 - 2) Make the IDP readily available to anyone working at the project site.
 - 3) Discuss the IDP with staff and contractors working at the project site.

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

G. Inadvertent Discovery

- 1) If any archaeological or historic resources are found while conducting work under this Agreement, the Sponsor shall immediately stop work and notify RCO, the Department of Archaeology and Historic Preservation at (360) 586-3064, and any affected Tribe, and stop any activity that may cause further disturbance to the archeological or historic resources.
- 2) If any human remains are found while conducting work under this Agreement, Sponsor shall immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then RCO, all in the most expeditious manner, and stop any activity that may cause disturbance to the remains. Sponsor shall secure the area of the find will and protect the remains from further disturbance until the State provides a new notice to proceed.
 - a) Any human remains discovered shall not be touched, moved, or further disturbed unless directed by RCO or the Department of Archaeology and Historic Preservation (DAHP).
 - b) The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

RECORDS

- A. **Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. **Maintenance and Retention.** The Sponsor shall maintain books, records, documents, data and other records relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of nine years from the date RCO deems the project complete, as defined in the PROJECT REIMBURSEMENTS Section. If any litigation, claim or audit is started before the expiration of the nine (9) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- C. **Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. **Public Records.** Sponsor acknowledges that the RCO is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04 (which ever applies). Additionally, the Sponsor agrees to disclose any information in regards to the expenditure of that funding as if the project sponsor were subject to the requirements of chapter 42.56 RCW. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such record to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

PROJECT FUNDING

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

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

PROJECT REIMBURSEMENTS

- A. **Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12, whichever has been designated to apply. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may request reimbursement only after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in the PROJECT FUNDING Section. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor, or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. **Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recent applicable RCO manuals and this Agreement regarding reimbursement requirements.
- C. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. **Conditions for Payment of Retainage.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the following has occurred:
 - 1) RCO has accepted the project as a completed project, which acceptance shall not be unreasonably withheld.
 - 2) On-site signs are in place (if applicable); Any other required documents and media are complete and submitted to RCO; Grant related fiscal transactions are complete, and
 - 3) RCO has accepted a final boundary map of the project area for which the Agreement terms will apply in the future.

RECOVERY OF PAYMENTS

- A. **Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, fails to meet its percentage of the project total, and/or fails to comply with any of the terms and conditions of the Agreement, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. **Return of Overpayments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time the Sponsor received such overpayment. Unless the overpayment is due to an error of RCO, the payment shall be due and owing on the date that the Sponsor receives the overpayment from the RCO. If the payment is due to an error of RCO, it shall be due and owing 30 days after demand by RCO for refund.

COVENANT AGAINST CONTINGENT FEES

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

INCOME (AND FEES) AND USE OF INCOME

See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

- A. **Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any applicable manuals, RCWs, and WACs.
- B. **Use of Income.** Subject to any limitations contained in applicable state or federal law, any needed approvals of RCO, and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, rent, franchise fees, ecosystem services, carbon offsets sequestration, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
 - 1) The Sponsor's matching resources;
 - 2) The project's total cost;
 - 3) The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the grant funding;
 - 4) The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 - 5) Capital expenses for similar acquisition and/or development and renovation; and/or
 - 6) Other purposes explicitly approved by RCO or otherwise provided for in this agreement.
- C. **Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored and shall be consistent with the:
 - 1) Grant program laws, rules, and applicable manuals;
 - 2) Value of any service(s) furnished;
 - 3) Value of any opportunities furnished; and
 - 4) Prevailing range of public fees in the state for the activity involved.

PROCUREMENT REQUIREMENTS

- A. **Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists, the Sponsor must follow these minimum procedures:
 - 1) Publish a notice to the public requesting bids/proposals for the project;
 - 2) Specify in the notice the date for submittal of bids/proposals;
 - 3) Specify in the notice the general procedure and criteria for selection; and
 - 4) Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
 - 5) Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

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

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

TREATMENT OF EQUIPMENT AND ASSETS

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

- A. **Discontinued Use.** Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the

equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

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

RIGHT OF INSPECTION

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

STEWARDSHIP AND MONITORING

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

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. 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.

ACKNOWLEDGMENT AND SIGNS

- A. **Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. **Signs.**
- 1) During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless waived by the director; and
 - 2) During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. **Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies and in all advertisements and mailings thereof, and any and all of its related digital media publications.

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

The following provisions shall be in force:

- A. **Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted per this Agreement and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration. It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. **Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if

the RCO guidance would not meet such requirements.

- 1) Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the RCO must receive prior written approval of the RCO.
- C. **Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure and term (such as long-term lease, perpetual or long-term easement, or perpetual or long-term fee simple ownership, or landowner agreement or interagency agreement for the land proposed for construction, renovation, or restoration. The documentation must meet current RCO requirements identified in this Agreement as of the effective date of this Agreement unless otherwise provided in any applicable manual, RCW, WAC, or as approved by the RCO.
- D. **Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include "Integrated Streambank Protection Guidelines", 2002; "Land Use Planning for Salmon, Steelhead and Trout: A land use planner's guide to salmonid habitat protection and recovery", 2009; "Protecting Nearshore Habitat and Functions in Puget Sound", 2010; "Stream Habitat Restoration Guidelines", 2012; "Water Crossing Design Guidelines", 2013; and "Marine Shoreline Design Guidelines", 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in "Reducing Accidental Introductions of Invasive Species" which is available on the WISC Web site.
- E. At no time shall the Sponsor design, construct, or operate this grant funded project in a way that unreasonably puts the public, itself, or others at risk of injury or property damage. The Sponsor agrees and acknowledges that the Sponsor is solely responsible for safety and risk associated with the project, that RCO does not have expertise, capacity, or a mission to review, monitor, or inspect for safety and risk, that no expectation exists that RCO will do so, and that RCO is in no way responsible for any risks associated with the project.

LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. **Long-Term Obligations.** This section applies to completed projects only.
- B. **Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by applicable manual, policy, program rules, or this Agreement, or approved in writing by RCO. The RCO requires that the project area continue to function for the purposes for which these grant funds were approved, in perpetuity.
- C. **Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/ or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property (or a portion of it) to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policies or unless a transfer or change in use is approved by the RCO through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon all terms of the Agreement, and all applicable state or federal laws or regulation.
- 1) When a conversion has been determined to have occurred, the Sponsor shall remedy the conversion as set forth in this Agreement (with incorporated documents) and as required by all applicable policies, manuals, WACs and laws that exist at the time the remedy is implemented or the right to the remedy is established by a court or other decision-making body, and the RCO may pursue all remedies as allowed by the Agreement or law.

CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force for this agreement:

- A. **Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with the grant funds, including undeveloped sites, are built, operated, used, and maintained:
- 1) According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 - 2) In a reasonably safe condition for the project's intended use;

- 3) Throughout its estimated useful service life so as to prevent undue deterioration;
 - 4) In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. **Open to the public.** Unless otherwise specifically provided for in the Agreement, and in compliance with applicable statutes, rules, and applicable WACs and manuals, facilities must be open and accessible to the general public, and must:
- 1) Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
 - 2) Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
 - 3) Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals or, by a decision of the RCO director in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

- A. Federal law and binding executive orders;
- B. Code of federal regulations;
- C. Terms and conditions of a grant award to the state from the federal government;
- D. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
- E. State Constitution, RCW, and WAC;
- F. Agreement Terms and Conditions and Applicable Manuals;
- G. Applicable deed restrictions, and/or governing documents.

LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate authorized in writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Entity (if different from RCO) and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SPECIFIC PERFORMANCE

RCO may, at its discretion, enforce this Agreement by the remedy of specific performance, which means Sponsors' completion of the project and/or its completion of long-term obligations as described in this Agreement. However, the remedy

of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the RCO shall be deemed exclusive. The RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

TERMINATION AND SUSPENSION

The RCO requires strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules, and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by RCO. For federal awards, notification of termination will comply with 2 C.F.R. § 200 (as updated).

A. For Cause.

- 1) The RCO director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a) If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b) If the Sponsor fails to make progress satisfactory to the RCO director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c) If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
- 2) Prior to termination, the RCO shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
- 3) RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

- 1) The Sponsor was not in default; or
- 2) Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights and Remedies of the RCO.

- 1) The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 2) In the event this Agreement is terminated by the director, after any portion of the grant amount has been paid to the Sponsor under this Agreement due to Sponsor's breach of the Agreement or other violation of law, the director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent repayment would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

- 1) **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean

all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

- 2) **No Waiver.** The failure or neglect of RCO to require strict compliance with any term of this Agreement or to pursue a remedy provided by this Agreement or by law shall not act as or be construed as a waiver of any right to fully enforce all rights and obligations set forth in this Agreement and in applicable state or federal law and regulations.

DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the RCO, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the persons chosen by the Sponsor and director shall be dismissed and an alternate person chosen by the Sponsor, and one by the director shall be appointed and they shall agree on a third person. This process shall be repeated until a three person panel is established.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the majority decision of the dispute panelists, unless the remedy directed by that panel is beyond the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

ATTORNEYS' FEES

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

GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in the Superior Court of a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington and agrees to venue as set forth above.

SEVERABILITY

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

END OF STANDARD TERMS AND CONDITIONS

This is the end of the Standard Terms and Conditions of the Agreement.



RECEIVED APR 20 2023

CLALLAM COUNTY
Department of Community Development
County Courthouse
223 E. 4th St., Suite 5
Port Angeles, WA 98362-3015
Phone: (360) 565-2616
Fax: (360) 417-2443
greg.ballard@clallamcountywa.gov

Bruce Emery, Director

MEMO

DATE: April 19, 2023
TO: Don Crawford, agencies and interested parties
FROM: Greg Ballard, Senior Planner 
RE: Requirements to replace 6 creosote piles with 6 steel piles for two piers in the Clallam County Lake Pleasant Park (APN 133035-500118 and 500010)

This proposal is located on Lake Pleasant that is designated Shoreline Residential Intensive by the 2021 SMP. The two existing piers have been in existence since at least 1994 per aerial photos. The replacement of the 6 creosote piles with 6 steel piles would be exempt from a Shoreline Substantial Development permit per WAC 173-27-040(2)(b).

This proposal is also exempt from SEPA per WAC 197-11-800(3) normal repair and maintenance.

Based on the above DCD has no permits or requirements for the replacement of 6 creosote piles with 6 steel piles (in the general same location) for the County Boat launch on Lake Pleasant provide that you obtain a HPA from WDFW.

Feel free to forward this to agencies and interested parties.

Natural Resources Building
P.O. Box 40917
Olympia, WA 98504-0917
1111 Washington St. S.E.
Olympia, WA 98501



(360) 902-3000
E-mail: info@rcow.wa.gov
Web site: www.rcow.wa.gov

STATE OF WASHINGTON
RECREATION AND CONSERVATION OFFICE

Re: Executive Order 2102 Cultural Resources Review and Consultation is Complete.

In accordance with Governor's Executive Order 2102, Recreation and Conservation Office (RCO) has reviewed this project for potential impacts to cultural or historic resources and has conducted formal consultation with the Department of Archaeology and Historic Preservation (DAHP) and affected Native American tribes.

RCO has completed the EO 2102 consultation process for this project scope of work. Attached is an Inadvertent Discovery Protocol (IDP) and signature page. Please thoroughly review your IDP document and return the signed signature page to your grant manager.

This will satisfy your cultural resources requirements for this project. Please work with your grant manager on any other outstanding project requirements.

If you have any further questions, please contact your grant manager or our cultural resources staff at cultural.resource@rcow.wa.gov.

Thank you,

A handwritten signature in blue ink, appearing to read "Sarah Thirtyacre".

Sarah Thirtyacre
Cultural Resources
Program Manager

A handwritten signature in blue ink, appearing to read "Sarah J. Humphries".

Sarah Johnson-Humphries
Archaeologist/Cultural Resources
Specialist

A handwritten signature in blue ink, appearing to read "Sarah Steinkraus".

Sarah Steinkraus
Archaeologist

INADVERTENT DISCOVERY PLAN

for RCO funded projects

Project Name: Lake Pleasant Dock Renovation

Project Number: 22-2063

DAHP Number: NA

This Inadvertent Discovery Plan (IDP) is intended to provide clear guidance related to the management of an unexpected discovery or unearthing of cultural artifacts, archaeological features or other evidence of cultural materials and/or of skeletal material of human or unknown origin during projects funded by the Recreation and Conservation Office not governed by a Washington State Department of Archaeology and Historic Preservation (DAHP)-issued excavation permit; by a Monitoring or Site Protection Plan for a specific area or activity; or a federal permit.

This plan is to be implemented without exception whenever such discoveries occur, and applies to all RCO sponsoring entity staff, contractors, subcontractors, volunteers, and others who may be involved with RCO funded projects. This plan does not supersede or satisfy requirements for monitoring, site protection, or other plans developed to address concerns at known archaeological and historic sites. The sponsoring entity's Project Contact (as defined in your RCO project agreement) is responsible for implementation of the IDP and must sign the following to indicate that she/he has read and acknowledges this responsibility.

As the Project Contact, I acknowledge that I am responsible for implementation of the IDP.

1. It is my responsibility to ensure that all site crew on all phases of project excavation and construction understand the requirements of this IDP. ☒
2. A complete copy of this signed document will be maintained at all times on the project site for the duration of the project for site crew training and available for inspection by DAHP, RCO, or others as authorized. ☒
3. I will follow the actions in the IDP in the event that site crew uncover any archaeological object and/or other cultural resource as a result of project actions, including but not limited to ground-disturbing activities such as excavation, boring, and concrete removal. ☒
4. I understand failure to follow the actions in this IDP is a breach of your RCO project contract and that according to, knowingly disturbing an archaeological site is a Class C Felony (27.53.060 RCW). ☒

R. Donald
Crawford

Digitally signed by R. Donald
Crawford
Date: 2023.08.03 14:11:20
-07'00'

Don Crawford

8/3/2023

Sponsor Signature

Sponsor Name

Date

RECREATION AND CONSERVATION OFFICE

PLAN AND PROCEDURES FOR THE UNANTICIPATED DISCOVERY OF CULTURAL RESOURCES AND HUMAN SKELETAL REMAINS – NO FURTHER WORK REQUIRED

1. INTRODUCTION

The following Inadvertent Discovery Plan (IDP) outlines procedures to follow, in accordance with state and federal laws, if archaeological materials or human remains are discovered. An IDP is required, as part of Agency Terms and Conditions for all grant funded projects. An IDP is not a substitute for a formal cultural resource review (Executive 21-02 or Section 106). Once completed, the IDP should always be kept at the project site during all project activities. It is the responsibility of the grant recipient (Sponsor) to ensure all staff (and subcontracted entities) working on the project is familiar with this plan.

2. RECOGNIZING CULTURAL RESOURCES: A cultural resource discovery could be prehistoric or historic. Examples include (see images for further examples):

- An accumulation of shell, burned rocks, or other food related materials,
- Bones, intact or in small pieces.,
- Area of charcoal or very dark stained soil with or without artifacts,
- Stone tools or waste flakes (i.e. an arrowhead, or stone chips),
- Modified or stripped trees, often cedar or aspen, or other modified natural features, such as rock drawings or carvings
- Agricultural or logging materials that appear older than 50 years, could include equipment, fencing, canals, spillways, chutes, derelict sawmills, tools, and many other items
- clusters of tin cans or bottles, logging or agricultural equipment that appears to be older than 50 years
- Old munitions casings. Always assume these are live and never touch or move
- buried railroad tracks, decking, or other industrial materials.
- Remnants of homesteading. These could include bricks, nails, household items, toys, food containers, and other items associated with homes or farming sites
- The above list does not cover every possible cultural resource. When in doubt, assume the material is a cultural resource.

3. ON-SITE RESPONSIBILITIES: If any employee, contractor, or subcontractor believes that they have uncovered cultural resources or human remains at any point in the project, take the following steps to Stop-Protect-Notify. If you suspect that the discovery includes human remains, also follow Sections 4. The discovery location should be secured at all times.

STEP A: STOP WORK. If an employee, contractor, subcontractor or volunteer believes that they have uncovered a cultural resource at any point in the project, all work in the immediate area of the discovery must stop.

STEP B: Protect the Discovery. Leave the discovery and the surrounding area untouched and create a clear, identifiable, and wide boundary (30 feet or larger) with temporary fencing, flagging, stakes, or other clear markings. Provide protection and ensure integrity of the discovery until cleared by the Department of Archaeological and Historical Preservation (DAHP) or a licensed, professional archaeologist.

Do not permit vehicles, equipment, or unauthorized personnel to traverse the discovery site. Do not allow work to resume within the boundary until the requirements of this IDP are met.

STEP C: NOTIFY PROJECT MANAGEMENT Contact the RCO Grants Manager and Cultural Resources Coordinator and sponsoring entity's Project Manager.

RCO CONTACTS:		
<u>Cultural Resources Program Coordinator</u> Sarah Thirtyacre (360) 360-764-9841 sarah.thirtyacre@rco.wa.gov	<u>RCO Archaeologist</u> Sarah Johnson Humphries 360; 764-3072 (Cell) sarah.johnsonhumphries@rco.wa.gov	<u>Grants Managers</u> (360)-902-3000 (front desk) Grant Managers contacts can be found: https://rco.wa.gov/recreation-and-conservation-office-grants/contact-a-grants-manager/

STEP D: RCO will notify DAHP and Tribes: Once notified, the RCO Cultural Resource staff or the Project Manager will contact DAHP to report and confirm the discovery. To avoid delay, the Project Lead/Organization will contact DAHP if they are not able to reach RCO. DAHP will provide the steps to assist with identification. DAHP, RCO, and Tribal representatives may coordinate a site visit following any necessary safety protocols. DAHP may also inform the Project Lead/Organization and RCO of additional steps to further protect the site. Do not continue work until RCO has issued an approval for work to proceed in the area of, or near, the discovery.

The RCO will continue to manage the formal government to government consultation with Tribes. The City and your consultant may communication with Tribes for the purposes of technical communications and notifications.

DAHP Contacts:	
<u>Archaeological Materials:</u> Rob Whitlam, PhD State Archaeologist 360-890-2615 Rob.Whitlam@dahp.wa.gov	<u>Human Remains/Bones:</u> Guy Tasa, PhD State Anthropologist 360-790-1633 (24/7) Guy.Tasa@dahp.wa.gov

4. **TRIBAL CONTACTS:** In the event cultural resources are discovered, the following tribes will be contacted. See Section 10 for Additional Resources.

Insert Tribal Contacts:	
<u>Hoh Tribe</u> Bryan Cole THPO (360) 640-2122 bryan.cole@hohtribe-nsn.org	<u>Jamestown S'Klallam Tribe</u> Allie Taylor THPO (360) 681-4638 ATaylor@jamestowntribe.org

Confederated Tribes and Bands of the Yakama Nation Casey Barney THPO 509-865-5121 x4766 Casey_Barney@yakama.com	Port Gamble S'Klallam Tribe Misty Ives THPO (360) 979-9485 pgst-thpo@pgst.nsn.us
Lower Elwha Klallam Tribe Bill White THPO (360) 452-8471 x7424 bill.white@elwha.nsn.us	Makah Tribe Janine Ledford THPO (360) 645-2711 mcrjanine@centurytel.net
Quileute Nation Rio Jamie Cultural Resources (360) 374-6163 Rio.Jaime@quileutenation.org	

5. **FURTHER CONTACTS (if applicable)** If the discovery is confirmed, and there is a partnering federal or state agency, the Project Lead/Organization will ensure the partnering agency is immediately notified

Insert Other Agencies (if applicable):	

6. **SPECIAL PROCEDURES FOR THE DISCOVERY OF HUMAN SKELETAL MATERIAL:** If human remains are encountered, , regardless of antiquity or ethnic origin, treat them with dignity and respect at all times. Cover the remains with a tarp or other materials (not soil or rocks) for temporary protection in place and shield them from being photographed. Do not call or speak with the media about the remains specifically. Follow the steps under Stop-Protect-Notify. For specific instructions on how to handle a human remains discovery, see: [RCW 68.50.645: Skeletal human remains—Duty to notify—Ground disturbing activities—Coroner determination—Definitions. \(wa.gov\)](https://www.wa.gov/RCW/68.50.645).

If you are unsure whether the discovery is human bone or not, contact Guy Tasa with DAHP (contact info below), for identification and next steps. Do not pick up the discovery.

A. Notify Law Enforcement Agency or Coroner's Office:

- In addition to the actions described in Sections 3 and 4, the Project Sponsor (or person that made the discovery) will immediately notify the local law enforcement agency or coroner's office.
- The coroner (with assistance of law enforcement personnel) will determine if the remains are human, whether the discovery site constitutes a crime scene, and will notify DAHP.

B. Participate in Consultation:

- Per RCW 27.44.055, RCW 68.50, and RCW 68.60, DAHP will have jurisdiction over non-forensic human remains.
- RCO Cultural Resources staff will participate in consultation.
- Organizations may also participate in consultation at the discretion of DAHP, RCO and the Tribes.

C. Further Activities:

- Documentation of human skeletal remains and funerary objects will be agreed upon through the consultation process described in RCW 27.44.055, RCW 68.50, and RCW 68.60.
- When consultation and documentation activities are complete, construction in the discovery area may resume as described in Section 7.

<u>Contacts for Human Skeletal Remains</u>	
Dr. Guy Tasa State Physical Anthropologist 360) 790-1633 (Cell/Office) guy.tasa@dahp.wa.gov	County Coroner Contacts: https://dahp.wa.gov/sites/default/files/Washington%20State%20Medical%20Examiners-Coroners%20-%20Revised%202019.pdf

Note:

- If the project occurs on federal lands (e.g., national forest or park, military reservation) or Indian lands (e.g., reservations, allotments, communities) the provisions of the Native American Graves Protection and Repatriation Act of 1990 apply, and the responsible

federal agency will follow its provisions. Note that state highways that cross federal and Indian lands are on easements and are not owned by the state.

- If the project occurs on non-federal lands, it will comply with applicable state laws, and the following procedure:

7. DOCUMENTATION OF ARCHAEOLOGICAL MATERIALS

Archaeological deposits discovered during construction will be assumed eligible for inclusion in the National Register of Historic Places under Criterion D per 36CFR800.13(c) until a formal Determination of Eligibility is made. If the project does not have a federal nexus/compliance requirement, contact the Project Manager or DAHP regarding the possible need for an Emergency Excavation Permit per RCW. In general, expect that:

- All prehistoric and historic cultural material discovered during project construction will be recorded by a professional archaeologist on State of Washington cultural resource site or isolate form using standard techniques. Site overviews, feature, and artifacts will be photographed; stratigraphic profiles and soil/sediment descriptions will be prepared for subsurface exposures. Discovery locations will be documented on scaled site plans and site location maps
- Cultural features, horizons and artifacts detected in buried sediments may require further evaluation using hand-dug test units. Units may be dug in controlled fashion to expose features, collect samples from undisturbed contexts, or interpret complex stratigraphy. A test excavation unit or small trench might also be used to determine if an intact occupation surface is present. Test units will be used only when necessary to gather information on the nature, extent and integrity of subsurface cultural deposits to evaluate the site's significance. Excavations will be conducted using state-of-the-art techniques for controlling provenience
- Spatial information, depth of excavation levels, natural and cultural stratigraphy, presence or absence of cultural material, and depth to sterile soil, regolith, or bedrock will be recorded for each probe on a standard form. Test excavation units will be recorded on unit-level forms, which include plan maps for each excavated level, and material type, number, and vertical provenience (depth below surface and stratum association where applicable) for all artifacts recovered from the level. A stratigraphic profile will be drawn for at least one wall of each test excavation unit.
- Sediments excavated for purposes of cultural resources investigation will be screened through 1/8-inch mesh, unless soil conditions warrant 1/4-inch mesh.
- All prehistoric and historic artifacts collected from the surface and from probes and excavation units will be analyzed, catalogued, and temporarily curated. Ultimate disposition of cultural materials will be determined in consultation with the federal agencies (if any), DAHP, and the affected tribe(s).
- Within 90 days of concluding fieldwork, the archaeologist will provide a technical report describing any and all monitoring and resultant archaeological excavations to the Project Lead/Organization, who will forward the report to RCO, the federal agencies (if any), DAHP, and the affected tribe(s) for review and comment.

If assessment activity exposes human remains (burials, isolated teeth, or bones), the process described in Section 6 above will be followed.

- ## 8. PROCEEDING WITH WORK:
- The Project Lead/Organization shall work with the archaeologist, DAHP, and affected tribe(s) to determine the appropriate discovery boundary and where work can continue. Project work
- RCO Plan: Procedures for the Unanticipated Discovery of Cultural Resources or Human Skeletal 8/27/2021

outside the discovery location can typically continue while documentation and assessment of the cultural resources proceed. A Cultural Resources Specialist (either from DAHP, a consulting Tribe, or a professional consultant) must determine the boundaries of the discovery location. In consultation with DAHP and affected tribes, the RCO and the grants sponsor will determine the appropriate level of documentation and treatment of the resource. If federal agencies are involved, the agencies will make the final determinations about treatment and documentation.

Project work may continue at the discovery location only after the process outlined in this plan is followed and DAHP (and the federal agencies, if any) determine that compliance with state and federal laws is complete

9. ORGANIZATION RESPONSIBILITY The Project Lead/Organization is responsible for ensuring: •

- This plan has complete and accurate information.
- This plan is immediately available to all field staff at the sites and available by request to any party.
- This plan is implemented to address any discovery at the site.
- That all field staff, contractors, and volunteers are instructed on how to implement this plan

10. ADDITIONAL RESOURCES:

Informational Resources

DAHP (<https://dahp.wa.gov>)

Washington State Standards for Cultural Resource Reporting: <https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting>

Association of Washington Archaeologists (<https://www.archaeologyinwashington.com>)

Interactive Map of Tribes by Area (<https://dahp.wa.gov/archaeology/tribal-consultation-information>)

WSDOT Tribal Contact Website (<https://wsdot.wa.gov/tribal/TribalContacts.htm>)

Ecology's IDP Video <https://www.youtube.com/watch?v=ioX-4cXfbDY> (The Ecology video is an informative resources that explains the value of IDP protocol and what to do in the event of a discovery. The target audience is anyone working on the project who could unexpectedly find cultural resources or human remains while excavating or digging)

Implement the IDP if you see:

chipped stone artifacts

Examples include:

- angular material
- glass-like material
- unusual material or shape for the area



stone artifacts from Washington



- regularity of flaking
- variability of size

bi-face-knife, scraper or pre-form



stone artifacts from Oregon

Implement the IDP if you see:

chipped stone artifacts (continued)



flaked stone artifact from Colorado



intertidal stone fish trap, BC



flaked stone core on Lopez Island



shell midden with fish bone, BC



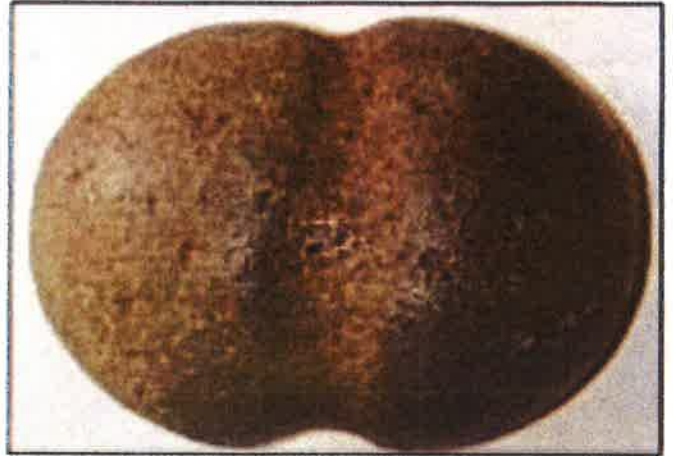
eroding shell midden, BC

Implement the IDP if you see:

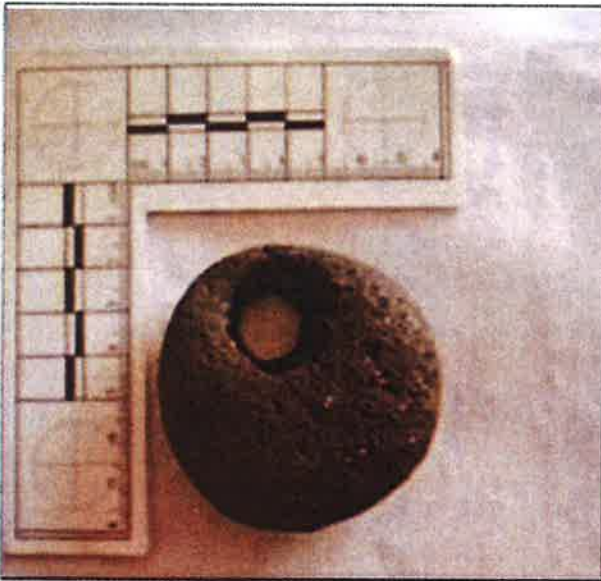
stone artifacts – intact

Examples include:

- unnatural shapes or unusual stone
- striations or scratching
- etching, perforations or pecking



fishing weight - credit CRITFC



fishing weight - credit CRITFC

- regularity in modifications
- variability of size, function or complexity



fishing weight - credit CRITFC



fishing weight - credit CRITFC

Implement the IDP if you see:

bone or shell artifacts

Examples include:

- smooth or carved materials
- unusual shape
- pointed as if used as tool



bone wedge from California



choker and bracelet from Nez Perce



bone awls from Oregon



tooth pendants

- wedge shaped like a shoehorn
- variability of size
- beads from shell



bone pendants

Implement the IDP if you see:

culturally modified trees, fiber or wood artifacts

Examples include:

- trees with bark stripped or peeled, carvings, axe cuts, delimbing, wood removal and other human modifications



culturally modified tree - Credit DAHP

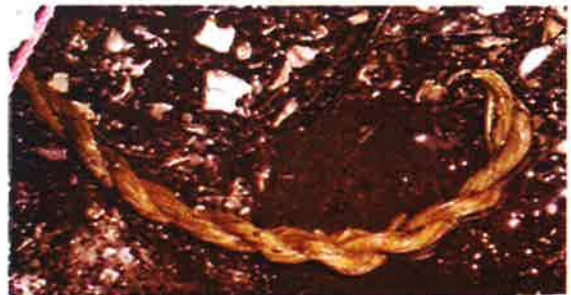
- fiber or wood artifacts in a wet environment
- variability of size, function and complexity



aspen tree carving - Credit DAHP



artifacts from Mud Bay, Olympia



artifacts from Mud Bay, Olympia

Implement the IDP if you see:

strange, different or interesting looking dirt, rocks or shells

Human activities leave traces in the ground that may or may not have artifacts associated with them.

Examples include:



hearth excavated near Hamilton, WA

- unusual accumulation of rock (especially fire-cracked rock)
- unusual shaped accumulation of rock (such as a fire ring)
- charcoal or charcoal-stained soils, burnt soil or soil with a "layer cake" appearance
- accumulation of shell, bones or artifacts that seem out of place



shell midden pocket in modern fill



underground oven - Credit DAHP

Implement the IDP if you see:

strange, different or interesting looking dirt
rocks or shells (continued)

- often have a layered appearance, associated with black or blackish soil and/or crushed or compacted shells



< blackish soil, layers of shell
midden, historic debris

blackish soil, layered
appearance, crushed and
compacted shells >



Implement the IDP if you see:

historic foundations or buried structures

Examples include:

- foundations
- railroad and trolley tracks
- remnants of structures



city of Spokane historic trolley tracks



historic structure in SR99 tunnel



intact foundation below parking lot

Implement the IDP if you see:

historic period artifacts – historic archaeology considered older than 50 years

Examples include:

- agricultural or logging equipment (fencing, canals, spillways, chutes, derelict sawmills, tools etc.)



artifacts discovered in Eastern WA

- domestic items (square or wire nails, amethyst colored glass, painted stoneware etc.)



willow pattern serving bowl



artifacts discovered in Eastern WA



slip joint pocketknife

Implement the IDP if you see:

historic period artifacts (continued)

Examples include:

- railway tokens, coins and buttons
- spectacles, toys, clothing and personal items



coins discovered during excavation



spectacles discovered during excavation

- items helping to understand culture or identity
- food containers and dishware



items discovered at North Shore site



*Montgomery Ward
pitchfork toy*

Implement the IDP if you see:

historic period artifacts (continued)

Examples include:

- munition casings
- tins or glass bottles with maker's mark, distinct colors or older methods of opening the container



british cartridge found at Skagit River



logo used between 1924-1938



maker's mark on bottle



beer can found in Oregon



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023
Project End Date: September 30, 2024

Permit Number: 2023-6-260+01
FPA/Public Notice Number: N/A
Application ID: 31515

PERMITTEE

Clallam County .
ATTENTION: Donald Crawford
223 East 4th Street, Suite 7
Port Angeles, WA 98362

AUTHORIZED AGENT OR CONTRACTOR

WATERSMITH CONSTRUCTION INC
ATTENTION: BRAD SMITH
5018 Lambskin St SW
Tumwater, WA 98512-6799

Project Name: Lake Pleasant boat launch piling replacement

Project Description: 1. Remove six (6) existing wooden piling.
2. Install six (6) new 6-inch galvanized steel pipe piling in their place.

PROVISIONS

1. **TIMING LIMITATIONS:** The project may begin immediately and must be completed by September 30, 2024, provided all work below the ordinary high water line must be completed between July 16 and September 30, of calendar years 2023 and 2024.

2. **APPROVED PLANS:** You must accomplish the work per plans and specifications submitted with the application and approved by the Washington Department of Fish and Wildlife, entitled "Boat Launch Site Plan.pdf" dated May 5, 2023 except as modified by this Hydraulic Project Approval. You must have a copy of these plans available on site during all phases of the project construction.

NOTIFICATION REQUIREMENTS

3. **NOTIFICATION:** You, your agent, or contractor must contact the Washington Department of Fish and Wildlife by e-mail at HPAapplications@dfw.wa.gov; mail to Post Office Box 43234, Olympia, Washington 98504-3234; or fax to (360) 902-2946 at least three business days before starting work. The notification must include the permittee's name, project location, starting date, and the Hydraulic Project Approval permit number.

4. **FISH KILL/ WATER QUALITY PROBLEM NOTIFICATION:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the Washington Department of Fish and Wildlife of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington Military Department Emergency Management Division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the Washington Department of Fish and Wildlife gives approval. The Washington Department of Fish and Wildlife may require additional measures to mitigate impacts.

STAGING, JOB SITE ACCESS, AND EQUIPMENT

5. Establish staging areas (used for equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

6. Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.

7. Confine the use of equipment to the specific access and work corridor shown in the approved plans.

8. Use existing roadways or travel paths.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023

Project End Date: September 30, 2024

Permit Number: 2023-6-260+01

FPA/Public Notice Number: N/A

Application ID: 31515

9. This Hydraulic Project Approval does not authorize the removal of riparian zone vegetation.

10. Retain all natural habitat features on the bed or banks including large woody material and boulders. You may move these natural habitat features during construction but you must place them near the preproject location before leaving the job site.

CONSTRUCTION-RELATED SEDIMENT, EROSION AND POLLUTION CONTAINMENT

11. Prevent project contaminants, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

12. Use tarps or other methods to prevent treated wood, sawdust, trimmings, drill shavings, fresh concrete and other debris from contacting the bed or waters of the state.

13. Deposit all trash from the project at an appropriate upland disposal location.

PILE REMOVAL, DRIVING

14. To avoid attracting fish to artificial light at night, limit impact pile driving to daylight hours whenever feasible.

15. Remove the six existing piling and dispose of them in an upland area unless the material is approved by the Washington Department of Fish and Wildlife for reuse in the project.

16. Piling removal:

a. Vibratory or direct pull extraction is the preferred method of pile removal.

b. Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling near waters of the state.

c. If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting. If the stump cannot be fully extracted, remove the remainder of the stump with a clamshell bucket, chain, or similar means, or cut it off three feet below the mudline. Cap all buried cut stumps and fill holes left by piling extraction with clean sediment that matches the native material.

d. When removing creosote piling, containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All debris on the bed and accumulated in containments structures must be collected and disposed upland at an approved disposal site.

e. Submit post-project surveys (e.g., underwater video, photos at low-tide) along transects within the project area to Washington Department of Fish and Wildlife within two weeks of pile removal to verify debris removal.

PILING REPLACEMENT

17. As specified in the approved plans, the six pilings must be 8 – inch diameter galvanized steel pilings.

18. The use of a vibratory and/or an impact hammer, or a water jet, is authorized for piling installation under this Hydraulic Project Approval, however a vibratory driver is preferred.

19. Sound attenuation methods are required for the driving or proofing of steel piles with an impact hammer below the ordinary high water line. For impact driving of steel piles that exceed the following criteria, a bubble curtain or other Washington Department of Fish and Wildlife approved sound attenuation device must be used. The specific criteria include sound pressure levels of:

a. Greater than or equal to 206 dB (one micropascal squared per second) peak,

b. Greater than or equal to 187 dB (one micropascal squared per second) accumulated sound exposure level (SEL) for fish greater than or equal to 2 grams, and

c. Greater than or equal to 183 dB (one micropascal squared per second) (SEL) for fish less than 2 grams.

d. Install a bubble curtain around the pile during all driving operations to ensure proper sound attenuation. The bubble curtain must distribute air bubbles around 100 percent of the perimeter of the piling over the full length of the pile in the water column.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023

Project End Date: September 30, 2024

Permit Number: 2023-6-260+01

FPA/Public Notice Number: N/A

Application ID: 31515

20. Use appropriate sound attenuation when driving or proofing steel piling with an impact hammer.

a. For driving or proofing steel piling, 10 inches in diameter or less, install a 6 inch thick wood block, plastic or rubber between the piling and the impact hammer during impact pile driving operations or install a pile sleeve or bubble curtain around the piling during impact pile driving operations that distributes air bubbles around 100% of the perimeter of the piling over the full depth of the water column.

b. For driving or proofing steel piling greater than 10 inches in diameter, install a bubble curtain around the pile during piling impact driving operations that distributes air bubbles around 100% of the perimeter of the piling over the full depth of the water column.

21. This approval is for the replacement of six existing pilings and does not authorize expansion of the overwater structure.

22. Remove the existing pilings and associated materials from waters of the state. Do not relocate the structure within waters of the state without written authorization from Washington Department of Fish and Wildlife.

23. Fit all pilings with devices to prevent perching by fish-eating birds.

DEMOBILIZATION AND CLEANUP

24. Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

25. To prevent fish from stranding, backfill trenches, depressions, and holes in the bed that may entrain fish during high water or wave action.

26. Upon completion of the project, restore the disturbed bed, banks, and riparian zone to preproject condition to the extent possible.

LOCATION #1: Site Name: Lake Pleasant Recreation Area
1292 Lake Pleasant Road, Beaver, WA 98305

WORK START: July 16, 2023

WORK END: September 30, 2024

WRIA		Waterbody:			Tributary to:	
00 - Unknown		Other			Other	
1/4 SEC:	Section:	Township:	Range:	Latitude:	Longitude:	County:
All	26	30 N	13 W	48.067690	-124.332640	Clallam

Location #1 Driving Directions

North on State hwy 101 from Forks, turn left on Lake Pleasant rd to site

APPLY TO ALL HYDRAULIC PROJECT APPROVALS

This Hydraulic Project Approval pertains only to those requirements of the Washington State Hydraulic Code, specifically Chapter 77.55 RCW. Additional authorization from other public agencies may be necessary for this project. The person(s) to whom this Hydraulic Project Approval is issued is responsible for applying for and obtaining any additional authorization from other public agencies (local, state and/or federal) that may be necessary for this project.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023

Permit Number: 2023-6-260+01

Project End Date: September 30, 2024

FPA/Public Notice Number: N/A

Application ID: 31515

This Hydraulic Project Approval shall be available on the job site at all times and all its provisions followed by the person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work.

This Hydraulic Project Approval does not authorize trespass.

The person(s) to whom this Hydraulic Project Approval is issued and operator(s) performing the work may be held liable for any loss or damage to fish life or fish habitat that results from failure to comply with the provisions of this Hydraulic Project Approval.

Failure to comply with the provisions of this Hydraulic Project Approval could result in civil action against you, including, but not limited to, a stop work order or notice to comply, and/or a gross misdemeanor criminal charge, possibly punishable by fine and/or imprisonment.

All Hydraulic Project Approvals issued under RCW 77.55.021 are subject to additional restrictions, conditions, or revocation if the Department of Fish and Wildlife determines that changed conditions require such action. The person(s) to whom this Hydraulic Project Approval is issued has the right to appeal those decisions. Procedures for filing appeals are listed below.

MINOR MODIFICATIONS TO THIS HPA: You may request approval of minor modifications to the required work timing or to the plans and specifications approved in this HPA unless this is a General HPA. If this is a General HPA you must use the Major Modification process described below. Any approved minor modification will require issuance of a letter documenting the approval. A minor modification to the required work timing means any change to the work start or end dates of the current work season to enable project or work phase completion. Minor modifications will be approved only if spawning or incubating fish are not present within the vicinity of the project. You may request subsequent minor modifications to the required work timing. A minor modification of the plans and specifications means any changes in the materials, characteristics or construction of your project that does not alter the project's impact to fish life or habitat and does not require a change in the provisions of the HPA to mitigate the impacts of the modification. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a minor modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are seeking a minor modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234, or by email to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.

MAJOR MODIFICATIONS TO THIS HPA: You may request approval of major modifications to any aspect of your HPA. Any approved change other than a minor modification to your HPA will require issuance of a new HPA. If you originally applied for your HPA through the online Aquatic Protection Permitting System (APPS), you may request a major modification through APPS. A link to APPS is at <http://wdfw.wa.gov/licensing/hpa/>. If you did not use APPS you must submit a written request that clearly indicates you are requesting a major modification to an existing HPA. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the APP ID number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested change, the date of the request, and the requestor's signature. Send your written request by mail to: Washington Department of Fish and Wildlife, PO Box 43234, Olympia, Washington 98504-3234. You may email your request for a major modification to HPAapplications@dfw.wa.gov. You should allow up to 45 days for the department to process your request.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023

Project End Date: September 30, 2024

Permit Number: 2023-6-260+01

FPA/Public Notice Number: N/A

Application ID: 31515

APPEALS INFORMATION

If you wish to appeal the issuance, denial, conditioning, or modification of a Hydraulic Project Approval (HPA), Washington Department of Fish and Wildlife (WDFW) recommends that you first contact the department employee who issued or denied the HPA to discuss your concerns. Such a discussion may resolve your concerns without the need for further appeal action. If you proceed with an appeal, you may request an informal or formal appeal. WDFW encourages you to take advantage of the informal appeal process before initiating a formal appeal. The informal appeal process includes a review by department management of the HPA or denial and often resolves issues faster and with less legal complexity than the formal appeal process. If the informal appeal process does not resolve your concerns, you may advance your appeal to the formal process. You may contact the HPA Appeals Coordinator at (360) 902-2534 for more information.

A. INFORMAL APPEALS: WAC 220-660-460 is the rule describing how to request an informal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete informal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request an informal appeal of that action. You must send your request to WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. WDFW must receive your request within 30 days from the date you receive notice of the decision. If you agree, and you applied for the HPA, resolution of the appeal may be facilitated through an informal conference with the WDFW employee responsible for the decision and a supervisor. If a resolution is not reached through the informal conference, or you are not the person who applied for the HPA, the HPA Appeals Coordinator or designee may conduct an informal hearing or review and recommend a decision to the Director or designee. If you are not satisfied with the results of the informal appeal, you may file a request for a formal appeal.

B. FORMAL APPEALS: WAC 220-660-470 is the rule describing how to request a formal appeal of WDFW actions taken under Chapter 77.55 RCW. Please refer to that rule for complete formal appeal procedures. The following information summarizes that rule.

A person who is aggrieved by the issuance, denial, conditioning, or modification of an HPA may request a formal appeal of that action. You must send your request for a formal appeal to the clerk of the Pollution Control Hearings Boards and serve a copy on WDFW within 30 days from the date you receive notice of the decision. You may serve WDFW by mail to the HPA Appeals Coordinator, Department of Fish and Wildlife, Habitat Program, PO Box 43234, Olympia, Washington 98504-3234; e-mail to HPAapplications@dfw.wa.gov; fax to (360) 902-2946; or hand-delivery to the Natural Resources Building, 1111 Washington St SE, Habitat Program, Fifth floor. The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, you may request a formal appeal within 30 days from the date you receive the Director's or designee's written decision in response to the informal appeal.

C. FAILURE TO APPEAL WITHIN THE REQUIRED TIME PERIODS: If there is no timely request for an appeal, the WDFW action shall be final and unappealable.



HYDRAULIC PROJECT APPROVAL

Washington Department of
Fish & Wildlife
PO Box 43234
Olympia, WA 98504-3234
(360) 902-2200

Issued Date: June 27, 2023

Project End Date: September 30, 2024

Permit Number: 2023-6-260+01

FPA/Public Notice Number: N/A

Application ID: 31515

Habitat Biologist

kris.northcut@dfw.wa.gov

Kris Northcut

360-417-1434

A handwritten signature in black ink, appearing to read "Kris Northcut".

for Director

WDFW



6
SEP 18 2023

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Prosecuting Attorney's Office

WORK SESSION ☒ **Meeting Date:** 9/18/2023

REGULAR AGENDA ☐ **Meeting Date:**

Required originals approved and attached? ☐
Will be provided on:

Item summary:

- | | | |
|---|--|--|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☒ Other - Presentation |

Documents exempt from public disclosure attached: ☐

Executive summary:

Prosecuting Attorney's Office Victim Witness Coordinator (VWC) Division presentation. The presentation will include a description of the responsibilities of our VWCs and how their work impacts the PAO department and victims of crime. We will also discuss the current funding model and challenges, as well as how the BOCC can help.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?) None

County Official signature & print name: Mark Nichols

Handwritten signature of Mark Nichols in blue ink.

Name of Employee/Stakeholder attending meeting: Mark Nichols, Michele Devlin, Jillian Munger, Kayla Ayers, Christi Wojnowski

Relevant Departments: PAO

Date submitted: 9/13/2023

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting - Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

CLALLAM COUNTY PROSECUTING ATTORNEY

MARK B. NICHOLS

PROSECUTING ATTORNEY

223 EAST 4TH STREET, SUITE 11
PORT ANGELES, WA 98362
PHONE: 360-417-2301 FAX: 360-417-2469
TOLL FREE FROM FORKS: 360-374-5324

WASHINGTON VICTIM'S RIGHTS LAWS

WASHINGTON CONSTITUTION

Article 1, Section 35

VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

WASHINGTON STATUTES

TITLE 7 – SPECIAL PROCEEDINGS AND ACTIONS:

CHAPTER 7.69: CRIME VICTIMS, SURVIVORS AND WITNESSES

RCW 7.69.010 – Intent

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime and the civic and moral duty of victims, survivors of victims, and witnesses of crimes to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this state, the legislature declares its intent, in this chapter, to grant to the victims of crime and the survivors of such victims a significant role in the criminal justice system. The legislature further intends to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity; and that the rights extended in this chapter to victims, survivors of victims, and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

RCW 7.69.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Survivor" or "survivors" of a victim of crime means a spouse or domestic partner, child, parent, legal guardian, sibling, or grandparent. If there is more than one survivor of a victim of crime, one survivor shall be designated by the prosecutor to represent all survivors for purposes of providing the notice to survivors required by this chapter.

(3) "Victim" means a person against whom a crime has been committed or the representative of a person against whom a crime has been committed.

(4) "Victim impact statement" means a statement submitted to the court by the victim or a survivor, individually or with the assistance of the prosecuting attorney if assistance is requested by the victim or survivor, which may include but is not limited to information assessing the financial, medical, social, and psychological impact of the offense upon the victim or survivors.

(5) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(6) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

RCW 7.69.030 Rights of victims, survivors, and witnesses

- (1) There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any adult or juvenile criminal proceeding and any civil commitment proceeding under chapter 71.09 RCW:
 - (a) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;
 - (b) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

- (c) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;
- (d) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
- (e) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;
- (f) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;
- (g) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;
- (h) To be provided with appropriate employer intercession services to ensure that employers or victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process or the civil commitment process under chapter 71.09 RCW in order to minimize an employee's loss of pay and other benefits resulting from court appearance;
- (i) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;
- (j) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

- (k) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;
 - (l) With respect to victims and survivors of victims in any felony case, any case involving domestic violence, or any final determination under chapter 71.09 RCW, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing or disposition hearing upon request by a victim or survivor;
 - (m) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;
 - (n) With respect to victims and survivors of victims in any felony case or any case involving domestic violence, to present a statement, personally or by representation, at the sentencing hearing; and
 - (o) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.
- (2) If a victim, survivor of a victim, or witness of a crime is denied a right under this section, the person may seek an order directing compliance by the relevant party or parties by filing a petition in the superior court in the county in which the crime occurred and providing notice of the petition to the relevant party or parties. Compliance with the right is the sole available remedy. The court shall expedite consideration of a petition filed under this subsection.

RCW 7.69.032 Right to make statement before postsentence release of offender

(1) The legislature recognizes the significant concerns that many victims, survivors of victims, and witnesses of crimes have when offenders are considered for postsentence release from confinement. Therefore, it is the intent of the legislature to ensure that victims, survivors of victims, and witnesses of crimes are afforded the opportunity to make a statement that will be considered prior to the granting of postsentence release from confinement for any offender under the jurisdiction of the indeterminate sentence review board or its successor, or by the governor regarding an application for pardon or commutation of sentence.

(2) Victims, survivors of victims, and witnesses of crimes have the following rights:

(a) With respect to victims, survivors of victims, and witnesses of crimes, to present a statement to the indeterminate sentence review board or its successor, in person or by representation, via audio or videotape or other electronic means, or in writing, prior to the granting of parole or community custody release for any offender under the board's jurisdiction.

(b) With respect to victims and survivors of victims, to present a statement to the clemency and pardons board in person, via audio or videotape or other electronic means, or in writing, at any hearing conducted regarding an application for pardon or commutation of sentence.

RCW 7.69.035 Protection of witnesses who testify against criminal gang members—Intent

The legislature recognizes that witnesses are often fearful of testifying against criminal gang members. Witnesses may be subject to harassment, intimidation, and threats. While the state does not ensure protection of witnesses, the state intends to provide resources to assist local prosecutors in combating gang-related crimes and to help citizens perform their civic duty to testify in these cases.

RCW 7.69.040 Representation of incapacitated or incompetent victim

For purposes of this chapter, a victim who is incapacitated or otherwise incompetent shall be represented by a parent or present legal guardian, or if none exists, by a representative designated by the prosecuting attorney without court appointment or legal guardianship proceedings. Any victim may designate another person as the victim's representative for purposes of the rights enumerated in RCW 7.69.030.

RCW 7.69.050 Construction of chapter—Other remedies or defenses.

Nothing contained in this chapter may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding, nor may anything in this chapter be construed to grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to ensure that victims, survivors, and witnesses under this chapter have the rights enumerated in RCW 7.69.030 shall not result in civil liability against that person. This chapter does not limit other civil remedies or defenses of the offender or the victim or survivors of the victim.

CHAPTER 7.69A: CHILD VICTIMS AND WITNESSES

RCW 7.69A.010 Legislative intent

The legislature recognizes that it is important that child victims and child witnesses of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system of this state. Therefore, it is the intent of the legislature by means of this chapter, to insure that all child victims and witnesses of crime are treated with the sensitivity, courtesy, and special care that must be afforded to each child victim of crime and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded the adult victim, witness, or criminal defendant.

RCW 7.69A.020 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Child" means any living child under the age of eighteen years.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness for the prosecution, whether or not an action or proceeding has been commenced.

(5) "Family member" means child, parent, or legal guardian.

(6) "Advocate" means any person, including a family member not accused of a crime, who provides support to a child victim or child witness during any legal proceeding.

(7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a child victim, including pretrial hearings, trial, sentencing, or appellate proceedings.

(8) "Identifying information" means the child's name, address, location, and photograph, and in cases in which the child is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

(9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter 70.125 RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter 70.123 RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

RCW 7.69A.030 Rights of child victims and witnesses

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents, or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

(7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

(8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.

(11) With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

RCW 7.69A.040 Liability for failure to notify or assure child's rights

The failure to provide notice to a child victim or witness under this chapter of the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to notify was in good faith and without gross negligence. The failure to make a reasonable effort to assure that child victims and witnesses are afforded the rights enumerated in RCW 7.69A.030 shall not result in civil liability so long as the failure to make a reasonable effort was in good faith and without gross negligence.

RCW 7.69A.050 Rights of child victims and witnesses—Confidentiality of address—Notice of right—Penalty

At the time of reporting a crime to law enforcement officials and at the time of the initial witness interview, child victims or child witnesses of violent crimes, sex crimes, or child abuse and the child's parents shall be informed of their rights to not have their address disclosed by any law enforcement agency, prosecutor's office, defense counsel, or state agency without the permission of the child victim or the child's parents or legal guardian. The address may be disclosed to another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child. Intentional disclosure of an address in violation of this section is a misdemeanor.

CHAPTER 7.69B: CRIME VICTIMS AND WITNESSES – DEPENDENT PERSONS

RCW 7.69B.005 Intent—Finding

The legislature recognizes that it is important that dependent persons who are witnesses and victims of crime cooperate with law enforcement and prosecutorial agencies and that their assistance contributes to state and local enforcement efforts and the general effectiveness of the criminal justice system. The legislature finds that the state has an interest

in making it possible for courts to adequately and fairly conduct cases involving dependent persons who are victims of crimes. Therefore, it is the intent of the legislature, by means of this chapter, to insure that all dependent persons who are victims and witnesses of crime are treated with sensitivity, courtesy, and special care and that their rights be protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded to other victims, witnesses, and criminal defendants.

RCW 7.69B.010 Definitions

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Crime" means an act punishable as a felony, gross misdemeanor, or misdemeanor under the laws of this state or equivalent federal or local law.

(2) "Dependent person" has the same meaning as that term is defined in **RCW 9A.42.010**.

(3) "Victim" means a living person against whom a crime has been committed.

(4) "Witness" means a person who has been or is expected to be summoned to testify for the prosecution or defense in a criminal action, or who by reason of having relevant information is subject to call or likely to be called as a witness, whether or not an action or proceeding has been commenced.

(5) "Family member" means a person who is not accused of a crime and who is an adult child, adult sibling, spouse or domestic partner, parent, or legal guardian of the dependent person.

(6) "Advocate" means any person not accused of a crime, including a family member, approved by the witness or victim, in consultation with his or her guardian if applicable, who provides support to a dependent person during any legal proceeding.

(7) "Court proceedings" means any court proceeding conducted during the course of the prosecution of a crime committed against a dependent person, including pretrial hearings, trial, sentencing, or appellate proceedings.

(8) "Identifying information" means the dependent person's name, address, location, and photograph, and in cases in which the dependent person is a relative of the alleged perpetrator, identification of the relationship between the dependent person and the alleged perpetrator.

(9) "Crime victim/witness program" means any crime victim and witness program of a county or local law enforcement agency or prosecutor's office, any rape crisis center's sexual assault victim advocacy program as provided in chapter **70.125** RCW, any domestic violence program's legal and community advocate program for domestic violence victims as provided in chapter **70.123** RCW, or any other crime victim advocacy program which provides trained advocates to assist crime victims during the investigation and prosecution of the crime.

RCW 7.69B.020 Rights enumerated

(1) In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that dependent persons who are victims or witnesses are afforded the rights enumerated in this section. The enumeration of rights under this chapter shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Dependent persons who are victims or witnesses in the criminal justice system have the following rights, which apply to any criminal court or juvenile court proceeding:

(a) To have explained in language easily understood by the dependent person, all legal proceedings and police investigations in which the dependent person may be involved.

(b) With respect to a dependent person who is a victim of a sex or violent crime, to have a crime victim advocate from a crime victim/witness program, or any other advocate of the victim's choosing, present at any prosecutorial or defense interviews with the dependent person. This subsection applies unless it creates undue hardship and if the presence of the crime victim advocate or other advocate does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate or other advocate is to provide emotional support to the dependent person and to promote the dependent person's feelings of security and safety.

(c) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the dependent person prior to and during any court proceedings.

(d) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the dependent person to cooperate with prosecution and the potential effect of the proceedings on the dependent person.

(e) To allow an advocate to provide information to the court concerning the dependent person's ability to understand the nature of the proceedings.

(f) To be provided information or appropriate referrals to social service agencies to assist the dependent person with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the dependent person is involved.

(g) To allow an advocate to be present in court while the dependent person testifies in order to provide emotional support to the dependent person.

(h) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the dependent person testifies in order to promote the dependent person's feelings of security and safety.

(i) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as victim advocates or prosecutorial staff trained in the interviewing of the dependent person.

(j) With respect to a dependent person who is a victim of a violent or sex crime, to receive either directly or through the dependent person's legal guardian, if applicable, at the time of reporting the crime to law enforcement officials, a written statement of the rights of dependent persons as provided in this chapter. The statement may be paraphrased to make it

more easily understood. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

(2) Any party may request a preliminary hearing for the purpose of establishing accommodations for the dependent person consistent with, but not limited to, the rights enumerated in this section.

RCW 7.69B.030 Testimony—Videotaped depositions

(1) The prosecutor or defense may file a motion with the court at any time prior to commencement of the trial for an order authorizing the taking of a videotape deposition for the purpose of preserving the direct testimony of the moving party's witness if that witness is a dependent person.

(2) The court may grant the motion if the moving party shows that it is likely that the dependent person will be unavailable to testify at a subsequent trial. The court's finding shall be based upon, at a minimum, recommendations from the dependent person's physician or any other person having direct contact with the dependent person and whose recommendations are based on specific behavioral indicators exhibited by the dependent person.

(3) The moving party shall provide reasonable written notice to the other party of the motion and order, if granted, pursuant to superior court criminal rules for depositions.

(4) Both parties shall have an opportunity to be present at the deposition and the nonmoving party shall have the opportunity to cross-examine the dependent person.

(5) Under circumstances permitted by the rules of evidence, the deposition may be introduced as evidence in a subsequent proceeding if the dependent person is unavailable at trial and both the prosecutor and the defendant had notice of and an opportunity to participate in the taking of the deposition.

RCW 7.69B.040 Liability for violating chapter—Actions based on other state or federal laws

(1) The failure to provide notice to a dependent person of the rights enumerated in this chapter or the failure to provide the rights enumerated shall not result in civil liability so long as the failure was in good faith.

(2) Nothing in this chapter shall be construed to limit a party's ability to bring an action, including an action for damages, based on rights conferred by other state or federal law.

VICTIMS OF SEXUAL ASSAULT ACT

RCW 70.125.020 Findings

The legislature hereby finds and declares that:

(1) Sexual assault is a serious crime in society, affecting a large number of children, women, and men each year;

(2) Efforts over many years to distribute information and collect data have demonstrated the incidence of sexual assault that continues to impact communities, families, and individuals;

(3) Over the past three decades, law enforcement, prosecutors, medical professionals, educators, mental health providers, public health professionals, and victim advocates have benefited from a commitment to training and learning regarding appropriate responses to and services for victims of sexual assault;

(4) This same effort has resulted in increased public awareness of sexual assault and its impact on communities, families, and individuals;

(5) Law enforcement, prosecutors, medical professionals, educators, mental health providers, public health professionals, and victim advocates should continue to work closely and collaboratively to improve responses to and services for victims of sexual assault;

(6) The physical, emotional, financial, and psychological needs of victims and their families are particularly well-served by timely and effective services provided in local communities; and

(7) Persons who are victims of sexual assault benefit directly from continued public awareness and education, prosecutions of offenders, a criminal justice system which treats them in a humane manner, and access to victim-centered, culturally relevant services.

RCW 70.125.030 Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(2) "Core services" means those services that are victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(3) "Department" means the department of commerce.

(4) "Law enforcement agencies" means police and sheriff's departments and tribal law enforcement departments or agencies of this state.

(5) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(6) "Services for underserved populations" means culturally relevant victim-centered community-based advocacy responses to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(7) "Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation;
- (h) Sexual exploitation or commercial sex abuse of a minor;
- (i) Promoting prostitution; or
- (j) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means those services intended to alleviate the impact of sexual assault, as delineated in the Washington state sexual assault services plan of 1995 and its subsequent revisions.

(9) "Victim" means any person who suffers physical, emotional, financial, and psychological impact as a proximate result of a sexual assault.

RCW 70.125.060 Personal representative may accompany victim during treatment or proceedings

If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

RCW 70.125.065 Records of community sexual assault program and underserved populations provider not available as part of discovery—Exceptions.

Records maintained by a community sexual assault program and underserved populations provider shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

- (1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;
- (2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the community sexual assault program or underserved populations provider records;
- (3) The court reviews the community sexual assault program or underserved populations provider records in camera to determine whether the community sexual assault program or underserved populations provider records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of

such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

RCW 70.125.110 Rights of sexual assault survivors

(1) In addition to all other rights provided in law, a sexual assault survivor has the right to:

- (a) Receive a medical forensic examination at no cost;
- (b) Receive written notice of the right under (a) of this subsection and that he or she may be eligible for other benefits under the crime victim compensation program, through a form developed by the office of crime victims advocacy, from the medical facility providing the survivor medical treatment relating to the sexual assault;
- (c) Receive a referral to an accredited community sexual assault program or, in the case of a survivor who is a minor, receive a connection to services in accordance with the county child sexual abuse investigation protocol under RCW 26.44.180, which may include a referral to a children's advocacy center, when presenting at a medical facility for medical treatment relating to the assault and also when reporting the assault to a law enforcement officer;
- (d) Consult with a sexual assault survivor's advocate throughout the investigatory process and prosecution of the survivor's case, including during: Any medical evidentiary examination at a medical facility; any interview by law enforcement officers, prosecuting attorneys, or defense attorneys; and court proceedings, except while providing testimony in a criminal trial, in which case the advocate may be present in the courtroom. Medical facilities, law enforcement officers, prosecuting attorneys, defense attorneys, courts and other applicable criminal justice agencies, including correctional facilities, are responsible for providing advocates access to facilities where necessary to fulfill the requirements under this subsection. The right in this subsection applies regardless of whether a survivor has waived the right in a previous examination or interview;
- (e) Be informed, upon the request of a survivor, of when the forensic analysis of his or her sexual assault kit and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that the disclosure is made at an appropriate time so as to not impede or compromise an ongoing investigation;
- (f) Receive notice prior to the destruction or disposal of his or her sexual assault kit;
- (g) Receive a copy of the police report related to the investigation without charge;
- (h) Review his or her statement before law enforcement refers a case to the prosecuting attorney;
- (i) Receive timely notifications from the law enforcement agency and prosecuting attorney as to the status of the investigation and any related prosecution of the survivor's case;
- (j) Be informed by the law enforcement agency and prosecuting attorney as to the expected and appropriate time frames for receiving responses to the survivor's inquiries

regarding the status of the investigation and any related prosecution of the survivor's case; and further, receive responses to the survivor's inquiries in a manner consistent with those time frames;

(k) Access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and

(l) Where the sexual assault survivor is a minor, have:

(i) The prosecutor consider and discuss the survivor's requests for remote video testimony under RCW 9A.44.150 when appropriate; and

(ii) The court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom in order to facilitate the survivor's testimony and participation in the criminal justice process.

(2) A sexual assault survivor retains all the rights of this section regardless of whether the survivor agrees to participate in the criminal justice system and regardless of whether the survivor agrees to receive a forensic examination to collect evidence.

(3) If a survivor is denied any right enumerated in subsection (1) of this section, he or she may seek an order directing compliance by the relevant party or parties by filing a petition in the superior court in the county in which the sexual assault occurred and providing notice of such petition to the relevant party or parties. Compliance with the right is the sole remedy available to the survivor. The court shall expedite consideration of a petition filed under this subsection.

(4) Nothing contained in this section may be construed to provide grounds for error in favor of a criminal defendant in a criminal proceeding. Except in the circumstances as provided in subsection (3) of this section, this section does not grant a new cause of action or remedy against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys. The failure of a person to make a reasonable effort to protect or adhere to the rights enumerated in this section may not result in civil liability against that person. This section does not limit other civil remedies or defenses of the sexual assault survivor or the offender.

(5) For the purposes of this section:

(a) "Law enforcement officer" means a general authority Washington peace officer, as defined in RCW 10.93.020, or any person employed by a private police agency at a public school as described in RCW 28A.150.010 or an institution of higher education, as defined in RCW 28B.10.016.

(b) "Sexual assault survivor" means any person who is a victim, as defined in RCW 7.69.020, of sexual assault. However, if a victim is incapacitated, deceased, or a minor, sexual assault survivor also includes any lawful representative of the victim, including a parent, guardian, spouse, or other designated representative, unless the person is an alleged perpetrator or suspect.

(c) "Sexual assault survivor's advocate" means any person who is defined in RCW 5.60.060 as a sexual assault advocate, or a crime victim advocate.

CRIME VICTIM'S COMPENSATION

RCW 7.68 and WAC 296-30, 296-31



7
SEP 18 2023

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

4b

Department: Public Works

WORK SESSION ☒ **Meeting Date: 09/18/2023**

REGULAR AGENDA ☒ **Meeting Date: 09/19/2023**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | |
|---|---|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # 402-13-001A |
| ☐ Resolution | ☐ Proclamation ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

Clallam County leases the Blue Mountain Transfer site from WA State Dept. of Natural Resources (DNR). This lease expires 9/30/23. We are in negotiations for a new lease but need additional time to come to agreement on the price of the lease. DNR has agreed to a two-month extension on the current lease to allow additional time to continue to work with County to reach agreement. The current lease expires on September 30.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

The two-month lease extension will cost \$300.00. Lease payments are allocated in the solid waste budget.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Public works recommends the Board approve the lease extension to avoid a lapse on our lease for the Blue Mountain Transfer Site.

County Official signature & print name:. Steve Gray

A handwritten signature in blue ink, appearing to read "Steve Gray".

Name of Employee/Stakeholder attending meeting: Ron Garcelon, Linda Capps

Relevant Departments: Roads

Date submitted: 09/13/2023

- * Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

COMMISSIONER ITEM SUMMARY
Revised: 3-04-2019



HILARY S. FRANZ
COMMISSIONER OF PUBLIC LANDS

September 6, 2023

DEPARTMENT OF
NATURAL RESOURCES
Product Sales and Leasing
1111 WASHINGTON ST SE
P.O. BOX 47014
OLYMPIA WA 98504-7014

360-902-1600
FAX: 360-902-1789
TRS 711
FRCD@dnr.wa.gov
WWW.DNR.WA.GOV

Board Of Clallam County Commissioners
223 E 4th Street
Port Angeles, WA 98362

Subject: Extension of Lease No. 60-A75461

Dear Lessee:

Your lease, which expires on September 30, 2023, is being extended for Two (2) months with the same terms and conditions. The new expiration date will be November 30, 2023. This extension is allowed by RCW 79.13.060.

If you concur with this extension, please electronically sign the letter where indicated below. Please email the signed letter to Doreen Smith at doreen.smith@dnr.wa.gov. Mail your rent of \$300.00 to the address on the invoice. The payment and signed letter must be received no later than September 25, 2023.

Sincerely,

Jill

DeCianne

Jill DeCianne

Acting Olympic Region Manager

Digitally signed by
Jill DeCianne
Date: 2023.09.07
16:43:42 -07'00'

Enclosure

c: File: 60-A75461
TRO: 60-A75461

I concur with the lease extension.

Mark Ozias

Date Signed

Randy Johnson

Date Signed

Mike French

Date Signed

402-13-001



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

SPECIAL USE LEASE

Lease No. 60-A75461

BY THIS LEASE (hereinafter "Agreement"), the STATE OF WASHINGTON, Department of Natural Resources, (hereinafter "State") leases to CLALLAM COUNTY (hereinafter "Lessee") the premises in Clallam County, Washington, the legal description of which is set forth in Exhibit 1A, upon the terms and conditions and for the consideration enumerated herein. Said premises and rights leased hereby are hereinafter referred to as the "Premises".

SECTION 1 OCCUPANCY

1.01 Lease Term. This Agreement shall commence on October 1, 2013 ("Commencement Date") and expire on September 30, 2023.

1.02 No Warranty of Quiet Enjoyment. State makes no warranty of quiet enjoyment of the Premises.

1.03 Condition of Premises. Lessee has had an opportunity to inspect Premises and enters into this Agreement solely in reliance on Lessee's own examination and not by reason of any representation by State. Premises are accepted in its present condition "AS IS WHERE IS". No reliance shall be placed on any opinion, material, or information provided by or through State, and Lessee does so at its own risk, cost and expense.

SECTION 2 USE OF PREMISES

2.01 Permitted Use. For this Agreement, the following uses and no other uses are permitted:

<u>Permitted Use</u>	<u>Acres</u>
Garbage Transfer Station	4.46

In the event the Lessee desires a change in acreage or use, authorization must be obtained in advance and in writing from the State. Approval may be conditioned upon adjustment of the payment in accordance with changes in acreage or use.

SECTION 3 PAYMENT

Payments made hereunder will be applied first to interest, then to outstanding or delinquent rent, leasehold tax and other charges owed, then to current rent, leasehold tax, and charges.

3.01 Rent. The Lessee shall pay to the State, at Olympia, Washington 98504, in advance, the required rent of \$1,784.00 for the period of October 1, 2013 to September 30, 2014 and annually thereafter subject to adjustment under Subsection 3.06.

3.02 Leasehold Tax. Lessee shall pay to State, the leasehold tax as set forth in RCW Chapter 82.29A - Leasehold Excise Tax as may be amended. The tax shall be due and payable at the same time the rental charged herein is due and payable. Lessee may be assessed leasehold tax directly from the Washington State Department of Revenue. In this instance, Lessee must submit to State a written request, with supporting documentation from the Washington State Department of Revenue, to end leasehold tax billing.

3.03 No Counterclaim, Setoff, or Abatement of Rent. Rent and all other sums payable by Lessee hereunder shall be paid without the requirement of prior notice or demand by State, and shall not be subject to any counterclaim, setoff, deduction or defense and without abatement. The obligations and liabilities of Lessee hereunder shall in no way be released, discharged or otherwise affected, except as expressly provided in Subsection 13.06 (Condemnation).

3.04 Interest Charged for Past-Due Rent and Other Sums Owed. Lessee shall pay interest at the rate of one percent (1%) per month (or at such higher rate as may be authorized by statute after the Commencement Date hereof), until paid, on rent or other sums owing under the terms of this Agreement commencing the date such rent or other sum is due and payable. In the event State pays any sum or incurs any expense which Lessee is obligated to satisfy or pay under this Agreement, or which is made on behalf of Lessee, State shall be entitled to receive reimbursement thereof from Lessee upon demand, together with interest thereon from the date of expenditure at the rate stated above.

3.05 Late Charge for Failure to Pay. In the event the Lessee fails to make any payment of rent due hereunder upon the date due, the State shall be entitled to collect from the Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment. Any failure to pay rent or any amount specified in this Section 3, or any other amount to be paid by the Lessee under terms of this Agreement within thirty (30) days of the date due, shall be a material default hereunder by the Lessee and such default shall entitle the State to pursue all remedies specified in this Agreement, including the right to terminate this Agreement, though failure to exercise such right shall not be construed as a waiver of the right and thereafter pursue any remedies available at law or equity, including those contained in Chapter 59.12 RCW.

3.06 Adjustment of Rent. Beginning on October 1, 2018, the fifth anniversary of the Commencement Date, and at intervals of five (5) years thereafter (the "Adjustment Date"), a new annual rental will be established. In no event will the adjusted annual rental be less than the previous annual rental. Adjusted rental values established after the designated Adjustment Date shall be due retroactive to such Adjustment Date. The method for such adjustment shall be selected solely by the State from the following options:

(a) Increase of the current annual rent by the percentage increase in the United States Department of Labor, Bureau of Labor Statistics, "All Items" Consumer Price Index for All Urban Consumers ("CPI"), US City Average (1982-84=100), between the date five (5) years previous to the Adjustment Date and the Adjustment Date, i.e., adjusted rental amount equals current annual rent times CPI as of current Adjustment Date divided by CPI as of date five (5) years previous. In the event the CPI ceases to be published, the State may substitute such other comparable cost of living index as then may be in publication by a comparable governmental agency.

(b) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through evaluation of pertinent market evidence by State lease administrator and/or other appropriate State personnel.

(c) Determination of fair market value of the Premises within six (6) months before or after the Adjustment Date through formal appraisal by State's appraiser, certified general appraiser under contract with the State, or such other appraiser as may be agreed to by State. Such appraisal must be performed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP) as promulgated by the Appraisal Institute.

The market value will be determined exclusive of Lessee's improvements and as though ownership were in fee simple, not encumbered by lease.

Under (b) and (c) above, the new annual rental above shall be computed by multiplying the market value of the Premises by the then current Prime Rate as of the Adjustment Date plus 200 basis points (Prime Rate + 2.0%). The term "Prime Rate" shall mean the Prime Rate as published in The Wall Street Journal from time to time (or the average Prime Rate if more than one is published), any change in such Prime Rate to effect a change in the rate charged hereunder on the date of each such change. If The Wall Street Journal ceases to be published or ceases to publish a Prime Rate, then State shall designate another nationally recognized business publication which publishes such a rate or such rates which does, in the reasonable opinion of State, represent the "Prime Rate" as defined herein.

3.07 Failure to Adjust Not Waiver. Failure of State to adjust rent pursuant to Subsection 3.06 above at the end of any five (5) year period, shall not be a waiver by State of the right to adjust rent at the end of any subsequent five (5) year period. State shall retain the right, for so long as this Agreement remains in effect, to adjust rent as of the end of any five (5) year period, as though all prior adjustments had been made in accordance with the above provisions.

SECTION 4 RESERVATIONS

4.01 Compliance. The State shall have access to the Premises at all reasonable times to determine and secure compliance with this Agreement. Failure to inspect or enforce compliance shall not be construed as a waiver of the State's right to declare a breach, nor relieve Lessee of any liability to the State for any breach of the terms, conditions, or requirements of this Agreement.

4.02 Compatible Uses. State reserves for itself, its successors and assigns, the right at all times for any purpose to cross and re-cross the Premises at any place or grade, to grant easements/licenses over or leases to the Premises, to sell, or otherwise dispose of minerals, coal, oil, timber, gas, or other valuable materials from the Premises insofar as the State's activities on the Premises and any grant of rights the State makes to any person or entity shall not unreasonably interfere with the activities permitted hereunder.

4.03 Non-Default Termination. State reserves the right to terminate this Agreement upon sixty (60) days' written notice in the event the State includes the Premises in a plan for higher and better use, land exchange or sale.

SECTION 5 SPECIAL RESTRICTONS

5.01 Permits and Conformance with Laws.

(a) Lessee shall obtain all building permits and other required permits, licenses, permissions, consents, and approvals from governmental agencies or third parties in connection with this Agreement and Lessee's permitted use including construction of any improvements, changes, alterations, additions, repairs, maintenance to or replacement of the Premises, or for the conduct of any business upon the Premises at the sole cost and

expense of Lessee. Copies of such permits, licenses, permissions, consents, and approvals shall be supplied to State on request.

(b) Lessee shall conform to all applicable laws, regulations, permits, orders, or requirements of any public authority affecting the Premises and the use thereof, and shall correct at the Lessee's own cost and expense any failure of compliance created through the Lessee's fault or by reason of the Lessee's use. In no event shall Lessee undertake or suffer any activity to be conducted upon the Premises which constitutes a nuisance or which is a threat to the health or welfare of the general public.

(c) Lessee shall cause all work on the Premises and all business conducted thereon during the term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction.

5.02 Other Restrictions on Use.

(a) Lessee shall cut no State timber or remove State-owned valuable material, without prior written consent of the State. Prior to State's authorization for the cutting of timber, or removal of valuable material, the Lessee must pay to the State the fair market value of the timber or valuable material, as determined by the State.

(b) Lessee shall take all reasonable precautions to protect the land and improvements on the Premises from fire, make every reasonable effort to report and suppress such fires as may affect the Premises, and shall be subject to applicable fire laws affecting the Premises.

(c) Lessee shall prevent accumulation of equipment parts or "bone yards" on the Premises.

(d) This Agreement does not convey rights to media uses, communication sites, or any use on the Premises other than those expressly stated in this Agreement.

5.03 Habitat Conservation Plan. The Premises are located within an area that is subject to State's Habitat Conservation Plan adopted in connection with Incidental Take Permit No. PRT-812521 (ITP) as supplemented by Permit No. 1168 (Collectively "ITP"). As long as the Habitat Conservation Plan remains in effect, Lessee and all persons acting under Lessee shall comply with the terms and conditions set forth in Exhibit 5A while operating on the Premises. State shall have the right to modify these terms and conditions from time to time to comply with the Habitat Conservation Plan, the ITP, the Endangered Species Act, the implementing regulations, and amendments thereto, or the requirements of the federal agencies administering these laws.

SECTION 6 UTILITIES, TAXES, LIENS

6.01 Utilities and Maintenance. During the term of this Agreement, Lessee shall pay all expenses incurred by Lessee in the use, enjoyment, and operation of the Premises, including, but not limited to, utility charges and all costs of maintaining and repairing the Premises and all improvements thereon whether now existing or hereafter installed. Lessee shall indemnify and hold the State harmless against any loss, liability, or expense resulting from any failure of Lessee to pay all such charges when due.

6.02 Taxes and Assessments.

(a) Lessee shall pay during the term of this Agreement all taxes and other governmental charges of any kind applicable or attributable to the installation of Lessee owned improvements on the Premises, Lessee's leasehold interest therein, and Lessee's use and enjoyment thereof.

(b) Lessee shall pay its prorated share of all assessments that are legally required to be paid now or may be charged during the Agreement term to the Premises or Lessee owned improvements thereon. Lessee shall not cause or suffer the imposition of any assessment upon the Premises without the prior written consent of State. In the event any new assessment is proposed which affects the Premises, Lessee shall immediately notify State of such proposal after Lessee has knowledge or receives notice thereof. Any assessment upon the Premises shall be made in compliance with all applicable statutes, including, but not limited to, Chapter 79.44 RCW.

6.03 Lessee Liens. Lessee shall not suffer or permit any lien to be filed against the State's interest in the Premises, or improvements thereon by reason of work, labor, or services performed thereon or materials supplied to, by or through the Lessee. If any such lien is filed, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing or creation of such lien unless other arrangements are authorized in writing by the State in advance. Lessee shall indemnify the State for any costs, damages or expenses (including attorneys' fees and courts' costs) incurred as a result of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to termination or cancellation of this Agreement.

SECTION 7 LESSEES INDEMNITY; INSURANCE REQUIREMENTS

7.01 Indemnity. Lessee releases and shall indemnify and defend (with counsel acceptable to State) State, its employees, officers, and agents from and against any and all claims arising out of the use, occupation or control of the Premises by Lessee, its agents, and employees. A "claim" as used in this subsection means any claim of any nature whatsoever for penalties, financial loss, damages (including but not limited to bodily injury, sickness, disease or death, or injury to or destruction of property, land and other natural resources including the loss of use thereof), costs or expenses (including but not limited to attorney's fees), whether or not resulting in a suit or action or reduced to judgment. This release and the obligation to indemnify shall not be eliminated or reduced by the concurrent negligence of the State, its officials, employees, or agents, except as provided in this subsection. To the extent that RCW 4.24.115 applies, Lessee shall not be required to indemnify State from State's sole or concurrent negligence. Lessee waives its immunity under Title 51 to the extent it is required to indemnify the State herein.

7.02 Insurance Requirements. Lessee shall, at all times during the term of this contract at its cost and expense, buy and maintain insurance of the types and amounts listed below. Failure to buy and maintain the required insurance may result in the termination of the contract at State's option.

All insurance and surety bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the department's risk manager before the contract is accepted. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications:

1. Insurers subject to Chapter 48.18 RCW (admitted and regulated by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.
2. Insurers subject to Chapter 48.15 RCW (surplus lines): The State shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation.

Before starting work, Lessee shall furnish with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the contract and, if requested, copies of policies to State. The certificate of insurance shall reference the State of Washington, Department of Natural Resources, and the lease number.

Lessee shall include all subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each subcontractor.

Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Lessee's liability or responsibility.

To the extent required by law, the State, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella, and property insurance policies.

All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State.

Lessee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this contract. All insurance policies must expressly waive any right of subrogation by the insurance company against the State and the State's officials, employees, and agents.

If Lessee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Lessee must describe its financial condition and the self-insured funding mechanism.

By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Lessee, and such coverage and limits shall not limit Lessee's liability under the indemnities and reimbursements granted to State in this contract.

The limits of insurance, which may be increased by State, as deemed necessary, shall not be less than as follows:

Commercial General Liability (CGL) Insurance. Lessee shall maintain general liability (CGL) insurance covering claims for bodily injury, personal injury, or property damage arising on the property and/or out of Lessee's operations and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract), and contain separation of insured (cross liability) condition.

Employer's Liability ("Stop Gap") Insurance. Lessee shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Workers' Compensation Coverage. Lessee shall comply with all State of Washington workers' compensation statutes and regulations. Workers' compensation coverage shall be provided for all employees of Lessee and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which exists out of or in connection with the performance of this contract. Except as prohibited by law, Lessee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers' compensation, employer's liability, commercial general liability, or commercial umbrella liability insurance.

If Lessee, subcontractor or sub-subcontractor fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Lessee shall indemnify State. Indemnity shall include all fines, payment of benefits to Lessee or subcontractor or sub-subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees.

Business Auto Policy (BAP). The Lessee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto".

Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

The Lessee waives all rights against the State for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Pollution Legal Liability (or Contractor's Pollution Liability) Insurance. Lessee shall obtain for the duration of the contract for contractor's pollution legal liability, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide coverage for both on-site and off-site clean up costs and cover gradual and sudden pollution, and includes in its scope of coverage, natural resource damage claims. The State shall be named as additional insured. Coverage shall be maintained in an amount of at least:

1. \$1,000,000 each occurrence for contractor's operations at the site(s) identified above, and

2. If the policy contains a general aggregate limit or policy limit, it shall be at least \$5,000,000.

Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is provided on a claims-made basis, the following additional conditions must be met:

- a. The Insurance Certificate must state that the insurer is covering hazardous substance removal.
- b. The policy must contain no retroactive date, or the retroactive date must precede abatement services.
- c. Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the agreement Area.
- d. The extended reporting period (tail) must be purchased to cover a minimum of 36 months beyond completion of work.

SECTION 8 WEEDS, HARMFUL SUBSTANCES

8.01 Weed Control. Lessee shall control all weeds on the Premises. Lessee shall be responsible for, or shall immediately reimburse State for, any all weed control cost incurred, as a result of Lessee's failure to control all weeds on said Premises.

Lessee shall prevent weed infestations by applying management practices which discourage their establishment or spread. The Lessee shall detect and control the invasion of new weeds. Weeds will be controlled using appropriate mechanical, biological and chemical treatments that meet the requirements of Washington State and Federal law.

Lessee shall use Integrated Pest Management (IPM) to control weeds. This means using a coordinated decision-making and action process that considers all weed management methods and strategies, and applies them in an environmentally and economically sound manner to meet weed management objectives. The elements of integrated pest management for weeds include:

- a. Preventing weed problems;
- b. Monitoring for the presence of weed species;
- c. Establishing the density of the weed population (which may be zero) that can be tolerated;

d. Treating weed problems to reduce their populations below the tolerable threshold, using strategies that may include biological, cultural, mechanical, and chemical control methods, and that consider human health, ecological impact, feasibility and cost-effectiveness; and

e. Evaluating the effects and efficacy of weed control treatments.

8.02 Hazardous, Toxic, or Harmful Substances.

(a) Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of the Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or upon the Premises, except as approved in writing by the State, or unless permitted by Subsection 2.01 (Permitted Use). If the Lessee fails to remove all nonapproved fill material, refuse, garbage, wastes or any other of the above materials from the Premises, the Lessee agrees that the State may, but is not obligated to, remove such materials and charge the Lessee for the cost of removal and disposal.

(b) Hazardous, Toxic, or Harmful Substances.

(1) Lessee shall not keep on or about the Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful, and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under Subsection 2.01 (Permitted Use) and unless Lessee fully complies with all federal, state and local laws, regulations, statutes, and ordinances, now in existence or as subsequently enacted or amended. Lessee shall:

(i) Immediately notify the State of: all spills or releases of any Hazardous Substance affecting the Premises; all failures to comply with any federal, state, or local law, regulation or ordinance, as now enacted or as subsequently enacted or amended; all inspections of the Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting the Premises; and all regulatory orders or fines or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning the Premises; and

(ii) On request, provide copies to the State of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Premises.

(2) Lessee shall be fully and completely liable to the State, and shall indemnify, defend, and save harmless State and its agencies, employees, officers, and agents with respect to any and all damages, costs, fees (including attorneys' fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, sublessees, contractors, subcontractors, licensees or invitees, and for any breach of this subsection.

SECTION 9 ASSIGNMENTS

9.01 Assignment. Lessee shall not hypothecate, mortgage, assign, sublease, transfer, or otherwise alienate this Agreement ("Assignment"), or any interest therein, without the prior written consent of State, which consent shall not be unreasonably withheld. In granting any such consent under this clause State shall be entitled to consider, among other items, the proposed assignee's, sublessee's or transferee's financial condition, business reputation, business, and such other factors as may reasonably bear upon the suitability of the assignee, sublessee, or transferee as lessee of the Premises. If Lessee is a corporation, partnership, or other association, (1) the transfer of more than fifty percent (50%) of the ownership interest in such entity, or (2) the sale of all or substantially all of the assets of Lessee shall be deemed to constitute an "assignment" of this Agreement which requires consent of State. The consent of State to any one assignment shall not constitute a waiver of State's right to consent to subsequent assignments, nor shall consent of State to any one assignment relieve any party previously liable as Lessee from any obligations under this Agreement, who shall remain joint and severally liable as primary obligor and not as surety. The acceptance by State of the payment of rent following an assignment shall not constitute consent to any assignment and State's consent shall be evidenced only in writing. The State may require reimbursement for any additional administrative costs resulting from the assignment.

9.02 Name Change. If during the term of this Agreement Lessee changes its name, Lessee shall provide State with documentation legally supporting the name change within 60 days of the effective date of the change. Lessee may contact State's Olympic Region office in Forks, Washington for a list of acceptable documentation.

SECTION 10 IMPROVEMENTS

10.01 Authorized Improvements. No improvement shall be placed on the Premises without the prior written consent of the State. Consent may be granted through this Agreement resulting in the State's approval of the authorized improvements listed herein as Exhibit 10A, or by written Letter of Authorization issued by the State.

10.02 Plan Approval. The plans or specifications for the construction of the authorized improvements listed on Exhibit 10A or authorized by Letter of Authorization issued by State, and for such changes or alterations, including amendments of such plans or specifications, shall be submitted to State for its approval.

10.03 Ownership of Improvements. During the Term of this Agreement, the improvements constructed by Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Lessee. At the expiration or earlier termination of this Agreement, all improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein shall become the property of State, unless State requires their removal pursuant to Section 10.04 below. Throughout the term of this Agreement, Lessee shall not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Premises for work or labor done, services performed, or materials used or furnished to be used in or about the Premises for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by Lessee, its agents, or sublessees. Any liens, encumbrances or claims of third parties with respect to any of the foregoing, shall be expressly subordinate and subject to the rights of State under this Agreement.

10.04 Condition at End of Lease. Upon vacating the Premises on the termination date, Lessee shall leave the Premises and all improvements thereon in the state of repair and cleanliness required to be maintained by Lessee during the Term of this Agreement and shall peaceably surrender the same to State. At the option of State, Lessee shall at its sole expense remove all improvements constructed by Lessee upon the Premises and return the Premises to grade level free of all debris.

10.05 Surety Bond. A surety bond, certificate of deposit assignment, or letter of credit may be required by State to assure completion of construction or development of any improvements costing in excess of \$2,500.

10.06 Hold Harmless. Lessee shall indemnify, defend and hold harmless State and the Premises from and against all claims and liabilities arising by virtue of or relating to construction of the authorized improvements or repairs made at any time to the authorized improvements (including repairs, restoration and rebuilding). Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records in the State of Washington, with respect to all aspects of such work and materials therefore, and will make them available for inspection by State or its representatives as requested.

10.07 Permits; Compliance with Codes. Lessee shall cause all work on the Premises during the Term to be performed in accordance with all applicable laws and all directions and regulations of all governmental agencies and the representatives of such agencies having jurisdiction. Lessee is responsible, at Lessee's sole cost and expense, to cause the authorized improvements and the Premises to comply with all applicable governmental laws, statutes, rules, regulations and/or ordinances that apply to the Premises during the Agreement Term, whether now in effect, or hereinafter adopted or enacted.

10.08 State's Repairs. State shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Premises, or any part thereof, during the term of this Agreement.

10.09 Lessee's Repairs, Alteration, and Maintenance. Lessee shall, at its sole cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto (regardless of ownership) in good order and repair and safe condition for the safe conduct of any activities or enterprises conducted on the Premises pursuant to this Agreement, and keep and maintain the whole of the premise, including all improvements in a clean, sanitary and attractive condition.

SECTION 11 ROADS

Not Applicable. Access is via county road.

SECTION 12 DEFAULT AND REMEDIES

12.01 Default. In the event of any material breach of any provision of this Agreement by Lessee, the breach, after expiration of any grace period as provided in this subsection, shall be deemed a default entitling State to cancel this Agreement and seek any other remedies set forth in this Agreement or otherwise available at law or equity. State shall deliver to Lessee notice of the breach and a demand that the same be remedied immediately. Lessee shall not be in default if the breach pertains to the payment of money and Lessee cures the breach within thirty (30) days of receipt of the notice, or if the breach pertains to a matter other than the payment of any monies due under this agreement, Lessee shall after receipt of the notice promptly commence to cure the breach and shall cure the breach within forty-five (45) days after receipt of the notice. If such breach is non-monetary in nature, and, as determined by State, is not reasonably susceptible of being cured in said forty-five (45) days (provided that the lack of funds, or the failure or

refusal to spend funds, shall not be an excuse for a failure to cure), Lessee shall commence to cure such breach within said period and diligently pursue such action with continuity to completion. If Lessee fails to cure a default, all Lessee owned improvements shall at the option of State, be removed by Lessee, be removed by State at the cost to Lessee, or become the property of State.

12.02 Reentry. In the event of any default by Lessee, State shall have the right, with or without canceling the Agreement, to reenter the Premises and remove all persons and property from Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Any property so removed may be stored in a public warehouse or other suitable place or otherwise disposed of in State's discretion at the expense and for the account of Lessee. State shall not be responsible for any damages or losses suffered by Lessee as a result of such reentry, removal, storage or other disposition, and no such action shall be construed as an election to terminate this Agreement unless a written notice of termination is given to Lessee.

12.03 Termination of Agreements. Whether or not State elects to terminate this Agreement on account of any default by Lessee and subject to any non-disturbance and attornment agreements, if any, State shall have a right to terminate any and all subleases, licenses, concessions or other arrangement for possession affecting Premises. Alternatively, State, in its sole discretion, may succeed to Lessee's interest in such sublease, license, concession or arrangement, and Lessee shall have no further right to or interest in the rent or other consideration receivable thereunder.

12.04 Survival. All obligations of Lessee to be performed prior to the expiration or earlier termination shall not cease upon the termination or expiration of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement that require performance beyond the termination or expiration date shall survive the termination or expiration date of this Agreement. Upon expiration or earlier termination of this Agreement, the rights of Lessee and of all persons, firms, corporations, and entities claiming under Lessee in and to the Premises and all improvements hereon, unless specified otherwise in this Agreement, shall cease.

12.05 State's Right to Cure Defaults. If Lessee fails to perform and is in default of any undertaking or promise contained herein, the State shall have the option, but is not obligated, to make such performance after giving ten (10) days written notice to the Lessee. The State's costs and expense to correct Lessee's failure to perform shall be reimbursed by Lessee and shall be immediately due and payable, together with interest accruing from the date such cost or expense is incurred.

12.06 Remedies Cumulative. The specified remedies to which the State may resort under the terms of this Agreement are cumulative and are not intended to be exclusive of any other remedies or means of redress to which State may lawfully be entitled in case of any breach or threatened breach by Lessee of any provision of this Agreement.

12.07 Nonwaiver. Waiver by the State of strict performance of any provision of this Agreement shall not be a waiver of nor prejudice the State's right to require strict performance of the same provision in the future or of any other provision. The acceptance of performance, rent, or any other sum owing, by State following a breach by the Lessee of any provision of this Agreement shall not constitute a waiver of any right of the State with respect to such breach and State shall be deemed to have waived any right hereunder only if State shall expressly do so in writing.

12.08 Force Majeure. The Lessee's failure to comply with any of the obligations under this Agreement shall be excused only if due to causes beyond Lessee's control and without the fault or negligence of the Lessee, including acts of God, acts of the public enemy, acts of any government, fires, floods, epidemics and strikes.

12.09 Insolvency of Lessee. If the Lessee becomes insolvent, a receiver is appointed, or Lessee's interest is transferred by operation of law by reason of insolvency, the State may terminate this Agreement at its option. Insolvency as used herein will mean the inability of the Lessee to meet its monetary obligations under this Agreement as they come due.

SECTION 13 GENERAL PROVISIONS

13.01 Governing Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington. Venue shall be in Thurston County. The terms of this Agreement shall be given their ordinary meaning and shall not be presumed construed in favor of or against either party hereto.

13.02 No Partnership. The State is not a partner nor a joint venturer with the Lessee in connection with the activities conducted and business carried on under this Agreement, and the State shall have no obligation with respect to the Lessee's debts or other liabilities.

13.03 Lessee's Authority. Persons executing this Agreement on behalf of Lessee represent that they are authorized to do so and represent and warrant that this Agreement is a legal, valid, and binding obligation on behalf of Lessee, and is enforceable in accordance with its terms.

13.04 State's Authority. This Agreement is entered into by State pursuant to the authority granted by statute and the Constitution of the State of Washington. The terms and conditions hereof are subject to such statutory and constitutional provisions as may be now in effect and such provisions which do not impair the contractual rights of Lessee under this Agreement which may lawfully be enacted subsequent to the date of this Agreement.

13.05 Preservation of Markers. Lessee shall not destroy any land survey corner monuments and reference points (including but not limited to corner markers, witness objects, or line markers) without prior written approval from the State, which shall not be unreasonably withheld. Monuments or reference points that must necessarily be disturbed or destroyed during construction or operations must be adequately referenced and replaced, at the Lessee's cost, under the direction of a State of Washington Professional Land Surveyor, in accordance with all applicable laws of the State of Washington, including but not limited to RCW 58.24, and all relevant Department of natural Resources regulations.

13.06 Condemnation. If all of the Premises are taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, this Agreement terminates as of the date the condemner takes possession. If part of the Premises is taken by any lawful authority under the power of eminent domain for a period which will end on or extend beyond the expiration of the term of this Agreement, the State or Lessee may choose to terminate this Agreement as of the date the condemner takes possession. If either the State or Lessee elects to terminate this Agreement, the rents or other charges to be paid by Lessee will be apportioned by the State and paid by the Lessee to the date of taking. If neither the State nor Lessee elects to terminate this Agreement, the rent will be reduced in the same proportion that the value of the portions of the site to be taken bears to the value of the entire site as of the date condemner takes possession.

If the taking is for a period which will end on or extend beyond the expiration of the term of this Agreement, Lessee will have no claim or interest in or to any award of damages for the whole or partial taking of the site, except that the Lessee will be entitled to an amount equal to the fair market value of any improvements as of the date of taking (except trade fixtures) considered by this Agreement to be owned by the Lessee taken by the condemner.

If temporary use of all or part of the site is taken by any lawful authority under the power of eminent domain for a period ending before the expiration of the term, this Agreement will continue in full force and Lessee will be entitled to receive any award from the condemner for the use of all or part of the Premises.

The State and Lessee will give to the other immediate written notice of any proceedings with respect to a condemnation and of any intentions of any authority to exercise the power of eminent domain.

13.07 Interpretation and Numbering. This Agreement has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight given to it being drafted by any party hereto or their counsel. Section and subsection numbers, headings, or titles are for convenience only and are not to be construed to limit or to extend the meaning of any part of this Agreement.

Section and subsection numbers may be omitted or out of sequence because of inclusion or exclusion of sections or subsections in this Agreement at the option of the State. Cross references to sections or subsections that are not included in this Agreement should not be construed as material references.

13.08 Time of Essence. Time is expressly declared to be of the essence of this Agreement and each and every covenant of Lessee and the State hereunder.

13.09 Amendments. Any amendments, revisions, supplements, or additions to this Agreement or the attached exhibits shall be made in writing executed by the parties hereto, and neither State nor Lessee shall be bound by verbal or implied agreements. Such changes may be made by re-execution of the signature page and the deletion and addition of the appropriate new effective pages or exhibits governing the change, if any.

13.10 Entire Agreement. This written Agreement or its successor or replacement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and no other agreement, statement or promise made by any party hereto, or to any employee, officer or agent of any party hereto, which is not contained herein, shall be binding or valid.

13.11 Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent prove to be invalid, unenforceable, void, or illegal, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall be not affected thereby, and each term and provision of this Agreement shall be valid and be enforced as written to the fullest extent permitted by law.

13.12 Attorney Fees. If either party brings suit or submits to an alternative dispute process to interpret or enforce any provision of the agreement, the prevailing party shall be entitled to reasonable attorney fees, paralegal fees, accountant and other expert witness fees and all other fees, costs and expenses actually incurred in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the default.

13.13 Notices and Submittals. Any notice or submittal given under this Agreement shall be deemed as received when delivered by hand or five (5) days after deposit in the United States

mail with first-class postage affixed, addressed as noted. Changes of address may be given in accordance with this section. Any notice or submittal given under this Agreement shall be:

To the State:

Where Agreement provisions require submittal to State office:

Department of Natural Resources
Product Sale and Leasing Division
PO Box 47016
Olympia, WA 98504-7061

Where Agreement provisions require submittal to the State at its Region office:

Department of Natural Resources
Olympic Region
411 Tillicum Lane
Forks, WA 98331

To the Lessee at the address affixed with signature or Lessee's last known address.

13.14 Proprietary Information/Public Disclosure. Materials or information submitted as required in this Agreement shall become public records within the meaning of RCW Chapter 42.56.

Any submitted materials or information that the Lessee claims as exempt from disclosure under the provisions of RCW 42.56.210 must be clearly designated. The page must be identified and the particular exemption from disclosure upon which the Lessee is making the claim must be identified by the RCW citation number.

The State will consider a Lessee's request for exemption from disclosure; however, the State will make an independent decision on the applicability of any claimed exemption consistent with applicable laws. The portion of a document claimed as exempt must qualify for exempt status as identified in RCW 42.56. Marking the entire submitted materials or information exempt from disclosure cannot be honored. If a public records request is made regarding materials that the Lessee has requested as exempt, the affected Lessee will be given notice of the request and allowed ten business days to seek a court injunction against the requested disclosure prior to the State fulfilling the public records request.

13.25 Exhibits. This agreement is subject to the terms and conditions of exhibits referenced herein, which are attached hereto and by this reference made a part hereof.

Exhibits: 1A - Legal Description and Encumbrances, 5A - HCP Requirements, 10A - Authorized Improvements.

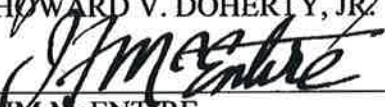
BOARD OF CLALLAM COUNTY
COMMISSIONERS
UBI: 601 268 138

Dated: 13 August, 2013.


MICHAEL C. CHAPMAN, CHAIR

Approved as to form only by:

 8/5/2013
Brian Wendt
Deputy Prosecuting Attorney
Clallam County


HOWARD V. DOHERTY, JR.

JIM McENTIRE

Address: 223 E 4TH Street
Port Angeles, WA 98362

Phone: (360) 417-2389

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: 8/29, 2013.


KYLE BLUM
Deputy Supervisor for State Uplands

Approved as to form
February 27, 2003
By James Schwartz
Assistant Attorney General

Revised as to form
September 13, 2007
by Roger Braden
Assistant Attorney General

**NOTARIAL CERTIFICATE
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF Washington)
) ss.
COUNTY OF Clallam)

I certify that I know or have satisfactory evidence that HOWARD V. DOHERTY, JR., and MICHAEL C. CHAPMAN and JIM MCENTIRE are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it as the duly elected, qualified and acting County Commissioners of Clallam County and to be the free and voluntary act of such parties for the uses and purposes mentioned in the instrument.

DATED: 13 August 2013

(Seal or Stamp)

Patricia S. Holden
NOTARY PUBLIC in and for the
State of Washington
My appointment
expires 11 January 2017

**NOTARIAL CERTIFICATE
ACKNOWLEDGMENT IN A REPRESENTATIVE CAPACITY**

STATE OF WASHINGTON)

)ss

County of Thurston)

On this 29 day of Aug, 2013, personally appeared before me Kyle Blum, to me known to be the Deputy Supervisor for State Uplands of the Department of Natural Resources, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

DATED: 8.29.13



(Seal or Stamp)

NOTARY PUBLIC in and

for the

State of WA

My appointment expires 12.17.16

EXHIBIT 1A
Legal Description of Premises &
Encumbrances

A portion of the E½ of the E½ of Section 23, Township 30 North, Range 5 West, W.M., Clallam County, Washington, containing 4.49 acres, more or less, according to the government survey thereof.

Class	Number	Event	Expire Dt	Grantee	Date Gtd.
LSE	60-075461	SPECUSE	9/30/2013	Clallam County	10/19/2004*
ESE	50-038183	BRTRANS	Indef.	Pacific Northwest Bell Telephone Co.	7/15/1975
ESE	50-040916	ROAD	Indef.	Phoenix Contractors, Inc., Gerald Turner & Phyllis Goakey	3/17/1980
ESE	50-CR3201	CROAD	Indef.	Clallam County	9/23/1985
ESE	50-CR3285	CROAD	Indef.	Clallam County	5/21/1991
ESE	50-F01456	OVPOWER	Indef.	Bonneville Power Administration	3/13/1952
ESE	50-033172	OVTRANS	Indef.	Bonneville Power Administration	4/28/1969

EXHIBIT 5A
HCP REQUIREMENTS

1. The Lessee shall immediately notify the State of new locations of Permit species covered in the Incidental Take permit (ITP) that are discovered within the leased Premises covered by the Habitat Conservation Plan (HCP), including, but not limited to: locations of occupied murrelet habitat; spotted owl nest sites; wolves; grizzly bears; nests, communal roosts, or feeding concentrations of bald eagles; peregrine falcon nests; Columbian white-tailed deer; Aleutian Canada geese; and Oregon silverspot butterflies. In all circumstances notification must occur within a 24 hour time period.
2. Upon locating any live, dead, injured, or sick specimens of any listed species covered by the ITP within the leased Premises the Lessee shall immediately notify the State. In all circumstances notification must occur within a 24 hour time period. Lessee may be required to take certain actions to help the State safeguard the well being of any live, injured or sick specimens of any listed species discovered, until the proper disposition of such specimens can be determined by the State.
3. Lessee shall refer to ITP number PRT-812521 (a copy of the ITP is located for reference in the region office) in all correspondence and reports concerning Permit activities.
4. All applicable provisions of the ITP and this schedule must be presented and clearly explained by Lessee to all authorized officers, employees, contractors, or agents of Lessee conducting authorized activities on the Property. Any questions Lessee may have about the ITP should be directed to the State.

EXHIBIT 10A
Authorized Improvements

IMPROVEMENTS AUTHORIZED BY THE STATE:

Description	Location
Existing paved drive, concrete pit and ramp, building, utility poles and lights	Within lease premises



8

AGENDA ITEM SUMMARY

SEP 18 2023

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: Administrator and Climate Advisory Committee

WORK SESSION X Meeting Date: 9-18-23

REGULAR AGENDA Meeting Date:

**Required originals approved and attached?
Will be provided on: 9-15**

Item summary:

- | | | |
|---|---|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | X Other- Update and discussion |

Documents exempt from public disclosure attached: ☐

Executive summary:

Review of Climate Action Plan and discussion of climate recommendations to pursue in 2024

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐
None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)

Discussion and Board approval of direction for proceeding in 2024

County Official signature & print name:

Clea Rome Clea Rome

Name of Employee/Stakeholder attending meeting: Todd Mielke, County Administrator and Clea Rome on behalf of Climate Advisory Committee

Relevant Departments: BOCC

Date submitted: 9-13

* Work Session Meeting - Submit 1 single sided/not stapled copy Agenda Item Summary- Climate update for 2024
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies) Revised: 3-04-2019

Document was submitted after the
agenda and packet were posted on
Sept 14 2023.
item 8

Clallam County Climate Action in 2024



Plan Components

Greenhouse Gas Inventory
(data year 2019)

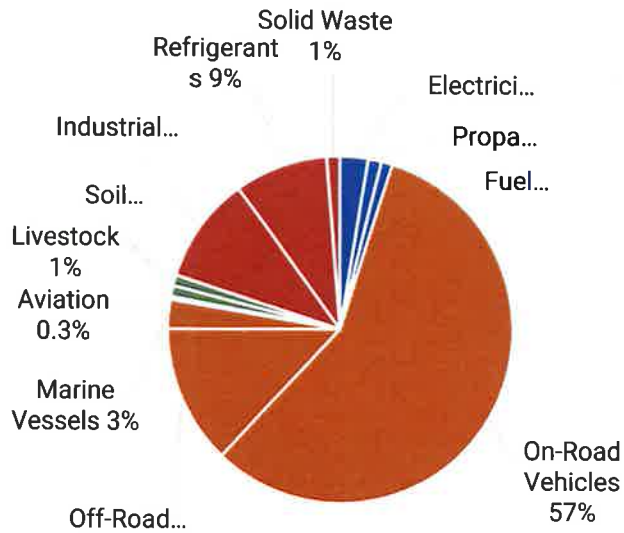
Strategies and Recommendations

Implementation Plan

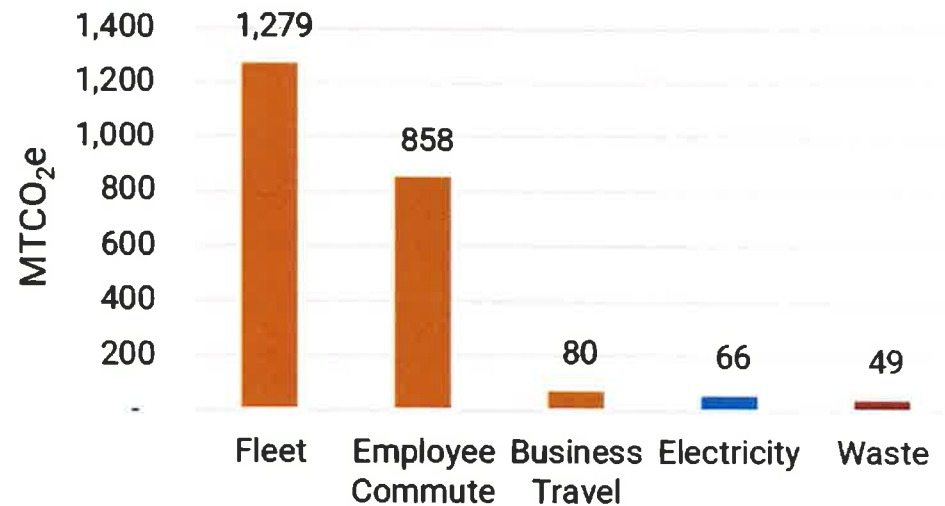
Plan is County Government Focused



Transportation is major source of emissions



73% of community-wide emissions



95% of County Government emissions

Key Takeaways



Creating low-/zero-
emission
transportation options



Importance of Regional Planning
(ex. Permitting smaller homes
+ more rental units in dense transit-oriented
developments)



Supporting local
agriculture



Supporting low-/zero-
emission industries

Strategies and Actions



Focus Areas & Strategies

	Focus Area	Goal
	Energy & Built Environment	Decrease and mitigate emissions through clean energy and energy efficiency in the built environment.
	Consumption & Solid Waste	Reduce organic waste stream by half by 2030 through waste diversion and sustainable consumption.
	Transportation	Increase transportation options, incentivize non-motorized transportation options, facilitate, and plan for electrification of vehicles.
	Land Use	Implement policies for sustainable, smart development that reduces urban sprawl, strengthens food systems, and increase conservation.
	Natural Environment	Conserve and protect the environmental attributes and critical areas of Clallam County that contribute to the quality of life for all.

Plan Adopted in April 2023

“The Board of Commissioners approve of the attached Clallam County Climate Action Plan and encourage its implementation across all County Departments.”

Implementation requires leadership and interdepartmental coordination



Key Recommendation

“Sustainability Officer”

- Identify and secure funding opportunities to **integrate climate action into all County planning efforts**
- Support departments with **grant writing** for climate-related opportunities
- Ensure **accountability** of policies/actions related to existing CAP goals
- Recommend **new and updated policies** that promote sustainability
- Create a **systematic way to assess the GHG emissions** associated with major county actions/policies/plans and consider the cost of those emissions during the decision-making process
- Oversee **centralized procurement** process



Key Recommendation

Develop and adopt a comprehensive approach to digital government and e-government approaches to County Services



Recommendations for Moving Forward in 2024

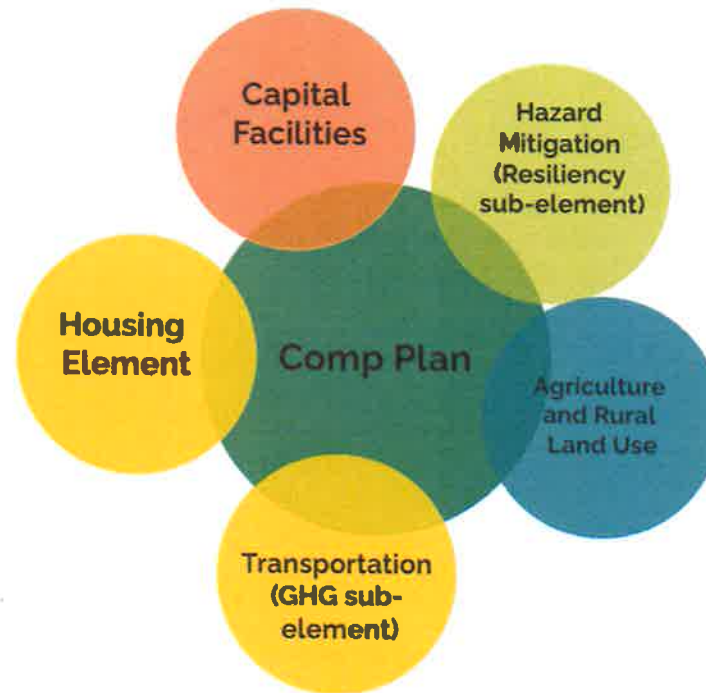


Potential 2024 Guidelines:

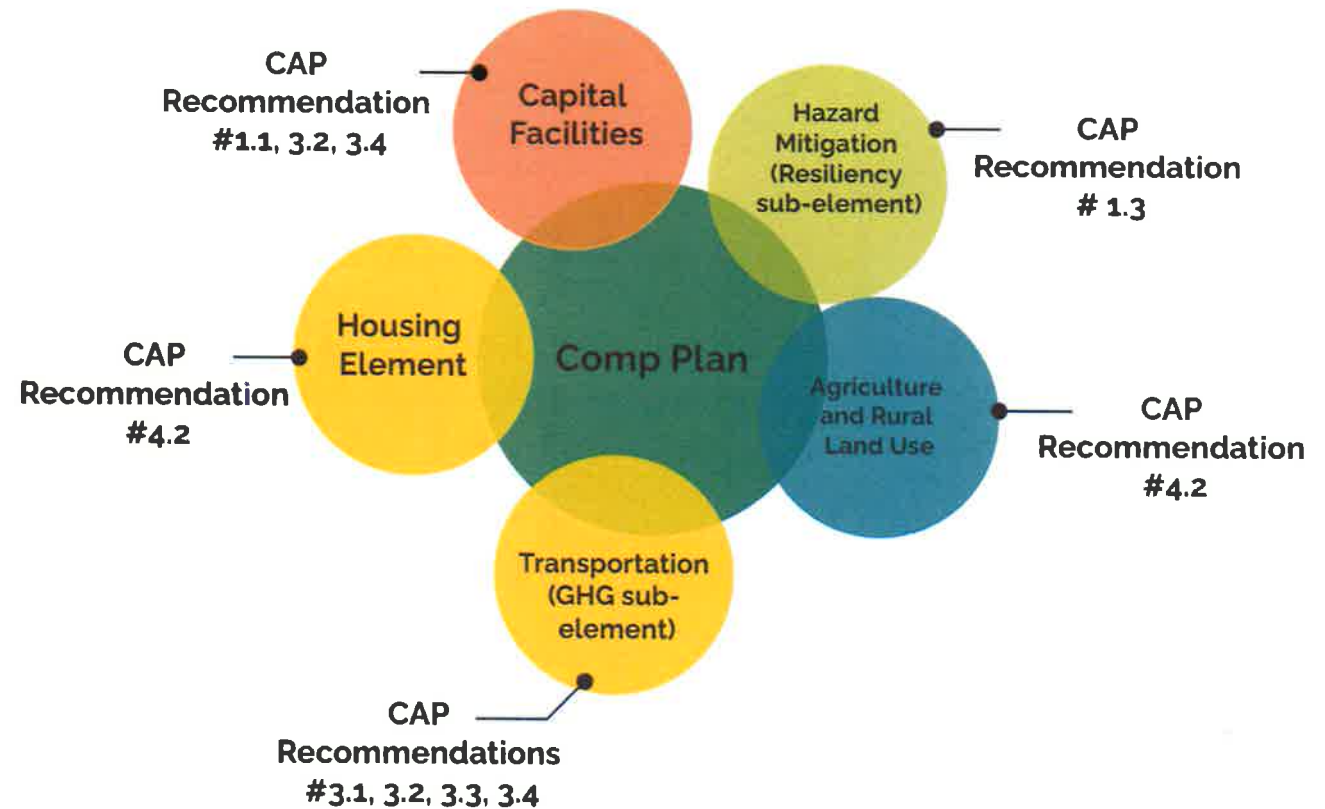
- *Continue targeted actions to implement recommendations of the Climate Action Plan.*
- *Recognizing the County Comprehensive Plan Update is due in 2025, coordinate but do not preempt the development of that plan.*
- *Gather additional data where necessary.*
- *Consider pilot programs where appropriate.*



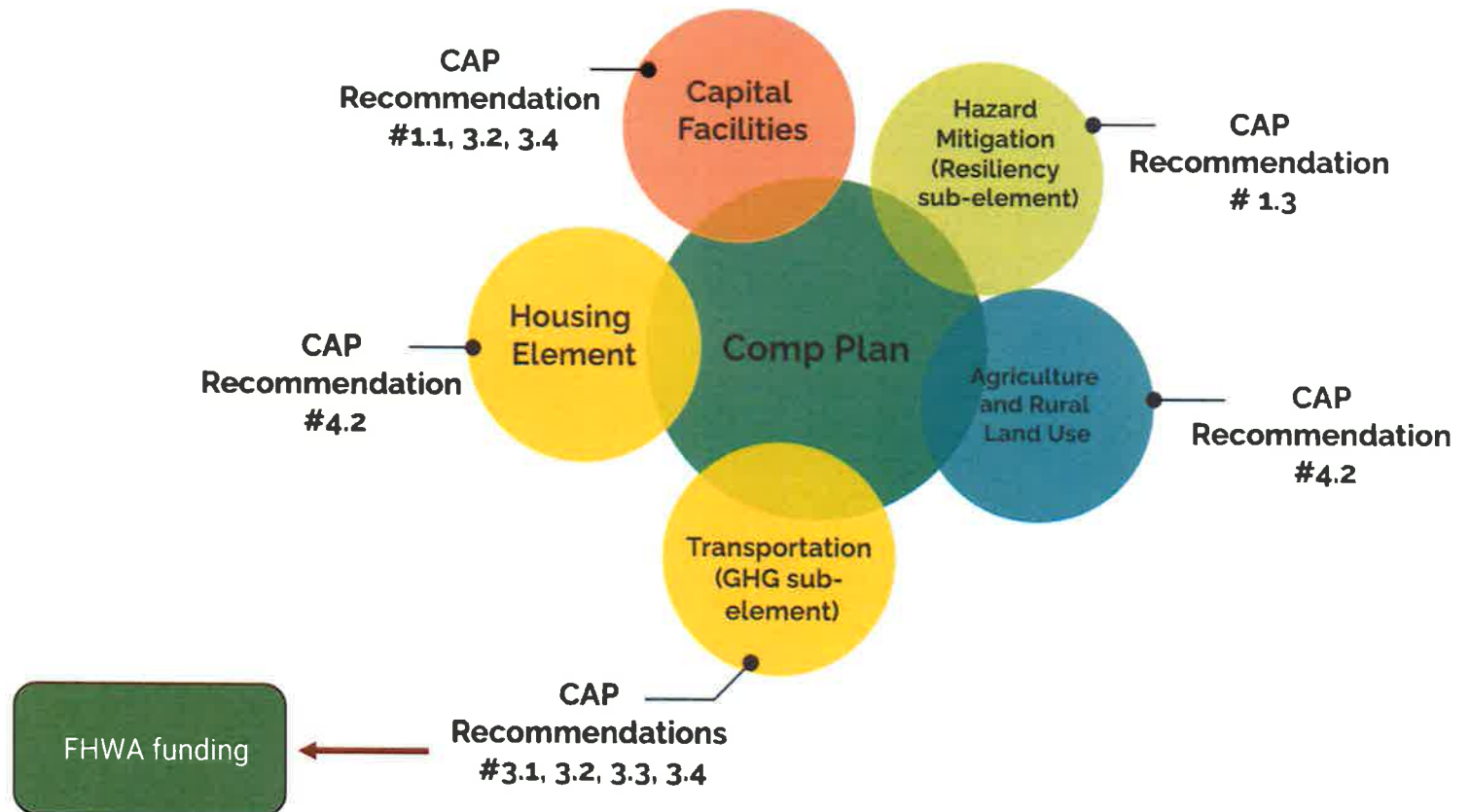
Comprehensive Plan 2024

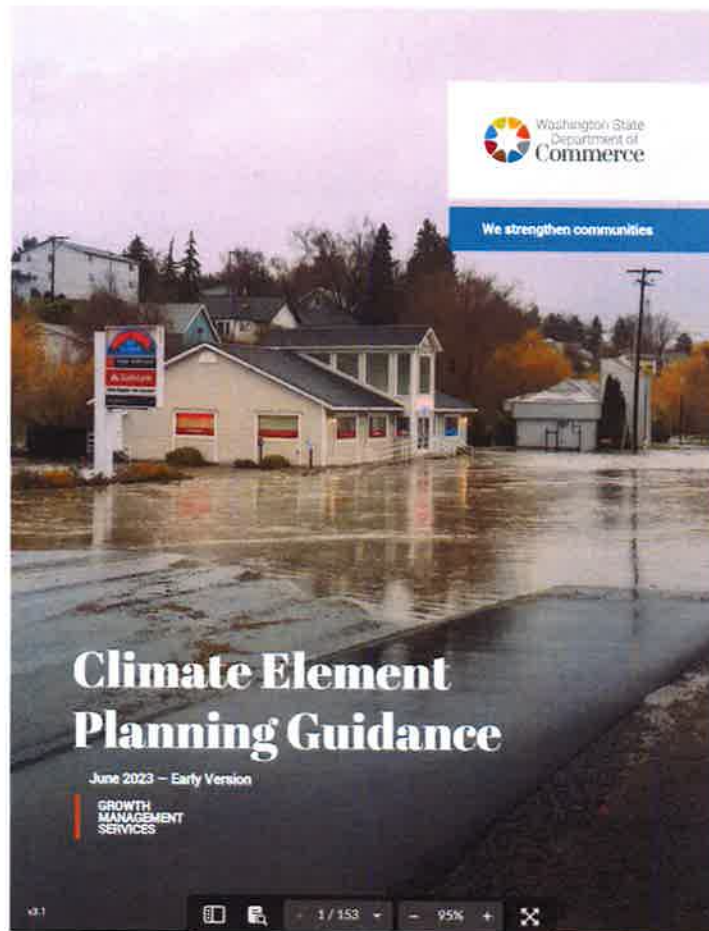


Comprehensive Plan 2024



Comprehensive Plan 2024





Section 2: Climate Policy Creation

This guidance is intended to be followed in order by section. The public participation plan should be iterative and adjusted throughout the project until final adoption, given that public participation is a required component of the periodic update.¹⁷

County and city staff should establish a work plan at the outset of the project that outlines the entire periodic update process – including any new elements, such as climate. A work plan should include approximately two years planning to create and adopt a new climate element (one year per sub-element) concurrent with your broader comprehensive plan update.

See the [Periodic Update webpage](#) for an example work plan that identifies a procedure and schedule for the public to participate in the periodic update.¹⁸ Communication to the public regarding the work plan should clearly identify the scope of the review and identify when legislative action on the review and update of the component are proposed to occur. The work plan must provide for early and continuous public participation. The best way for a county or city to fulfill this requirement is to schedule public engagement at the beginning of the update process, and iteratively review and adjust the plan throughout all of the key steps for best results.

County and city staff should also provide for early and continuous public engagement. They should work with community partner organizations to the fullest extent possible to anticipate barriers to public engagement and to make engagement more accessible. Identifying barriers to engagement – and gaps in engagement activities and outcomes – is also an iterative process. Such factors impacting meaningful notice and engagement may include the use of written and verbal materials, day and night opportunities, multiple language options (without community members having to request them), and in-person and virtual engagement.

NOTE: If the policy changes you are considering apply to use and development in shoreline areas, your jurisdiction will need to follow the process for updating a Shoreline Master Program (SMP).¹⁹ The Washington Department of Ecology has additional resources for addressing climate change in SMPs.

2.1: Form Climate Policy Advisory Team

Typically, a jurisdiction forms an internal staff team to manage the update process and will include at least one advisory committee composed of community volunteers and other stakeholders as its primary advisory committee for the comprehensive plan.

If there is capacity, consider including a climate-focused interdisciplinary team, in addition to the primary advisory committee, to focus on developing and revising the comprehensive plan's climate goals and policies. This team, hereafter referred to as the "climate policy advisory team," would coordinate with the primary planning and public-engagement efforts associated with updating housing, land use, transportation, and other comprehensive plan elements. If capacity is constrained, and only a singular advisory committee is possible, then consider recruiting individuals with expertise as described in this section to fill dual roles.

¹⁷ RCW 36.70A.035 and 130(2)(2)

¹⁸ See above

¹⁹ WAC 173-26-090

2024 Recommendation #1:

- *Form a “Comp Plan Coordinating Committee” to assist DCD in developing the Comp Plan Update, including the Climate Element.*
- *This is an “internal” committee formed to coordinate County agency activities necessary to complete the Update.*
- *The Update process requires ‘public participation’ where community stakeholders are invited to provide input.*
- *Significant workload, tight deadlines...*



2024 Recommendation #2:

- *Identify at least one “digital government” opportunity to implement in 2024 that allows the public to conduct County business online.*
- *The Climate Action Plan identified passenger vehicles as the largest source of emissions.*
- *Results in more options for citizens to access County services, thereby improving services.*
- *Results in fewer trips to the Courthouse to access County services.*



2024 Recommendation #3:

- *Commission an energy audit of County-owned facilities to identify opportunities for energy savings, thereby reducing utility costs to the County.*
- *An energy audit was commissioned in 2018 with Hunt Engineering for the Courthouse complex for lighting only.*
- *An energy audit would provide specific recommendations for how the County facilities could become more energy efficient.*
- *Pursuing energy efficiency aligns with the fiduciary responsibility of the Commissioners.*



2024 Recommendation #4:

- *Create a pilot project to purchase and put into service 2-3 hybrid vehicles as part of the Sheriff's patrol vehicle fleet.*
- *The Sheriff's Office has one of the largest vehicle fleets in the County and operates 24/7/365.*
- *Hybrid vehicles do not require charging stations (Sheriff's Office utilizes take-home vehicles).*
- *Provides a direct comparison of data between use of hybrid vehicles versus gas in areas of economy, maintenance costs, and performance in like conditions.*



2024 Recommendation #5:

- ***Task the Climate Action Committee to:***
 - ***gather input from County departments regarding the appropriate policies and locations for electric vehicle charging stations for both County-owned and privately-owned electric vehicles on County premises.***
 - ***Identify potential grant opportunities for installation of EV charging stations.***
- ***This action would contribute to addressing underlying necessary infrastructure requirements for adding electric vehicles to the County fleet in the future, as well as supporting employee utilization of lower emission vehicles.***



Discussion





9
SEP 18 2023

AGENDA ITEM SUMMARY

(Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ **Meeting Date: 9-18-23**

REGULAR AGENDA ☒ **Meeting Date: 9-26-23**

Item summary:

- | | | |
|--|--|--------------------------------------|
| ☐ Call for Hearing | ☐ Contract/Agreement/MOU - Contract # | |
| ☒ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

Executive summary:

A vacancy exists on the Olympic Area Agency on Aging Advisory Council due to a resignation.

A press release was issued during the month of July 2023 soliciting applications from interested citizens. One application was received.

The Olympic Area Agency on Aging Advisory Council supports the appointment of Ronnie Meldrum.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?)
Approve and sign a resolution to reappoint and appoint.

County Official signature & print name: Loni Gores Loni Gores, Clerk

Name of Employee/Stakeholder attending meeting: Board of Commissioners

Relevant Departments: Board of Commissioners

Date submitted: 9-13-23

* Work Session Meeting - Submit 1 single sided/not stapled copy
** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)



RESOLUTION _____, 2023

APPOINTING A MEMBER TO THE
OLYMPIC AREA AGENCY ON AGING ADVISORY COUNCIL

THE BOARD OF CLALLAM COUNTY COMMISSIONERS finds as follows:

1. A vacancy exists on the Olympic Area Agency on Aging Advisory Council due to a resignation.
2. A press release was issued during the month of July 2023 soliciting applications from interested citizens. One application was received.
3. The Olympic Area Agency on Aging Advisory Council supports the appointment of Ronnie Meldrum.

NOW, THEREFORE, BE IT RESOLVED by the Board of Clallam County Commissioners, in consideration of the above findings of fact:

1. **Ronnie Meldrum** is reappointed as a Clallam County Representative to a term expiring December 31, 2024.

PASSED AND ADOPTED this 26th day of September 2023

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair

ATTEST:

Randy Johnson

Loni Gores, CMC, Clerk of the Board

Mike French

c: Appointees
Olympic Area Agency on Aging
A22.167

SEP 18 2023



AGENDA ITEM SUMMARY (Must be submitted NLT 3PM Wednesday for next week agenda)

Department: BOCC

WORK SESSION ☒ **Meeting Date: September 18, 2023**

REGULAR AGENDA ☐ **Meeting Date:**

Required originals approved and attached? ☒
Will be provided on:

Item summary:

- | | | |
|---|---|--------------------------------------|
| ☐ Call for Hearing | ☒ Contract/Agreement/MOU - Contract # | |
| ☐ Resolution | ☐ Proclamation | ☐ Budget Item |
| ☐ Draft Ordinance | ☐ Final Ordinance | ☐ Other |

Documents exempt from public disclosure attached: ☐

BACKGROUND OF WAVE/ASTOUND CABLE FRANCHISE AGREEMENT

A Cable Franchise Agreement with Wave Division I LLC, successor in interest to Northland Cable Properties Seven Limited Partnership, and WaveDivision III, LLC, successor interest to Northland Cable Television, Inc (individually and collectively doing business as Astound Broadband power by Wave, or "Astound"), was authorized and adopted by Clallam County in 2012 for a ten (10) year term allowing the authority to install, construct, operate, and maintain a cable communications system in Clallam County. The 2012 Franchise Ordinance 883 was originally set to expire on May 18, 2022, and was subsequently extended to November 18, 2022 via Ordinance 987. As both parties continued in good faith negotiations and discussions aimed at creating and entering into a new franchise agreement, the terms and conditions of the 2012 Franchise Ordinance and Agreement continued to be observed by both parties following the end of the extended end date as provided under processes outlined under the Federal Cable Act.

As many changes have occurred in the cable services industry, the previous cable franchise agreement had become outdated in many aspects and required significant updates to better reflect industry best practices, and to reflect several industry changes affecting cable system operators and the franchise agreements under which they operate. The attached proposed 10-year agreement has been negotiated with Astound with the assistance of CBG Consultants, Inc., a specialized cable and broadband communications industry consultant, over the past 2+ years to assist the County staff in drafting and negotiating a new cable franchise agreement with Astound. This effort has involved the collaboration and input of several County departments, including the Finance Department and Prosecuting Attorney Civil Division, as well as input solicited from Public Works and IT as needed.

Historically, the County has received Franchise Fee Revenues under the cable franchise agreement, equal to 5% of Astound's gross revenues generated by the cable system it operates in unincorporated

* Work Session Meeting - Submit 1 single sided/not stapled copy Astound Cable Franchise Agenda Item Summary Sept 2023 (ML Changes)

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies) Revised: 3-04-2019

Clallam County. The total franchise fees paid to the County under the franchise agreement have ranged between \$200,000-\$250,000 annually that were paid twice a year to the County. However, in recent years, these franchise fee revenues have slowly declined to under \$200K per year which is reflective of subscriber trends affecting the cable industry traditional cable services as households increasingly are migrating toward streaming services platforms. Under the new agreement Franchise Fees will now be paid quarterly, giving the County more frequent payments of revenue and ability to see emerging trends faster than in the past.

The Cable Franchise Agreement is only applicable to Astound's cable TV line of services. Broadband services are exempt from Franchise agreements.

KEY FEATURES OF NEW ASTOUND CABLE FRANCHISE AGREEMENT

The key highlights/changes of the proposed Cable Franchise Renewal Agreement between Clallam County and Astound include the following:

- **Gross Revenues and Franchise Fees --** There is an expanded definition of Astound's Gross Revenues pertaining to Cable Service, which will enable a wider range of Cable Service-related revenues to be captured and applied to the calculation of the 5% of Gross Revenues Franchise Fee provided to the County. This definition is more consistent with the best practices regarding such in today's cable franchise agreements and should enable the County to receive the largest amount feasible for the use of its rights-of-way by Astound. This will be beneficial to the County, especially in helping counter the effects of a continued decline in Cable Service subscribership versus subscribership to video streaming services.
- **Enhanced Audit Rights--**The County's Franchise Fee audit rights are also better defined and will enable the County to review and challenge, if necessary, Astound's methodology and calculations to ensure that it always receives the amounts required under the Franchise. If an error in Astound's Franchise Fee calculation is made that results in an additional 5% or more owed to the County, as determined by a formal Franchise Fee Audit, Astound is responsible for the reimbursing the County's cost of that audit up to \$30,000.
- **Government and Educational Access Channel --** The proposed Renewal Agreement also provides for the County to implement (if it chooses) a Government Access Channel (which also can include programming by educational entities, as the County may determine). This channel will provide another outlet for coverage of County meetings and other proceedings; video programs on governmental initiatives, programs, and services; and provision of other types of information, including public health announcements, emergency messages and other critical communications.

If the County chooses to implement the Channel, the agreement allows for the implementation of a PEG Fee, which will provide 1% of Gross Revenues to help support any types of PEG channel-related capital costs incurred by the County in establishing and broadcasting the PEG channel content to Astound (including such costs as cameras, meeting room video/audio systems, remote video production equipment, editing equipment, facilities funding to build video production facilities if needed, and other program development-related capital costs).

* Work Session Meeting - Submit 1 single sided/not stapled copy
Changes)

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

- **System Build-out and Expansion Requirements** -- The proposed Renewal Franchise also provides an amount of \$1,750 per occupied dwelling unit in construction costs for requested system expansions beyond Astound's current system. Astound will apply this amount towards pockets of homes to be constructed or existing homes interested in having cable services expanded to their area, and then funding can be contributed from other sources, including homeowners themselves, to meet Astound's full construction costs of expanding its service into that area based on detailed designs that it would provide. This construction cost amount will be adjusted annually based on changes in Seattle CPI each year during the term of the agreement. This mechanism has the potential for enabling future extension of its cable services, and by extension, its broadband services to such unserved areas.

This provision can work on a "dual track", in tandem with separate efforts that the County may undertake with Astound to extend its system for broadband purposes by applying for broadband grant funds.

Between the two efforts, it is projected that Astound will be able to build new system infrastructure over the course of the renewed Franchise.

- **Consumer Protection Standards** -- A detailed set of Customer Service and Consumer Protection Standards is proposed in the Renewal Franchise Agreement that is consistent with the best practices for such Standards. The Standards place the burden of resolving complaints on Astound as the service provider, but allow the County to intervene as necessary, utilize the Standards as benchmarks for evaluating complaints and then enforcing them for the benefit of County residents as needed.
- **Books, Records and Reports** -- The Renewal Franchise provides for the ability for the County to review and obtain copies of books and records as necessary to ensure compliance with Franchise requirements. It also enables requirement of specific operational reports to obtain information to evaluate problems that arise with the system, if needed for the County to ensure Astound's compliance.
- **System Technical Requirements** -- The proposed Renewal Franchise Agreement provides for technical standards that Astound must comply with and demonstrate compliance as needed if problems arise. It also contains requirements for status monitoring, standby powering, and other critical system components to ensure that the Astound system operates in a highly reliable manner. When reliability problems may be experienced, it provides the County with the ability to review and evaluate data concerning such problems and then enforce compliance.
- **Insurance and Bond Provisions** -- The Renewal Franchise Agreement provides for updated insurance types and amounts and a larger performance bond to ensure that the County is always protected from any financial liability that could occur as a result of actions or inaction by Astound.
- **Franchise Area and Service Area** -- The existing two Astound Franchises have been combined into one Franchise Agreement for a term of ten (10) years. Astound's existing service area is shown in Exhibit A and the Franchise Area has now been defined as the entire unincorporated County. Also, as-built system maps are required at the inception of the

* Work Session Meeting - Submit 1 single sided/not stapled copy
(Changes)

Astound Cable Franchise Agenda Item Summary Sept 2023 (ML

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

renewed Franchise, and then must be updated as needed to identify the extent of Astound's infrastructure and any expansion thereof.

Budgetary impact: (Is there a monetary impact? If so, are funds for this already allocated or is a budget change necessary? If this is a contract and a budget change is necessary, the budget change form must be submitted with the item at work session and for the regular agenda) **If a budget action is required, has it been submitted and a copy attached?** ☐

None at this time. The annual Franchise Fees are already considered in the budget planning for 2023 and 2024.

Recommended action: (Does the Board need to act? If so, what is the department's recommendation?) The initial presentation of this new cable franchise agreement will be followed up with a draft ordinance and notice of hearing that is anticipated to be prepared by the Prosecutor's Civil Division office and presented to the Board on Monday, September 25, 2023 with approval to publish the notice of hearing on Tuesday, September 26, 2023. We anticipate scheduling the public hearing for the proposed draft ordinance on Tuesday, October 10, 2023.

County Official signature & print name: Mark Lane



Name of Employee/Stakeholder attending meeting: Angi Klahn, Dee Boughton, David VonMoritz (Astound), Tom Robinson (CBG)

Relevant Departments: BOCC & Prosecutor

Date submitted: September 13, 2023

* Work Session Meeting - Submit 1 single sided/not stapled copy
Changes)

Astound Cable Franchise Agenda Item Summary Sept 2023 (ML

** Regular Meeting – Submit 1 single sided/not stapled copy and originals (1 or 3 copies)

Revised: 3-04-2019

PUBLIC HEARING

Proposed Clallam County Ordinance
Cable Television Franchise Renewal Agreement
Between Clallam County, WA and Wavedivision I, LLC and Wavedivision III, LLC
(d.b.a., Astound Broadband)

NOTICE: The Clallam County Board of Commissioners will conduct a public hearing on Tuesday, enter date October 10th, 2023 at 10:30 a.m., or as soon thereafter as possible in the Commissioners' Meeting Room of the Clallam County Courthouse, 223 East 4th Street, Room 160, Port Angeles, Washington. The public hearing is to consider the ordinance listed above. All proposed ordinances are available on the County website <https://www.clallamcountywa.gov/228/Comment-on-Proposed-Ordinances-Policies>

Public comments are encouraged. Submit written comments to the address below before the hearing or present comments in person at the public hearing.

In compliance with the Americans with Disabilities Act, reasonable accommodations are available upon request. The facility is considered "barrier free" and accessible to those with physical disabilities.

PROPONENT: Clallam County Board of Commissioners
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015
Telephone: 360.417.2233

FORMAL IDENTIFICATION: Ordinance Adopting Code Chapter Title Cable Television Franchise Renewal Agreement.

SUMMARY OF PROPOSED CHANGES:

Adoption of the Clallam County Code Chapter Title Cable Television Franchise Renewal Agreement.

The Ordinance will grant a franchise for the term of ten (10) years to Wavedivision I, LLC and Wavedivision III, LLC (d.b.a. Astound Broadband) to construct, extend, connect, repair, maintain, operate and remove cable television lines and facilities along the county roads within Clallam County.

Publish: September 29th, 2023
Bill:BOCC

Loni Gores, MMC, Clerk of the Board

CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT

between

CLALLAM COUNTY, WASHINGTON

and

**WAVEDIVISION I, LLC AND WAVEDIVISION III, LLC (D.B.A.,
ASTOUND BROADBAND)**

October 10, 2023

TABLE OF CONTENTS

1. PURPOSE AND INTENT	1
2. DEFINITIONS	1
3. GRANT OF FRANCHISE	9
3.1 Grant	9
3.2 Use of Public Streets and Ways	9
3.3 Duration and Effective Date of Franchise/Franchise Review	10
3.4 Franchise Area	10
3.5 Periodic Public Review of Franchise	10
3.6 Franchise Not Exclusive	11
3.7 Franchise Non-Transferable	12
3.8 Change in Control	13
3.9 Franchise Acceptance	14
4. CONSTRUCTION AND SERVICE REQUIREMENTS	14
4.1 General	14
4.2 Right of Inspection of System Construction and Maintenance	16
4.3 Provision of Service	16
4.3.1 In General	16
4.3.2 Parameters for Normal Extension of Service	17
4.3.3 Line Extension Areas	17
4.3.4 New Subdivisions	20
4.3.5 Annexation and Transferred Franchising Jurisdiction	20
4.4 Erection of Poles	20
4.5 Repair & Restoration of Streets, and Public Ways	20
4.6 Compliance with Laws, Standards and Construction Codes	21
4.7 Reservation of Street Rights	22
4.8 Street Vacation and Abandonment	23
4.9 Movement of Facilities	23
4.10 Undergrounding	24
4.11 As Built	25
4.12 Emergency	25
4.13 Updated Right-of-Way Requirements	25
4.14 Monument Reference	25
5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS	26
5.1 Equal and Uniform Service	26
5.2 System Configuration	26
5.3 Return Capacity	27
5.4 Satellite Earth Stations	27
5.5 Interconnection	27
5.6 Emergency Alert Capability	29
5.7 Standby Power	30
5.8 Status Monitoring	30
5.9 Parental Control Lock	30

5.10	Technical Standards	30
5.11	Performance Testing	31
6.	SERVICES AND PROGRAMMING	32
6.1	Programming Categories	32
6.2	Changes in Video Programming Services	32
6.3	Interactive Residential Services	32
6.4	Leased Channel Service	33
6.5	Obscenity	33
6.6	Educational and Government Use of System	33
6.6.1	Education and Government Access Channels	33
a.	Designated EG Access Providers.	33
b.	Channel Capacity	34
c.	Access Programming Information in Programming Guides	34
6.6.2	Access Interconnections	35
6.6.3	Support for Access Costs	36
6.6.4	Access Direct Connections and Support	36
6.6.5	Cable Service to Public Facilities	37
6.6.6	Change in Technology	37
6.6.7	Technical Quality	37
7.	FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS	38
7.1	Intent	38
7.2	Areas of Regulation and Administration	38
7.3	Rate Regulation	39
7.4	Remedies for Franchise Violations	39
7.5	Public Disclosure	42
7.6	Remedies Not Exclusive	43
7.7	Consumer Protection Standards	43
7.7.1	Customer Service and Telephone Responsiveness	43
7.7.2	Service and Repair Calls	44
7.7.3	Disconnection	45
7.7.4	Credits Upon Outage	46
7.7.5	Downgrade Charges	46
7.7.6	Billing Information Required	46
7.7.7	Information to Subscribers and Grantor	46
7.7.8	Complaint Resolution	48
7.7.9	Failure to Resolve Complaints	49
8.	GENERAL FINANCIAL AND INSURANCE PROVISIONS	49
8.1	Compensation	49
8.2	Faithful Performance Bond	50
8.3	Damages and Defense	51
8.4	Liability Insurance and Indemnification	52
8.5	Construction Bond	54
9.	RIGHTS RESERVED TO GRANTOR	54
9.1	Grantor Acquisition of the Cable System	54
9.2	Condemnation and Eminent Domain	55

9.3	Right of Inspection of Records	55
9.4	Right to Perform Franchise Fee Audit	56
9.5	Inspection of Construction and Facilities	56
9.6	Intervention	57
9.7	Right to Require Removal of Property	57
10.	RIGHTS OF INDIVIDUALS PROTECTED	58
10.1	Discriminatory Practices Prohibited	58
10.2	Unauthorized Monitoring or Cable Tapping Prohibited	58
10.3	Privacy and Other Rights	59
10.4	Permission of Property Owner Required	59
10.5	Sale of Subscriber Lists and Personalized Data Prohibited	59
10.6	Landlord - Tenant	59
11.	TERMINATION AND EXPIRATION	60
11.1	Revocation	60
11.2	Receivership	62
11.3	Expiration	62
11.4	Continuity of Service Mandatory	63
12.	OPERATION AND MAINTENANCE	63
12.1	Open Books and Records	63
12.2	Communications with Regulatory Agencies	64
12.3	Reports	64
12.4	Safety	66
13.	MISCELLANEOUS PROVISIONS	66
13.1	Compliance with Laws	66
13.2	Severability	67
13.3	Captions	67
13.4	No Recourse Against the Grantor	67
13.5	Nonenforcement by Grantor	68
13.6	Force Majeure	68
13.7	Entire Agreement	68
13.8	Consent	68
13.9	Time Limit for Grantee Communications	69
13.10	Consistency of Franchise with Cable Act	69
13.11	Notice	69
13.12	Future Changes in Law	69
13.13	Public Disclosure	70
13.14	Time is of the Essence	70
13.15	Reservation of Rights and Enforcement	70
EXHIBIT A:	FRANCHISE AREA AND SERVICE AREA	72
EXHIBIT B:	ACCEPTANCE	73
EXHIBIT C:	DIRECT ACCESS CONNECTIONS & INTERCONNECTIONS	74
EXHIBIT D:	SERVICE TO PUBLIC BUILDINGS	75

1. PURPOSE AND INTENT

- 1.1 Clallam County, Washington (hereafter "County" or "Grantor") is authorized to and by this Franchise Agreement, as defined below, does grant to WaveDivision I, LLC, a Washington limited liability company, and WaveDivision III, LLC, a Washington limited liability company (individually and collectively doing business as Astound Broadband powered by Wave and hereafter Grantee) a non-exclusive ten (10) year franchise, revocable as provided herein, to construct, operate and maintain a Cable Communications System, as defined below, in the franchise areas comprised of a portion of the area within the unincorporated territory as described in Exhibit A.
- 1.2 The purpose of this Franchise Agreement is to create a binding, enforceable contract between Grantor and Grantee.

2. DEFINITIONS

For the purposes of this Franchise Agreement and all attachments included hereto, the following words, terms, phrases, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used in this franchise which are not defined hereunder but defined in the Cable Communications Policy Act of 1984, the Cable Communications Policy Act of 1992, and the Telecommunications Act of 1996, as may be amended from time to time, shall have the meaning specified in the Cable Act definition.

- a. "Access" or "Educational and Government (EG) Access" means the availability of Access Channels or Educational and Government Access (EG) Channels for use by various agencies, institutions, organizations, and groups in the community, including Grantor and its designees, on a non-discriminatory basis, of the Cable System for non-commercial purposes, including the right to acquire, create, and distribute non-commercial Programming not under the Grantee's editorial control.
- b. "Access Channel" or "Educational or Government Access (EG) Channel"
A video programming channel which Grantee makes available to the Grantor without cost for the purpose of transmitting non-commercial programming by Grantor departments and agencies, public schools, and educational institutional and other non-profit organizations, subject to and in accordance with 47 U.S.C. 531 and the terms herein.

- i. "Educational Access Channel" means any channel or portion of a channel available for educational programming by public schools or educational institutions and required by the Franchise to be dedicated by the Grantee for EG Access.
- ii. "Government Access Channel" means any channel or portion of a channel available for programming by government agencies, and required by the Franchise to be dedicated by the Grantee for EG Access.

Nothing in this Franchise shall prevent the Grantor or its designee from carrying out fundraising activities to supplement access capital or operating funds, and such fundraising activity shall not in itself constitute a commercial use of access channels, facilities, and equipment.

- c. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- d. "Availability of Service" means the ability of a Subscriber to obtain a service within seven (7) business days by requesting Cable Service and paying applicable installation and/or usage charges.
- e. "Basic Service" means that tier of Cable Service which includes but is not limited to a) the retransmission of local broadcast station signals, and b) public, educational and government access channels. Basic Service includes Cable Service over Grantee's Cable System.
- f. "Broadcast Channel" or "Local Broadcast Channel" means a television or radio signal that is transmitted over-the-air to a wide geographic audience and is received by the cable communications system and retransmitted to subscribers, regardless of the means used by Grantee to receive the signal (off-the-air, microwave link, fiber optically, satellite receiver, other means, etc.).
- g. "Cable Act" means collectively the federal Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 as may be amended from time to time.
- h. "Cable Operator" means any Person or group of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who

otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

- i. "Cable Service" means a) the one-way transmission to Subscribers of video programming or other programming service; and b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Except in the event of a change in applicable law, pursuant to which such service is explicitly deemed a Cable Service, any video programming or other programming service received by a Subscriber over Grantee's managed broadband service provided by an entity which is not the Grantee or an Affiliate and which is available to all, including non-Subscribers, solely via the public Internet will not constitute a Cable Service.
- j. "Cable Communications System" or "Cable System" or "System" shall have the meaning specified in the definition of "Cable System" in the Cable Act 47 U.S.C §522(7). In every case of its use in this Franchise, unless otherwise specified, the term shall refer to the Cable System constructed and operated by the Grantee in the County under this Franchise.
- k. "Channel" means a portion of the electromagnetic frequency spectrum which is used in a Cable System, and which is capable of delivering Cable Service.
- l. "Commercial Subscriber" means a Subscriber receiving Cable Services in a business or other commercial enterprise, where the Cable Services are to be used in conjunction with the enterprise and the rates for services are individually negotiated with the Subscriber.
- m. "Converter" or "Set Top Unit (STU)" means a consumer electronic interface device for changing the television signal, transported by the Cable System, to a suitable channel or format which the television receiver is able to tune.
- n. "County" means Clallam County, a Washington statutory County, and all of the unincorporated territory within its boundaries.
- o. "County Board of Commissioners" means the governing body of the Grantor.
- p. "FCC" means the Federal Communications Commission.
- q. "Franchise" or "Franchise Agreement" means the authorization granted by this document, or renewal thereof (including renewal of an authorization which has been granted subject to Section 626 of the Cable Act), issued by

Grantor as the franchising authority, whether such authorization is designated as a franchise or by Ordinance.

- r. "Franchise Area" means all territory within unincorporated Clallam County. Grantee's service area, upon the Effective Date (as defined in Section 3.3 below) of this Franchise, is depicted on the attached Exhibit A.
- s. "Grantee" or "Franchisee" means WaveDivision I, LLC and WaveDivision III, LLC, and the lawful successors, transferees, or assignees thereof.
- t. "Grantor" means Clallam County, a statutory County in the State of Washington.
- u. "Gross Revenue" means all revenue derived by Grantee from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenue shall be calculated in accordance with Generally Accepted Accounting Principles ("GAAP") as of the Effective Date and the following requirements. Gross revenues include, by way of illustration and not limitation:
 - Fees for Cable Services to all Subscribers, including revenues derived from the provision of all Cable Services including but not limited to:
 - Basic Service fees and fees for all service tiers above Basic Service;
 - Fees charged for digital video tiers and for optional, per-channel, such as Pay Channels or Premium Channels or per-program Cable Service such as Video-on-Demand and Pay-per-View;
 - Broadcast Channel retransmission fees;
 - Regional sports programming fees;
 - Fees for any and all music services offered as a Cable Service.
 - Installation, disconnection, reconnection, downgrade, upgrade, maintenance, repair, or similar charges associated with Subscriber Cable Service;
 - Inside wiring service plans and maintenance charges;
 - Convenience fees related to Cable Service;
 - Early termination fees on Cable Services;
 - Fees paid to Grantee for Channels designated for commercial/leased access use; which shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area;
 - Converter, remote control, and other Cable Service equipment rentals, leases, or sales;

- Payments for pre-paid Cable Services and/or equipment;
- Advertising Revenues as defined herein;
- Fees including, but not limited to: (1) late fees, Non-sufficient funds fees, convenience fees and administrative fees which are either specifically identified as related to the provision of Cable Service or, in the absence of such specific identification, shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area; and (2) Franchise Fees (defined in Section 8.1.a);
- Revenues from program guides;
- Launch fees and market co-op fees; and
- Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall either be specifically attributed to a service area or, in the absence of such specific attribution, shall be allocated on a pro rata basis using total Cable Service Subscribers within the Franchise Area.

"Gross Revenues" shall not be net of: (1) any operating expense; (2) any accrual, including without limitation, any accrual for commissions to Affiliates; or (3) any other expenditure, regardless of whether such expense, accrual, or expenditure reflects a cash payment. "Gross Revenues", however, shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliate, shall be counted only once for purposes of determining Gross Revenues. Similarly, operating expenses of the Grantee which are payable from Grantee's revenue to an Affiliate, and which may otherwise constitute revenue of the Affiliate, shall not constitute additional Gross Revenues for the purpose of this Franchise. "Gross Revenues" shall include amounts earned by Affiliates only to the extent that Grantee could, in concept, have earned such types of revenue in connection with the operation of Grantee's Cable System to provide Cable Services in the Franchise Area and recorded such types of revenue in its books and Records directly, but for the existence of Affiliates. "Gross Revenues" shall not include sales taxes imposed by law on Subscribers that the Grantee is obligated to collect. With the exception of recovered bad debt, "Gross Revenues" shall not include bad debt.

"Advertising Revenues" shall mean amounts derived from sales of advertising that are made available to Grantee's Cable System Subscribers within the Franchise Area and shall either be in the amount specifically attributed to the Franchise Area, or in the absence of such specific attribution, shall be allocated on a pro rata basis using

total Cable Service Subscribers reached by the advertising. Whenever Grantee acts as the principal in advertising arrangements involving representation firms and/or advertising Interconnects and/or other multichannel video providers, Advertising Revenues subject to Franchise Fees shall include the total amount from advertising that is sold, and not be reduced by any operating expenses (e.g., "revenue offsets" and "contra expenses" and "administrative expenses" or similar expenses), or by fees, commissions, or other amounts paid to or retained by affiliated advertising representation firms to Grantee or their successors involved with sales of advertising on the Cable System within the Franchise Area.

"Gross Revenues" shall **not** include:

- actual Cable Services bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total Grantee revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed on Subscribers by any municipality, state, or other governmental unit, provided that the Franchise Fee shall not be regarded as such an excluded tax or fee and shall be included in Gross Revenues;
- revenues associated with the provision of managed network services provided under separate business contract;
- unaffiliated third-party advertising sales agency fees or commissions which are reflected as a deduction from revenues, except when Grantee acts as a principal as specified in the paragraph immediately above; and
- revenue not derived from operation of the Cable System to provide Cable Service.

To the extent revenues are derived by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues in accordance with GAAP and in accordance with the requirements herein, using a methodology that allocates revenue based on the relative undiscounted rate card amount (including all fees) of each element of service provided in the discounted bundle.

Grantee shall not allocate revenue between Cable Services and non-Cable Services for the purpose or with the intent of evading or substantially reducing Grantee's Franchise Fee obligations to Grantor. The Grantor reserves its right to review and to challenge Grantee's calculations.

Grantee reserves the right to change the allocation methodologies set forth above to meet changes in GAAP, standards mandated by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee agrees to explain and document the source of any change it makes to allocation methodologies, including, but not limited to, those it deems required by GAAP, FASB, EITF and SEC concurrently with any Franchise-required document at the time of submittal, identifying each revised Section or line item. Grantor reserves its right to review and challenge any Grantee change in allocation methodologies.

- v. "Interactive Services" means services provided to subscribers where the Subscriber either (a) both receives information consisting of either television or other signals and transmits signals generated by the Subscriber or equipment under the Subscriber's control for the purpose of selecting what information shall be transmitted to the Subscriber or for any other purpose; or (b) transmits signals to any other location for any purpose.
- w. "Leased Channel" means any channel or portion of a channel available for programming by persons or entities other than Grantee for a fee or charge.
- x. "Monitoring" means observing a one-way communications signal, or the absence of a signal, where the observer is neither the Subscriber nor the programmer, whether the signal is observed by visual or electronic means, for any purpose whatsoever.
- y. "Pay Channel" or "Premium Channel" means a Channel which Subscribers receive Programming for a special fee or charge over and above the regular charges for Basic Service, on a per program, per Channel, or other Grantee provided subscription basis.
- z. "Person" means an individual, partnership, association, proprietorship, organization, joint stock company, trust, corporation, or governmental entity or other entity doing business in the State of Washington, or any natural person.
- aa. "Programmer" means any person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital or other storage methods or media, to Subscribers, by means of the Cable Communications System.
- bb. "Programming" means the process of causing television programs or other patterns of signals in video, voice, or data formats to be transmitted as a Cable Service on the Cable System and includes all programs or patterns of signals transmitted as a Cable Service, on the Cable System.

- cc. "Record" means written or graphic materials, however produced or reproduced, or any other tangible permanent record, including, without limitation, all letters, correspondence, memoranda, minutes, notes, summaries or accounts of telephone conversations, electronic files, opinions or reports of consultants or experts, invoices, billings, statements of accounts, studies, appraisals, analyses, contracts, agreements, charts, graphs, and photographs to the extent related to the enforcement or administration of this Franchise.
- dd. "Resident" means any natural person residing within the Franchise Area.
- ee. "Residential Subscriber" means a non-commercial Subscriber.
- ff. "School" means any public educational institution, including primary and secondary schools, community colleges, colleges, universities and extension centers, and all similarly situated private and parochial educational institutions which have received the appropriate accreditation from the State of Washington and, where required, from other authorized accrediting agencies.
- gg. "Section" means any section, subsection, or provision of this Franchise Agreement.
- hh. "Streets, Public Ways and Rights-of-Way" means the surface of and the space along, across, upon, above and below any Grantor Street, road, avenue, viaduct, bridge, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the Franchise Area, and any easements, rights of way or other similar means of access to the extent Grantor has the right to allow Grantee to use them.
- ii. "Subscriber" means any person who subscribes to Cable Service provided by the Grantee by means of, or in connection with, Grantee's Cable System whether or not a fee is paid for such service.
- jj. "Tapping" means observing a two-way communications signal exchange where the observer is neither of the communicating parties, whether the exchange is observed by visual or electronic means, for any purpose whatsoever.
- kk. "Year" means a full twelve-month calendar year, unless designated otherwise, such as a "fiscal year."

3. GRANT OF FRANCHISE

3.1 Grant

Grantor hereby grants to the Grantee a non-exclusive, revocable franchise for a term of ten (10) years from and after the Effective Date hereof, revocable as provided herein to construct, operate, extend, connect, repair, remove and maintain a Cable System within the Franchise Area. This franchise constitutes the authority, right, privilege and obligation to provide Cable Services over the Cable System as required by the provisions of this Franchise Agreement and nothing herein shall be deemed to regulate, restrict, or prohibit Grantee from providing, other lawful services.

This Franchise is subject to the laws of the United States and the State of Washington, and to the lawful general ordinances of the Grantor affecting matters of general Grantor concern and not merely existing contractual rights of Grantee, whether now existing or hereafter enacted. In particular this Franchise supersedes any of Grantor's subsequently adopted Ordinances in any matter in which the Franchise and the Ordinance are in conflict, and Grantor shall make a good faith effort to notify the Grantee of any Grantor proceedings which would substantially affect the Grantee's operations and shall upon request supply the Grantee with copies of any Grantor laws or regulations affecting Grantee's operations.

Grantee promises and guarantees a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the terms and conditions of this Agreement.

3.2 Use of Public Right-of-Way

For the purpose of constructing, extending, connecting, removing, operating, repairing, and maintaining a Cable Communications System in the Franchise Area, the Grantee may erect, install, audit, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Right-of-Way within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary, convenient and appurtenant to the operation of the Cable Communications System. Prior to construction or alteration, however, the Grantee shall in each case file plans as required with the appropriate agencies of Grantor and in accordance with any agreements with utility

providers and companies, obtain permits, pay applicable fees, and receive approval as necessary before proceeding.

3.3 Duration and Effective Date of Franchise/Franchise Review

Except as otherwise provided herein for revocation, or early termination in accordance with Section 11.1, the Term of this franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall be ten (10) years from the Effective Date of this agreement, at which time the franchise shall expire and, to the extent allowed by applicable federal law, be of no force and effect. The Effective Date of the franchise shall be the date the County Board of Commissioners Order granting the franchise takes effect, unless the Grantee fails to file the Franchise acceptance in accordance with Section 3.9 herein, in which event this Franchise shall be null and void.

During the six-month period beginning five (5) years after the Effective Date of this Franchise, the Grantor and Grantee may undertake a review of Grantee's system and performance to date, in order to determine whether the Franchise should continue in effect for the full ten (10) year Term or should terminate early. The Grantor may propose to, and subsequent thereto, terminate the Franchise early if the Grantee has been found to have committed a pattern of material violations of the Franchise, and Grantee does not provide, or refuses to make provision for, the effective resolution thereof, provided that any proposal by the Grantor to terminate the Franchise early, and termination pursuant thereto, shall be subject to the same procedural requirements as for a revocation under Section 11.1 hereof. If the Grantor does not terminate the Franchise early as provided herein, the Franchise shall continue for its full ten (10) year term.

3.4 Franchise Area and Service Area

The Franchise Area shall be the entire area of unincorporated Clallam County. Grantee's service area upon the Effective Date is that area within the Franchise Area, designated on the attached map, Exhibit A.

3.5 Periodic Public Review of Franchise

The Grantor may at approximately three (3)-year intervals during the term of the Franchise, and at such other times as the Grantor deems appropriate, conduct a public review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment, that the Franchise continues to effectively serve the public in light of new developments in cable law and regulation, cable technology, cable

company performance, local regulatory environment, community needs and interests, and other such factors. Both the Grantor and Grantee agree to make a full and good faith effort to participate in the review and both parties will mutually agree on the actions required to implement the findings. The Grantor shall establish a procedure for ensuring orderly review, full discussion of any proposed policy changes between the Grantor and Grantee, and full public hearing regarding all matters discussed during the review.

Matters appropriate for discussion at the public reviews in accordance with this Section include without limitation:

- a. Grantee's overall compliance with the Franchise;
- b. Policies and practices necessary to ensure continued support for educational and government access at substantially the same level provided for in this Franchise;
- c. System maintenance and operational requirements;
- d. The resolution of any evident patterns of customer service problems;
and
- e. System build-out.

The periodic public reviews described in this Section may be, but need not be, made coincident with public reviews involved in the consideration of Grantee requests for franchise renewal, franchise extension, or approval of transfer of system ownership.

3.6 Franchise Not Exclusive

This grant or privilege shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Grantor from granting other franchises of a like nature for other public or private purposes over, under, along, across or upon any of Grantor's Streets, Public Ways and Rights-of-Way and shall in no way prevent or prohibit Grantor from using any of said Streets, Public Ways and Rights-of-Way or affect its jurisdiction over them or any part of them, with full power to make all lawful necessary changes, relocation, repairs, maintenance, etc., as it deems fit. It is the intent of the parties that no such grant of authority by Grantor shall be made on terms and conditions more favorable or less stringent or burdensome than those contained herein, taking into account the terms and conditions of the grant of authority as a whole. In the event of Grantor's enactment, grant or other such allowance of any other cable

television franchise ordinance or other similar grant of authority concerning cable television, Grantor shall provide and Grantee may review such instrument and notify Grantor of any terms and/or conditions that are more favorable or less stringent or burdensome than those contained herein and Grantee and Grantor shall, in good faith, negotiate and enter into agreement(s) documenting such amendments to this Franchise as are necessary to achieve competitive equity between the two franchises. Grantor shall not be obligated but shall endeavor in good faith to keep Grantee informed of any proceedings concerning the grant of another cable television franchise ordinance or similar grant of authority concerning cable television.

3.7 Franchise Non-Transferable

This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the consent of the Grantor, expressed in writing. The granting of such consent in one instance shall not render unnecessary any subsequent consent in another instance.

If the Grantee wishes to transfer this Franchise, the Grantee and Grantor shall proceed pursuant to Section 617 of the Cable Act and related rulemakings of the FCC. Grantee shall give Grantor written notice of the proposed transfer and shall request consent of the transfer by the Grantor. For the purpose of determining whether it will consent to such transfer, Grantor may inquire into the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall assist Grantor in any such inquiry and shall provide all information requested in writing by the Grantor that is reasonably necessary to determine the legal, financial, and technical qualifications of the proposed transferee in order to determine whether it will consent to the proposed transfer. The Grantor may condition its consent upon such terms and conditions as it deems appropriate, related to the qualifications of the prospective transferee to perform the obligations of the Grantee under this Franchise. Consent to the transfer shall not be unreasonably delayed or withheld. Any transfer of ownership effected without the written consent of the Grantor shall render this Franchise subject to revocation. The Grantor shall have one hundred and twenty (120) days to act upon any request for approval of a transfer that contains or is accompanied by such information as is required in accordance with FCC regulations and by the Grantor. If the Grantor fails to render a final

decision on the request within said 120 days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

The Grantee, upon any transfer as heretofore described, shall within thirty (30) days thereafter file with the Grantor a copy of the deed, agreement, mortgage, lease, or other written instrument evidencing such sale, lease, mortgage, assignment, or transfer, certified and sworn to as correct by the Grantee.

Every such transfer as heretofore described, whether voluntary or involuntary, shall be deemed void and of no effect unless Grantee shall within thirty (30) days after the same shall have been made, file such certified copy as is required.

The requirements of this Section shall not be deemed to prohibit the use of the Grantee's property as collateral for security in financing the construction or acquisition of all or part of a Cable Communications System of the Grantee or any Affiliate of the Grantee. However, the Cable Communications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

The requirements of this Section shall not be deemed to prohibit sale of tangible assets of the cable system in the ordinary conduct of the Grantee's business without the consent of the Grantor. The requirements of this Section shall not be deemed to prohibit, without the consent of the Grantor, a transfer to a transferee whose primary business is Cable System operation and having a majority of its beneficial ownership held by the Grantee, a parent of the Grantee, or an Affiliate a majority of whose beneficial ownership is held by a parent of the Grantee.

3.8 Change in Control

The Grantee shall promptly notify the Grantor of any proposed change in, transfer of, or acquisition by any other party of control of the Grantee or of Grantee's interest in the Cable System. There shall be no change of control of the Cable System without prior approval of the Grantor. Such change in control shall make this Franchise subject to revocation unless and until the Grantor shall have given written consent thereto.

If the Grantee wishes to operate the Franchise under a change of control, the Grantee shall give the Grantor written notice of the proposed change and shall request approval of the change by the Grantor. The Grantor shall have one hundred and twenty (120) days to act upon the request, following the receipt of the request and of all information required in accordance

with FCC regulations, as well as all information required in writing by the Grantor prior or subsequent to the request for approval, and submitted by Grantor at least thirty (30) days prior to the end of the one hundred and twenty (120) day period. If the Grantor fails to render a final decision on the request within said one hundred and twenty (120) days, the request shall be deemed granted unless the Grantee and the Grantor agree to an extension of time.

For the purpose of determining whether it will consent to such change, transfer, or acquisition of control, Grantor may inquire into the qualifications of the prospective controlling party to perform the obligations of the Grantee under this Franchise Agreement. The Grantee shall provide reasonable assistance to Grantor in any such inquiry. Consent to the change of control shall not be unreasonably delayed or withheld.

3.9 Franchise Acceptance

The Grantee, within sixty (60) days after the tender by the Grantor to the Grantee of the Franchise Agreement adopted by the Grantor, shall file in the office of the Grantor's cable franchise manager a written acceptance executed by Grantee, substantially in the form attached hereto as Exhibit B. In the event Grantee fails to file the acceptance as required herein, then this Franchise shall be null and void.

4. CONSTRUCTION AND SERVICE REQUIREMENTS

4.1 General

As of the Effective Date of this Agreement, the Cable System utilizes a Hybrid Fiber Coaxial (HFC) system architecture. All active electronics are 750 MHz capable equipment, or equipment of higher bandwidth. Grantee agrees to maintain and improve upon this architecture in order for the System to provide the highest level of capacity and capability to its Subscribers for any service that Grantee provides.

In all its construction and service provision activities, Grantee shall meet or exceed the construction, extension and service requirements set forth in this Franchise Agreement.

4.1.1 Permits

Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Streets. Before any work

is done by the Grantee under this franchise, it shall first file with the Director of the Clallam County Department of Public Works (hereinafter the Director) an application for a permit to do such work, accompanied by design drawings showing the position, location, and type of facility sought to be constructed, extended, connected, repaired, maintained, operated or removed, showing the relative positions to existing roads and property lines. Such drawings shall give an accurate, graphic representation of the location of existing utility structures and shall contain or be accompanied by a drawing showing the location by cross section of the utility improvement to be installed by grantee. The location of these utilities and the roadway shall be drawn in such a manner that identification in the field is possible. The Director shall approve and issue the permit, approve subject to conditions, or reject the application. If the application is rejected, the Director shall provide the Grantee, in written form, with an explanation of the reasons that the application was rejected. The approval of any such permit shall be processed in a timely manner and shall not be unreasonably withheld. All construction shall be performed in compliance with this Agreement and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, grantees, permittees, and franchisees so as to reduce as far as possible the number of Street cuts.

Permits shall not be required for work performed by Grantee's personnel and contractors and equipment relating to the following, provided that no obstruction, improvement, or construction is located so as to constitute a hazard to motor or pedestrian traffic:

- a. Tree trimming and brushing, unless the vegetation in need of trimming or brushing is the subject of a "no trim" agreement between Grantor and the property owner, his or her heirs, successors or assigns, where the vegetation is located; provided, that Grantee shall be entitled to rely upon records maintained by Grantor to determine the existence and locations of any "no trim" agreements.
- b. Maintenance repairs where no damage to the road or its appurtenances will occur;
- c. Installation of customer service laterals from existing lines where no damage to the road or its appurtenances will occur;

- d. Emergency work provided that Grantee shall notify the Director of the nature and scope of said emergency work as soon thereafter as possible but in no event later than forty-eight (48) hours after commencement of said emergency work and shall provide the Director, if requested to do so, with as-built drawings which are consistent with requirements for permit drawings hereunder.

4.2 Right of Inspection of System Construction and Maintenance

Grantor shall have the right to inspect all construction or installation work performed within the Franchise Area and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise Agreement and applicable law. If a condition creating a serious, clear, and immediate danger to the health, welfare, or safety of the public is found to exist, Grantor, in addition to taking any other action permitted under applicable law, may alert Grantee, verbally or in writing, of the unsafe condition and require Grantee to make the necessary repairs and alterations to correct the unsafe condition immediately or within a reasonable time established by Grantor.

4.3 Provision of Service

4.3.1 In General

It is the Grantor's general policy that all potential Subscribers in the Grantee's Franchise Area should have equivalent Service Availability from Grantee's Cable System under non-discriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Services to any Person within its Franchise Area. Except as otherwise provided in this Section, Grantee shall provide Cable Service within 7 business days of a request by any Person within its Franchise Area that can be connected by a standard installation. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, or receipt of a written request by the Grantee, or receipt by the Grantee of a verified oral request.

Except as otherwise provided in Section 10.1(e), Grantee shall provide such service:

At non-discriminatory monthly rates for Subscribers; and

Notwithstanding the above, Grantee may establish different and nondiscriminatory rates and charges and classes of services for Commercial Subscribers.

4.3.2 Parameters for Normal Extension of Service

Provided that Grantee's cost for any such normal extension of service shall not exceed, as of the Effective Date, one thousand seven hundred fifty and no/100 Dollars (\$1,750) per occupied residential dwelling unit within the planned service extension area, the Grantee shall offer availability of Cable Service to potential subscribers in all areas of the Franchise Area. The extension cost shall be calculated based on the amount of aerial strand footage and/or underground trench footage from the nearest technically feasible point on the existing Cable Communications System plant. The amount of \$1,750 per occupied residential dwelling unit shall be escalated annually based on the increase in CPI for the Seattle, Washington Metropolitan area. Subject to the foregoing, should, through new construction, an area within the Franchise Area meet the above requirements after the Effective Date of this Franchise, Grantee shall use commercially reasonable efforts to provide Cable Service to such area within ninety (90) days of the date that Grantee is notified of a request from a potential Subscriber of an occupied residential dwelling unit and Grantee verifies that the cost requirement is satisfied.

No charge in addition to the standard installation charge shall be made by the Grantee to Subscribers for the extension of the Cable System under this subsection; nor the provision of a cable drop to the premises of any Subscriber requesting service, so long as the drop does not exceed the above noted cost ceiling, and one hundred and twenty-five (125) feet in aerial or underground length.

4.3.3 Line Extension Areas

- (a) Definitions. For purposes of this Section 4.3.3, the term "occupied residential dwelling units per mile" means the number of residential dwellings or units, including multi-dwelling units, calculated by including all new distribution plant in the Right-of-Way and new units passed by the Cable Communication System extension that are within three hundred (300) feet of the Right-of-Way. Units that are excluded because of their distance from the Right-of-Way

may elect to be connected by paying a Long Drop charge as provided for in Section 4.3.3.c.

- (b) Line Extensions. In the event that the requirements set forth in Section 4.3.2 are not satisfied, Grantee shall extend its Cable System to serve a Subscriber or Subscribers if such Subscriber or Subscribers are willing to share the cost of the extension, according to the following formula: The amount by which the actual number of occupied dwelling units on the extension falls short of the total line extension construction cost, after taking into account Grantee's contribution based on a calculation incorporating the maximum amount specified in Section 4.3.2 above is the portion of the construction costs that must be borne by the Subscriber(s), to the extent not funded by the Grantor at the Grantor's discretion.
- i. The term "construction costs" means the actual costs of the extension design, walkout, make-ready by other utilities, construction labor costs, and material costs. Construction costs do not include the cost of the drop, up to three hundred (300) feet, to the residence.
 - ii. By way of example, in the event a line extension to reach a requesting Subscriber requires an extension passing eight (8) occupied dwelling units at a cost of \$20,000, Grantee would contribute \$14,000 while the cost to the non-Grantee participants would be \$6,000; if all eight (8) occupied dwelling units contributed to the cost, they would each be required to contribute \$750. If less than all 8 occupied dwelling units elect to contribute, those parties would be required to contribute the entire \$6,000. If fewer than all 8 occupied dwelling units elect to participate, a new design may be required that could lower the over-all cost and require new cost sharing calculations.

In Diagram #1 below, various examples of the cost sharing process are shown. In example #1, the Grantee is shown to build the network extension at no cost to Subscribers. In examples #2 through #6, other contributors cover or share the additional \$6,000, as contemplated herein. These examples show how the number of Subscribers sharing the \$6,000 cost will determine the cost per Subscriber.

Additionally, the column labeled as “Non-Subscribers’ Contribution”, in Diagram #1, is based on potential contributions from sources other than Subscribers. This could include contributions by residents interested in having services delivered on Grantee’s System other than Cable Services, builders of new neighborhoods or contributions from other sources.

Example #				Non-Grantee Costs			
	Cost of Infrastructure Extension	Number of Occupied Dwelling Units Passed	Grantee’s Contribution	Cost Shared by Others	Number of Subscribers Contributing	Non-Subscribers’ Contribution	Cost per Subscriber
1	\$20,000	8	\$20,000	\$0	0	\$0	\$0
2	\$20,000	8	\$14,000	\$6,000	8	\$0	\$750
3	\$20,000	8	\$14,000	\$6,000	4	\$0	\$1,500
4	\$20,000	8	\$14,000	\$6,000	4	\$2,000	\$1,000
5	\$20,000	8	\$14,000	\$6,000	2	\$0	\$3,000
6	\$20,000	8	\$14,000	\$6,000	2	\$3,000	\$1,500

Diagram #1

- iii. If a person or persons requesting extension is required to make a contribution in aid of extension, Grantee shall provide a detailed cost quotation to such person.
- (c) Long Drop. In cases where a Cable System extension is constructed, but certain units beyond three hundred (300) feet from the Right-of-Way have been excluded from the density calculation, such units shall be considered Long Drops. If a Long Drop unit requests installation of Cable Service, Grantee may charge the actual cost of the connection, based on design, walkout, make-ready by other utilities, construction labor and material costs, for the distance from the Right-of-Way beyond three hundred (300) feet.

- (d) Service Availability. To continue the cooperative relationship between Grantee and Grantor in extending service to unserved areas of the County, Grantee agrees to provide outreach to unserved portions of the Franchise Area concerning the potential availability of services.

4.3.4 New Subdivisions

Subject to Sections 4.3.2 and 4.3.3, Grantee shall work with developers of subdivisions in the Franchise Area in order to make its Cable Services available at the time of first occupancy on a commercially feasible basis.

4.3.5 Annexation and Transferred Franchising Jurisdiction

Whenever any of the Streets and other Public Rights-of-Way fall within a city or town limits by reason of subsequent incorporation or annexation, or become annexed or otherwise fall under the jurisdiction of the State of Washington, then all the rights and privileges herein granted shall terminate in respect to said Streets or other Public Rights-of-Way so incorporated or annexed; but this franchise shall continue in force and effect in respect to all Streets and other Public Rights-of-Way not so incorporated or annexed. In the event that cable franchising jurisdiction is transferred to Grantor from another jurisdiction, then the terms of this Franchise shall apply within the area.

4.4 Erection of Poles

Grantee shall use existing poles unless such use is demonstrated not feasible. Where so required by the existing pole owner, Grantee shall first negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction, under mutually acceptable terms and conditions, and shall comply with all applicable ordinances, resolutions, rules, and regulations of the Grantor. If not successful, or in the absence of existing poles sufficient for Grantee's purposes Grantee may pursue installation of its own poles. Grantee shall not erect, for any reason, any pole on or along any street or public way in an existing aerial utility system unless approved by the Grantor.

4.5 Repair & Restoration of Streets, and Public Ways

The Grantee shall leave all roads in as good and safe condition in all respects as they were before the commencement of such work by the

Grantee, its officers, agents, contractors, or employees, or when such condition has met with the approval of the Director.

In case of any damage to said Streets and other Public Rights-of-Way or their appurtenances, including, but not limited to, turnouts, gutters, ditches, wood or concrete walks, drainpipes, hand or embankment rails, bridges, trestles, wharfs or landings or to the property of third parties, resulting from any work performed or failed to be performed by the Grantee, the Grantee agrees to immediately repair said damage at its own cost and expense to the satisfaction of the Director. Grantor may at any time, do, order and have done, any and all work considered necessary to restore to a good and safe condition any such Streets and other Public Rights-of-Way or appurtenances left by the Grantee, its officers, agents, contractors, or employees in a condition different from that which existed prior to the work; and the Grantee, on demand, shall pay to Grantor all costs of such construction or repair and of doing such work; provided, that Grantor shall have first made written demand upon the Grantee to perform the work necessary to return the Streets and other Public Rights-of-Way or appurtenances to the condition which they existed prior to the work by the Grantee, and the Grantee shall have failed, for a period of forty-eight (48) hours after receipt of such written demand, to commence the work necessary to return the Streets and other Public Rights-of-Way or appurtenances to its pre-existing condition. Provided further, that in the event it is reasonably determined by Grantor that an emergency exists, which requires immediate restoration, then the Grantor may perform such work, and the Grantee shall pay all reasonable costs thereof.

4.6 Compliance with Laws, Standards and Construction Codes

The Grantee shall construct, extend, connect, repair, maintain, operate, and remove its facilities at its own risk. The Director shall inspect said construction, extension, repair, maintenance, or removal to determine whether the construction, extension, repair, maintenance, or removal materially or adversely impacts Grantor's Street and other Public Rights-of-Way. Approval by the Director of the construction, extension, repair, maintenance, or removal shall not be construed as an approval of the nature, extent, quality, or workmanship of the Grantee's work and shall be construed to mean nothing other than that the Grantee's work does not materially adversely impact the physical characteristics of Grantor's Street and other Public Rights-of-Way. The location of all the Grantee's facilities, their depth below or height above the surface of the ground or grade of any Street and other Public Rights-of-Way, and their lateral location in relation to the Street and other Public Rights-of-Way centerline shall be in compliance with all applicable County, state and federal codes, regulations and standards. The Grantee shall at all times

ensure that its construction, extension, connection, repair, maintenance, operation and removal of its facilities does not diminish the safety of the public using, or in proximity to Grantor's Streets and other Public Rights-of-Way.

The Grantee shall also strictly adhere to all applicable building, zoning or other laws and codes currently or hereafter in force in Grantor's jurisdiction. The Grantee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference, as determined by the Grantor, with the use of said public or private property by any person. In the event of such interference, Grantor may require the rearrangement, or removal if rearrangement would not resolve such interference of Grantee's lines, of cables and appurtenances from the property in question following ninety (90) days notification to the Grantee.

4.7 Reservation of Street Rights

Nothing in this Franchise Agreement shall be construed to prevent any public work of the Grantor, including without limitation constructing sewers, grading, paving, repairing and/or altering any street, alley, or public highway, blasting, excavating, embanking, or laying down, repairing, or removing water mains or maintaining, repairing, constructing, or establishing any other public property. If any property of the Grantee shall interfere with the construction or repair of any street or public improvement, whether it be construction, repair or removal of a sewer or water main, the improvement of a street or any other public improvement, then on no less than one hundred and twenty (120) days' prior written notice from Grantor in the event of a planned project, or ten (10) days' prior written notice from Grantor in the event of unplanned work all such property including poles, wires, conduits or other appliances and facilities shall be removed, replaced or relocated in a timely manner as shall be directed by the Grantor, so that the same shall not interfere with the said public work of the Grantor, and such removal, replacement or relocation shall be at the expense of the Grantee. Grantor shall in no way be held liable for any damages to Grantee that may occur by reason of the Grantor's improvements or by the exercise of any rights so reserved in this Section or grant, except as a result of willful misconduct, negligence or fault on the part of Grantor. Said notice shall indicate the date by which the Grantee is required to raise, lower, or move its facilities which date shall be no earlier than ten days after delivery of the notice.

In the event of failure, neglect, or refusal of the Grantee, to relocate its facilities or to repair, restore, or reconstruct such street, the Grantor may

do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.8 Street Vacation and Abandonment

In the event any street, alley, public highway, or portion thereof used by the Grantee shall be vacated by the Grantor, or the use thereof discontinued by the Grantee, during the term of this franchise, the Grantee shall forthwith remove its facilities therefrom unless specifically permitted in writing to continue the same by the new controlling jurisdiction or property owner, as appropriate. At the time of removal thereof the Grantee shall restore, repair, or reconstruct the street area where such removal has occurred, and place the street area where such removal has occurred in such condition as may be reasonably required by Grantor. In the event of failure, neglect, or refusal of the Grantee, to remove its facilities or to repair, restore, or reconstruct such street damage, following five (5) business days notification to the Grantee to cure, the Grantor may do such work or cause it to be done, and the cost thereof to the Grantor shall be paid by the Grantee.

4.9 Movement of Facilities

In the event it is necessary temporarily to move or remove any of the Grantee's wires, cables, poles or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets, alleys or highways of the Grantor, Grantee, upon reasonable notice, shall move at the expense, paid in advance, of the person requesting the temporary removal such of its facilities as may be required to facilitate such movements; provided that, if the Grantor is the party requesting the removal, for movement of buildings or structures or other public purposes of the Grantor, then the removal shall be done at the expense of the Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may affect such removal or relocation, and the expense thereof shall be paid by Grantee.

If public funds, other than the funds of the Grantor, including pass through funds, are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the relocation of facilities as provided under Sections 4.7, 4.8 and 4.9, hereof, Grantee shall be afforded equal treatment subject to applicable law and regulations and Grantor shall, upon written request of the Grantee, use commercially reasonable efforts to support Grantee's application for such funds; provided, however, that (1) Grantor may decline if such application would compete with Grantor or a component unit thereof for such monies, and

(2) such efforts will be at Grantee's sole cost and expense, including Grantor's staff time.

4.10 Undergrounding

- a. Cable must be installed underground where:
 - i. all existing utilities are placed underground,
 - ii. required by statute or an ordinance, or other regulation lawfully imposed by Grantor on a non-discriminatory basis on all similar entities with facilities in the same Street and other Public Rights-of-Way.
 - iii. all aerial utility lines are moved underground (Grantee shall bear the cost of such movement of its facilities unless specific exemption is given by Grantor in any individual case or unless preemptive state or federal law or regulation provides otherwise),
 - iv. Grantee is unable to get or maintain proper clearances on poles,
 - v. underground easements are obtained from developers of new residential areas and all utilities will initially be placed underground, or
 - vi. utilities are aerial but residents prefer underground (undergrounding is to be paid by the residents, which shall be provided by the Grantee to the residents at cost); provided, however, that such undergrounding obligation shall be conditioned on Grantee's ability to timely procure all necessary permits and authorizations.
- b. Grantee shall use conduit or its functional equivalent on 100% of undergrounding, except for drops from pedestals to Subscribers' homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the industry standards for electronic performance and resistance to interference or damage from environmental factors. Grantee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

4.11 As Built

Grantee shall maintain strand map drawings or the functional equivalent of the Cable System and make them available to the Grantor for inspection upon request. Said drawings or their functional equivalent shall be updated as changes occur in the Cable System. The Grantee shall provide the Grantor upon the Effective Date, and thereafter upon request, a copy of as-builts or GIS map layers showing the location and nature of Grantee's facilities in the streets and public ways throughout the entirety of the Franchise Area.

4.12 Emergency

In the event of an emergency, or when the cable equipment creates or is contributing to an imminent danger to health, safety or property, the Grantor may remove or relocate Grantee's cable system without prior notice. Subject to the limits of the Washington Torts Claims Act and the Washington Constitution, Grantor will defend, indemnify, and hold Grantee harmless for any negligent actions or gross negligence by Grantor's employees or agents pursuant to this Section 4.12.

4.13 Updated Right-of-Way Requirements

Grantor reserves for itself the right at any time upon forty-eight (48) hours' notice to the Grantee to change, amend, modify, or amplify any of the Right-of-Way provisions or conditions herein enumerated to conform to any local, state, or federal law or regulation or recognized engineering practice relating to the public welfare, health, safety, or highway design as may hereinafter be adopted or recognized. Such changes, however, shall not apply to existing facilities in Street and other Public Rights-of-Way but rather, to changes, modifications, or new installations. However, all facilities in the Right-of-Way, must conform to codes in place when such facilities were installed or last modified.

4.14 Monument Reference

Before any work is performed under this franchise, the Grantee shall reference all subdivision plates, highways, and all other surveys that are affected by such work. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during the Grantee's operation shall be made as expeditiously as conditions permit and as directed by the Director. The cost of monuments or other markers

lost, destroyed, or disturbed and the expense of replacement of approved monuments shall be borne by the Grantee. Said reference of monuments shall be performed by a surveyor licensed by the State of Washington or such other person authorized by state law to prepare and file a survey.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 Equal and Uniform Service

In all its construction and service provision activities, Grantee shall meet or exceed the construction, technical performance, extension and service requirements set forth in this Franchise Agreement. Reasonable efforts shall be made to provide equal and uniform access and Cable Service rates to Subscribers within the Franchise Area unless otherwise permitted by State or federal law. Exceptions to this requirement may be made for any promotional offers that are not made available either on a uniform basis or throughout the entire Franchise Area such as those designed for select qualifying groups (for example, new Subscribers or senior discounts) and qualifying portions of the Franchise Area (for example, households in new subdivisions).

5.2 System Configuration

- a. Grantee has designed, constructed, and shall maintain a Cable System that has been built for digital television standards. As of the Effective Date, Grantee's Cable System utilizes a HFC 750 MHz two-way activated System for all programming services throughout all parts of the system. The Cable System shall be capable of at a minimum supporting video and audio, including HD (at least 720p) and SD video (less than 720p), throughout the term of this Agreement. The Cable System shall be two-way activated and able to reliably support two-way Interactive Services such as Video On Demand (VOD). Grantee's Cable System shall provide consistent, high-quality reception to Subscribers in the System in accordance with the FCC technical standards and other technical standards contained in this Agreement. Consistent with Section 4.1, Grantee agrees to maintain and improve upon its existing System, consistent with Grantee's other cable systems in western Washington, in order for the System to provide the highest level of capacity and capability to its Subscribers.
- b. The Cable Service provided by the Cable System shall be delivered in accordance with applicable FCC standards, as amended. The Cable System shall meet or exceed any and all applicable technical

performance standards of the FCC and shall comply with all applicable codes and versions of codes including the National Electrical Safety Code, the National Electrical Code and any other applicable federal laws and regulations and the laws, ordinances and construction standards of the State of Washington and the generally applicable laws, ordinances and construction standards of Grantor.

5.3 Return Capacity

The System shall, throughout the Franchise term, carry reverse signals in the upstream direction as required to operate Grantee-offered Interactive Services such as VOD, channel guide functionality, DVR operation, etc. As of the Effective Date, the reverse spectrum of the System has the capability of permitting return signals within the total 5-42 MHz bandwidth, from any Subscriber tap to the head end facility serving that Subscriber. Customers ordering tiers of Cable Service that require other than the minimum reverse bandwidth shall be provided with access to those upstream signals required by such service.

5.4 Satellite Earth Stations

Grantee shall provide a sufficient number of earth stations to receive signals from enough operational communications satellites, or equivalent transport such as fiber optic systems, that carry cable television services accessible to the Grantee throughout the life of the Franchise to enable Grantee to carry out its obligations under this Franchise.

5.5 Interconnection

- a. Grantee shall, upon Grantor's request and as needed to distribute EG programming, interconnect the Cable System with all other, contiguous cable systems in Clallam County, specifically including but not limited to Grantee's systems in the Cities of Sequim and Port Angeles and others that may hereafter be located there, in Forks and in unincorporated Clallam County. The Grantor shall not direct interconnection in these cases except under circumstances where it can be accomplished without undue burden or excessive cost to the Subscribers. Grantee shall not be required to interconnect with an unaffiliated cable system unless the cable operator of that system is willing to do so and pay for its own costs of constructing and maintaining the interconnect to the demarcation point, which shall be at a meet point located at or near the border of the aforementioned jurisdictions, except as may otherwise be agreed by the parties. Grantee shall use reasonable efforts to agree with the other cable operator upon mutually convenient, cost effective and technically

viable interconnections of the EG Access Channel signals. Grantee agrees to not object to or impede any connection established by a Grantor designated access provider, whether on the property of the Grantor, a designated access provider, or another cable operator, by means of which another cable operator obtains access to the EG Access Channels, and not to object or impede the transmission of such signals by any other cable operator. The Grantee shall not charge the other party a fee for EG programming in connection with transporting EG signals or programming on Grantee's Cable System to the meet point or other location agreed upon between Grantee and the other cable operator if Grantee is not required to pay a fee to obtain or transport such programming.

System interconnections shall provide the capability to transmit Access Programming, in a capacity, format and quality to ensure no degradation across the Interconnect, in each direction, together with data, telemetry, audio, and other non-video signals. The Interconnection shall be capable of receiving and delivering, among other things: selected Access Programming produced by Grantor and other, contiguous cable systems in Clallam County; and Access Programming carried on those cable systems.

- b. Grantee shall ensure that all interconnections on its own property are securely housed and maintained, and shall establish and continue in effect a routing system satisfactory to the Grantor that meets FCC technical requirements for carriage of signals for EG access signals.

With respect to installing the capacity required under this Section, the Grantor understands that interconnection may require cooperation from other cable system operators as to engineering, design, and technical operation issues. In addition, Grantee's interconnection obligation, with respect to equipment and construction, shall be limited to providing only such equipment needed, and performing such construction work required, within Grantee's Franchise Area in order to enable the required interconnections to occur. In order to actually establish the interconnections, it may be necessary for the operators of cable systems interconnecting with the Grantee's system to provide equipment needed, and perform construction work required, within their respective Franchise Areas; and the provision of such equipment and performance of such construction work shall be the obligation of Grantee only within its own Franchise Area. Therefore, Grantor shall make every reasonable effort to assist Grantee in achieving the cooperation of interconnecting cable system operators necessary to establish the interconnections, and Grantee's

interconnection obligations hereunder shall be subject to such cooperation being obtained.

All interconnections shall be accomplished in a manner that permits the transmission of signals meeting the technical standards of this Franchise on all interconnected Channels.

- c. Grantor shall be responsible for all direct costs incurred by Grantee in connection with the obligation to provide for EG Access Channel interconnection, including, but not limited to, design, permitting, construction, maintenance, and equipment and materials acquisition. After providing a detailed bill of materials and not-to-exceed cost estimate, approved by Grantor, Grantee may require pre-payment of certain of such costs, including for equipment, materials, design, and construction. Grantor's costs may be directly paid or paid out of the EG capital contribution passed through to Subscribers, to the extent lawful and in a manner provided for in federal regulations governing the same. In the event Grantee chooses to bear any or all of the cost of interconnection, it shall be in addition to any EG capital contribution made by Grantee pursuant to Section 6.6.2 hereof and shall not be deducted from the amount of such contribution.
- d. Notwithstanding the foregoing, interconnection may be waived by the Grantor if not technically feasible. Grantee may, after consultation with Grantor, terminate an interconnection for any period where an interconnecting system is delivering signals in a manner that endangers the technical operation of Grantee's Cable System.
- e. Grantor may in the future identify institutional network (I-Net) capacity or services determined through an ascertainment of community needs and interests. After identification, Grantor and Grantee would determine I-Net infrastructure and/or services and may mutually agree to enter into a separate I-Net agreement that would meet the needs determined.

5.6 Emergency Alert Capability

In accordance with the provisions of FCC Regulations Part 11, Emergency Alert System (EAS), and as such provisions may from time to time be amended, the Grantee shall maintain and operate an Emergency Alert System (EAS) for use in transmitting Emergency Act Notification (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the local primary, state primary, and/or the state Emergency Operations Center, as those

authorities are identified and defined within FCC Reg. Section 11.51 and other applicable state and local laws.

5.7 Standby Power

Grantee shall provide continuous standby power generating capacity at the Cable System control center or headend, capable of powering all headend equipment for at least twenty-four (24) hours and indefinitely with a continuous or replenished fuel supply. Grantee shall maintain standby power system rated at least at three (3) hours duration at each node. In addition, Grantee shall have in place a plan for dealing with outages of more than three (3) hours and will make same available for Grantor's review upon request.

5.8 Status Monitoring

Grantee shall employ status Monitoring of the System which will continually monitor the System for signal quality on the forward and return spectrums of the System. In addition, the Grantee shall employ status Monitoring for all power in its headend(s) and hub(s).

Status Monitoring shall be capable of notifying the Grantee, 24/7 of system problems.

5.9 Parental Control Lock

Grantee shall provide Subscribers (by sale or lease or otherwise), upon request, with a manual or electronic parental control locking device or digital code that permits inhibiting the viewing of any Channel.

5.10 Technical Standards

The Grantee shall install all aerial and underground cables and wires in a manner consistent with Grantor requirements and in compliance with all applicable laws, ordinances, and safety requirements including but not limited to the Federal Communications Commission, Federal Aviation Administration, National Electrical Code (NEC), National Electrical Safety Code (NESC), and Society of Cable Telecommunications Engineers Standards of Good Engineering Practices. The Cable System shall meet or exceed all applicable technical and performance standards and the Federal Communications Commission or its successor agency, and any and all other applicable technical and performance standards.

5.11 Performance Testing

- a. **Quadrature Amplitude Modulation, (QAM)** - As of the Effective Date of this Franchise, Grantee is providing Cable Services in a QAM format and will potentially migrate to an all IPTV format over time. The following sections (5.11.a – d) will be in place until QAM is no longer utilized on the system.
 - i. Grantee shall be responsible for ensuring that its Cable System is designed, installed, and operated in a manner that fully complies with 47 C.F.R. §76.640 and other applicable FCC standards as amended. Pursuant to this Section 5.11, Grantee shall conduct and document complete performance tests of its Cable System, to show the level of compliance with applicable FCC standards, upon request by the Grantor as needed to resolve consumer complaints or issues, or issues raised by County Commissioners or staff. The performance tests shall be directed at determining the extent to which the Cable System complies with applicable FCC technical standards regarding the transmission and reception capabilities of digital Cable Systems.
 - ii. All testing required in this Section 5.11 may be observed by representatives of the Grantor. Grantee shall provide reasonable notice to the Grantor in advance of the scheduled testing date(s), and the Grantor shall then notify Grantee before such testing is scheduled to occur if it desires to observe such test(s).
 - iii. Copies of system performance tests shall be maintained by the Grantee for a period of two (2) years and made available to the Grantor upon request within ten (10) days. In addition, the Grantee shall retain written reports of the results of any tests required to demonstrate compliance with FCC standards, and such reports shall be submitted to the Grantor upon the Grantor's request.
 - iv. If any test required hereunder indicates that any part or component of the System fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from the Grantor, shall take corrective action, retest the locations, and advise the Grantor of the action taken and results achieved.
- b. **Internet Protocol TV (IPTV) Testing.** Upon implementation of an IPTV system that serves Subscribers without the use of the QAM system in place as of the Effective Date of the Franchise, Grantee shall implement a quality assurance monitoring process which measures dropped streams, viewer counts, error rates and other parameters as

are measured on the cable modem system. Grantee shall provide Grantor with necessary facility access for review of monitoring results and picture quality, provided such access shall be limited to once per calendar year. Notwithstanding the foregoing, if Subscribers place complaints to the Grantor regarding picture quality and availability on Grantee's IPTV system, Grantor shall be granted additional ability to view the monitoring system to measure performance of these Subscribers' Cable Service.

6. SERVICES AND PROGRAMMING

6.1 Programming Categories

Grantee shall use commercially reasonable efforts to continue to provide broad categories of video programming in at least the number and of the type offered as of the Effective Date of this franchise. To the extent demonstrated by community needs, Grantor may require Grantee to add another broad category of programming not otherwise carried by Grantee, in order to meet the demonstrated need, and provided that such programming can be added on commercially reasonable rates, terms and conditions.

6.2 Changes in Video Programming Services

In the event any applicable law or regulation materially alters the terms and conditions under which Grantee carries programming within the broad programming categories referred to in Section 6.1, then the Grantee shall be obligated to carry such programming only upon reasonable terms and conditions.

Grantee shall provide written notice to Grantor and to Subscribers for any proposed deletions, additions, or rearrangements of individual programming service at least thirty (30) days in advance. Grantor reserves the right to regulate to the fullest extent permitted by law to ensure maintenance of the mix, level, and quality of service.

6.3 Interactive Cable Services

Grantee shall continue to make Interactive Cable Services available to Subscribers in the System consistent with its other similarly situated cable systems in the Pacific Northwest.

6.4 Leased Channel Service

The Grantee shall offer leased channel service to the extent required by 47 U.S.C. Section 532 (Section 612 of the Cable Act), or regulations adopted thereunder.

6.5 Obscenity

Grantee shall not transmit over the Cable System programming which is obscene or otherwise unprotected by the Constitution of the United States, or the State of Washington, provided, however, Grantee shall in no way be responsible for programming over which it has no editorial control, including public, educational, and governmental access programming.

6.6 Educational and Government Use of System

6.6.1 Education and Government Access Channels

a. Designated EG Access Providers.

- i. The Grantor may designate Educational and Government “EG” Access Channel operators and Programming providers (hereafter “Designated Access Provider”), including itself for Government Access purposes, to control and manage the use of any or all Access Facilities provided by the Grantee under this Franchise, including, without limitation, the operation of Interconnected Access Channels. To the extent of such designation by the Grantor, as between the Designated Access Provider and the Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access Facilities.
- ii. Grantee shall cooperate with EG Designated Access Providers in the use of the Cable System and Access Facilities for the provision of EG Access. Grantee shall work with EG Designated Access Providers as may be necessary to facilitate and coordinate the provision of EG Access.
- iii. Except as provided in this Franchise, the Grantor shall allocate Access Resources to Designated Access Providers only. Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.

iv. For the purpose of Section 6.6:

1. "Access Facilities" means the Channel capacity (and portions thereof), services, facilities, equipment, and/or technical components used or useable by EG Access; and
2. "Access Resources" means all operating support and other financial means by which EG Access is exercised, including, but not limited to, Access Cost support under Section 6.6.3.

v. The requirements of this Section 6.6 shall be subject to the Franchise Review provided for in Section 3.5.

b. Channel Capacity.

Downstream Channels. Upon no less than one hundred eighty (180) days' written notice by Grantor to Grantee, Grantee shall make available a minimum of one (1) Downstream Video Channel, as determined by the Grantor, for distribution of EG Access programming to all Subscribers. Grantee shall simultaneously carry such Access Channel in both a high definition (HD) format and a standard digital (SD) format, unless and until Grantee ceases to carry Channels on the System in SD, at which time the Access Channel may be provided in only an HD format, for a total of two (2) activated EG Access Channels, one (1) SD Access Channel and one (1) HD Access Channel. Grantor acknowledges that receipt of HD format Access Channel may require Subscribers to pay additional HD charges applicable to receiving other comparable HD programming services.

c. Access Programming Information in Programming Guides.

- i Grantee will provide to the EG Access Channel operator its third-party guide provider contact information so as to permit EG Access Channels and programming information to be included in any program guides, navigation systems and search functions accessible through Grantee's Set Top Units and remote controls, or their successor technologies, and allow program information to be included for EG Access Channels provided to Subscribers, including, but not limited to on-screen, and on-line program guides which include channel and program listings of any Local Broadcast

Channels. Grantee shall facilitate the connection of the EG Access Channel operators to its third-party guide provider to implement the requirements of this Section.

- ii. Inclusion of EG Access Channels on the programming menu, and subsequent provision of program information by the entity(s) responsible for providing the information, shall afford the ability to record EG programming via the Digital Video Recording (DVR) system in place and all auto-tuning abilities as provided for other Channels on the System.
- iii. The Designated Access Providers shall provide to the Grantee's third-party guide provider, the EG Access Channel programming information in an appropriate format and within the appropriate timeframe for insertion into the programming guides.
- d. No Editorial Control. The Grantor acknowledges that pursuant to Section 611 of the Cable Act that Grantee has no editorial control over the EG Access Channels except as provided in the Cable Act.

6.6.2 Access Direct Connections and Interconnections

- a. Upon no less than one hundred eighty (180) days' prior written notice to Grantee, Grantee shall commence work to install up to two direct fiber optic connections from the mutually agreed upon EG Access Channel origination points to Grantee's pertinent hub(s) or and/or headend, for delivery of the EG Access Channels described in Section 6.6.1.b. to Subscribers (the "EG Connections"). The EG Connections shall include all necessary encoding and transmission equipment to deliver the Access signals without material degradation. The County shall be responsible for all costs associated with such direct connections, including but not limited to transport, encoding and transmission equipment, materials, design, permitting, construction, implementation, testing, and maintenance thereof. Grantee shall be responsible for all equipment needed to place such EG Access Channels on the Cable System at its pertinent hub(s) and/or headend.
- b. Such costs may be paid directly by Grantor or paid out of Access Contribution. In the event Grantee chooses to bear any or all of the cost of direct connection, it shall be in addition to any Access

Contribution made by Grantee pursuant to Section 6.6.3 hereof and shall not be deducted from the amount of such contribution.

- c. The Grantee shall install and maintain all access interconnection of EG Access Channels in accordance with the requirements of Section 5.5. In addition to the interconnection requirement in Section 5.5, Grantee shall make a reasonable effort to install and maintain all access interconnections needed for future Access Channels required under this Franchise.

6.6.3 Support for Access Costs

Upon no less than one hundred eighty (180) days' prior written notice to Grantee, Grantee shall provide 1% of its Cable Services Gross Revenues, for Educational and Governmental Access costs, capital facilities and equipment (the "Access Contribution"). The Access Contribution shall then continue throughout the term of this Agreement. If the Grantee elects to include the Access Contribution on the bills of Subscribers, the Grantee shall provide notice to the Grantee's Subscribers of such inclusion at least thirty (30) days prior to including the contribution on any bills. The Grantee shall coordinate with the Grantor on the content of the notice. The Grantee shall make such payments quarterly, following the Effective Date of this agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter.

If Grantor enters into a franchise agreement or amends an existing franchise agreement with another cable operator after the Effective Date of this Franchise to provide Cable Service in all or a portion of the Grantee's Franchise Area that includes EG financial support calculated based on a percentage of Gross Revenues that is less than 1% of Cable Services Gross Revenues, or requires no such EG financial support, then Grantee shall be entitled to reduce or eliminate the Access Contribution to match that of the other cable operator or operators.

6.6.4 Access Support

- a. The Grantor recognizes that the financial support for the Access Contribution set forth in this Section 6.6 is to be used for costs consistent with Federal law and FCC Rules and Regulations. As of the Effective Date, applicable law exempts from the term

“franchise fee” capital contributions (e.g., the Access Contribution) to the extent associated with the use of PEG channel capacity. In the event of a change in applicable law, Section 13.12 shall govern.

- b. The Grantor recognizes that the Grantee has the right and ability to include Franchise Fees and certain other commitments on the bills of Subscribers.
- c. The Access Contribution may be accrued over the period of time necessary to provide funding for the purposes described herein. In the event that such funding is no longer being accrued, remaining funds shall be utilized for the purposes described herein within one year of the termination of this Franchise or any renewal thereof.

6.6.5 Cable Service to Public Facilities

The connections and service level Grantee shall provide to public facilities are identified in Exhibit D.

6.6.6 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee’s signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access Programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition or replacement of all necessary equipment at Grantee’s headend, to ensure that the quality of the EG Access Channel signals distributed on the System are not diminished or adversely affected by such change. Changes in technology shall not require Subscribers to obtain equipment not otherwise needed for receiving any other Channels on the System. Designated Access Providers shall be responsible for acquisition of necessary equipment on their side of the demarcation point at their respective facilities.

6.6.7 Technical Quality

- a. Grantee shall maintain and deliver to all Subscribers all Access Channels and Interconnections of Access Channels at the same level of technical quality and reliability provided for Local Broadcast Channels, and as required by this

Franchise and all other applicable laws, rules, and regulations for Access Channels.

- b. Grantee shall have no responsibility for the technical production quality of the Access programming provided by the Access Channel providers to the point of demarcation with the Grantee's Access signal transport equipment.
- c. The Grantee shall not cause any programming other than emergency alert signals to override Access Programming on any Access Channel, except by specific written permission from the Access Provider.

7. FRANCHISE REGULATION AND CUSTOMER SERVICE STANDARDS

7.1 Intent

It is the intent of the Grantor to administer and enforce the provisions of this Franchise. To the extent permitted by applicable law, Grantor may delegate all or a part of its administrative and regulatory authority under this franchise to an entity designated by the Grantor.

7.2 Areas of Regulation and Administration

The Grantor (or its designee) has authority for regulation in the following areas:

- a. Administering and enforcing the provisions of this Franchise Agreement, including the adoption of administrative rules and regulations to carry out this responsibility;
- b. Coordination of the operation of government and educational access channels;
- c. Interfacing the Grantee's technical, programming, and operational assistance and support to public agency users, such as County departments, schools, and health care institutions;
- d. Formulating and recommending long-range cable communications policy for the franchise area;
- e. Disbursing and utilizing franchise revenues paid to the Grantor.
- f. Regulating rates, to the extent permitted by law;

- g. Enforcing consumer protection standards, to the extent permitted by law including, but not limited to applicable FCC regulations;
- h. Planning and facilitating development of public uses of the cable system both within the County and through interconnection with adjacent systems.

7.3 Rate Regulation

- a. Rate Regulation Right Reserved. Grantor reserves the right to regulate Grantee's rates and charges for Cable Service to the full extent authorized by applicable federal, state, and local law, as these may change during the period of the franchise; and to establish rate regulation policies and guidelines for carrying out its authority.
- b. Notice of Change in Rates and Charges. Throughout the term of this Franchise, Grantee shall give all Subscribers within the Franchise Area at least thirty (30) days' notice of proposed rate changes for Cable Service. Nothing in this subsection shall be construed to prohibit the reduction or waiving of rates or charges in conjunction with promotional campaigns or for the purpose of attracting Subscribers or users.
- c. Rate Discrimination Prohibited. Grantee shall apply non-discriminatory rates and charges for Cable Service to all Subscribers purchasing similar services, regardless of race, color, creed, sex, marital or economic status, age, national origin, sexual preference, or neighborhood of residence, except as otherwise provided herein; provided that nothing in this franchise shall prevent the Grantee from establishing discounted rates and charges for low-income or elderly Subscribers, or from temporarily reducing or waiving rates and charges in connection with promotional campaigns or providing other discounts or accommodations as may be required by applicable law from time to time.
- d. The provisions of this Section 7.3 shall be subject to the provisions of 47 U.S.C. Section 543 (Section 623 of the Cable Communications Policy Act of 1984), as amended from time to time.

7.4 Remedies for Franchise Violations

- a. In addition to any other remedies as specified in this Franchise, the Grantor has the right to and may impose penalties not to exceed \$1,000, per day, per incident, not to exceed a total of \$50,000 per incident, in the event Grantee violates any time-sensitive or emergency-oriented

provision of this Franchise Agreement. In addition to any other remedies as specified in this Franchise and in the event that Grantor determines that Grantee has violated any other material provision of this Agreement, subject to Section 7.4(c) below Grantor may impose as liquidated damages, and not as a penalty, up to five hundred dollars (\$500) per incident for non-continuing violations and up to one thousand dollars \$1,000 per incident for continuing violations, not to exceed a total of fifty thousand dollars \$50,000 per year. For purposes of this Section, the term "per incident" means a single occurrence of a violation without regard to number of Subscribers.

- b. If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation.

The date of the violation will be the date of the event and not the date Grantee receives notice of the violation except in cases where Grantee did not know and could not reasonably have been expected to know that a violation occurred, in which case penalties shall accrue from the date Grantee knew or should have known of the violation. Without limiting the foregoing, Grantee is presumed to know whether it violated a customer service standard that is measured based upon aggregate performance including, but not limited to, call answer times, installation times service and repair response times.

Grantee shall have thirty (30) calendar days from the date of receipt of such notice to:

- i. Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection (e) below, or;
 - ii. Cure the violation, or;
 - iii. Notify Grantor that Grantee cannot cure the violation within the thirty (30) days and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (c) below.
- c. In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor may within thirty (30) days of Grantor's receipt of such notice, set a hearing, as

described in subsection (f) in this Section below. At the hearing, Grantor shall review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found in Grantor's sole discretion to be reasonable, the same may be approved by the Grantor, who may waive all or part of the penalties for such extended cure period in accordance with the criteria set forth in subsection (g) of this Section. Following the hearing, Grantor may also in its sole discretion, modify Grantee's proposed extended cure period.

- d. In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor pursuant to subsection (c), the Grantor may set a hearing to determine what penalties, if any, shall be applied.
- e. In the event that the Grantee contests the Grantor's assertion that a violation has occurred and requests a hearing in accordance with subsection (b)(i) above, the Grantor shall set a hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what penalties shall be applied.
- f. In the case of any hearing pursuant to this Section, all hearings shall be had in front of a quorum of the Clallam County Board of County Commissioners (BOCC). Any procedural rules, or requirements for these hearings shall be set at the sole discretion of the BOCC but shall be clearly communicated to the Grantee. Grantor shall notify Grantee of the hearing in writing and in the case of a hearing under (b)(1) above, the Grantor shall provide Grantee no less than twenty (20) days prior written notice of the hearing. At any hearing under this Section, the Grantee shall be provided an opportunity to be heard and to present evidence, and testimony in its defense. The Grantor may also hear any other Person interested in the subject and may provide additional hearing procedures as Grantor deems appropriate. It shall not be a violation of the time requirements within this Section if a quorum of the BOCC cannot be had on the date and time that a hearing is scheduled. In such an instance, the hearing will be re-scheduled to the soonest date that a quorum is possible.
- g. The penalties set forth in this Section of this Agreement may be reduced at the discretion of the Grantor, taking into consideration the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors:

- i. Whether the violation was unintentional;
 - ii. The nature of any harm which resulted;
 - iii. Whether there is a history of overall compliance, and/or;
 - iv. Whether the violation was voluntarily disclosed, admitted, or cured.
- h. If, after the hearing, Grantor determines that a violation exists, Grantor may utilize one or more of the following remedies:
- i. Order Grantee to correct or remedy the violation within a reasonable time frame as Grantor shall determine;
 - ii. Establish the amount of penalties, taking into consideration the criteria provided for in subsection (g) of this Section as appropriate in Grantor's discretion;
 - iii. Revoke this Agreement, and/or;
 - iv. Pursue any other legal or equitable remedy available under this Agreement or any applicable law.
- i. The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor and shall be in writing. Grantee may appeal the decision of Grantor to a court of competent jurisdiction as provided by Washington law.

7.5 Public Disclosure

Subject to the Washington Public Records Act, RCW 42.56, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without Grantee's prior written consent provided Grantee has clearly identified such information by watermarking or identifying such information on the face of the document with a notice stating "PROPRIETARY INFORMATION, NOT FOR DISCLOSURE" or something substantially similar at the time of submission. Certain proprietary information is exempted from public disclosure by RCW 42.56.270. The parties understand and agree that the Grantor is statutorily required to disclose non-exempt public records upon request, and compliance with Washington state public records law shall not be considered a breach of this agreement.

7.6 Remedies Not Exclusive

The Grantor has the right to apply any one or any combination of the remedies provided for in this Franchise, including without limitation all remedies provided for in this Section 7, and may without limitation pursue any rights, remedies, or actions that it may have in law or equity regardless of whether they are specifically mentioned in this Franchise.

7.7 Consumer Protection Standards

The following customer service and consumer protection standards shall apply. Nothing in this Section shall limit the rights of the Grantor to establish additional or different standards in accordance with federal law and regulations.

7.7.1 Customer Service and Telephone Responsiveness

- a. The Grantee shall maintain an office or customer service location within Clallam County that is capable of accepting payments and changing out Subscriber equipment. The office/customer service location must be adequately staffed for Subscribers to make payments and drop off equipment not less than forty-nine (49) hours per week with a minimum of nine (9) hours per day Monday through Friday, four (4) hours on Saturdays, and until at least 6:00 PM at least one night per week.
- b. As used herein, "adequately staffed" means toll-free telephone lines are open and customer service representatives are available to respond in at least the following ways: to accept payments; to exchange or accept returned converters or other company equipment; to respond to inquiries; and to schedule and conduct service or repair calls.
- c. Toll-free telephone lines, either staffed or with answering capability, providing at least emergency referral information, must be operational twenty-four (24) hours a day, including weekends and holidays.
- d. The Grantee shall maintain, on average as verifiable by statistical data:
 - i. Sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of

delay to Subscribers. Under normal operating conditions, the Subscribers will receive a busy signal less than 3% of the time.

- ii. Under normal operating conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds. Grantee may use an Automated Response Unit (“ARU”) or Voice Response Unit (“VRU”) in answering and distributing calls from Subscribers and the wait time not to exceed thirty seconds will commence once the ARU or VRU forwards the call to a queue for a live representative. Notwithstanding the foregoing, use by Grantee of fully-automated troubleshooting via telephone call shall not violate the telephone response times set forth in this Section. If a call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than 90% percent of the time under normal operating conditions, measured on a quarterly basis.

7.7.2 Service and Repair Calls

- a. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from Subscribers for repair and maintenance service must be responded to, and repairs must commence within twenty-four (24) hours or prior to the end of the next business day, whichever is earlier. Repair and maintenance for service interruptions or other repairs not requiring on-premises work must be completed within twenty-four (24) hours under normal circumstances. All other repairs should be completed within seventy-two (72) hours under normal circumstances.
- b. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, as a normal operating procedure, upon Subscriber request the Grantee shall offer either a specific appointment time or a pre-designated block of time (not to exceed four hours) for Subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, and after 5:00 p.m.

The Grantee shall not cancel an appointment with a Subscriber after the close of business on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a Subscribers and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber.

- c. With regard to the needs of working or mobility-limited Subscribers, upon Subscriber request, the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the Subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
- d. Under normal operating conditions, at least 95% of the time measured on a quarterly basis, where the service requested is installation of Cable Service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed by a Subscriber.

7.7.3 Disconnection

- a. The Grantee may disconnect a Subscriber if:
 - i. at least thirty (30) days have elapsed without payment after the due date for payment of the bill of the affected Subscriber; and
 - ii. the Grantee has provided at least ten (10) days written notice to the affected Subscriber prior to disconnection, specifying the effective date after which Cable Services are subject to disconnection.
- b. Regardless of subsection (a) hereof, the Grantee may disconnect a Subscriber for cause at any time if the Grantee in good faith determines that the Subscriber has tampered with, stolen or abused company equipment, or is or may be engaged unlawfully in theft of Cable Services, or is causing a system violation of FCC rules or regulations, or is threatening or abusive to employees or representatives of the Grantee during the course of their employment.
- c. The Grantee shall promptly disconnect any Subscriber who so requests from the Cable System. No period of notice prior to voluntary termination of Cable Service may be required of Subscribers by the Grantee. No charge may be imposed by the

Grantee for any Cable Services delivered after the date of the disconnect request. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, within thirty (30) days return to such Subscriber the amount of the deposit, if any, collected by Grantee from such Subscriber, less any disputed amounts owed to Grantee for Cable Services or charges prior to the date of disconnection.

7.7.4 Credits Upon Outage

Except for planned outages under the Grantee's control where Subscribers are provided reasonable notification in advance, upon a Subscriber's request the Grantee shall provide a pro-rated 24-hour credit to the Subscriber's account for any period of two (2) hours or more during which that Subscriber experienced the effective loss or substantial impairment of Cable Service on the System.

7.7.5 Downgrade Charges

Grantee may impose Downgrade Charges only if:

- a. the Subscriber has been notified, at the time of initiating Cable Services, of Grantee's Downgrade Charges; and
- b. the Downgrade Charge does not exceed the Grantee's costs of performing the downgrade as determined under FCC rate regulation rules, subject to applicable law.

7.7.6 Billing Information Required

The Grantee bill to Subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge there of. The Grantee shall make its best effort to inform Subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

7.7.7 Information to Subscribers and Grantor

- a. Upon the Effective Date for the Grantor and upon installing initial service to or reconnecting each Subscriber, and upon request thereafter, the Grantee shall advise the Grantor and Subscriber, in writing, whether electronic or hard copy in nature, of:

- i. the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;
 - ii. the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;
 - iii. the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;
 - iv. the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;
 - v. the company's practices and procedures for protecting against invasions of Subscriber privacy;
 - vi. service termination policy;
 - vii. billing procedures. Billing procedures shall be clearly explained in the written information and in addition, the company's phone number for information and requesting the written materials shall be placed on the part of the bill retained by Subscribers;
 - viii. the notice and referral information, as set forth in subsection (b) hereof;
 - ix. liability specifications;
 - x. converter/Subscriber terminal policy; and
 - xi. breach of agreement policy.
- b. Notice to Subscribers.
- i. The Grantee shall inform the Grantor and Subscribers within thirty (30) days, prior to any increases in rates, costs, or charges to Subscribers for Cable Service, or any channel repositioning or programming changes within the control of Grantee.
 - ii. All Grantee promotional materials, announcements, and advertising of residential Cable Services to Subscribers

and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee-prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential Subscribers in advance of taking the order.

- iii. The Grantee shall, upon request by the Grantor, but no more often than annually, send written notice approved by the Grantor to all Subscribers that any complaints or inquiries not satisfactorily handled by the Grantee may be referred to the Grantor or its designee, giving the address and phone number of the appropriate Grantor office. Such notification may be included with a billing statement.

c. **Written Complaint Acknowledgment**

Within ten (10) days following receipt of a written complaint, as defined in Section 7.7.8.b, received at the Grantee's principal business office by mail, or received by an e-mail, from a Subscriber, the Grantee shall provide an acknowledgement to the Subscriber of receipt of the complaint and of any action, the Grantee has taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than Grantor, such as the FCC.

7.7.8 Complaint Resolution

- a. The Grantor may take all necessary steps to ensure that all Subscribers to Cable Service and any other affected residents, businesses, or other organizations, have an appropriate recourse, where there is evidence that the Grantee has not settled the complaint to the reasonable satisfaction of the person initiating the complaint.
- b. For purposes of this Section, a "complaint" is a grievance related to the Cable Service of the Cable Communications System within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services,

other than grievances regarding the inclusion or exclusion of broad categories of programming, and does not include Subscriber contacts resulting in routine service calls that resolve the Subscriber's problem satisfactorily to the Subscriber or inquiries by the Subscriber.

7.7.9 Failure to Resolve Complaints

If Grantee fails to resolve a complaint within thirty (30) days following the date the complaint was made to the Grantee, and after the Grantor follows the processes set forth in Section 7.4 herein Grantor finds that Grantee has failed to satisfactorily resolve the complaint, then Grantee shall be deemed in violation of the Franchise, and the Grantor may assert any of the remedies set out in Sections 7.4, 11 and other applicable subsections.

8. GENERAL FINANCIAL AND INSURANCE PROVISIONS

8.1 Compensation

a. Franchise Fee.

As compensation for the Franchise to be granted, and in consideration of permission to use the streets and public ways of the Grantor for the construction, operation, and maintenance of a Cable Communications System within the Franchise Area and to defray the costs of Franchise regulation, the Grantee shall pay to Grantor an amount equal to five percent (5%) of Gross Revenues. In the event any law or valid rule or regulation applicable to this Franchise limits Franchise Fees below the five percent (5%) of Gross Revenues required herein, the Grantee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Grantee shall pay the higher amount up to the maximum allowable by law, not to exceed five percent (5%).

The Grantee shall at all times during the term of this Franchise maintain in its files an up-to-date list of all affiliated entities receiving Gross Revenues as such revenues are defined in this Franchise. Grantee shall provide this list to the Grantor upon request and during the course of any audit performed pursuant to Section 9.4.

In the event the obligation of Grantee to compensate Grantor through Franchise Fees is lawfully suspended or eliminated, in whole or in part, then to the extent provided for by applicable law, the Grantee shall pay to Grantor compensation equivalent to the compensation

paid to Grantor by other similarly situated users of the streets for Grantee's use of the Streets, to the extent Grantor has the legal right to require such compensation.

b. Payment of Franchise Fees.

- i. Payments due under this provision shall be computed and paid quarterly, for the preceding quarter, as of March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after the dates listed in the previous sentence. A quarterly report shall be made as hereinafter provided in Section 12.3.
- ii. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim Grantor may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and re-computation by Grantor.
- iii. In the event that a Franchise Fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the legal interest rate in the State of Washington.
- iv. Payment of the Franchise Fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by Grantor, to the extent not prohibited or limited in amount by federal law.

8.2 Faithful Performance Bond

- a. Upon the Effective Date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to Grantor with good and sufficient surety approved by Grantor, in the penal sum of one hundred thousand dollars (\$100,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. The bond shall provide that the surety agrees to protect and indemnify Grantor against any direct or indirect loss claimed by reason of failure of the Grantee to faithfully perform its responsibilities hereunder. Such bond shall be maintained by the Grantee throughout the term of this Franchise.

- b. Grantee shall pay all premiums charged for any bond required under Section 8.2(a), and shall keep the same in full force and effect at all times through the later of either:
 - i. The remaining term of this Franchise; or
 - ii. If required by Grantor, the removal of all of Grantee's system installed in Grantor's Streets and Public Ways.
- c. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first being given to Grantor. The bond shall be subject to the approval of the County Attorney as to its adequacy under the requirements of Section 8.2. During the term of the bond, Grantee shall file with Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to Grantor.
- d. In a form approved by Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give Grantor substantially the same rights and guarantees provided by a faithful performance bond.

8.3 Damages and Defense

- a. The Grantee shall defend, indemnify and hold harmless Grantor, and any and all other public agencies, and their members, officers, agents, and employees, from and against any and all claims, demands, suits, actions, damages, expense, costs, and penalties (collectively "claims"), including but not limited to attorney fees, arising as a result of any actions of the Grantee, its officers, agents, contractors or employees, by any manner whatsoever under this Franchise unless such claims are the result of Grantor's sole negligence or willful misconduct. These claims shall include, but shall not be limited to: damages arising out of copyright infringement; defamation or anti-trust actions; injury to or death of any person or any damage to any property caused by the fault of the Grantee, as defined in RCW 4.22.015, as now enacted or hereafter amended, and all other damages arising out of the Grantee's actions under the franchise or the construction, extension, connection, repair, removal, operation, maintenance or reconstruction of the Cable Communications System authorized herein, or arising out of the exercise of any right or privilege under this Franchise whether or not

any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

- b. The Director shall notify Grantee, in writing, as soon as practicable after the presentation of any claims, made or accrued against Grantor on account of any fault on the part of the Grantee. Failure by the Director to notify Grantee properly in accordance with the foregoing of any such claims against Grantor shall not release Grantee from its obligation to defend or indemnify Grantor unless Grantee can establish that it has been materially prejudiced by such failure.
- c. If the Grantee fails to defend as required in Section 8.3(a), above, then the Grantee agrees to and shall pay all expenses incurred by Grantor, and any other public agencies, and their members, officers, agents, and employees, in defending itself with regard to all claims, damages and penalties mentioned in section (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by any employees of the Grantor.

8.4 Liability Insurance and Indemnification

- a. Grantee shall maintain automobile and Workers' Compensation insurance, as well as public liability and property damage insurance, that protects the Grantee and Grantor, its officers, agents, and employees, from any and all claims for damages or personal injury including death, demands, actions and suits brought against any of them arising from operations under this Franchise or in connection therewith, as follows:
- b. The insurance shall provide coverage at all times for not less than \$2,000,000 for personal injury to each person, \$5,000,000 aggregate for each occurrence, and \$2,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit or additional excess liability policy of not less than \$5,000,000 covering all claims per occurrence, plus costs of defense. The insurance shall be equal to or better than commercial general liability insurance.

The minimum amounts of insurance set out in subsection (b) of this Section shall be increased from time to time to the extent necessary to provide coverage at least as great as the limits on Grantor's liability under the Washington Tort Claims Act.

The evidence of coverage for Worker' Compensation shall show that it includes State of Washington Statutory Limits, and Employers' Liability limits of at least \$1,000,000.

Any insurance carrier shall have an A.M. Best rating of A or better and be authorized to do business in the State of Washington.

- c. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Grantor and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
- d. The insurance shall provide that the insurance shall not be canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 without thirty (30) days written notice first being given to Grantor. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 8.4 within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise.
- e. Grantee shall file prior to the Effective Date of this Franchise and shall maintain on file with Grantor a certificate of insurance certifying the coverage required above, which certificate shall be subject to the approval of the County Attorney as to the adequacy of the certificate and of the insurance certified under the requirements of this Section 8.4. At a minimum, the certificate shall be signed by a representative with authority to bind the insurance carrier.

The certificate shall show that the general liability portion of the insurance includes:

- i. Broad form property damage;
- ii. Products and completed operations;
- iii. Explosion, collapse, and underground exposures;
- iv. Contractual liability;
- v. Owners and contractors' protective coverage; and
- vi. Cybersecurity coverage.

- f. Failure to maintain adequate insurance as required under this Section 8.4 shall be cause for termination of this Franchise by Grantor as provided in Section 11.1 herein.
- g. The Grantee shall also indemnify, defend, and hold harmless Grantor and its officers, agents, and employees for any and all claims for damages or personal injury which exceed the limits of insurance provided for in this Section.

8.5 Construction Bond

- a. During the course of this Franchise, in order for the Grantee to obtain permits to perform construction which will involve the Grantee's affecting, as the result of the process of construction, maintenance or removal of facilities, roadways or appurtenances of Grantor, and the total aggregate sum to repair such roadways or facilities from the disruptions caused to those facilities by the proposed work of the Grantee will exceed the amount of twenty-five thousand dollars (\$25,000), the Grantee shall provide a blanket construction bond in an amount of one hundred thousand dollars (\$100,000). This construction bond shall be designed to cover the costs and damages which might accrue to Grantor by reason of the Grantee's failure to properly perform the proposed work. Such a construction bond shall be conditioned in the same manner as provided for the above referenced performance bond.

9. RIGHTS RESERVED TO GRANTOR

9.1 Grantor Acquisition of the Cable System

Grantor shall have the right to purchase the Cable System, consistent with applicable law.

- a. In the event Grantor has declared a forfeiture for cause or otherwise revoked for cause this Franchise Agreement, or in the event of expiration of the initial term of this Franchise Agreement without the Franchise being renewed or extended, the Grantee shall continue its operations for a period of two hundred and seventy (270) days under the terms and conditions of this Franchise Agreement and as required by Section 11 herein, following the date of the forfeiture or revocation or expiration of the initial term, if such continuation of operations is ordered by the Grantor.

For any period of continued operation under this Section, except as provided in Section 3.7 of this Franchise, the Grantee shall not sell,

assign, transfer, or lease to any other persons, firm or corporation, any portion of the system used by it in its operations without the prior written consent of the Grantor.

The parties shall be subject to the provisions of 47 U.S.C. 547 (Section 627 of the Cable Act), as amended from time to time. It is not intended that this Agreement diminish the rights of either Grantor or Grantee under Section 627 of the Act, and any provision of the Agreement that purports to diminish such right shall be deemed superseded by the Act.

9.2 Condemnation and Eminent Domain

Consistent with applicable law, this Franchise shall be subject to Grantor's power of eminent domain and Grantor may condemn all or any portion of Grantee's Cable System, in a non-discriminatory manner based on Grantor's lawful regulatory jurisdiction.

9.3 Right of Inspection of Records

In order to assist the Grantor in keeping adequate records of the activities of the Grantee under this Franchise, the Grantee shall provide the following information as may be required by the Grantor for its review:

- a. With respect to the System and its operation authorized under this Franchise, and to the extent necessary for the enforcement of this Franchise, information pertaining to the operations of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor, including but not limited to: the maintenance, administration and operation thereof, Gross Revenue generated from the operation of the Cable System to provide Cable Service by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to Grantee.
- b. The amount collected by the Grantee from users of Cable Services of the Grantee's Cable Communications System under this Franchise and the character and extent of the services rendered therefore to them.

The information, along with any further data which may be reasonably required by the Grantor to adequately understand the information, shall be furnished by the Grantee to the Grantor upon request, and at the Grantee's own cost and expense.

9.4 Right to Perform Franchise Fee Audit

In addition to all rights granted under Section 9.3, but no more than twice during the term of the Franchise, unless an audit determines underpayment of 5% or more, the Grantor shall have the right to perform, or cause to have performed, a formal audit of the Grantee's books and records and, the books and records of any parent or affiliate company, for the purpose of determining the Gross Revenues of the Grantee generated in any manner through the operation of the Cable System to provide Cable Service under this Franchise and the accuracy of amounts paid as franchise fees to the Grantor by the Grantee, provided that any audit must be commenced not later than five (5) years after the date on which franchise fees for any period being audited were due. The cost of any such audit shall be borne by the Grantor, except that if through the audit it is established that the Grantee has made underpayment of 5% or more in franchise fees for the entire period under audit than required by this franchise, then the Grantee shall, within thirty (30) days of being requested to do so by the Grantor, reimburse the Grantor for the cost of the audit up to thirty thousand dollars (\$30,000) for the cost per audit.

If one of the first two audits discovers an underpayment of 5% or more, the Grantor may elect to perform an additional audit, above the two included above.

9.5 Inspection of Construction and Facilities

- a. Grantor may inspect any of Grantee's System facilities, on Grantee's private property during normal business hours upon at least forty-eight (48) hours' notice to determine compliance with this Franchise. In case of an emergency, Grantee will allow necessary inspections upon demand without prior notice. If an unsafe condition is found to exist by Grantor, Grantor may, in addition to taking any other action permitted under applicable law, require remediation of such condition to the extent necessary to remediate the unsafe condition under applicable law, code, or regulation.
- b. Grantor may inspect Grantee's System in the Public Right-of-Way without notice. Nothing herein shall prevent Grantor or its agents from performing inspections of the Cable System in the Rights-of-Way or on private property, with owners' permission as needed, at any time and without prior notice.
- c. Grantor may notify Grantee of issues of safety violations or other problems or issues with Grantee's infrastructure in the Public

Right-of-Way. Grantee must then make appropriate repairs and notify the Grantor of such repairs. In the event of imminent danger to the public, or where Grantee has not taken timely appropriate actions to remediate such reported issues following notice and opportunity to cure, Grantor has the right to correct, inspect, administer, and repair unsafe conditions if Grantee fails to do so, and to charge Grantee for the cost thereof.

9.6 Intervention

The Grantee shall not hinder the Grantor's lawful intervention in any suit or proceeding to which the Grantee is party which may have an effect upon the construction, upgrade, maintenance or operation of the system.

9.7 Right to Require Removal of Property

At the expiration of the term for which the Franchise is granted providing no renewal is granted, or upon its forfeiture or revocation, as provided for herein, the Grantor shall have the right to require the Grantee to remove, at Grantee's own expense, all or any part of the Cable Communications System from all streets and public ways within the franchise area. Grantee shall restore such Streets and other Public Rights-of-Way to that condition existing immediately before such facilities were removed; provided that such property shall not be removed if the Director shall reasonably determine that such removal will cause unreasonable damage to such Streets and other Public Rights-of-Way and provided further, that should the Director request that any facilities be allowed to remain in place for the use of Grantor, then such facilities shall not be removed, and title thereto shall be transferred to Grantor at fair market value. The Director may, at his discretion, permit any other facilities to be abandoned in place, provided that Grantee shall submit to the Director an instrument transferring to Grantor ownership of such facilities; except that the Grantor may nevertheless, by written notice, require the Grantee to remove portions of the system as deemed necessary by the Grantor to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes. If the Grantor requires removal of the system and Grantee fails to do so, the Grantor may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon placement in the lien books of the Grantor.

10. RIGHTS OF INDIVIDUALS PROTECTED

10.1 Discriminatory Practices Prohibited

- a. The Grantee shall not deny service, deny access, or otherwise unlawfully discriminate against Subscribers or persons on the basis of race, color, religion, national origin, sex, age, disability, income, or, except as otherwise provided herein, the area in which such person lives. The Grantee shall strictly adhere to the equal employment opportunity requirements of the federal government, as expressed in Section 76.13(a) (8) and 76.311 of Chapter 1 of Title 47 of the Code of Federal Regulations, as now or hereafter constituted. The Grantee shall comply at all times with all applicable federal, state, or local laws, rules and regulations relating to nondiscrimination.
- b. The Grantee shall use best efforts to assure maximum practical availability of Grantee services and facilities to all Subscribers, regardless of disability, including the provision of a remote-control device to those Subscribers who are mobility limited, or where a member of the Subscriber's household is mobility limited.
- c. For hearing impaired Subscribers, the Grantee shall provide information concerning the cost and availability of equipment to facilitate the reception of all basic services for the hearing impaired. In addition, the Grantee must have TDD/TTY (or equivalent) equipment at the company office, and a publicly listed telephone number for such equipment, that will allow hearing impaired Subscribers to contact the company.
- d. Upon request by a Subscriber or potential Subscriber, the Grantee shall make a reasonable effort as determined by Grantor to provide information required under Section 7.7.7, or otherwise provided in the normal course of business, in English and any other language that Grantee utilizes in the provision of Subscriber information.
- e. Nothing in this Section shall be construed to prohibit: 1) the temporary reduction or waiving of rates and charges in conjunction with promotional campaigns; or 2) Grantee from offering reasonable discounts to senior citizens or discounts to economically disadvantaged citizens.

10.2 Unauthorized Monitoring or Cable Tapping Prohibited

The Grantee shall not, nor shall Grantee allow any other person, agency, or entity to tap, or arrange for the tapping, of any cable, line, signal input

device, or Subscriber outlet or receiver for any purpose whatsoever, without the Subscriber's written consent or a valid court order or a valid request from a law enforcement agency permitting the tapping.

10.3 Privacy and Other Rights

The Grantee and the Grantor shall maintain constant vigilance with regard to possible abuses of the right of privacy of any Subscriber, Programmer, or person resulting from any device or signal associated with the Cable Communications System. Grantee shall all times comply with the provisions of 47 U.S.C. §551, and any other applicable privacy law.

10.4 Permission of Property Owner Required

No cable, line, wire, amplifier, Set Top Unit, gateway, Converter, or other piece of equipment owned by the Grantee shall be installed by the Grantee without first securing the written permission of the owner or tenant of any property involved except where there is an existing utility easement or other easement reserved by plat or other conveyance. If such permission or easement is later lawfully revoked, whether by the original or a subsequent owner or tenant or Grantor, the Grantee shall remove forthwith on request of the owner or tenant any of its equipment and promptly restore the property to its original condition. The Grantee shall perform all installations and removals in a workmanlike manner and shall be responsible for any damage to residences or other property caused by the installation.

10.5 Sale of Subscriber Lists and Personalized Data Prohibited

The Grantee shall be subject to 47 U.S.C Section 551 (Section 631 of the Cable Act), as amended from time to time, regarding limitations on the cable company's collection and use of personally identifiable information, and other issues involving the protection of Subscriber privacy.

10.6 Landlord - Tenant

Grantee shall, to the extent permitted by the owner or manager of such premises, provide to individual units of a multiple housing facility, such as a duplex, apartment or condominium unit, all services offered to other dwelling units within the franchise area, providing the owner of the facility consents in writing, if requested by Grantee, as follows:

- a. To Grantee's providing the services to units of the facility;

- b. To reasonable conditions and times for installation, maintenance, and inspection of the system on facility premises;
- c. To reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the system; and
- d. To not demand payment, directly or indirectly, from Grantee for permitting Grantee to provide service to the facility.
- e. However, Grantee shall have no obligation to provide service if the cost of installation per unit exceeds the Grantee's standard per foot rate for line extension construction multiplied by one hundred twenty-five (125) feet. To determine unit costs, the total project cost is divided by the number of units. The total project cost shall include only the costs of cable, any structural supports (*e.g.*, a utility pole) and any installation costs, including underground trenching where applicable, installed on the property including line extension and pre/post wiring of the units.

11. TERMINATION AND EXPIRATION

11.1 Revocation

In addition to any rights set out elsewhere in this document, the Grantor reserves the right to declare a forfeiture or otherwise revoke this franchise, and all rights and privileges pertaining thereto, in the event that:

- a. the Grantee is in violation of any material provision of the Franchise Agreement after application by the Grantor of a remedy lesser than franchise revocation pursuant to this Franchise Agreement, and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter of not less than thirty (30) days to correct the violation;
- b. the Grantee or the Guarantor becomes insolvent, unable, or unwilling to pay its debts, or is adjudged a bankrupt;
- c. the Grantee is found to have engaged in fraud or deceptive practices upon the Grantor, persons, or Subscribers
- d. the Grantee fails to obtain or maintain any material permit required by any federal or state regulatory body, relating to the construction, maintenance and operation of the system; provided,

however, that the Grantee shall be allowed a reasonable time to cure failure to obtain any permit; or

- e. the Grantee fails to maintain the full amount of its insurance or to post a performance bond as required under the terms of this franchise after notice and opportunity to cure.

Upon the occurrence of one of the events set out above, and after following the due process procedure set forth in Section 7.4 of the Franchise, including the public hearing described therein, the Grantor shall provide written notice to Grantee of such intent. The notice shall set forth the specific nature of the noncompliance. The Grantee shall have ninety (90) days from receipt of such notice to object in writing and to state its reason for such objection. In the event the Grantor has not received a satisfactory response from Grantee, it may then seek revocation of the Franchise at a second public hearing. The Grantor shall cause to be served upon the Grantee, at least thirty (30) business days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Grantor, to compel the testimony of other persons as permitted by law, and to question and/or cross examine witnesses. A complete verbatim record and transcript shall be made of such hearing at Grantee's request and expense.

Following the public hearing, Grantee shall be provided up to thirty (30) days to submit its proposed findings and conclusions in writing and thereafter the Grantor shall determine (i) whether an event of default has occurred (ii) whether such event of default is excusable; and (iii) whether such event of default has been cured or will be cured by the Grantee. The Grantor shall also determine whether to revoke the Franchise based on the information presented or, where applicable, grant additional time to the Grantee to affect the cure. If the Grantor determines that the Franchise shall be revoked, the Grantor shall promptly provide Grantee with a written decision setting forth in reasoning. Grantee may appeal such determination of the Grantor to an appropriate court, which shall have the power to review the decision of the Grantor in accordance with Washington law, Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Grantor.

The Grantor may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Grantor's rights under the Franchise in lieu of revocation of the Franchise.

The parties agree that the limitation of Grantor liability set forth in 47 U.S.C. § 555a is applicable to this Franchise Agreement.

11.2 Receivership

In addition to its other rights and remedies as set forth in this Franchise, Grantor shall have the right, subject to federal law, to declare a forfeiture of this Franchise one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the Grantee's business, whether in receivership, reorganization, bankruptcy or other similar action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

- a. Within one hundred and twenty (120) days after such appointment, the receiver or trustee shall have fully complied with all provisions of this Franchise and remedied any and all violations or defaults, as approved by a County Board of Commissioners resolution; and
- b. Within said one hundred and twenty (120) days, such receiver or trustee shall have executed an agreement with Grantor, duly approved by Grantor and the court having competent jurisdiction, in which such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

11.3 Expiration

Upon expiration of the Franchise, the parties shall have the obligation to abide by the renewal provisions of the Cable Communications Policy Act of 1984, as amended from time to time. It is not intended that this Section diminish the rights of either the Grantor or the Grantee under the Act, and any provisions of this Section that purports to diminish such rights shall be deemed superseded by the Act.

11.4 Continuity of Service Mandatory

It shall be the right of all Subscribers to receive all available Cable Services insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify, or sell the system, or Grantor revokes or fails to renew the franchise, the Grantee shall make its best effort to ensure that all Subscribers receive continuous uninterrupted service.

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, reviewed by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the security provided by the Grantee.

12. OPERATION AND MAINTENANCE

12.1 Open Books and Records

The Grantee shall maintain a customer service location within Clallam County, and, subject to the provisions of Section 10 of this franchise and, to such privileges as may be established under Washington Law, shall manage all of its operations in accordance with a policy of accessible open books and records to the Grantor. The Grantor shall have the right as necessary, in the Grantor's sole and reasonable discretion, for effectively administering and enforcing the Franchise, to inspect at any time during normal business hours upon five (5) business days' notice, at the closest pertinent Grantee location, all records of the Grantee, and for the specific purposes of a bona fide enforcement effort being conducted by the Grantor which relate to the operation of the Cable System to provide Cable Service in the Franchise Area. Access to the aforementioned records shall not be denied by the Grantee to representatives of the Grantor on the basis that said records contain "proprietary information", nor on the basis that they contain trade secrets unless the Grantor cannot protect the trade secrets from disclosure under Washington law. To the extent allowed under Washington law, the Grantor shall protect proprietary information including trade secrets of the Grantee from disclosure. The franchisee shall not be required to maintain any books and records for Franchise compliance purposes longer than six (6) years.

The Grantee shall also provide, in the manner set forth in this Section and as provided in Section 13.13, the following information: (a) for the specific purpose of a bona fide audit or enforcement effort being conducted by the Grantor, the true and entire cost of construction, upgrade and replacement of plant and equipment for the cable system authorized under this Franchise; the true and entire cost of the maintenance, administration and operation of the cable system, including any operations or revenue generated from the cable system by any parent company or affiliate within the Franchise Area indicated or implicated as direct or indirect revenue to the Grantee from the provision of Cable Services; and (b) the amount collected by the Grantee from Subscribers of Cable Services of the Grantee's Cable System under this Franchise and the character and extent of the Cable Service rendered therefore to them.

Upon no less than fifteen (15) business days' prior written notice from Grantor, Grantee shall provide the Grantor access to digital files related to compliance with obligations contained in the Franchise. Such access shall be carried out in a manner that does not violate requirements regarding personally identifiable Subscriber information, as referenced in Section 631 of the Cable Act, and shall exclude access to digital files containing no information related to Grantee's Franchise obligations. Digital record access shall be provided via electronic mail or Grantee shall upload the file to a secure, password-protected site that Grantor or its representatives or agents may access to view.

12.2 Communications with Regulatory Agencies

A list and copies of, or links to, all material written petitions, applications, communications, and reports submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or State regulatory commission or agency having jurisdiction in respect to any matters directly affecting cable communications operations within the Franchise Area authorized pursuant to this Franchise Agreement, shall be submitted to the Grantor promptly following written request.

12.3 Reports

a. Quarterly Reports.

Within thirty (30) calendar days after the end of each fiscal quarter of the Grantee, Grantee shall, promptly following written request of the Grantor, submit to the Grantor a report summarizing Subscriber

trouble call complaints received by or referred to Grantee within the report quarter. The reports shall contain, as a minimum, the specific nature of the complaint, remedial action taken if any, and the current status of the complaint. Grantee shall also provide information regarding any changes in services provided including, but not limited to, tier restructuring and channel adds, moves and changes. Upon written request by the Grantor, Grantee shall also provide outage reports, summary statistics on patterns of complaints or service problems, and other customer service information, provided that such information may be reasonably generated by the Grantee. Within forty five (45) days after the end of each of the Grantee's fiscal quarters, the Grantee shall submit a written report to the Grantor, verified by an officer of Grantee, or the officer's designee, which shall contain an accurate statement of all gross revenues earned and collected by the Grantee or any cable operator, related to operation of the cable system franchised hereunder, including detailed breakdowns of all gross revenues received as defined in Section 2. above, in sufficient detail to enable the Grantor to fully verify the accuracy of Franchise Fee payments.

b. Annual Report.

No later than three-and-one-half (3 ½) months following the end of the Grantee's fiscal year each year and upon written request, Grantee shall present a written report to the Grantor which shall include:

- i. Any publicly available financial reports for Grantee or its parent company.
- ii. A summary of the previous year's activities including, but not limited to system construction, activation and installation; homes passed; Subscriber totals in each category: and new services.

c. Monitoring and Compliance Reports.

Upon written request, the Grantee shall provide a written report of any technical performance tests for the residential network required by Grantor or required in, or to demonstrate compliance with, FCC Rules and Regulations as now or hereinafter constituted. In addition, the Grantee shall upon request provide reports of the test and compliance procedures established by this Franchise Agreement, no later than thirty (30) days after the completion of each series of tests.

d. Additional Reports.

The Grantee shall prepare and furnish to the Grantor, at the times and in the form prescribed, such additional reports with respect to its operations, affairs, transaction, or property, as may be reasonably necessary and appropriate to determine compliance with the Franchise.

All reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. Grantee shall not be required to develop reports involving the creation of new data but may be required to provide existing data in new or additional formats.

12.4 Safety

- a. The Grantee shall, at all times, employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to employees of the Grantor.
- b. The Grantee shall install and maintain its wires, cable, fixtures, and other equipment, including the drop to the Subscriber's premise in accordance with the applicable requirements of the National Electrical Safety Code (NESC), National Electrical Code (NEC), and Occupational Safety and Health Administration (OSHA) standards, and in such manner that they shall not interfere with the installations of any public utility.
- c. All lines, equipment and connections in, over, under, along and upon either the streets and public ways of Grantor or private property within boundaries of Grantor, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

13. MISCELLANEOUS PROVISIONS

13.1 Compliance with Laws

The Grantee shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all general ordinances, resolutions, rules and regulations of the Grantor heretofore or hereafter adopted or established during the entire term of this franchise, provided that any such ordinances, resolutions,

rules and regulations of the Grantor hereafter adopted or established shall not conflict or interfere with the existing rights of the Grantee hereunder.

13.2 Severability

Subject to the provisions of Section 13.12 below, if any section, subsection, sentence, clause, phrase article, or word of the Franchise Agreement is held to be invalid or unconstitutional by any court of competent jurisdiction or pre-empted by federal or state regulations or law, such section, subsection, sentence, clause, phrase, article or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining provisions hereof.

If any material provision of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal law, rules, regulations or decision so that the intent of these provisions is frustrated, the parties agree to immediately negotiate replacement provisions to fulfill the purpose and intent of the superseded provisions consistent with applicable law.

In the event that federal or State laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the Grantor, and any amendments to this Franchise negotiated pursuant to this Section as a result of such provision being preempted shall no longer be of any force or effect.

13.3 Captions

The captions to sections throughout this Franchise Agreement are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Franchise Agreement.

13.4 No Recourse Against the Grantor

Except as provided by applicable law, the Grantee shall have no recourse whatsoever against the Grantor or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any

provision or requirement contained herein, or in the event this Franchise Agreement or any part thereof is determined to be invalid.

13.5 Nonenforcement by Grantor

The Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise Agreement by reason of any failure of the Grantor to enforce prompt compliance.

13.6 Force Majeure

If by reason of force majeure the Grantee is unable in whole or in part to carry out its obligations hereunder, the Grantee shall not be deemed in violation or default during the continuance of such inability. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders of the government of the United States of America, or of the State of Washington, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; insurrections; riots; epidemics; landslides; earthquakes; lightning; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; restraint of government and people; civil disturbances; explosions; entire failure of utilities; documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee's facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary and similar occurrences outside the control of the Grantee. The Grantee agrees, however, to give its best efforts to remedy as soon as possible, under the circumstances, the cause or causes preventing Grantee from carrying out its responsibilities and duties under this Franchise Agreement.

13.7 Entire Agreement

This Franchise Agreement contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties.

13.8 Consent

Wherever the consent or approval of either the Grantee or the Grantor is specifically required in this agreement, such consent or approval shall not be unreasonably withheld.

13.9 Time Limit for Grantee Communications

Provided that the issuance of any such written communication shall not in and of itself constitute a waiver, act or omission of Grantee under the Franchise, Grantee shall provide any written communication required by this Franchise within ninety (90) days of being requested to do so by the Grantor, in each case in which no other specific time limit for a communication is identified in the Franchise.

13.10 Consistency of Franchise with Cable Act

The parties intend and believe that all of the provisions hereof are consistent with and permitted by the Cable Communications Policy Act of 1984, and the Cable Act of 1992, and the Telecommunications Act of 1996.

13.11 Notice

Any notice provided for under this Franchise shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such address as the receiving party specifies in writing:

If to the Grantor: Clallam County
Board of County Commissioners
223 East 4th St., Suite 4
Port Angeles, WA 98362

If to the Grantee: WaveDivision Holdings, LLC
3700 Monte Villa Pkwy
Bothell, WA 98021
Attn: Legal

With a copy to

WaveDivision Holdings, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
Attn: General Counsel

13.12 Future Changes in Law

If future changes to binding federal or State law affect any material provision of the Franchise, including but not limited to the scope of

Grantor's authority to regulate Grantee and its activities within the Franchise Area and the streets and public ways, the parties agree that they will take any action necessary, or revise this Agreement where applicable, to be consistent with the scope of such change in law. In the event the parties are unable to agree to a modification of this Franchise within either the time specified by the authority enacting the change in law, or within one hundred and twenty (120) days if not specified, either party may seek appropriate legal remedies to amend the Franchise.

13.13 Public Disclosure

Subject to the Washington Public Records Law, whenever, pursuant to this Franchise Agreement, Grantee shall make available for inspection by the Grantor or submit to the Grantor reports containing information considered proprietary by the Grantee, the Grantor shall not disclose or release such reports or information to the public without notification to the Grantor, and opportunity to pursue an injunction to block disclosure or provide its prior written consent. All such reports reviewed by Grantor shall be deemed proprietary and confidential.

13.14 Time is of the Essence

Whenever this Franchise Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Franchise Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Franchise Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise Agreement by reason of Force Majeure, Grantee's performance shall be excused during the affected time periods and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise Agreement or procure a substitute for performance which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers, employees or agents.

13.15 Reservation of Rights and Enforcement

Notwithstanding any provision to the contrary, the parties reserve any and all rights at law or in equity regarding any enforcement proceeding or other matters hereunder.

In the event that either party seeks judicial enforcement of any term of this agreement, except in the case of the formal franchise renewal

process, the substantially prevailing party in any litigation shall be reimbursed by the other party for all disbursements and costs incurred, including reasonable attorney's fees and expert witness fees.

EXHIBIT A: FRANCHISE AREA AND SERVICE AREA



Service Area - Yellow

City of Port Angeles's Franchise Service Area - Pink

City of Sequim Franchise Service Area - Peach

Clallam County - Astound

EXHIBIT B: ACCEPTANCE

ACCEPTANCE

Board of County Commissioners
223 East 4th St., Suite 4
Port Angeles, WA 98362

The undersigned, WaveDivision I, LLC and WaveDivision III, LLC (DBA, Astound) does hereby accept the Franchise granted pursuant to Ordinance No. _____, passed and approved on _____, 2023, and does hereby agree that it will comply with and abide by all of the provisions, terms and conditions of the Franchise, subject to applicable federal, state and local law.

WAVEDIVISION I, LLC AND WAVEDIVISION III, LLC (DBA, ASTOUND)

BY: _____

TITLE: _____

DATE: _____

EXHIBIT C:
DIRECT ACCESS CONNECTIONS AND INTERCONNECTIONS

[Intentionally left blank]

EXHIBIT D: SERVICE TO PUBLIC BUILDINGS

The Grantee shall continue to, or upon request the Grantee shall initially provide, without charge, a standard installation and one (1) outlet of Basic and Expanded Basic Service or its equivalent to those buildings set forth below. If not already provided, such installations shall be provided to the facilities within sixty (60) days of Grantor's request. Furthermore, Grantee shall be permitted to recover, from any School or other public building owner entitled to free service, the direct cost of installing, when requested and if Grantee agrees to do so, more than (1) one outlet or concealed inside wiring. In the alternative, Grantor may distribute the Basic and Expanded Basic Service throughout the building for Grantor's purposes at Grantor's cost including necessary equipment to maintain signal quality so long as Grantor's use does not adversely affect Grantee's signals outside of any such building, and provided that any deterioration of the signal caused by Grantor's distribution of the signal throughout the building will be the responsibility of the Grantor. The Basic and Expanded Basic Service provided shall not be used for commercial or public viewing purposes. Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System.

Grantee may charge the marginal cost of providing the service, in such manner and to the extent permitted by, applicable law, after demonstrating, to the reasonable satisfaction of the Grantor, how the marginal cost was calculated. Grantor will determine whether such marginal cost will be paid directly to the Grantee, or whether it may be deducted from each quarterly franchise fee payment.

Public Buildings

[TBD by the Astound]