



AGENDA – Monday, October 7, 2019

6:00 p.m. Workshop

7:00 p.m. City Council Meeting

Long Beach City Hall

115 Bolstad Avenue West

6:00 WORKSHOP

WS 19-25 Budget Workshop – TAB A

7:00 p.m. CALL TO ORDER; PLEDGE OF ALLEGIANCE; AND ROLL CALL

Call to order Mayor Phillips, Council Member Linhart, Council Member McGuire,
And roll call Council Member Murry, Council Member Cline & Council Member Kemmer.

OATH OF OFFICE -MIRANDA EASTHAM – TAB B

PUBLIC COMMENT

At this time, the Mayor will call for any comments from the public on any subject whether or not it is on the agenda for any item(s) the public may wish to bring forward and discuss. Preference will be given to those who must travel. **Please limit your comments to three minutes. The City Council does not take any action or make any decisions during public comment.** To request Council action during the Business portion of a Council meeting, contact the City Administrator at least one week in advance of a meeting.

CONSENT AGENDA – TAB C

All matters, which are listed within the consent section of the agenda, have been distributed to each member of the Long Beach City Council for reading and study. Items listed are considered routine by the Council and will be enacted with one motion unless a Council Member specifically requests it to be removed from the Consent Agenda to be considered separately. Staff recommends approval of the following items:

- Minutes, September 16, 2019 City Council Meeting
- Payment Approval List for Warrant Resisters 58917-58946 & 85796-85866 for \$1,210,133.08

BUSINESS

- **AB 19-73 – Ordinance 973 – Establishing Fees for Main Stage Use – TAB D**
- **AB 19-74 – Federal Lands Program Project Memorandum Agreement – TAB E**
- **AB 19-75 – Public Works Board Construction Loan Contract – TAB F**
- **AB 19-76 – V 2019-02 - Public Hearing – TAB G**
- **AB 19-77 – SWRTPO Award – TAB H**
- **AB 19-78 – 5th Street Southeast Ownership – TAB I**

DEPARTMENT HEAD ORAL REPORTS

CORRESPONDENCE AND WRITTEN REPORTS – TAB J

- **Pacific County Tourism 2018 Annual Report**
- **Lodging Tax Collections**
- **Sales Tax Collections**
- **Transportation Benefit District Collections**
- **Police Chief's Report for September**

FUTURE CITY COUNCIL MEETING SCHEDULE

The Regular City Council meetings are held the 1st and 3rd Monday of each month at 7:00 PM and may be preceded by a workshop.
October 21, 2019, November 4, 2019 & November 18, 2019

ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact the City Clerk at (360) 642-4421 or advise City Administrator at the meeting.

TAB - A



**CITY COUNCIL
WORKSHOP BILL
WS 19-25**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION		
SUBJECT: Budget Workshop Streets, Stormwater & Capital Projects Fund	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	
	Events Coordinator	
	Finance Director	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: N/A		
SUMMARY STATEMENT: Review the Streets, Stormwater and Capital Projects fund.		

Workshops are public meetings with the purpose of allowing the City Council to discuss topics. No formal decisions are made at workshops. While almost every meeting when a majority of the city council is present is considered a public meeting, that doesn't necessitate the Council allowing public comment. If the Mayor and Council request more information or clarification they may seek input from the audience.

TAB - B

Oath of Office

I, Miranda Eastham, do solemnly swear that I am a citizen of the United States of America and of the State of Washington. That I will support the Constitution and Laws of the United States, of the State of Washington, and the **CITY OF LONG BEACH**. I will to the best of my ability, skill and judgment, faithfully and impartially perform and discharge the duties as **Police Officer** in and for the **CITY OF LONG BEACH**, Pacific County, State of Washington as such duties are prescribed by law.

Dated this 7th day of October 2019

Miranda Eastham

ATTEST:

Mayor, Jerry Phillips

TAB - C

LONG BEACH CITY COUNCIL MEETING

September 16, 2019

6:00 COUNCIL WORKSHOP

C. McGuire, C. Kemmer, C. Linhart, C. Murray, and C. Kline were all present.

WS 19-24- Sandcastle RV ROW Vacation Petition

-David Glasson, City Administrator, presented the workshop bill.

The owner of Sandcastle RV Park has petitioned to vacate portions of 11th ST NE and 12th ST NE. It was suggested that Council do a site visit to look at the property and what Mr. Green hopes to vacate. A staff report, location map, utilities map and other supporting documentation is attached to the workshop bill.

- **No decisions or motions were made at this time.**

OATH OF OFFICE- MIRANDA EASTHAM

Miranda Eastham was sworn in as the new City of Long Beach Police Officer.

7:00 CALL TO ORDER; PLEDGE OF ALLEGIANCE; ROLL CALL

Mayor Phillips called the meeting to order; asked for the Pledge of Allegiance and roll call.

ROLL CALL

David Glasson, City Administrator, called roll with C. Kemmer, C. McGuire, C. Linhart, C. Kline, and C. Murry all present.

PUBLIC COMMENT

Carla Curtis read a letter and Tom Willingham made a comment.

CONSENT AGENDA

Minutes, September 3, 2019 City Council Meeting

Payment Approval List for Warrant Registers 58877-58916 & 85724-959799 for \$308,248.18

C. Linhart made the motion to approve the Consent Agenda. C. McGuire seconded the motion; 5 Ayes, motion passed.

BUSINESS

AB 19-69– SUP – 2019-07 – Change Order No. 3 Biosolids Treatment Facility

David Glasson, City Administrator, presented the Agenda Bill. Construct trench aeration channels at the biofilter and install ECS materials: \$11,504.56. Reinforce the concrete slab under the solids handling building: \$8,063.56. Roofing credit- install light transmitting panels in lieu of polycarbonate panels (\$6,884.75). Finish trench aeration channels at the biofilter: \$12,268.00 – increased contract amount \$24,951.37.

C. Linhart made the motion to authorize staff to sign the change order. C. Murry seconded the motion; 5 Ayes, motion passed.

AB 19-70– Bid Award to Demolish 1315 Pacific Ave S.

David Glasson, City Administrator, presented the Agenda Bill. The bid for demo on 1315 Pacific Ave, S. closed on Friday, September 13th at 3 pm, therefore there wasn't enough time to include that information in the packet.

C. Linhart made the motion to authorize the Mayor to enter into an agreement with Lindstrom Construction. C. Cline seconded the motion; 5 Ayes, motion passed.

AB 19-71– Contract with DNR- Naselle Youth Camp for Forest Services

David Glasson, City Administrator, presented the Agenda Bill. This contract outlines services provided through DNR and the Naselle Youth Camp. This work will include reforestation, plantation management, stream stewardship, wildlife enhancement projects and other silviculture activities. This agreement has been reviewed by the city attorney and the cost was accounted for in the 2019 budget.

C. Linhart made the motion to authorize the Mayor to enter into this agreement with DNR. C. McGuire seconded the motion; 5 Ayes, motion passed.

AB 19-72– Bid Award for Electrical Work

David Glasson, City Administrator, presented the Agenda Bill. The bid for the electrical work for north Long Beach closed on Friday, September 13th at 3 pm, therefore there wasn't enough time to include that information in the packet.

C. Linhart made the motion to authorize the Mayor to enter into an agreement with Ford Electric. C. McGuire seconded the motion; 5 Ayes, motion passed.

AB 19-73- Lewis & Clark- Reallocation of funds to the 2019 Fiber Festival

David Glasson, City Administrator, presented the Agenda Bill. The Lewis & Clark event received \$1,000 worth of funding. However, since that event was cancelled, the Tourism & Events Coordinator, Ragan Myers, requested the funds be used toward the 2019 Fiber Festival.

C. Linhart made the motion to reallocate \$500.00 of the Lewis & Clark event funds to the 2019 Fiber Festival. C. McGuire seconded the motion; 5 Ayes, motion passed.

DEPARTMENT HEAD ORAL REPORTS

CORRESPONDENCE AND WRITTEN REPORTS

- Police Chief's Report
- Parks, Streets and Stormwater Report for August
- Wastewater Report for August
- Water Report for August
- Charter Notice- Upcoming Changes

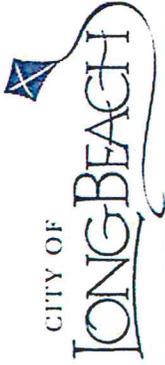
ADJOURNMENT

The Mayor adjourned the meeting at 7:26 p.m.

Mayor

ATTEST:

City Clerk



Warrant Register

Check Periods: 2019 September - Present

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF LONG BEACH, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

Council Member	Council Member	Council Member	Clerk/Treasurer	Amount
58917	Bell, Helen S		9/20/2019	\$308.07
58918	Binion, Jacob		9/20/2019	\$1,753.93
58919	Booi, Kristopher A		9/20/2019	\$1,614.30
58920	Cox, Mallory E		9/20/2019	\$479.91
58921	Eastham, Miranda L		9/20/2019	\$2,474.05
58922	Gilbertson, Bradley K		9/20/2019	\$1,535.84
58923	Goulter, John R.		9/20/2019	\$2,096.08
58924	Huff, Timothy M.		9/20/2019	\$1,636.02
58925	Jewell, Kyle E		9/20/2019	\$1,052.63
58926	Kemmer, Larry L		9/20/2019	\$1,597.44
58927	Luethe, Paul J		9/20/2019	\$2,395.98
58928	Miller, Matt W		9/20/2019	\$1,518.92
58929	Mortenson, Tim		9/20/2019	\$2,695.57
58930	Padgett, Timothy J		9/20/2019	\$1,591.66
58931	Persell, Whitney J		9/20/2019	\$1,105.94
58932	Warner, Ralph D.		9/20/2019	\$743.95
58933	Wood, Matthew T		9/20/2019	\$1,739.32
58934	Wright, Flint R		9/20/2019	\$2,813.73
58935	Zuern, Donald D.		9/20/2019	\$2,269.99
58936	AFLAC		9/20/2019	\$502.37
58937	City of Long Beach - Fica		9/20/2019	\$13,912.76
58938	City of Long Beach - FVH		9/20/2019	\$9,383.58
58939	Dept of Labor & Industries		9/20/2019	\$1,996.49
58940	Dept of Retirement Systems		9/20/2019	\$16,841.99
58941	Dept of Retirement Systems Def Comp		9/20/2019	\$3,206.50
58942	Discovery Benefits Inc.		9/20/2019	\$150.00
58943	Employment Security Dept		9/20/2019	\$231.49
58944	Massmutual Retirement Services		9/20/2019	\$675.00
58945	Teamsters Local #58		9/20/2019	\$216.50

Number	Name	Print Date	Clearing Date	Amount
58946	Association of WA Cities	9/20/2019		\$31,428.05
85796	Pacific County Auditor	9/16/2019		\$39.00
85797	Bonney, Matt	9/17/2019	9/17/2019	\$431.76
85798	Power Systems West	9/17/2019	9/24/2019	\$1,085.06
85799	Water Management Laboratories, Inc	9/19/2019		\$17.00
85800	CXT Incorporated	9/20/2019		\$187,235.35
85801	Elyson, Sue	9/20/2019	9/23/2019	\$66.45
85802	Long Beach Properties, LLC	9/20/2019		\$125.00
85803	Meling, Casey	9/20/2019		\$40.52
85804	Tangly Cottage Garden	9/20/2019		\$335.11
85805	Caldwell, Tye	9/23/2019	9/23/2019	\$102.00
85806	Goulter, John	9/23/2019		\$102.00
85807	Postmaster	9/24/2019		\$288.50
85808	Cox, Mallory	9/25/2019		\$121.75
85809	Long Beach Merchants	9/25/2019		\$13,480.00
85810	TMG Services, Inc.	9/25/2019		\$302.37
85811	Bank of The Pacific	9/30/2019		\$9,738.67
85812	CenturyLink	9/30/2019		\$1,605.13
85813	Charter Communications	9/30/2019		\$334.93
85814	Glasson, David	9/30/2019		\$52.20
85815	Goulter, Allen J III	9/30/2019		\$1,300.00
85816	KEYBANK	9/30/2019		\$10,254.25
85817	Postmaster	9/30/2019		\$506.00
85818	Prestegard, Ray	9/30/2019		\$200.00
85819	Standard Insurance Co.	9/30/2019		\$2,551.35
85820	Tapani, Inc	9/30/2019		\$757,772.48
85821	TIAA Bank	9/30/2019		\$247.97
85822	Blue Crab Graphics	10/3/2019		\$57.29
85823	Duke, Amanda	10/4/2019		\$100.00
85824	Peninsula Saddle Club	10/4/2019		\$3,000.00
85825	3 Kings	9/16/2019		\$12,235.80
85826	A-1 Redi Mix	9/16/2019		\$4,192.65
85827	Alsco-American Linen Div.	9/16/2019		\$300.55
85828	Arts Auto Parts Inc.	9/16/2019		\$6.49
85829	Astoria Janitor & Paper Supply	9/16/2019		\$855.80
85830	Backflow Management Inc	9/16/2019		\$1,506.25
85831	Beynon Sports Surfaces	9/16/2019		\$22,264.25
85832	Bonney, Matt	9/16/2019		\$48.06
85833	Cascade Columbia Distribution CO	9/16/2019		\$2,084.42
85834	Chinook Observer	9/16/2019		\$221.62
85835	City of Long Beach	9/16/2019		\$1,249.83
85836	Cox, Mallory	9/16/2019		\$151.20
85837	Day Wireless Systems	9/16/2019		\$1,266.87
85838	Dept of Ecology	9/16/2019		\$3,718.48
85839	Environmental Resource Associates	9/16/2019		\$122.00
85840	Ferguson Enterprises, Inc #3007	9/16/2019		\$2,816.49

Account	Description	Posting Date	Amount
85841	GRAINGER	9/16/2019	\$314.28
85842	K & L Supply, Inc.	9/16/2019	\$880.41
85843	L.N. Curtis & Sons	9/16/2019	\$125.63
85844	Long Beach Merchants	9/16/2019	\$3,000.00
85845	MANSFIELD ALARM CO, INC	9/16/2019	\$129.96
85846	Municipal Emergency Services Depository Account	9/16/2019	\$176.18
85847	Nichols Masonry & Concrete, Inc	9/16/2019	\$7,451.04
85848	Powell, Seiler & Co., P.S	9/16/2019	\$375.00
85849	Seaside Chamber of Commerce	9/16/2019	\$195.00
85850	Snap-ON Tools	9/16/2019	\$295.33
85851	State Auditor's Office	9/16/2019	\$1,401.40
85852	Taft Plumbing	9/16/2019	\$6,107.04
85853	Tangly Cottage Garden	9/16/2019	\$259.44
85854	Traffic Safety Supply Co.	9/16/2019	\$666.88
85855	Tse, Brian P	9/16/2019	\$150.00
85856	Unum Life Insurance	9/16/2019	\$39.90
85857	Usa Blue Book	9/16/2019	\$2,941.75
85858	Verizon Wireless	9/16/2019	\$786.98
85859	Vision Municipal Solutions	9/16/2019	\$940.90
85860	Ward, Catherine	9/16/2019	\$50.00
85861	Waterhouse Environmental Services Corp.	9/16/2019	\$6,773.33
85862	Weatherby, Cheryl	9/16/2019	\$155.00
85863	Weir, Ariel	9/16/2019	\$165.00
85864	Wilcox & Fiegel Oil Co.	9/16/2019	\$1,872.62
85865	Wirrkala Construction	9/16/2019	\$379.05
85866	World Kite Museum	9/16/2019	\$20,000.00
	Total		\$1,210,133.08
	Grand Total		\$1,210,133.08

TAB - D



**CITY COUNCIL
AGENDA BILL
AB 19-73**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION		
SUBJECT: Ordinance 973 Establishing a Fee for use of the Main Stage at Veterans Field	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk/Treasurer	
	City Engineer	
	Community Development Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
Water/Wastewater Supervisor		
COST: N/A	Other:	
<p>SUMMARY STATEMENT: There have been many requests to rent out or use the Main Stage at Veterans Field. There is no formal fee or agreement; city staff felt that it was necessary to establish both.</p>		
<p>RECOMMENDED ACTION: <i>Authorize the Mayor to sign the proposed ordinance.</i></p>		

ORDINANCE No. 973

AN ORDINANCE OF THE CITY OF LONG BEACH, WASHINGTON ESTABLISHING THE FEE STRUCTURE FOR THE PERIODIC RENTAL OF THE VETERANS FIELD MAIN STAGE FOR PUBLIC USE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, there is a need within the community for housing special events, and

WHEREAS, the City of Long Beach has the Main Stage at Veterans Field available, and

WHEREAS, the City of Long Beach desires to make the Main Stage available,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONG BEACH, WASHINGTON, as follows:

SECTION 1. RENTAL RATES:

Base fee of one-hundred dollars (\$100) per day. There is also a cleaning deposit of one hundred dollars (\$100) due when the keys are given to the renter. If the renter wishes to have alcohol at the venue, there is also a one hundred-dollar (\$100) deposit for that as well.

If the renter does not remove all garbage from the park a seventy-five (\$75) fee will be charged to cover that cost.

The Council has the right to waive or reduce the fees as voted upon and approved by a majority.

The renter must sign the rental agreement prior to the event.

SECTION 2. EFFECTIVE DATE

This Ordinance shall be in full force and effect five days from and after its passage approval and publication in the manner required by law.

PASSED this 7th day of October 2019.

AYES

NAYS

ABSENT

ABSTENTIONS

Jerry Phillips, MAYOR

Attest:

City Clerk

Main Stage at Veterans Field

Service Rental Agreement

City of Long Beach, P.O. Box 310 Long Beach, WA. 98631

360-642-4421

Veterans Field and Main Stage was established in May 2012 to gather peninsula residents and visitors to Long Beach. The park is located at 110 3rd St. SE, downtown Long Beach.

The rental fee includes the covered stage area, the picnic tables in the park, the park area, outside electrical outlets, the flag plaza and garbage cans throughout the park. The stage can accommodate approximately 100 people.

Park Hours: 7:00am – 10:00pm during April, May, June, July, August and September

7:00am – 7:00pm during October, November, December, January, February and March

Name of Group or Organization (if applicable): _____

Date of the Event: _____

Approximate Time in/Time out: _____

Name of the Event: _____

Mailing Address: _____

Phone Number: _____

Number of Guests Attending: _____

Type of Activity: _____

Rental fees are quoted per day. Rental fee and deposit must be paid in full at the time of reservation. The deposit will be refunded within 30 days following the event, on the condition the park grounds and facilities are left in satisfactory condition and keys have been returned. Upon departure, lessee is responsible for locking all buildings and returning the tables and chairs on the stage to their original locations. All picnic tables are to be returned to their original location or additional fees may be charged. All garbage must be removed from the park or a \$75.00 fee will be charged.

Park Rental Fee	\$100.00 X _____ Days	\$ _____
*Cleaning Deposit	\$100.00	\$ _____
*Alcohol Deposit	\$100.00	\$ _____
<input type="checkbox"/> Proof of Insurance		
Total Rental Fees \$	_____	Total Deposit Due \$ _____
*Deposit must be paid by cash or check only		

6. Hold Harmless. City of Long Beach shall not be responsible for any losses or damages resulting from any act or omission of a third party or of renter, and renter agrees to hold City of Long Beach harmless from any loss, claim or liability in connection with such act or omission. City of Long Beach shall not be liable for any losses or damages resulting from its own acts or omissions unless the same are proven to be caused by the negligence of city of Long Beach. In the event conditions reasonably required by City of Long Beach are not provided for the performance of this contract, then in such even City of Long Beach may cancel its obligations.

In case of any damage or loss to City of Long Beach equipment, the rent shall be liable for any and all damages that could have been prevented by the renter.

Final Agreement/Modification. This agreement constitutes the entire contract of the parties and the parties are not bound by any oral commitments or representation by any agent of either party purporting to act for or on behalf of either party which is not recited herein. Any changes to this agreement must be in writing 2 weeks prior to the event signed by the parties.

Mediation and Arbitration. Any dispute arising under this Agreement shall be submitted to mediation. The parties to the dispute shall select a mediator and shall have at least two meetings with the mediator. In the event that the dispute is not resolved by mediation or in the event that the parties cannot agree upon a mediator, the dispute shall be promptly submitted to arbitration. The parties shall each select an arbitrator and these arbitrators shall select one or two other arbitrators as necessary to create a panel with uneven numbers. All expense in connection with the arbitration shall be paid equally by the parties to the dispute.

Jurisdiction and Venue. The relationship of the parties with respect to this Agreement, along with the terms and provisions of this Agreement, shall be governed solely by the law of the State of Washington. Venue for any proceeding brought to enforce the provisions of this contract or concerning the relationship of Seller and Buyer shall be Pacific County Superior Court.

Attorney Fees/Costs. If legal suit is brought by either party upon this contract, the prevailing party shall be entitled to collect reasonable attorney fees and costs. In the event suit is brought and arises out of this contract, a copy of this contract may be introduced in evidence without production of an original or signed copy.

I have read & understand the above terms and I am in agreement effective this _____ day of _____, 20__.

X _____

City of Long Beach, WA.

X _____

Renter

I agree that Law Enforcement may conduct inspections and reviews of the premises during the rental period.

As the undersigned, I have agreed to restore the park to its original condition following the event.

Lessee Signature _____

Date Signed _____

TAB - E



**CITY COUNCIL
AGENDA BILL
AB 19-74**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION		
SUBJECT: Memorandum of Agreement with the Federal Lands Access Program – Discovery to Bay Trail	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	AS
	Events Coordinator	
	Finance Director	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: \$30,000 in-kind match (staff time)		
SUMMARY STATEMENT: This agreement outlines timelines, deliverables, responsibilities and match requirements. The alignment is still being determined; once that is established FHWA will take over as project manager.		
RECOMMENDED ACTION: Authorize the Mayor to execute the agreement between the city and FHWA.		

Federal Lands Access Program Project Memorandum of Agreement

Project / Facility Name: WA PACIFIC 2016(1) DISCOVERY BAY TRAIL

Project Route: Pedestrian/Bike Path Long Beach WA

State: WA

County: Pacific

Owner of Federal Lands to which the Project Provides Access: Federal Land Management US Fish and Wildlife Service, Willapa National Wildlife Refuge

Entity with Title or Maintenance Responsibility for Facility: Pacific County and City of Long Beach

Type of Work: The project is to include:

- Preliminary Engineering including pre-NEPA scoping studies, Public Involvement, environmental studies, surveying, site design, geotechnical, hydraulic, Right of Way, Utilities, Bridge, and Materials to support an environmental decision. The goal is to take the design as far as possible with the funds available. Since a route and NEPA documentation level has not been established the level of design is To-Be-Determined.
- Current scope does not include, final design, permitting, ROW Acquisitions, Utility agreement, contracting, nor construction management.

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this agreement sets forth the respective responsibilities as the project proceeds through the project development process and construction.

This agreement replaces Federal Lands Access Program Match Agreement dated: 5/6/2018 between FHWA-WFL, and City of Long Beach, Pacific County, and US Fish and Wildlife Service and completes the Federal Lands Access Program Match Agreement between FHWA-WFL and Port of Peninsula and Port of Ilwaco.

Parties to this Agreement: City of Long Beach WA, Pacific County WA, Port of Peninsula WA and Port of Ilwaco WA (LPA's), US Fish and Wildlife Service Willapa National Wildlife Refuge Federal Land Management Agency (FLMA), and Federal Highway Administration, the Western Federal Lands Highway Division (FHWA-WFL).

The Program Decision Committee approved this project from the 2016 WA Call for projects Call for Projects.

AGREED:

Local Public Agency- City of Long Beach	Date
Local Public Agency- Pacific County	Date
Local Public Agency Port of Peninsula	Date
Local Public Agency Port of Ilwaco	Date
Federal Land Management Agency – US Fish and Wildlife Service	Date
Western Federal Lands Highway Division, FHWA-WFL	Date

A. PURPOSE OF THIS AGREEMENT:

This agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development only of the subject project. The purpose of the agreement is to identify and assign responsibilities for Project Development as appropriate for this project, and to ensure continued maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the NEPA process.) Any decision to proceed with the design of the project will depend on the availability of appropriations at the time of obligation and other factors such as issues raised during the NEPA process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program (FLAP) funds are used for the development of this project, the LPA and/or FLMA agrees to provide a matching share equal to 20% of the total cost of the project, as detailed more fully in Section J below. When agency(cies) other than FHWA-WFL will be expending FLAP funds, the parties agree to execute a separate obligating document. No reimbursement will be made for expenses incurred prior to execution of the obligating document.

B. AUTHORITY:

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204 “

C. JURISDICTION AND MAINTENANCE COMMITMENT:

Not applicable as this is a feasibility study. Current and future ownership and maintenance will be discussed as part of the feasibility assessment.

D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION:

LPA sponsoring agencies have coordinated project development with the US Fish and Wildlife Service (FLMA). The FLMA support of the project is documented in the Project Proposal by endorsing the proposal.

Each party to this agreement who has a primary role in NEPA or design should coordinate their activities with the Federal Land Management Agency.

E. PROJECT BACKGROUND / SCOPE:

General:

Location

The proposed project is forecasted along an existing Utility corridor, and starts at approximate coordinate 46°22'15.36"N, 124° 3'12.42"W and end at approximate coordinate 46°22'21.62"N, 124° 1'38.27"W .

Background

The Lewis and Clark Discovery Trail begins in Ilwaco, WA connects to Lewis and Clark National Historic Park and Washington State Park's Cape Disappointment State Park. From there the 8-10 foot wide paved hiking and biking trail goes 8.5 miles north along shoreline of the Pacific Ocean through Seaview and Long Beach to 26th Street. The project would connect the Discovery Trail at 26th Street across the Peninsula to the Willapa National Wildlife Refuge. Creation of a bicycle/pedestrian path from the "Discovery Bay Trail" will connect two federally managed areas: Willapa National Wildlife Refuge (Refuge) and Lewis and Clark National Historic Park (Park) as well as Cape Disappointment State Park and Seashore Conservation Area. Furthermore, the Discovery Trail and the new two mile connection would also connect the Lewis and Clark Interpretive Center to the site of the Refuge's planned visitor center off of 67th Place (approximately 9 miles apart).

Project

The Pre-NEPA Scoping effort and preliminary design with NEPA analysis is to create a bicycle/pedestrian path connecting Willapa National Wildlife Refuge to Lewis and Clark National Historic Park to allow safe access to the planned Refuge Visitor Center.

F. PROJECT BUDGET:

This is the anticipated budget for the project based on information developed to date. Federal Lands Access Program funds in conjunction with matching funds provided by LPA and the **FLMA** will fund this project as detailed in Section K.

Item	Total	Comments
Pre-NEPA Scoping Effort	\$30,000	Lead - City of Long Beach
Preliminary Engineering including scoping and NEPA (PE)	\$TBD	TBD at post Pre-NEPA Scoping effort. Preliminary phase and update as needed.
Construction (CN)	\$N/A	N/A
Construction Engineering (CN)	\$N/A	N/A
Construction Modifications (CM) Contingency	\$N/A	N/A
TOTAL	\$420,000	

G. ROLES AND RESPONSIBILITIES:

LPA's(Local Public Agency)

- Will be responsible for project activities identified in Section P.
- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager
- Will provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion
- The LPA's will be responsible for the assessment and acquisition of any rights-of-way and / or easements necessary to complete the project.
- Will be responsible for terms and conditions as noted in 2 CFR 200 Common Rule Requirements & other legal requirements contained in Attachment 1

FLMA

- Will be responsible for project activities as identified in Section P.
- Will provide appropriate match to all FLAP funds expended on the project even if the project is terminated prior to completion
- Will appoint a representative who will be the primary contact for FHWA-WFL's Project Manager

FHWA-WFL

- Will be responsible for stewardship and oversight activities as noted in Section P.
- FHWA-WFL will be responsible for FHWA decisions that may be not be delegated. These decisions are identified in Section P.

H. ROLES AND RESPONSIBILITIES – MILESTONE SCHEDULE:

Responsible Lead	Product/Service	Schedule Start/Finish
City of Long Beach	Pre-NEPA Scoping Study	Start-May 1, 2019 End -Fall, 2019
FHWA-WFL	30% Design with NEPA	TBD
Pacific County	TBD	TBD
Willapa Wildlife Refuge	TBD	TBD
Port of Ilwaco	TBD	TBD
Port of Peninsula	TBD	TBD

I. PROPOSED DESIGN STANDARDS:

Preferred design alternatives will be determined through the NEPA process.

Criteria		Comments
Standard	Roadway Design Manual AASHTO – A Policy on Geometric Design	
Functional Classification	Trail, ADA compliant(to be assessed)	
Surface Type	Asphalt or similar	
Design Volume	N/A	

Design exceptions to standards, will be documented and sent to the LPA/FLMA for concurrence.

J. FUNDING:

The project is funded by the Federal Lands Access Program administered by FHWA-WFL, with matching funds provided by the FLMA and the LPA's.

Funding Source	Amount	%	Comments
Federal Lands Access Funds	\$350,000		
Local Matching Share (LPA)-City of Long Beach	\$30,000	8.57%	In-kind Services
Local Matching Share (LPA)-Pacific County	\$10,000	2.86%	In-kind Services
Local Matching Share (LPA)- Port of Peninsula	\$15,000	4.29%	Cash
Local Matching Share (LPA)- Port of Ilwaco	\$5,000	1.43%	Cash
Local Matching Share (FLMA) Willapa National Wildlife Refuge	\$10,000	2.86%	In-kind Services
Total Matching Share	\$70,000	20%	
Total Projected Costs	\$420,000		

K. MATCHING SHARE REQUIREMENTS:

The purpose of this section is to document the intent of LPA/FLMA to meet its match requirement for the subject project as authorized under section 23 USC 201(b)(7)(B).

All FLAP expenditures associated with this project will need to be matched by a Non- Federal source, by other Federal funds other than those made available under Titles 23 and 49 of the United States Code, or by funds made available under 23 U.S.C. 202 and 203. The matching requirement under the FAST Act will be met by LPA/FLMA.

LPA/FLMA and other agencies have committed to the project. The forms of match shall be those consistent with the 'Federal-Aid Guidance Non-Federal Matching Requirements' and as approved by FHWA-WFL. In the state of WA, 13.5% of the total project cost is required but the LPA's and FMLA have committed to 20%.

This project is authorized to use a Tapered Match. Under this approach, the non-Federal match is imposed over the entire project rather than individual progress payments. Timing of all fund transfers are specified in the Funding Plan. Tapered Match is authorized because it will result in an earlier completion date.

Estimated costs and fiscal year (FY) for the funding are based on the best budgeting and scheduling information known at the time. The final match will be determined based on actual expenditures at the conclusion of project work. Matching cash funds in FHWA-WFL receipt may need to be supplemented, or returned, once actual expenditures are determined. As noted under Modifications, if costs increase over the amount within this agreement, FHWA-WFL will consult with the agency(ies) providing Match before granting approval.

Maintain all project records, including source documentation for all expenditures and in-kind contributions, for a period of three (3) years from the date of final acceptance. If any litigation claim, negotiation, or audit has been started before expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues that arise from it.

The following agencies have agreed to contribute the amounts shown which will reduce the federal share by the same amount. The Funding Plan is as follows:

Agency	Phase	Form	Due	Value	Comments
LPA-City of Long Beach	Scoping	<i>In-kind</i>	Over Life of Project	\$30,000	<ul style="list-style-type: none"> ○ Lead local Project Management Team (PMT) which includes City, County, Refuge & EDC ○ Lead local Discovery Bay Trail Team (includes PMT as well as Port of Ilwaco, Port of

Agency	Phase	Form	Due	Value	Comments
					<p>Peninsula, landowners and other partners)</p> <ul style="list-style-type: none"> ○ Coordinate all team meetings, set dates, send invites/reminders, distribute notes, etc. ○ Participate in public meetings for NEPA/SEPA scoping & draft EA ○ Participate in developing NEPA/SEPA alternatives to ensure it meets City goals and standards ○ Provide support for local agency permitting and compliance/ <ul style="list-style-type: none"> • Develops grant proposals for additional project management funding • Completes ROW/easement required for selected trail route • Long-term trail maintenance • Pre-NEPA Scoping and Public Involvement
LPA-Pacific County	PE	<i>In-Kind</i>	Over Life of Project	\$10,000	<ul style="list-style-type: none"> • (Provide support and in-kind match of services (\$10,000) ○ Participate on PMT and Discovery Bay Trail team ○ Conduct and provide survey and easement information and mapping ○ Participate in public meetings for NEPA/SEPA scoping & draft EA ○ Participate in developing NEPA/SEPA alternatives to ensure it meets County goals and standards

Agency	Phase	Form	Due	Value	Comments
					<ul style="list-style-type: none"> ○ Provide support for local agency permitting and compliance • Completes ROW/easement required for selected trail route • Long-term trail maintenance
LPA-Port of Ilwaco	PE	CASH	TBD	\$5,000	<ul style="list-style-type: none"> • Participate on Discovery Bay Trail team and/or public meetings
LPA-Port of Peninsula	PE	CASH	TBD	\$15,000	<ul style="list-style-type: none"> • Participate on Discovery Bay Trail team and/or public meetings
FLMA	PE	In-Kind	Over Life of Project	\$10,000	<ul style="list-style-type: none"> • Provide support and in-kind match of services (\$10,000) ○ Participate on project management team ○ Participate on Discovery Bay Trail team ○ Participate in public meetings for NEPA/SEPA scoping & draft EA ○ Participate in developing NEPA/SEPA alternatives to ensure project meets Refuge goals and federal standards ○ Provide support for federal agency permitting and compliance • Long term maintenance of the portion of trail located on the Refuge

L. PROJECT TEAM MEMBERS – POINT OF CONTACT:

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

NAME / TITLE	ORGANIZATION	TELEPHONE NO. / E-MAIL
David Glasson, City Administrator	LPA-City of Long Beach P.O. Box 310/115 Bolstad Avenue W, Long Beach, WA 98631	(360) 642-4421 administrator@longbeachwa.gov
Mike Collins County Engineer, LPA	LPA-Pacific County 300 Memorial Drive, South Bend, WA 98586	(360)875-9368 mcollins@co.pacific.wa.us
Guy Glenn, Port Manager -LPA	Port of Ilwaco 165 Howerton Ave, Ilwaco, WA 98624	360-642-3143 gglenn@portofilwaco.org
Jay Personius, Port Manager -LPA	Port of Peninsula 3311- 275th Street, Ocean Park, WA 98640	360-665-4547 jay@portofpeninsula.org
Jackie Ferrier- Willapa National Wildlife Refuge	Federal Land Management Agency 3888 State Route 101, Ilwaco, WA 98624	360-484-3482 Jackie_ferrier@fws.gov
Michael Traffalis , Project Manager	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7787, Michal.Traffalis@dot.gov
Brent Coe , Project Manager Branch Chief	Federal Highway Administration-Western Federal Lands Highway Division	360-619-7744, Brent.Coe@dot.gov

M. CHANGES / AMENDMENTS / ADDENDUMS:

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes envisioned include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; change that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notifications to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX:

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

LPA	LPA	LPA	LPA	FLMA	FHWA-WFL	Time
David Glasson-City of Long Beach	Mike Collins-Pacific County	Guy Glenn-Port of Ilwaco	Jay Personius-Port of Peninsula	Jackie Ferrier-Willapa National Wildlife Refuge	Michael Traffalis, Project Manager	15 Days

O. TERMINATION:

This agreement may be terminated by mutual written consent of all parties. This agreement may also be terminated if either the NEPA process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal access funds have been expended prior to termination, the party responsible for the match agrees to provide a match in the applicable percentage of the total amount expended on the project prior to the termination.

P. PROJECT and STEWARDSHIP & OVERSIGHT ACTIVITIES:

Phase	Activity	LPA	FLMIA	FHWA-WFL
Planning & Programming	Evidence of funding allocation	Signed Project Agreement	Signed Project Agreement	Signed Project Agreement
Planning & Programming	Project agreement with scope, schedule, & budget	Signed Project Agreement	Signed Project Agreement	Signed Project Agreement
Pre-NEPA	*Pre-NEPA Scoping Study and Public Involvement	City of Long Beach	Coordinate and Attend as needed	Coordinate and Attend as needed
Environment	Lead Federal agency identified	Concur	Concur	Identified as FHWA-WFL
Environment	Draft Environmental resource Documents/ Studies	Review and concur	Review and concur	Provide
Environment	Non FHWA environmental decisions	Provide available related decisions	Provide available related decisions	File copy
Environment	FHWA NEPA decision	Comply	Concur	Provide
Preliminary Design	Review 30% PS&E	Review and comment	Review and comment	Provide
Survey	Establish Survey Control and topographic data	Develop	Review and comment	File Copy
Preliminary Hydraulic	Preliminary Hydraulic Analysis of proposed Trail	Review and comment	Review and comment	Provide
Preliminary Geotechnical	Preliminary Geotechnical to support any bridges or embankment construction	Review and comment	Review and comment	Provide
Preliminary Bridge	Preliminary Bridge design for any stream or waterways crossings	Review and comment	Review and comment	Provide
Preliminary Materials	Preliminary surfacing structure design	Review and comment	Review and comment	Provide
Preliminary ROW	Preliminary assessment of ROW needs	City of Long Beach and Pacific County	Review and comment	Review and comment
Preliminary Utilities	Preliminary assessment of Utility conflicts and relocation needs	City of Long Beach and Pacific County	Review and comment	Review and comment

**Pre-NEPA Scoping and Public Involvement Effort-*

- **Public Outreach Effort**

The goal of the public outreach effort is to provide ongoing involvement opportunities for members of the public, stakeholders, and select agency representatives throughout the planning study process. Education and outreach are essential elements in successfully informing individuals about the planning study process and soliciting feedback on the study outcomes.

- **Public Information Plan**

A PIP should describe the information and input opportunities that will be provided while developing the *DISCOVERY BAY TRAIL FEASIBILITY STUDY*. This plan should encourage active participation in identifying and commenting on study issues at every stage of the planning process. Participant involvement includes the following:

- The general public: residents of Pacific County, the City of Long Beach, and adjacent areas
- Landowners and business owners within or near the study area boundary
- Tribes
- Potential Stakeholders and other interested parties.
 - *Stakeholders*
 - *Discovery Bay Trail Team includes:*
 - *City of Long Beach (lead)*
 - *Pacific County*
 - *Willapa NWR*
 - *EDC*
 - *Port of Ilwaco*
 - *Port of Peninsula*
 - *Kim Patten*
 - *Cranberry Museum*
 - *Marcia Scholl & Stephen Oman*
 - *Guy and Carolyn Glenn*
 - *Tucker Glenn*
 - *Columbia Land Trust*
 - *Golf course owners – Names?*
 - *Others?*
 - *Other Stakeholders*
 - *Visitors Bureau?*
 - *Washington State Parks*
 - *Chinook Tribe?*
 - *Shoalwater Bay Tribe*
 - *Others as identified*

This document should contain descriptions of the notification process for informational meetings and other participation procedures. The City of Long Beach will provide information regarding all aspects of the planning study to the public and interested parties and will seek their input throughout the process.

Preliminary Design and NEPA Development

NEPA

- resource studies(ESA, wetlands, etc)
- NEPA Document

Preliminary Design

- Trail Design (Site Development and line and grade)
- Hydraulic
- Bridge
- Geotech
- Materials
- Survey
- ROW
- Utilities

ATTACHMENT 1

2 CFR 200 Common Rule Requirements and other legal requirements

A. GENERAL TERMS AND CONDITIONS

Background. To promote accelerated and efficient delivery of projects that benefit Federal Land Management Agencies, the Secretary has exercised his discretion under 23 U.S.C. § 201(a) and § 204(a)(3) to apply Title 23 U.S.C. Chapter 1 requirements (Federal Aid requirements) to Federal Lands Access Projects delivered by State Departments of Transportation (DOTs) and local public agencies that are evaluated and certified by State DOTs to deliver Federal Aid projects. In instances where a local public agency is not certified to deliver Federal-aid projects and Federal Lands Access projects are delivered by the local public agency cooperatively with Federal Lands Highway Division office oversight, the government-wide Common Rule (2 CFR 200) will be applied. This cooperative relationship will enable the FLH to identify any federal law issues in cooperation with the local public agency which may arise in the project development and delivery process.

1. The Agreement provides funds on a reimbursable basis to the Servicing Agency for the project described in the Access Program Project Memorandum of Agreement.
2. The Government's liability to make payments to the Servicing Agency under the Agreement is limited to those funds obligated by the Government under the Agreement as indicated herein and by any subsequent amendments agreed to in writing by all parties.
3. The Servicing Agency agrees to abide by and comply with all terms and conditions of the Agreement and to abide by, and comply with, all requirements of applicable law, including those specified in this Attachment, which are considered as an integral part of the Agreement.
4. In the case of any inconsistency or conflict between the specific provisions of the Agreement and this Attachment, such inconsistency or conflict shall be resolved by giving preference to the Agreement.
5. The Servicing Agency shall be responsible for ensuring that the Project is designed and/or constructed in accordance with the Agreement, and all applicable Federal laws, regulations and policies of the Federal Highway Administration ("FHWA" also referred to herein as the "Government").
6. Reimbursement of costs incurred pursuant to the Agreement will be made pursuant to and in accordance with 2 CFR Part 200 and the provisions of such regulations and procedures as the Government may prescribe. Determination of allowable costs incurred by the Servicing Agency under the Agreement shall be made in accordance with applicable government-wide cost principles under 2 CFR 200. Closeout of the Agreement shall be based upon a determination that all applicable administrative actions and all required work of the Agreement have been completed in accordance with 2 CFR Part 200. Upon the Government's review of all financial, performance, and other reports required as a condition of the Agreement, the Government may make any upward or downward adjustments to the allowable costs in accordance with 2 CFR 200.

7. The Servicing Agency agrees to carry out and complete the Project without undue delays and in accordance with the terms of the Agreement, including the Project Schedule set out in the Agreement, or in the Access Program Project Memorandum of Agreement if no Schedule is included in this Agreement, and comply with such regulations and procedures as the Government may prescribe.

8. The Servicing Agency agrees to retain all documents relevant to the Project for a period of three years from completion of the Project and receipt of final reimbursement from the Government. The Servicing Agency agrees to furnish the Government, upon request, all documents and records pertaining to the Project.

9. The Government is subject to the Freedom of Information Act (FOIA). The Servicing Agency should therefore be aware that all materials submitted by the Servicing Agency related to the Agreement will become agency records and thus are subject to FOIA and to public release through individual FOIA requests.

10. The Government shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this the Servicing Agency's work under the Agreement. The Government will be responsible for damages or injuries caused by the negligence of its own employees, to the extent permitted under the Federal Tort Claims Act, 28 U.S.C. 2671-2680.

11. To the extent that the State has not already enacted legislation regarding texting while driving, the Government encourages the Servicing Agency to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies that bar text messaging while driving company-owned or rented vehicles, or government-owned, leased, or rented vehicles or privately-owned vehicles when on official government business or when performing any work for or on behalf of the Government. See Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2010-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf) This includes, but is not limited to, the Servicing Agency:

- a. considering new rules and programs or re-evaluating existing programs to prohibit text messaging while driving;
- b. conducting education, awareness, and other outreach for employees about the safety risks associated with texting while driving; and
- c. encouraging voluntary compliance with the agency's text messaging policy while off duty.

The Servicing Agency is encouraged to insert the substance of this clause in all contracts and subcontracts.

B. APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into the Agreement, the Servicing Agency assures, certifies, and agrees to comply with all applicable Federal laws, regulations, policies, guidelines, and requirements as they relate to the use of Federal funds for this Project including, but not limited to, the following:

General Federal Legislation

- Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- Hatch Act - 5 U.S.C. §§ 1501, et seq.

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§4601, et seq.
- National Historic Preservation Act of 1966 – 16 U.S.C. § 470, et seq.
- Archaeological Resources Protection Act – 16 U.S.C. 470aa, et seq.
- Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001, et seq.
- National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. §§ 1271, et seq.
- Federal Water Pollution Control Act, as amended - 33 U.S.C. §§ 1251-1376
- Clean Air Act – 42 U.S.C. § 7401, et seq.
- Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d et seq.
- Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1855
- Farmlands Protection Policy Act of 1981 – 7 § U.S.C. 4201
- Noise Control Act of 1972 – 42 U.S.C. § 4901, et seq.
- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and 23 U.S.C. § 138
- Resource Conservation and Recovery Act of 1976 (RCRA), as amended -- 42 U.S.C. §§ 6901, et seq.
- Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended --42 U.S.C. §§ 9601-9657
- Safe Drinking Water Act -- 42 U.S.C. §§ 300f-300j-6
- Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901, et seq.
- Migratory Bird Treaty Act 16 U.S.C. § 760c-760g
- The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- Buy America Act – 23 U.S.C. § 313 (see http://www.fhwa.dot.gov/construction/contracts/buyam_ga.cfm)
- Nondiscrimination – 23 U.S.C. § 140

General Federal Regulations

- Suspension and Debarment – 2 CFR Parts Part 180
- Non-procurement Suspension and Debarment – 2 CFR Part 1200
- External Programs – 23 CFR Part 230
- Manual on Uniform Traffic Control Devices – 23 CFR Part 655
- Environmental Impact and Related Procedures – 23 CFR Part 771
- Procedures for Abatement of Highway Traffic and Construction Noise – 23 CFR Part 772
- Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 CFR Part 774
- DOT's oversight of DOJ's ADA regulations for non-transit programs, including the ADA Accessibility Guidelines, required by the DOJ regulations at – 28 CFR Part 35
- Procedures for predetermination of wage rates – 29 CFR Part 1
- Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 CFR Part 3
- Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 CFR Part 5
- Permitting Requirements under the National Pollutant Discharge Elimination System – 40 CFR Part 122.
- Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 CFR Parts 60, et seq.
- Uniform administrative requirements, cost principles, and audit requirements for Federal Awards – 2 CFR Part 200
- New Restrictions on Lobbying – 49 CFR Part 20
- Nondiscrimination in Federally Assisted Programs of the Department of Transportation –Effectuation of Title VI of the Civil Rights Act of 1964 – 49 CFR Part 21
- Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 CFR Part 24
- Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 CFR Part 25
- Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 CFR Part 26
- Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 CFR Part 27
- Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 CFR Part 28
- Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 CFR Part 30
- Government-wide Requirements for Drug-Free Workplace (Financial Assistance) – 49 CFR Part 32
- DOT's implementing ADA regulations for transit, including the ADA Accessibility Guidelines in Part 37, Appendix A – 49 CFR Parts 37 and 38
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs – 49 CFR Part 40
- 23 C.F.R. Part 710 applies unless otherwise agreed to by FHWA

The Servicing Agency, when contracting for work to be performed under this Agreement, will include in the prime contract the applicable provisions required under 2 CFR 200.326.

The Servicing Agency, when contracting for construction services, shall ensure that all laborers and mechanics employed by contractors or subcontractors on the construction work shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with sections 3141, 3146, and 3147 of title 40.

C. ASSURANCES AND CERTIFICATIONS

TITLE VI ASSURANCE

(Implementing Title VI of the Civil Rights Act of 1964, as amended)

ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 CFR Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By entering into the Agreement, the Servicing Agency (also herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal funds from the U.S. Department of Transportation (DOT), through the Federal Highway Administration (FHWA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 CFR section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Servicing Agency hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FHWA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Servicing Agency, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Servicing Agency agrees with and gives the following Assurances with respect to its receipt of funds for this project:

1. The Servicing Agency agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Servicing Agency will insert the following notification in all solicitations for bids and requests for proposals for work or materials, regardless of funding source:
 - a. *“The Servicing Agency, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*
3. The Servicing Agency will insert the clauses of Appendix A of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Servicing Agency will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Servicing Agency receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Servicing Agency receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Servicing Agency will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Servicing Agency with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Servicing Agency or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal funds were extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Servicing Agency retains ownership or possession of the property.
9. The Servicing Agency will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other parties funded in whole or part from the funds provided under this Agreement will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Servicing Agency agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing the Agreement, the Servicing Agency also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff. The Servicing Agency also recognizes that it must comply with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Servicing Agency must keep records, reports, and submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

Additionally, the Servicing Agency must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Servicing Agency gives this ASSURANCE in consideration of and for obtaining any Federal funds, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation.

This ASSURANCE is binding on the Servicing Agency, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the funds provided under this Agreement.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-funded programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Servicing Agency or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Servicing Agency or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Servicing Agency will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Servicing Agency or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Servicing Agency to enter into any litigation to protect the interests of the Servicing Agency. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Servicing Agency under the terms of the Agreement:

1. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

3. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Servicing Agency pursuant to the provisions of this Agreement:

1. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
3. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the Servicing Agency will there upon revert to and vest in and become the absolute property of the Servicing Agency and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

A. ASSURANCE OF DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The person signing this Agreement for the Servicing Agency certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts and contracts under grants, loans and grant agreements) and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352, title. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

B. CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The Servicing Agency certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Servicing Agency's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Servicing Agency's policy of maintaining a drug-free workplace;

- c. Any available drug counseling, rehabilitation, and employee assistance programs;
and,
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged in the performance of work supported by the Agreement be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the Agreement, the employee will:
- a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4.b. from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to FHWA. Notice shall include the order number of the Agreement.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
- a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.
8. The Servicing Agency *may*, but is not required to, provide the site for the performance of work done in connection with the Agreement. For the provision of services pursuant to the Agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the Agreement. If the Servicing Agency does so, the Servicing Agency shall identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of the Agreement.

**C. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS --
PRIMARY COVERED TRANSACTIONS
2 CFR Parts 180, 1200, 48 CFR Part 9, and 49 CFR Part 32**

These assurances and certifications are applicable to all construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other

covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200, and 48 CFR Part. 9.

By entering into this Agreement the Servicing Agency is providing the assurances and certifications for First Tier Participants and Lower Tier Participants as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph a.2. of this certification; and

4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient and subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D. ASSURANCE OF ADEQUATE FINANCIAL SYSTEMS AND CONTROL OF PROJECT COSTS

1. The Servicing Agency will be reimbursed in accordance with the terms of this Agreement.

2. The Servicing Agency shall have entered into obligations for services and goods associated with the Project prior to seeking reimbursement from the Government. Reimbursement will only be made for expenses incurred after execution of a project agreement.

3. The Servicing Agency shall ensure that the funds provided by the Government are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.
4. Any Federal funds not expended in conjunction with the Project will remain the property of the Government.
5. Financial Management System: By signing this Agreement, the Servicing Agency verifies that it has, or will implement, a financial management system adequate for monitoring the accumulation of costs and that it complies with the financial management system requirements of 2CFR Part 200.302. The Servicing Agency's failure to comply with these requirements may result in Agreement termination.
6. Allowable Costs: Determination of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., 2 CFR Part 200. Disallowed costs are those charges determined to not be allowed in accordance with the applicable Federal cost principles or other conditions contained in this Agreement.

E. TRANSPARENCY ACT REQUIREMENTS

Pursuant to the Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252, hereafter referred to as “the Transparency Act” or “the Act”) and the OMB Interim Final Rule (75 FR 55663 (September 14, 2010) (available at <http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf>) (codified at 2 CFR Part 170), the Servicing Agency is required to report as required under the Act: The Servicing Agency shall also report information for its prime contractor.

1. Reporting Obligations

- a. Applicability. Unless the Servicing Agency (hereinafter in this section referred to as “you”) are exempt as provided in paragraph 4. of this section, you must report each action that obligates \$25,000 or more in Federal funds for a prime contract to an entity (see definitions in subsection 5. of this section).
- b. Where and when to report.
 1. You must report each obligating action described in subsection 1.a. of this section to <http://www.fsrs.gov>.
 2. For contractor information, report no later than the end of the month following the month in which the contract was executed. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
- c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

2. Reporting Total Compensation of Executives.

a. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

1. the total Federal funding authorized to date under this award is \$25,000 or more;
2. in the preceding fiscal year, you received—
 - i.* 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii.* \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii.* The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

b. Where and when to report. You must report executive total compensation described in subsection 2.a.. of this section:

1. As part of your registration profile at <https://www.sam.gov>
2. By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Prime Contractor's Executives.

a. Applicability and what to report. Unless you are exempt as provided in subsection d. of this section, for each prime contractor receiving funds for which reimbursement will be sought, you shall report the names and total compensation of each of the prime contractor's five most highly compensated executives for the prime contractor's preceding completed fiscal year, if—

1. in the prime contractor's preceding fiscal year, the contractor received—
 - i* 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

b. Where and when to report. You must report the prime contractor's executive total compensation described in subsection 3.a. of this section:

1. [To http://www.fsrs.gov](http://www.fsrs.gov).

2. By the end of the month following the month during which you executed the prime contract. For example, if a prime contract is executed on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the prime contractor by November 30 of that year.

4. Exemptions.

If, in the previous tax year, you or the prime contractor had gross income, from all sources, under \$300,000, you are exempt from the requirements to report prime contracts and the total compensation of the five most highly compensated executives of any prime contractor.

5. Definitions. For purposes of this section:

a. Entity means all of the following, as defined in 2 CFR Part 25:

1. A Governmental organization, which is a State, local government, or Indian tribe;
2. A foreign public entity;
3. A domestic or foreign nonprofit organization;
4. A domestic or foreign for-profit organization;
5. A Federal agency, but only as a contractor or subcontractor to a non-Federal entity.

b. Executive means officers, managing partners, or any other employees in management positions.

c. Total compensation means the cash and noncash dollar value earned by the executive during the Servicing Agency's or prime contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

1. Salary and bonus.
2. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which is not tax-qualified.
6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

E. SINGLE AUDIT INFORMATION FOR SERVICING AGENCIES

To maximize the transparency and accountability of funds authorized under the Act as required by Congress and in accordance with 2 CFR 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards", the Servicing Agency agrees to maintain records that identify adequately the source and application of FHWA funds.

TAB — F



**CITY COUNCIL
AGENDA BILL
AB 19-75**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION		
SUBJECT: Public Works Trust Fund Agreement for South Washington Improvements	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk	
	City Engineer	
	Community Development Director	AS
	Events Coordinator	
	Finance Director	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: \$1,238,000 – 20-year loan at 0.79% Interest		
SUMMARY STATEMENT: This agreement recognizes the city accepting the loan from PWTF and allows the city to move forward with the improvements. The improvements include up-sizing the water main in Washington from an 4" AC line to an 8" PVC and resurfacing of the road.		
RECOMMENDED ACTION: Authorize the Mayor to execute the agreement between the city and PWTF for South Washington Improvements.		

CONTRACT FACE SHEET

Contract Number: PC20-96103-048

**PUBLIC WORKS BOARD
CONSTRUCTION LOAN CONTRACT**

1. Contractor City of Long Beach PO Box 310 115 Bolstad W Long Beach, WA 98631		2. Contractor Doing Business As (optional) N/A	
3. Contractor Representative N/A		4. Public Works Board Representative N/A	
5. Contract Amount \$1,238,000.00	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Contract Start Date Contract Execution Date	8. Contract End Date June 1, 2039
9. Federal Funds (as applicable) N/A	Federal Agency N/A	CFDA Number N/A	
10. Tax ID #	11. SWV # 0018431-00	12. UBI # 252-00-463	13. DUNS #
14. Contract Purpose Fund a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets, roads, bridges, drinking water systems, stormwater systems, sanitary sewage systems, or solid waste facilities, including recycling facilities.			
The Board, defined as the Washington State Public Works Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including Declarations Page; and Attachment I: Attorney's Certification.			
FOR THE CONTRACTOR		FOR PUBLIC WORKS BOARD	
_____ Signature		_____ Scott Hutsell, Public Works Board Chair	
_____ Print Name		_____ Date	
_____ Title		APPROVED AS TO FORM ONLY	
_____ Date		_____ September 11, 2019 Sandra Adix Assistant Attorney General	

DECLARATIONS

CLIENT INFORMATION

Legal Name: City of Long Beach
Loan Number: PC20-96103-048

PROJECT INFORMATION

Project Title: Washington Avenue S. Water and Street Improvements
Project City: City of Long Beach
Project State: **Washington**
Project Zip Code: 98631

LOAN INFORMATION

Loan Amount: **\$1,238,088.00**
Total Estimated Cost: **\$1,358,088.00**
Total Estimated Funding: **\$1,358,088.00**
Loan Forgiveness % (if applicable): **5%**
Loan Term: **20**
Interest Rate: **0.79%**
Payment Month: **June 1st**
Loan Reimbursement Start Date: **August 2, 2019**
Time of Performance: 60 months from Execution Date of this Contract to Project Completion.

SPECIAL TERMS AND CONDITIONS GOVERNING THIS LOAN AGREEMENT

LOAN SECURITY CONDITION GOVERNING THIS LOAN AGREEMENT

This loan is a general obligation of the LOCAL GOVERNMENT.

SCOPE OF WORK

The improvement project will replace approximately 2,500 feet of deteriorated 4-inch diameter asbestos concrete (AC) water main on Washington Avenue S from Sid Snyder Drive (10th Street) to 19th Street with 8-inch main. Project include the rehabilitation of Washington Avenue S from Sid Snyder Drive (10th Street) to 19th Street.

The project costs may include but are not limited to: engineering, cultural and historical resources, environmental documentation, review, permits, public involvement, easements, bid documents and construction. The project needs to meet all applicable Local, State, and/or Federal standards.

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TABLE OF CONTENTS

CONTRACT TERMS AND CONDITIONS	1
Part 1. SPECIAL TERMS AND CONDITIONS	1
1.1 Definitions	1
1.2 Authority.....	1
1.3 Purpose	1
1.4 Order of Precedence	1
1.5 5- year deferral for start-up systems	2
1.6 Competitive Bidding Requirements	2
1.7 Default in Repayment.....	2
1.8 Investment Grade Audit.....	2
1.9 Sub-Contractor Data Collection.....	2
1.10 Eligible Project Costs.....	2
1.11 Historical and Cultural Resources.....	3
1.12 Performance Incentives	3
1.13 Project Completion Amendment and Certified Project Completion Report.....	4
1.14 Project Signs.....	4
1.15 Rate Loan Forgiveness and Term of Loan.....	5
1.16 Recapture	5
1.17 Reimbursement Procedures and Payment.....	5
1.18 Repayment	6
1.19 Reports	7
1.20 Termination for Cause	7
1.21 Termination for Convenience.....	7
1.22 Time of Performance.....	7
1.23 Contract Suspension	7
1.24 Special Conditions	8
1.25 Loan Security.....	8
Part 2. GENERAL TERMS AND CONDITIONS	9
2.1 DEFINITIONS	9
2.2 Allowable Costs.....	9
2.3 ALL WRITINGS CONTAINED HEREIN	9
2.4 AMENDMENTS.....	9
2.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35	9
2.6 APPROVAL.....	9
2.7 ASSIGNMENT.....	10
2.8 ATTORNEYS' FEES	10
2.09 CODE REQUIREMENTS	10
2.10 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION	10
2.11 CONFORMANCE.....	10
2.12 CONFLICT OF INTEREST.....	11
2.13 COPYRIGHT PROVISIONS.....	11
2.14 DISALLOWED COSTS	11
2.15 DISPUTES.....	12
2.16 DUPLICATE PAYMENT	12
2.17 GOVERNING LAW AND VENUE	12
2.18 INDEMNIFICATION	12
2.19 INDEPENDENT CAPACITY OF THE CONTRACTOR	13
2.20 INDUSTRIAL INSURANCE COVERAGE.....	13
2.21 LAWS	13

2.22 LICENSING, ACCREDITATION AND REGISTRATION	13
2.23 LIMITATION OF AUTHORITY	13
2.24 Local Public Transportation Coordination	13
2.25 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS	13
2.26 PAY EQUITY	13
2.27 POLITICAL ACTIVITIES	14
2.28 PREVAILING WAGE LAW	14
2.29 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION.....	14
2.30 PUBLICITY.....	14
2.31 RECAPTURE	14
2.32 RECORDS MAINTENANCE.....	15
2.33 REGISTRATION WITH DEPARTMENT OF REVENUE	15
2.34 RIGHT OF INSPECTION	15
2.35 SAVINGS	15
2.36 SEVERABILITY	15
2.37 SUBCONTRACTING	15
2.38 SURVIVAL	16
2.39 TAXES.....	16
2.40 TERMINATION FOR CAUSE	16
2.41 TERMINATION FOR CONVENIENCE	16
2.42 TERMINATION PROCEDURES	16
2.43 TREATMENT OF ASSETS	17
2.44 WAIVER	17
ATTACHMENT I: ATTORNEY'S CERTIFICATION	189

CONTRACT TERMS AND CONDITIONS

PUBLIC WORKS BOARD CONSTRUCTION LOAN PROGRAM

Part 1. SPECIAL TERMS AND CONDITIONS

1.1 Definitions

As used throughout this Construction Loan Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Construction Loan Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service(s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "The Board" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and who is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information, loan terms and conditions as stated on the Declarations Page of this Loan Contract, displayed within the contract in **THIS STYLE** for easier identification.

1.2 Authority

Acting under the authority of Chapter 43.155 RCW, the Board has awarded the Contractor a Public Works Board construction loan for an approved public works project.

1.3 Purpose

The Board and the Contractor have entered into this Contract to undertake a local public works project that furthers the goals and objectives of the Washington State Public Works Program. The project will be undertaken by the Contractor and will include the activities described in the **SCOPE OF WORK** shown on the Declarations page. The project must be undertaken in accordance with the loan terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

1.4 Order of Precedence

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

1.5 5- year deferral for start-up systems

If the project financed by this contract is to develop a system to deliver previously unavailable services, and revenue from those services is to repay the loan, the new system is eligible for a deferral of loan payments for sixty (60) months after the Contract execution date. The Contractor may provide a written request to the Board requesting a 5-year deferral for an eligible system. The Board may approve the deferral request.

Interest accrues for the aforementioned sixty (60) months. The accrued interest only payment is due June 1 of the 6th year of the loan term. Interest and principal payments are due on June 1 of the 7th year of the loan term.

1.6 Competitive Bidding Requirements

The Contractor shall comply with the provisions of RCW 43.155.060 regarding competitive bidding requirements for projects assisted in whole or in part with money from the Public Works Program.

1.7 Default in Repayment

Loan repayments shall be made on the loan in accordance with Section 1.18 of this Contract. A payment not received within thirty (30) days of the due date shall be declared delinquent. Delinquent payments shall be assessed a monthly penalty beginning on the first (1st) day past the due date. The penalty will be assessed on the entire payment amount. The penalty will be one percent (1%) per month or twelve percent (12%) per annum. The same penalty terms shall apply at project completion if the repayment of loan funds in excess of eligible costs are not repaid at the time of the Project Completion Amendment is submitted, as provided for in Section 1.13.

The Contractor acknowledges and agrees to the Board's right, upon delinquency in the payment of any annual installment, to notify any other entity, creditors, or potential creditors of the Contractor of such delinquency.

The Contractor shall be responsible for all legal fees incurred by the Board in any action undertaken to enforce its rights under this section.

1.8 Investment Grade Audit

For projects involving repair, replacement, or improvement of a wastewater treatment plant, or other public works facility for which an investment grade audit is obtainable, Contractor must undertake an investment grade audit.

Costs incurred as part of the investment grade audit are eligible project costs.

1.9 Sub-Contractor Data Collection

Contractor will submit reports, in a form and format to be provided by the Board and at intervals as agreed by the parties, regarding work under this Contract performed by sub-contractors and the portion of the Contract funds expended for work performed by sub-contractors, including but not necessarily limited to minority-owned, women-owned, and veteran-owned business sub-contractors. "Sub-Contractors" shall mean sub-contractors of any tier.

1.10 Eligible Project Costs

The Eligible project costs must consist of expenditures eligible under Washington Administrative Code (WAC) 399-30-030 and be related only to project activities described in declared SCOPE OF WORK.

Eligible costs for reimbursement shall be construed to mean expenditures incurred and paid, or incurred and payable within thirty (30) days of the reimbursement request. Only costs that have been incurred on or after **LOAN REIMBURSEMENT START DATE** shown in the Declarations are eligible for reimbursement under this Contract. Eligible costs will be paid according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

The Contractor assures compliance with WAC 399-30-030, which identifies eligible costs for projects assisted with Public Works Board loans.

These terms supersede the terms in Section 2.2. Allowable Costs.

1.11 Historical and Cultural Resources

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as an alternative to completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act, as applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless the Board and the State of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural resources are discovered during construction, the Contractor shall immediately stop work and notify the local historical preservation officer and the state's historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to the declared **SCOPE OF WORK**.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44.040 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend **SCOPE OF WORK**, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1.12 Performance Incentives

The Contractor shall complete the project no later than sixty (60) months after the date of contract execution.

Should the Contractor shall submit the Certified Project Completion Report within forty-eight (48) months of the date of contract execution, the Contractor may choose one of the two following incentives upon project completion:

- Option A: The repayment period will be increased by twenty-four (24) months, not to exceed the life of the asset, OR;
- Option B: The interest rate will be decreased by one-quarter of one percent (0.25%).

Should the Contractor shall submit the Certified Project Completion Report within thirty-six (36) months of the date of contract execution, the Contractor may choose one of the following two incentives upon project completion:

- Option C: The repayment period will be increased by sixty (60) months, not to exceed the life of the asset, OR;
- Option D: The interest rate will be decreased by up to one-half of one percent (0.50%).

Once an option is selected, the Contract shall be modified to note the appropriate change and no further adjustment to the Contract for Performance Incentives shall be authorized. Irrespective of the performance incentive chosen, at no point in time shall the minimum loan interest rate be less than 0.25%.

The calculation of interest rate and term adjustments will apply to the remaining payments beginning from the date the Project Completion report is certified.

1.13 Project Completion Amendment and Certified Project Completion Report

The Contractor shall complete a Certified Project Completion Report when all activities identified in the **SCOPE OF WORK** are complete. The Board will supply the Contractor with the Certified Project Completion Report form, which shall include:

- A. A certified statement that the project, as described in the declared **SCOPE OF WORK**, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in the **SCOPE OF WORK**.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.
- E. Pictures of Completed Project.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the loan amount. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in the **SCOPE OF WORK** and the Board's receipt and acceptance of the Certified Project Completion Report.

The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, term, and interest rate.

1.14 Project Signs

If the Contractor displays, during the period covered by this Contract, signs or markers identifying those agencies participating financially in the approved project, the sign or marker must identify the Washington State Public Works Board as a participant in the project.

1.15 Rate Loan Forgiveness and Term of Loan

The Board shall loan the Contractor a sum not to exceed the LOAN AMOUNT shown on the Contract Face Sheet and declared on the Contract Declarations Page. The interest rate shall be the declared INTEREST RATE per annum on the outstanding principal balance. The amount of loan forgiveness (if applicable) shall be as stated on the attached Declarations Page, and identified therein as LOAN FORGIVENESS %. The length of the loan shall not exceed the declared LOAN TERM in years, with the final payment due by the CONTRACT END DATE as shown on the Contract Face Sheet.

The loan forgiveness shall be applied at project completion and shall apply to the lesser of the loan amount or the actual eligible costs and that declared percent on any accrued interest. The percent of loan forgiveness and interest rate shall not be changed, regardless of the actual cost of the project and the Affordability Index at project completion.

1.16 Recapture

The right of recapture under Section 2.31. Recapture, shall exist for a period not to exceed six (6) years following contract termination. In the event that the Board is required to institute legal proceedings to enforce the recapture provision, the Board shall be entitled to its costs thereof, including attorney's fees.

1.17 Reimbursement Procedures and Payment

If funding or appropriation is not available at the time the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation become available. Therefore, subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with the declared SCOPE OF WORK.

The Board shall reimburse the Contractor for eligible project expenditures up to the maximum loan amount under this contract, as identified in Section 1.10. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing the SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Requests for reimbursements for costs related to construction activities will not be accepted until the Contractor provides:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.11, and
- Signed Public Works Board Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract.

The Contractor shall submit all Invoice Vouchers and all required documentation to:

Public Works Board
Attn: (Program Specialist)
PO Box 42525
Olympia, WA 98504-2525

The Board will pay the Contractor upon acceptance of the work performed and receipt of properly completed invoices. Invoices shall be submitted to the Board not more often than monthly.

Payment shall be considered timely if made by the Board within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

The Board may, at its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Board.

BOARD shall not release the final five (5) percent of the total grant amount until acceptance by BOARD of project completion report.

Duplication of Billed Costs. If the Contractor is entitled to payment or has been or will be paid by another source for an eligible project cost, then the Contractor shall not be reimbursed by the Board for that cost.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

In no event shall the total Public Works loan exceed 100% of the eligible actual project costs. At the time of project completion, the Contractor shall submit to the Board a Project Completion Amendment certifying the total actual project costs and local share. The final Public Works loan disbursement shall bring the total loan to the lesser of 100% of the eligible project costs or the total declared **LOAN AMOUNT**. The Project Completion Amendment shall serve as an amendment to this Contract determining the final loan amount, local share, and interest rate.

In the event that the final costs identified in the Project Completion Amendment indicate that the Contractor has received Public Works Board monies in excess of 100.00% of eligible costs, all funds in excess of 100.00% shall be repaid to the Public Works Board by payment to the Department of Commerce, or its successor, together with the submission of the Project Completion Amendment.

1.18 Repayment

Loan repayment installments are due on the day and month identified under the term: **PAYMENT MONTH** on the Declarations Page. Payments are due each year during the term of the loan beginning one year from the date of contract execution. Interest only will be charged for this payment if a warrant is issued prior to this date. All subsequent payments shall consist of principal and accrued interest due on the specified **PAYMENT MONTH** date of each year during the remaining term of the loan.

Repayment of the loan under this Contract shall include the declared **INTEREST RATE** per annum based on a three hundred and sixty (360) day year of twelve (12) thirty (30) day months. Interest will begin to accrue from the date each warrant is issued to the Contractor. The final payment shall be on or before the **CONTRACT END DATE** shown on the Declarations page, of an amount sufficient to bring the loan balance to zero.

In the event that the Board approves the Contractor's request for a deferral as outlined in Section 1.5, then the first loan repayment is due sixty (60) months after contract execution. Interest accrues for the sixty (60) months after contract execution. The accrued interest only will be charged for this payment if a warrant is issued prior to this date. Interest and principal payments are due on the declared **PAYMENT MONTH** date of each year during the remaining term of the loan. The Contractor has the right to repay the unpaid balance of the loan in full at any time or make accelerated payments without penalty.

The Contractor will repay the loan in accordance with the preceding conditions through the use of a check, money order, or equivalent means made payable to the Washington State Department of Commerce, or its successor.

1.19 Reports

The Contractor shall furnish the Board with:

- A. Project Status Reports with each Invoice Voucher;
- B. Project Quarterly Reports (if no funds have been reimbursed in the quarter) and/or Quarterly Expenditures Report;
- C. Quarterly Projection Invoice Reports;
- D. Certified Project Completion Report at project completion (as described in Section 1.13);
- E. Pictures of various stages of the project, and
- F. Other reports as the Board may require.

1.20 Termination for Cause

If the Contractor fails to comply with the terms of this Contract, or fails to use the loan proceeds only for those activities identified in the **SCOPE OF WORK**, the Board may terminate the Contract in whole or in part at any time. The Board shall notify the Contractor in writing of its determination to terminate, the reason for such termination, and the effective date of the termination. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.40 Termination for Cause.

1.21 Termination for Convenience

The Board may terminate this contract in the event that state funds are no longer available to the Board, or are not appropriated for the purpose of meeting the Board's obligations under this contract. Termination will be effective when the Board sends written notice of termination to the Contractor. Nothing in this section shall affect the Contractor's obligation to repay the unpaid balance of the loan.

These terms supersede the terms in Section 2.41 Termination for Convenience.

1.22 Time of Performance

No later than sixty (60) months after the date of contract execution the Contractor must reach project completion.

Failure to meet Time of Performance shall constitute default of this contract. In the event of extenuating circumstances, the Contractor may request, in writing, that the Board extend the deadline for project completion. The Board may extend the deadline.

The term of this contract shall be for the entire term of the loan, regardless of actual project completion, unless terminated sooner as provided herein.

1.23 Contract Suspension

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such event, all work under this contract will be suspended effective July 1. The Contractor shall immediately suspend work under this contract and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

THE BOARD shall notify the Contractor immediately upon lifting of the contract suspension.

1.24 Special Conditions

If SPECIAL CONDITIONS are listed on the Contract Declarations Page then these conditions are herein incorporated as part of the terms and requirements of this contract.

1.25 Loan Security

Loan Security payments shall be made as stated on the attached Declarations Page, and identified therein as LOAN SECURITY.

Part 2. GENERAL TERMS AND CONDITIONS

2.1 DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Public Works Board Chair and/or the designee authorized in writing to act on the Chair's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- D. "BOARD" shall mean the Washington State Public Works Board created in Revised Code of Washington (RCW) 43.155.030, and which is a Party to the Contract
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2.2 Allowable Costs

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

2.3 ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

2.4 AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

2.5 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.6 APPROVAL

This contract shall be subject to the written approval of the Board's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

2.7 ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Board.

2.8 ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney's fees and costs.

2.09 CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

2.10 CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by the Board that is designated as "confidential" by the Board;
2. All material produced by the Contractor that is designated as "confidential" by the Board; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of the Board or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the Board with its policies and procedures on confidentiality. The Board may require changes to such policies and procedures as they apply to this Contract whenever the Board reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the Board. Upon request, the Contractor shall immediately return to the Board any Confidential Information that the Board reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify the Board within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

2.11 CONFORMANCE

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

2.12 CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the BOARD may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by the BOARD that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the PUBLIC WORKS BOARD including but not limited to formulating or drafting the legislation, participating in loan procurement planning and execution, awarding loans, and monitoring loans, during the 24 month period preceding the start date of this Loan. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by BOARD that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Loan.

In the event this contract is terminated as provided above, BOARD shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of BOARD provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which BOARD makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

2.13 COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Board. The Board shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the Board effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Board a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Board.

The Contractor shall exert all reasonable effort to advise the Board, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide the Board with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. The Board shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.14 DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

2.15 DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Chair of the Board, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Chair and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Chair or the Chair's designee and the requestor within five (5) working days.

The Chair or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Chair or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

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

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

2.16 DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

2.17 GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

2.18 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, BOARD, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom. The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

2.19 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or the Board. The Contractor will not hold itself out as or claim to be an officer or employee of the Board or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

2.20 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Board may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. The Board may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Board under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

2.21 LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended.

2.22 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

2.23 LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

2.24 Local Public Transportation Coordination

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

2.25 NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Board. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

2.26 PAY EQUITY

The Contractor agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - 1. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - 2. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - 3. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the BOARD, if the BOARD or the Department of Enterprise Services determines that the Contractor is not in compliance with this provision.

2.27 POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

2.28 PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

2.29 PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

2.30 PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or the Board's name is mentioned, or language used from which the connection with the state of Washington's or the Board's name may reasonably be inferred or implied, without the prior written consent of the Board.

2.31 RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, the Board reserves the right to recapture funds in an amount to compensate the Board for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the Board. In the alternative, the Board may recapture such funds from payments due under this contract.

2.32 RECORDS MAINTENANCE

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract 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 Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

2.33 REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

2.34 RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by the Board, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

2.35 SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Board may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

2.36 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

2.37 SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of the Board.

If the Board approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, the Board in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to the Board if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal

conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Board for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that the Board and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

2.38 SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

2.39 TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

2.40 TERMINATION FOR CAUSE

In the event BOARD determines the Contractor has failed to comply with the conditions of this contract in a timely manner, BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, BOARD shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law.

BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of BOARD provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

2.41 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract the Board may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, the Board shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

2.42 TERMINATION PROCEDURES

Upon termination of this contract, BOARD, in addition to any other rights provided in this contract.

The rights and remedies of BOARD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

- C. Assign to the BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to the BOARD;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the BOARD has or may acquire an interest.

2.43 TREATMENT OF ASSETS

Title to all property furnished by BOARD shall remain in BOARD. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Contractor.

2.44 WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of the Board.

ATTACHMENT I: ATTORNEY'S CERTIFICATION

PUBLIC WORKS BOARD CONSTRUCTION LOAN PROGRAM

City of Long Beach
PC20-96103-048

I, _____, hereby certify:

I am an attorney at law admitted to practice in the State of Washington and the duly appointed attorney of the City of Long Beach (the Contractor); and

I have also examined any and all documents and records which are pertinent to the Contract, including the application requesting this financial assistance.

Based on the foregoing, it is my opinion that:

1. The Contractor is a public body, properly constituted and operating under the laws of the State of Washington, empowered to receive and expend federal, state and local funds, to contract with the State of Washington, and to receive and expend the funds involved to accomplish the objectives set forth in their application.
2. The Contractor is empowered to accept the Public Works Board financial assistance and to provide for repayment of the loan as set forth in the Contract.
3. There is currently no litigation in existence seeking to enjoin the commencement or completion of the above-described public facilities project or to enjoin the Contractor from repaying the loan extended by the Public Works Board with respect to such project. The Contractor is not a party to litigation which will materially affect its ability to repay such loan on the terms contained in the Contract.
4. Assumption of this obligation would not exceed statutory and administrative rule debt limitations applicable to the Contractor.

Signature of Attorney

Date

Name

Address

TAB - G



**CITY COUNCIL
AGENDA BILL
AB 19-76**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION

**SUBJECT: Right-of-Way
Vacation – North portion
of 11th & 12th ST NE
Public Hearing**

Originator:

Mayor	
City Council	
City Administrator	
City Attorney	
City Clerk	
City Engineer	
Community Development Director	AS
Events Coordinator	
Finance Director	
Police Chief	
Streets/Parks/Drainage Supervisor	
Water/Wastewater Supervisor	

COST: Market Value - \$4.50
a SQFT– ½ \$2.25 the City can
charge

SUMMARY STATEMENT: The City has been approached by the property owner of Sandcastle RV to vacate the northern portion of the 11th ST NE ROW and the southern portion of the 12th ST NE ROW that abuts his property. The Council went to the property and assessed the situation.

RECOMMENDED ACTION: Review the Staff Report, continue the hearing to the October 21st Council date where the Ordinance can be presented.

City of Long Beach
Department of Community Development

STAFF REPORT

TO: Long Beach City Council
FROM: Ariel Smith, Community Development Director
SUBJECT: Case No. VAC 2019-02
Vacation of Right-of-Way—portions of 11th & 12th Street Northeast—
PETITIONER: Don Green
SITE ADDRESS: Northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet and the southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet;
The subject property is located on Block 10, lots 1-8, Plat of Tinkers Third Addition, of Long Beach, Pacific County, Washington.
DATE: September 16, 2019

BACKGROUND

The owner of 1100 Pacific Ave N has petitioned to vacate the north side of 11th St NE and the south side the of 12th ST NE Right-of-way (ROW) [location map attached]:

- Northern twenty-six feet (26') of the right-of-way of 11th Street Northeast, from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet;
- Southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet;

The vacated property would be joined with the petitioner's parcel(s), APN(s) 73011040003, 73011040004 and 73011040001. This ROW would be used for landscaping, fire pits and other amenities for the property owner's patrons. Below is a discussion of existing infrastructure located within the subject ROW.

PROPERTY DETAILS

Comprehensive Plan Map Future Land Use Designation of Adjacent Property: Residential Commercial and Single-Family Residential

Shoreline Master Program: Not applicable

SEPA: Not applicable

Zoning of Adjacent Property:

- North, south, and west are all RC – Residential Commercial. East side is R1– Single-Family Residential

Site Description: The proposed ROW vacation is comprised of 5,200 square feet (SF), 26’ X 200’ trending east-west along 11th St NE as well as 8,000 square feet (SF), 40’ X 200’ trending east-west along 12th St NE. The vacated ROW(s) would be joined with the applicant’s property, which is an entire city block (200’ X 200’). The area is operating currently as an RV park.

Vicinity Characteristics:

AREA	LAND USE PLAN	ZONING	EXISTING CONDITIONS
NORTH	Residential-Commercial – Single-Family	RC/R1	Residence
SOUTH	Residential Commercial	RC	Multi-Family
EAST	Single-Family	R1	Residences
WEST	Residential Commercial	RC	Commercial

Utilities and Services:

<u>Water:</u>	City water available
<u>Sewer:</u>	City sewer available
<u>Transportation:</u>	Property has frontage on 11 th and 12 th St NE as well as Pacific Hwy N and Oregon Ave N
<u>Public Education:</u>	Ocean Beach School District
<u>Electricity:</u>	PUD No. 2 electricity available at site
<u>Storm water and Drainage:</u>	Pre-existing use
<u>Cable:</u>	Charter Cable and several satellite providers available
<u>Solid Waste:</u>	Area served by Peninsula Sanitation

Police and Fire: City of Long Beach

Medical and

Emergency Facilities: City of Long Beach EMS, Medix Ambulance Service, and Ocean Beach Hospital District

Library: Timberland Regional Library in Ilwaco and Ocean Park.

Public Parks and

Recreation Area(s): Numerous park and recreation areas within the City of Long Beach and within Pacific County; within walking distance to the beach and ball fields about a block south

Public Transit: Pacific Transit District service available, including Dial-A-Ride

Flood Zone: Zone B-100 year shallow – undetermined

PROCEDURAL INFORMATION

Authorizing Ordinances

Title 11, Unified Development, of the of Long Beach City Code, and more specifically as follows:

City Code Section 11-6C-1 allows an abutting property owner to petition the City Council to vacate all or portions of street or alley ROWs ;

City Code Sections 11-6C-2, 3, and 4 set forth procedures for evaluating the vacation of a street or alley; and

City Code Sections 11-6C-6, 7, and 8 set forth how title, zoning, and vested rights are to be handled for vacated property.

This petition is required pursuant to **City Code Section 11-6C-1(A)**. Other applicable City regulations and guidelines are as follows:

- City of Long Beach Comprehensive Plan
- City of Long Beach Unified Development Regulations

Process to Date

In 2019

- July 24: Petition received by City to vacate the north portion of 11th St NE and southern portion of 12th St NE [attached]
- July 24: City Administrator notified
- September 3: City Council considered and passed Agenda Bill (AB) 19-67, which approved Resolution 2019-09 [both attached], establishing October 7, 2019 as the day for a public hearing and possible decision. That hearing date was not less than twenty (20) days and not more than sixty (60) days from the date of the passage of said resolution.
- September 4: City looked at utility GIS to determine if ROW vacation interfered with any services; PUD notified the City that there is power service in both ROW(s).
- September 4 : The City posted a public notice [attached] at the subject property, Long Beach City Hall, the Long Beach Post Office, and the Long Beach Police Department. The City also requested the Chinook Observer publish the notice on September 18 and September 25, 2019.
- October 7: The Council is expected to conduct a public hearing to take public input and may decide to close or continue the hearing.
- October 21: This is the date slated for the Council to make a decision on this matter, barring continuation of the public hearing.

Materials Submitted

The petitioner submitted the following in support of the subject request for approval:

- Petition (letter)

ANALYSIS

Regarding street or alley vacations, the Long Beach City Code restricts itself to procedural requirements and provides no guidance regarding what the City Council must consider when deciding whether or not to vacate ROWs. It is left to the City Council to make this decision based on the Council's judgment of what is in the best interest of the City. The following analysis provides input from key staff, identifies procedural requirements, and identifies relevant portions of the City's Comprehensive Plan. This analysis is intended to aid the Council's

decision by identifying potential costs and benefits of this proposed partial street vacation. Where City Code or Comprehensive Plan references are relevant, they appear [in brackets].

I. Staff Input

Fire Chief: Chief Matt Bonney has no comments and identified no issues with the requested vacation.

Staff did identify that the northeast portion of 11th St NE, if vacated, could create a narrow passage for the aerial truck. This would leave limited space for staging and set-up if there were to be a fire at the Driftwood Point Apartments.

Water and Sanitary Sewer Department Head, Don Zuern, notes that there are utilities surrounding this property on three sides. There is water and sewer on 11th St NE and 12th St NE, and sewer on Oregon Ave N. The utilities seem to be on the edge of the pavement and could possibly conflict with this ROW vacation. Please see attached utility map.

Parks, Streets and Drainage Department Head, Mike Kitzman, states that this vacation would leave little room to conduct repairs and could ultimately cause a problem in the future.

Engineer for Public Utilities District (PUD) No.2 of Pacific County, Jason Janda, states there are no PUD utilities located in either portion of the ROW to be vacated.

II. Comprehensive Plan

This request is not consistent with the City's Comprehensive Plan and does not support any of the plan's strategies.

III. City Code

The owners of an interest in any real estate abutting upon any street or alley may petition the City Council to make vacation, giving a description of the property to be vacated. The petition must be filed with the City Administrator. [City Code Section 11-6C-1(A), (C)]

On July 24, 2019, the applicant, who is also the owner of the property abutting all sides of the proposed street vacation, filed a petition with the City requesting partial street vacation, and described the property desired to be vacated. At that time, the proper utilities were contacted for a locate to ensure that this vacation would not impact any existing services.

If the petition is signed by the owners of more than two-thirds (2/3) of the properties abutting upon the street or alley sought to be vacated, the City Council shall by resolution set a date when the petition will be heard at a public hearing and decided upon. The date shall be not more than sixty (60) days nor less than twenty (20) days after the date of the passage of such resolution. [City Code Section at 11-6C-2]

The petitioner owns 100% of the property adjoining that portion of 11th St NE and 12th St NE, and the City Council is required to set a date for a public hearing on the matter. On September 3, 2019, the Long Beach City Council approved AB 19-67, passing Resolution 2019-09. That resolution fixed the date of a public hearing to hear input on the proposed vacation and to possibly decide the issue. The resolution as approved conforms to code.

Upon passage of the resolution, the City Administrator must post notice of the petition in three (3) public places in the city and a notice in a conspicuous place on the street or alley sought to be vacated. The notice must contain:

1. A statement that a petition has been filed to vacate the street or alley described in the notice; and
2. A statement of the time and place fixed for the hearing of the petition. [City code at 11-6C-3(A)]

On or about September 4, 2019, the City posted notice of the public hearing, including a description of the property proposed to be vacated, as well as a description of the date, time, and location of the hearing in three (3) public locations in the city, plus one on the property proposed to be vacated. In addition, on September 4, 2019, the City requested the Chinook Observer publish the notice in its September 18 and September 25, 2019, editions. The notice as stated and posted conforms to code.

If fifty percent (50%) of the abutting property owners file written objection to the proposed vacation with the City Administrator prior to the time of the hearing, the city will not proceed with the resolution. [City code at 11-6C-3(C)]

The adjacent property owners have not made any comments at this time.

Ordinance Required: The hearing on the petition must be held by the City Council. If the City Council decides to grant the petition or any part of it, the City Council may by ordinance vacate the street or alley. The ordinance may provide that it will not become effective until the owners of property abutting upon the street or alley so vacated will compensate the City in an amount which does not exceed one-half ($\frac{1}{2}$) the appraised value of the area so vacated, except in the event the subject property was acquired at public expense, compensation may be required in an amount equal to the full appraised value of the vacation; provided, that the ordinance may provide that the City retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. [11-6C-4(A)] The City also requires that vacation of streets that abut water be in the full amount.

The City Council is scheduled to conclude a public hearing on this matter at its regularly scheduled meeting on October 7, 2019. After that hearing, should the City decide to pass an ordinance and vacate a portion of the subject ROW, the applicants shall cause to have conducted an appraisal of the market value of the area to be vacated. Since the subject ROW was not purchased at public expense, and because this ROW does not directly lead to the ocean as defined in City Code, Council would be allowed to ask the applicant to pay up to a maximum of $\frac{1}{2}$ the market value.

The initiating party shall be responsible for the payment of all costs associated with the vacation, including the appraisal of the property. [11-6C-4(A)(1)]

If Council grants the vacation and passes an ordinance, the petitioners must pay to have an appraisal conducted to establish the value of the property to be vacated. Alternatively, the Council and petitioners may mutually agree to use a recent valuation conducted by Lighthouse Realty, which fixed the full market value at \$59,400. With $\frac{1}{2}$ market value as the maximum amount allowed to be charged, the amount to be charged would be \$29,700.

The amount a petitioner must pay for a vacated ROW up to the maximum is entirely up to Council.

Record Ordinance: A certified copy of the ordinance must be recorded by the City Clerk-Treasurer with the Pacific County Auditor's Office. [11-6C-4(B)]

This is a staff task, and if the transaction is completed, staff will record a certified copy of the ordinance with Pacific County. The petitioner will pay any recording costs.

Title to Vacated Street or Alley: If any street or alley is vacated by the City Council, the property within the limits so vacated will belong to the abutting property owners. [11-6C-6]

If the City Council vacates the north portion of the 11th St NE and 12th St NE ROW as requested, the property would be owned by the petitioners or subsequent owners of the property to which the vacated land is joined.

Zoning of Vacated Street or Alley: The zoning of vacated ROWs shall be the same as that of the abutting property to which it will belong. [11-6C-7]

If the City Council vacates the north portion of the 11th St NE and south portion of 12th St NE ROW as requested, that property would be zoned RC—Residential Commercial.

SUMMARY

Northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet.

Southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet.

This could create access issues for water, sewer and stormwater. Also, the PUD has two transformers in the area of the vacation. If it were to pass, the owner would need to grant easements for those utilities.

SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Suggested Findings of Fact

Staff provides the City Council of the City of Long Beach, Washington, the following suggested findings of fact as input to the Council's own evaluation of Case No. VAC 2019-01. If any Findings of Fact herein are deemed Conclusions of Law, they are incorporated into the Conclusions of Law for this decision.

1. **Petition.** The City Council finds the petition comprises the following:
 - 1.1 A letter from petitioner Don Green, July 24, 2019.
 - 1.2 All other information contained in Case File No. VAC 2019-02.
2. **Procedures.** The Council finds the following procedures were followed:
 - 2.1 On July 24, 2019, petition (completed) was received by the City.
 - 2.2 On July 24, 2019, the City Administrator was notified.
 - 2.3 On August 27, 2019, the Community Development Director consulted with City Department Heads, Public Utility District No. 2 of Pacific County, and CenturyTel regarding this ROW.
 - 2.4 On September 3, 2019, the City Council approved Resolution 2019-09, setting the time and place for a public hearing on the matter.
 - 2.5 On or soon after September 4, 2019, the City posted notice of the hearing at the subject site, the Long Beach Post Office, the Long Beach Police Station, and Long Beach City Hall. The City also requested the Chinook Observer publish the notice in its September 18 and September 25, 2019, issues. The notice includes a statement of the proposal, a description of the land proposed to be vacated, as well as a map. The notice also includes instruction on how to submit comments on the proposal.
 - 2.6 On October 7, 2019, the Long Beach City Council opened and conducted a public hearing at or soon after 7 PM to take public comment on this matter.
3. **Proposal.** The City Council finds the following regarding the proposed street vacations:
 - 3.1 The petitioner's request and City staff recommend that Council vacate the following, with transfer of title to the petitioners and all rights thereto:
 - Northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet.

- Southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet.

3.2 The petitioners shall pay for all costs associated with this proposal, including but not limited to noticing fees and appraisal costs if granted.

3.3 The petitioner shall pay the City up to a maximum of 50% of the appraised value of the subject property if granted.

4. **Property characteristics.** The City Council finds the following regarding the subject property:

4.1 Northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet and the southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet; of Lot 1-8, in Block 40 of Tinkers Third Addition to Long Beach, according to the Plat thereof on file in the office of the Auditor in Volume D-1 of Plats, Page 45, of Pacific County, Washington

Characteristics of the property to which the vacated land would become part are as follows:

4.2.1 The parcel(s) is 200' X 200'.

4.2.2 The lot currently is developed and used as RV park.

4.2.3 The parcel is located within the B flood zone.

4.2.4 The parcel is essentially flat.

4.2.5 The parcel is served with City and utility services.

5. **Subject property land use and zoning.** The City Council finds the following regarding the land use and zoning of the property proposed for vacation:

5.1 The subject property is located adjacent to the RC—Residential Commercial zone pursuant to the City's zoning regulations.

5.2 The subject property is located adjacent to property designated R1—Residential Commercial on the future land use map of the Long Beach Comprehensive Plan.

5.3 The current land use of the subject property is developed with an RV park on it.

6. **Surrounding property land use and zoning.** The City Council finds the following regarding the land use and zoning of surrounding property:

AREA	LAND USE PLAN	ZONING	EXISTING CONDITIONS
NORTH	Residential-Commercial – Single-Family	RC/R1	Residence
SOUTH	Residential Commercial	RC	Multi-Family
EAST	Single-Family	R1	Residences
WEST	Residential Commercial	RC	Commercial

7. **Services.** The City Council finds the following regarding services and utilities available to serve the proposed project:

- 7.1 Water is available from the City of Long Beach.
- 7.2 Sewer is available from the City of Long Beach.
- 7.3 Transportation: Existing from 11th St NE and 12th St NE
- 7.4 Public Education is provided by the Ocean Beach School District.
- 7.5 Electricity is available from Pacific County PUD No. 2.
- 7.6 Solid Waste is available from Peninsula Sanitation, and service is already provided.
- 7.7 Police and Fire are provided by the City of Long Beach Police and City of Long Beach Fire Departments.
- 7.8 Medical and Emergency Facilities are provided by the City of Long Beach EMS, Medix Ambulance Service, and Ocean Beach Hospital District No. 3.

8. **City Staff and PUD Input.** The City Council finds the following regarding staff and PUD input:

- 8.1 City staff did not identify any conflicts regarding City services or utilities that cannot be rectified.
- 8.2 The PUD did identify conflicts regarding PUD services; there is a transformer on the northwest corner of 11th St NE and Oregon Ave N. There is also a transformer on the west end of the property corner.
- 8.3 Contact with CenturyTel was made and staff is still waiting to hear back.

9. **City's Comprehensive Plan.** The City Council finds the proposed project does not comply the City's Comprehensive Plan.
10. **City's Unified Development Regulations.** The City Council finds the proposal complies with the following relevant portions of the City's Unified Development Regulations:
 - 10.1 11-6C-1(A), (C): Petition by owner.
 - 10.2 11-6C-2: Setting date for hearing.
 - 10.3 11-6C-3: Notice of hearing.
 - 10.4 11-6C-4: Hearing; ordinance of vacation.
 - 10.5 11-6C-6: Title to vacated street or alley.
 - 10.6 11-6C-7: Zoning of vacated street or alley.

II. Suggested Conclusions of Law

Staff provides the Long Beach City Council the following suggested conclusions of law as input to the Council's own evaluation of Case No. VAC 2019-02. The conclusions of law herein are made in reliance upon and with specific reference to and adoption of the Findings of Fact stated above, which are incorporated herein in their entirety by reference. If any Conclusions of Law herein are deemed Findings of Fact, they are incorporated into the Findings of Fact for this decision.

The City Council of the City of Long Beach, Washington, concludes the following regarding Case No. VAC 2019-02:

1. Case No. VAC 2019-02 complies with relevant portions of the Unified Development Regulations, adopted via Ordinance 848, as may be amended.

SUGGESTED RECOMMENDATION AND ACTION

Based on the analysis and suggested Findings of Fact and conclusions of law, above, staff recommends the City Council adopt the above Findings of Fact and DENY Case No. VAC 2019-02, including vacation of the following:

- Northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet.
- Southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet.

RESOLUTION 2019-09

A RESOLUTION OF THE CITY OF LONG BEACH, WASHINGTON SETTING THE TIME AND PLACE FOR A PUBLIC HEARING FOR CONSIDERING A PARTIAL STREET VACATION OF 11th & 12th STREET NORTHEAST

WHEREAS, Don Green has filed a petition for the partial vacation of 11th and 12th Street Northeast to combine with his adjoining parcel; and,

WHEREAS, RCW 35.79 requires passage of a resolution setting the time and place for a public hearing to consider vacation of a public street and the posting of public notices, such public hearing to be scheduled not less than twenty (20) nor more than sixty (60) days from passage of said resolution;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE LONG BEACH CITY COUNCIL that a public hearing shall be held in the Council Chambers at Long Beach City Hall for the purpose of considering the partial street right-of-way vacation of the following areas:

- 26 feet by 200 feet from the north side of 11th Street Northeast; and
- 40 feet by 200 feet from the south side of 12th Street Northeast; and

Said hearing shall be held on October 7, 2019 at 7:00 PM or shortly thereafter in the Long Beach City Council chambers.

The required notice shall be placed at on the subject property—which is Assessor’s parcel No. 73011040001, 73011040003, and 73011040004, bounded by Oregon Ave North and Pacific Hwy N and at Long Beach City Hall, the United States Post Office in Long Beach, and the Long Beach Police Department.

Passed this 3rd day of September 2019.

Ayes Nays Absent Abstentions

Jerry Phillips, Mayor

Attest:

Helen Bell, City Clerk

City of Long Beach
Notice of Petition and of Public Hearing
To Consider Partial Vacation of 11th and 12th Street Northeast

VACATION OF A PORTION OF 11TH & 12TH STREET NORTHEAST; CASE NO. VAC 2019-02. Notice is hereby given that Don Green, filed a petition with the City of Long Beach on July 24, 2019 requesting the City vacate a portion of the right-of-way of 11th Street Northeast and 12th Street Northeast. The petition seeks vacation of the northern 26 feet of 11th Street Northeast from the southwestern property corner of parcel No. 73011040001 to the southeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 5,200 square feet in the RC –Residential Commercial zone. The petition also seeks to vacate the southern 40 feet of 12th Street Northeast from the northwest property corner of parcel No. 73011040003 to the northeastern property corner of parcel No. 73011040004 approximately 200 feet, encompassing an area of approximately 8,000 square feet in the RC – Residential Commercial zone. **The subject property is located on Block 40, lots 1-8, Plat of Tinkers Third Addition, of Long Beach, Pacific County, Washington.**

The Long Beach City Council passed Resolution 2019-09 fixing the time, date, and location of a Public Hearing on this application as **7:00 pm or soon thereafter on Monday, October 7, 2019 in the City Council Chambers at Long Beach City Hall, 115 Bolstad Street West, Long Beach WA 98631.**

Any person interested in this request may speak for or against the request at the public hearing or submit written comments prior to the public hearing. **Written comments should be addressed to: Ariel Smith, Community Development Director, P.O. Box 310, Long Beach, WA 98631. Written comments must be received by the end of the public hearing.**

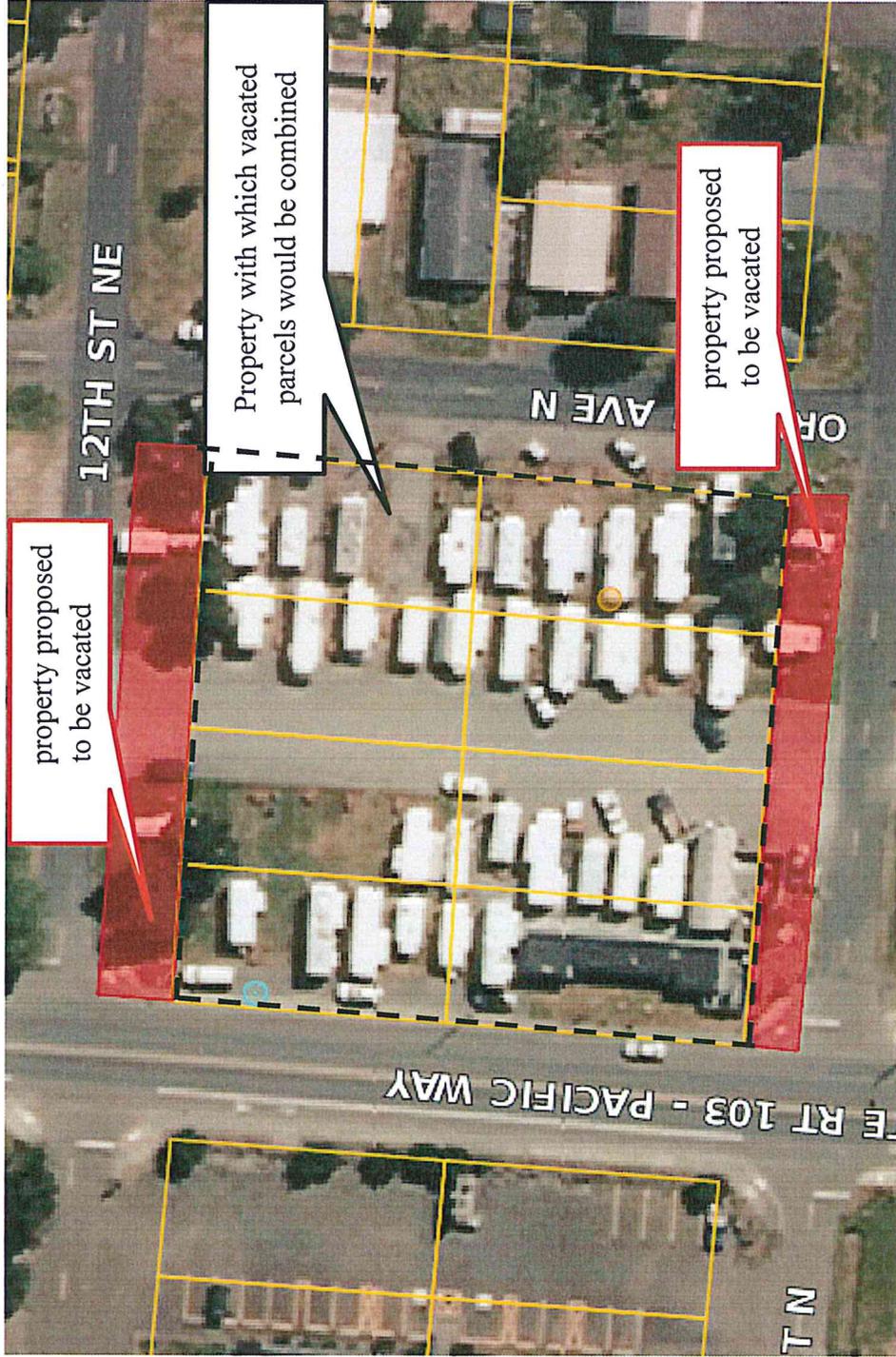
The Meeting Room is ADA accessible. For those planning to attend who have special accessibility requirements, please contact the City of Long Beach by phone, 360-642-4421 or at the address below at least ten (10) days in advance.

Responsible Official:
Position/Title:
Phone:
Address:

Ariel Smith
Director, Community Development
(360) 642-4421
P.O. Box 310
Long Beach, WA 98631

Notice Date:

September 4, 2019



Case No. VAC 2019-02; Location Map

Don Green

Partially vacate 11th & 12th Street NE; combine with property at 1100 Pacific Ave N

ТАВ — Н



**CITY COUNCIL
AGENDA BILL
AB 19-77**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION		
SUBJECT: SWRTPO Grant Award for the Discovery to Bay Trail	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	
	City Attorney	
	City Clerk/Treasurer	
	City Engineer	
	Community Development Director	AS
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: \$100,000 with 13.5% match requirement	Other:	
<p>SUMMARY STATEMENT: The city applied for grant money to help with the project management of the Discovery to Bay Trail planning process. This money will be used to hire a project lead who works directly with the public entities to coordinate and establish an alignment that can be brought to FHWA and ultimately lead to a construction grant application.</p>		
<p>RECOMMENDED ACTION: <i>Authorize the Mayor to enter into an agreement with the Southwest Washington Regional Transportation Planning Organization (SWRTPO) for Transportation Alternative (TA) funds to support the Discovery to Bay Trail planning process.</i></p>		



September 18, 2019

Mayor Jerry Phillips
 City of Long Beach
 PO Box 310
 Long Beach, WA 98631

Re: Surface Transportation Block Grant Program Set Aside (Transportation Alternatives) Funds –
 Discovery Bay Trail

Dear Mayor Jerry Phillips:

The Southwest Washington Regional Transportation Planning Organization (SWRTPO) Board approved the allocation of Transportation Alternatives (TA) funds in the amount of \$100,000 toward the Discovery Bay Trail in City of Long Beach. Please coordinate with the Cowlitz-Wahkiakum Council of Governments (CWCOG) staff to ensure timely programming of these awarded funds in the Regional Transportation Improvement Program (RTIP) / Statewide Transportation Improvement Program (STIP).

The funds are programmed for obligation according to the schedule in the following table. Please be aware these awards are subject to modification, pending Washington State Department of Transportation (WSDOT) confirmation of funding availability. Early obligation (i.e. before the year programmed) is strongly encouraged when allowed by WSDOT. If you plan to obligate your TA funds early, please be advised WSDOT will request approval for early obligation from CWCOG.

Phase	Amount of TA Funds	RTIP/STIP Year	Obligation Target Range*
PL	\$100,000	2022	October 1, 2021 - June 30, 2022

* Targets may be adjusted based on overall program obligation status. All parties must agree to any shift in obligation targets. Failure to meet obligation target by City of Long Beach could result in forfeiture of award.

With this approval, City of Long Beach will be responsible for the contracting, obligation, and closing out of the funds for the aforementioned project. The Washington State Department of Transportation Southwest Region (WSDOT – SW) Local Programs office will work closely with you to make sure that the project funds are properly spent.

As a recipient of TA funds, you are responsible for the timely expenditure of the funds for this project. Please ensure compliance with the Local Agency Guidelines (LAG) Manual and submit monthly expenditures to WSDOT’s Local Programs office. After close-out of the project has been completed,

any remaining funds will be returned to the SWRTPO TA account and cannot be transferred to another project in your jurisdiction.

As a recipient of TA funds, you are also responsible for reporting to WSDOT and the CWCOG any expected surplus funds identified at the time you obligate for construction. This requirement is in place to assist in the management of the TA program's obligation requirements.

To help ensure progress towards timely obligation and the completion of projects, CWCOG requires recipients of TA funds do the following.

1. Within six (6) months of the date of this letter complete two items: 1) Communicate with CWCOG staff about the plan for programming the project on the RTIP/STIP; and 2) Discuss the project with WSDOT - SW Local Programs staff to make sure the requirements to obligate are understood.
2. Provide periodic updates to CWCOG staff and copy the WSDOT Local Programs Engineer as requested, or as you identify challenges that may delay obligation.
3. Copy CWCOG staff on correspondence with WSDOT when it concerns obligation.
4. Provide CWCOG staff with a copy of the Local Agency Agreement and Project Prospectus when submitted to WSDOT.
5. Complete a CWCOG Annual Report each year until the project is closed out. Annual report forms will be emailed each January.

If you have any questions regarding the allocation, obligation, and expenditure of these funds, please contact CWCOG staff or your WSDOT Local Programs Engineer. We look forward to working with you as this project is completed.

Sincerely,



William A. Fashing, CWCOG Executive Director



Frank Wolfe, SWRTPO Chair

cc: David Glasson, City Administrator; City of Long Beach (by email)
Michael Williams, Local Programs Engineer; WSDOT Southwest (by email)

By signing and returning this award letter, City of Long Beach accepts this award and agrees to move forward with the project; understands the requirements in this letter; and acknowledges that not obligating by the targets on the previous page may result in this award being forfeited. Confirm this award within 30 days of the date of this letter.

By: _____
City of Long Beach Official

Title

TAB - I



**CITY COUNCIL
AGENDA BILL
AB 19-78**

Meeting Date: October 7, 2019

AGENDA ITEM INFORMATION

SUBJECT: 5 th Street Southeast Ownership	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	DG
	City Attorney	
	City Clerk/Treasurer	
	City Engineer	
	Community Development Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: N/A	Other:	

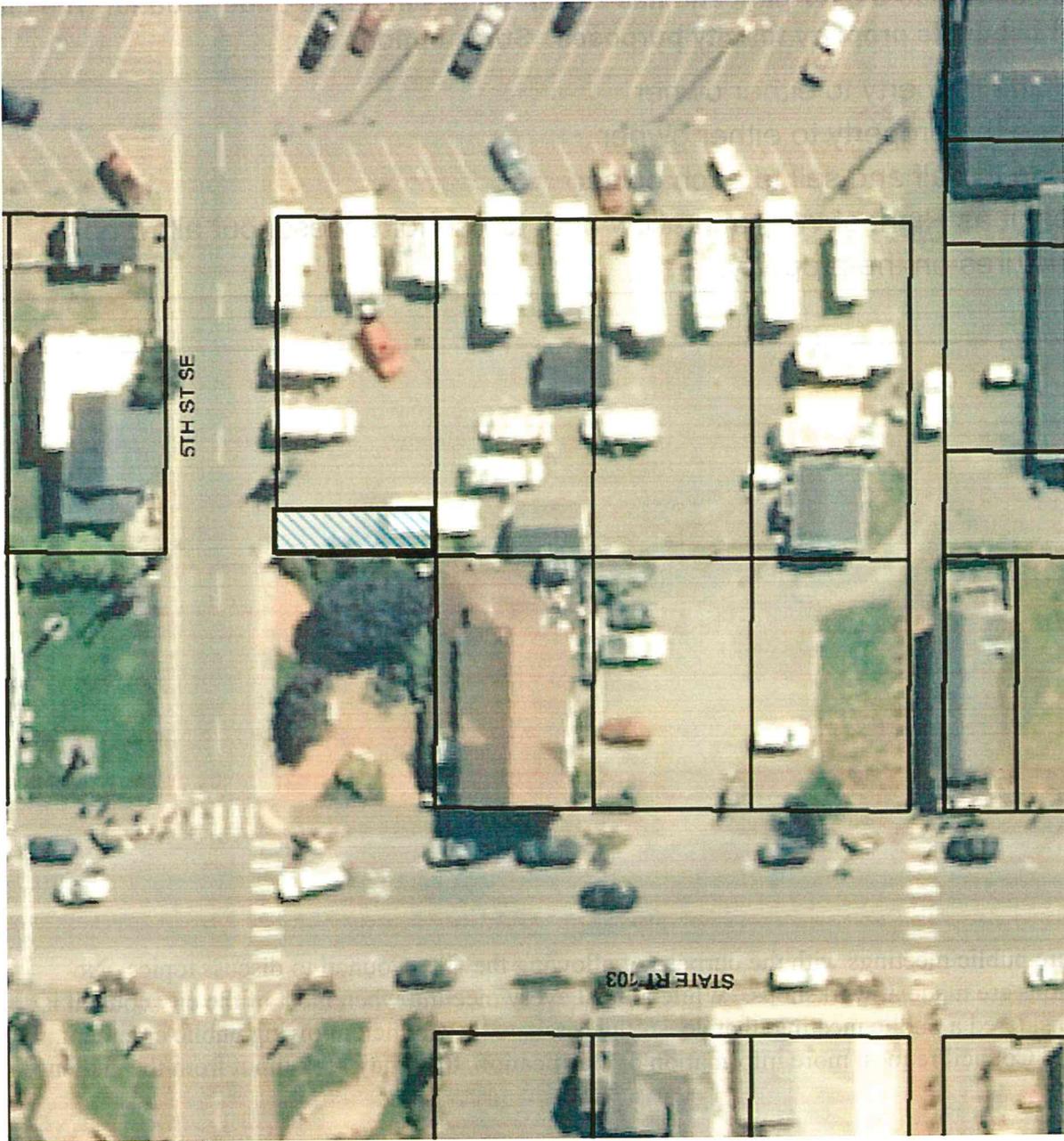
SUMMARY STATEMENT: This item was brought to the city’s attention by both of the abutting property owners. It was discussed during a workshop on September 3rd and the Council needs to now make a final action on the topic. See attached map for details.

RECOMMENDED ACTION: *Staff Recommends that the City claim the property as a right-of-way and enforce that it is treated as such.*



AGENDA ITEM INFORMATION	
SUBJECT: 5th Street South East property discussion.	<i>Originator:</i>
	Mayor
	City Council
	City Administrator
	Community Development Director
<p>SUMMARY STATEMENT: The adjoining property owners next to our mini park have expressed interest in leasing or purchasing property owned by the city. This property is adjacent and east of our current mini park and is about 10' wide by 45' long. It has been used as an access to the RV park and has sewer utilities installed underground. The city has never used this property for city purposes. Some options are:</p> <ol style="list-style-type: none"> 1. Sell the property to either owner 2. Lease the property to either owner 3. Divide in half and sell to each owner 4. Treat it as Right of Way and allow both to use for access, but allow no structures on the property. 	

Workshops are public meetings with the purpose of allowing the City Council to discuss topics. No formal decisions are made at workshops. While almost every meeting when most of the city council is present is considered a public meeting, that doesn't necessitate the Council allowing public comment. If the Mayor and Council request more information or clarification, they may seek input from the audience.



City Owned per Surveyor

Workshops are public meetings with the purpose of allowing the City Council to discuss topics. No formal decisions are made at workshops. While almost every meeting when most of the city council is present is considered a public meeting, that doesn't necessitate the Council allowing public comment. If the Mayor and Council request more information or clarification, they may seek input from the audience.

TAB - J

PACIFIC COUNTY TOURISM

Destination Marketing Organization

ANNUAL REPORT 2018

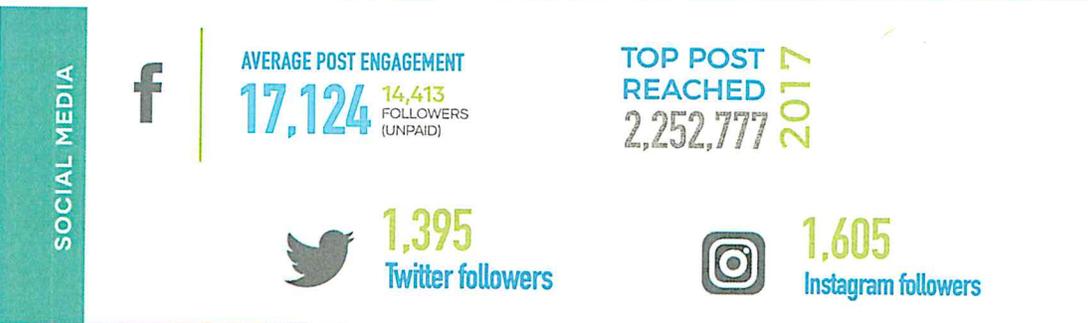
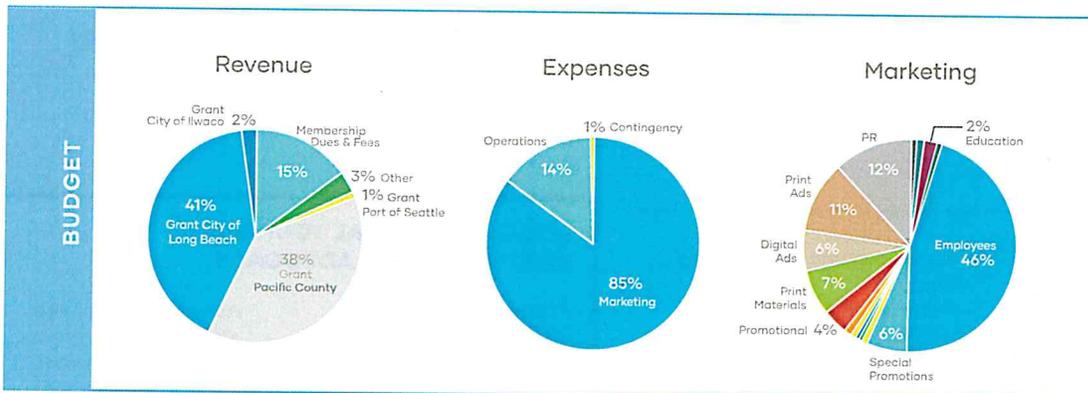
MISSION

To plan, collaborate and implement destination marketing to inspire and connect visitors with unique experiences and local products and generate sustainable tourism growth county-wide.

VISION

To be a favorite year-round Pacific Northwest destination for regional and global visitors and to strengthen the county economy through sustainable tourism growth by promoting authentic experiences while protecting and preserving natural resources and heritage.

2018 WORK & MEASURABLE OUTCOMES



2018 WORK & MEASURABLE OUTCOMES

PRINT MATERIALS

250,000
PIECES
produced and distributed

- Beach Visitors Guides
- Annual Events Calendars
- Discovery Trail Maps
- Beach Guest Directories
- Wedding Planners
- Meeting Planners in Print & Digital
- Lure Brochure

\$2.2 million

Local Economic Impact
for Beach Visitors
Guides distributed 2018

MEDIA RELATIONS

23 HOSTED
Media

Earned Media ROI: over \$8 million

- 434 Newspaper/radio
- 59 Blogs/features
- 115 Magazine articles
- 35 - third party emails/enews
- 2 Books
- 6 TV segments and/or commercials
- 50+ media inquiries fielded
- 21 press releases
- 1 media alert
- 2 bylines
- Media e-news to subscribers
- NW Travel Writers Conference

2018 HIGHLIGHTS



New website

2019 Special Campaign Grant
Take YOUR Time
from Pacific County
Tourism Fund

2018 Tourism Marketing Grant from Port of Seattle

2019-20 Special project grant for Pacific County Tourism Fund for Business Travel and Outdoor Recreational Development (collaboration with Pac. Co EDC)

OTHER DESTINATION MARKETING

- Tradeshows and Marketplaces
- Research
- Professional Development
- Local & Regional Tourism Partnership & Advocacy
- Industry Partner Familiarity Tours
- Visitors Center
- Membership Partnering
- Digital and Print Advertising

LOCAL & REGIONAL TOURISM PARTNERSHIPS & ADVOCACY

- Travel Portland
- Oregon Coast Visitors Assoc.
- Visit Seattle
- Washington Tourism Alliance
- Washington State Destination Marketing Organizations
- U.S. Travel Association
- Astoria Warrenton Area Chamber of Commerce
- Destination Marketing Association - West
- Port of Seattle
- BrandUSA

ECONOMIC IMPACT OF TOURISM IN PACIFIC COUNTY*

Pacific Co. Visitor Spending In 2018
\$185.6 million
↑ **5%** Over 2017

Visitor spending
per Pacific Co. resident
up from \$8,644 to
\$9,053 in 2018

Over 2,440 Jobs
In Pacific County

Visitor Spending has grown by **48%**
or **\$60 million**
since 2013

Lodging taxes collected in Pacific Co.

\$1.25 million ↑ **5.6%** Over 2017



Approximately
\$42.4 million
in Lodging Sales

48 cents

of every taxable dollar spent
in Pacific County
was by a visitor

Visitor spending in Millions

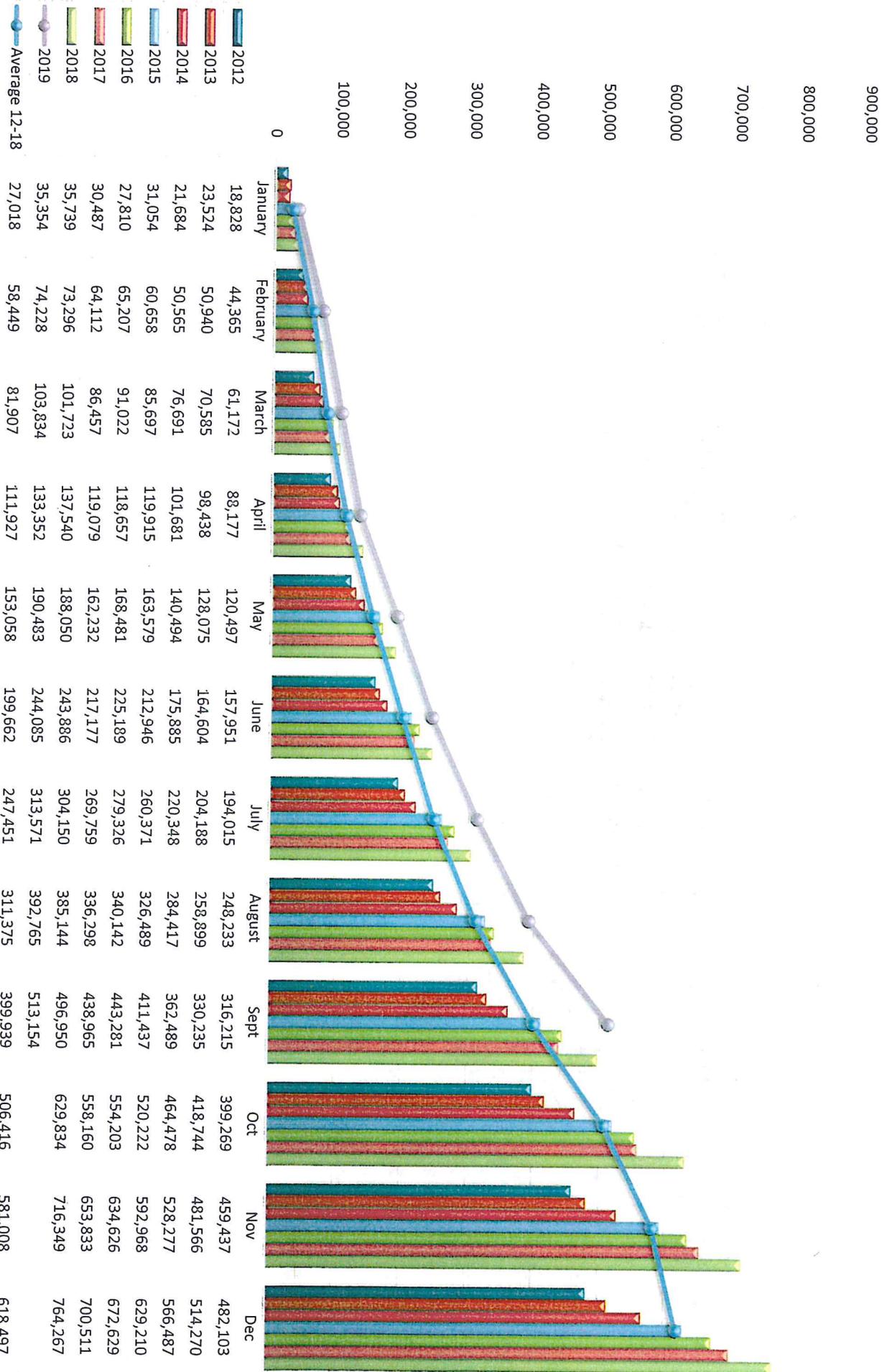


Nearly **\$15 million** in state and local taxes collected in Pac. Co. were paid by visitors

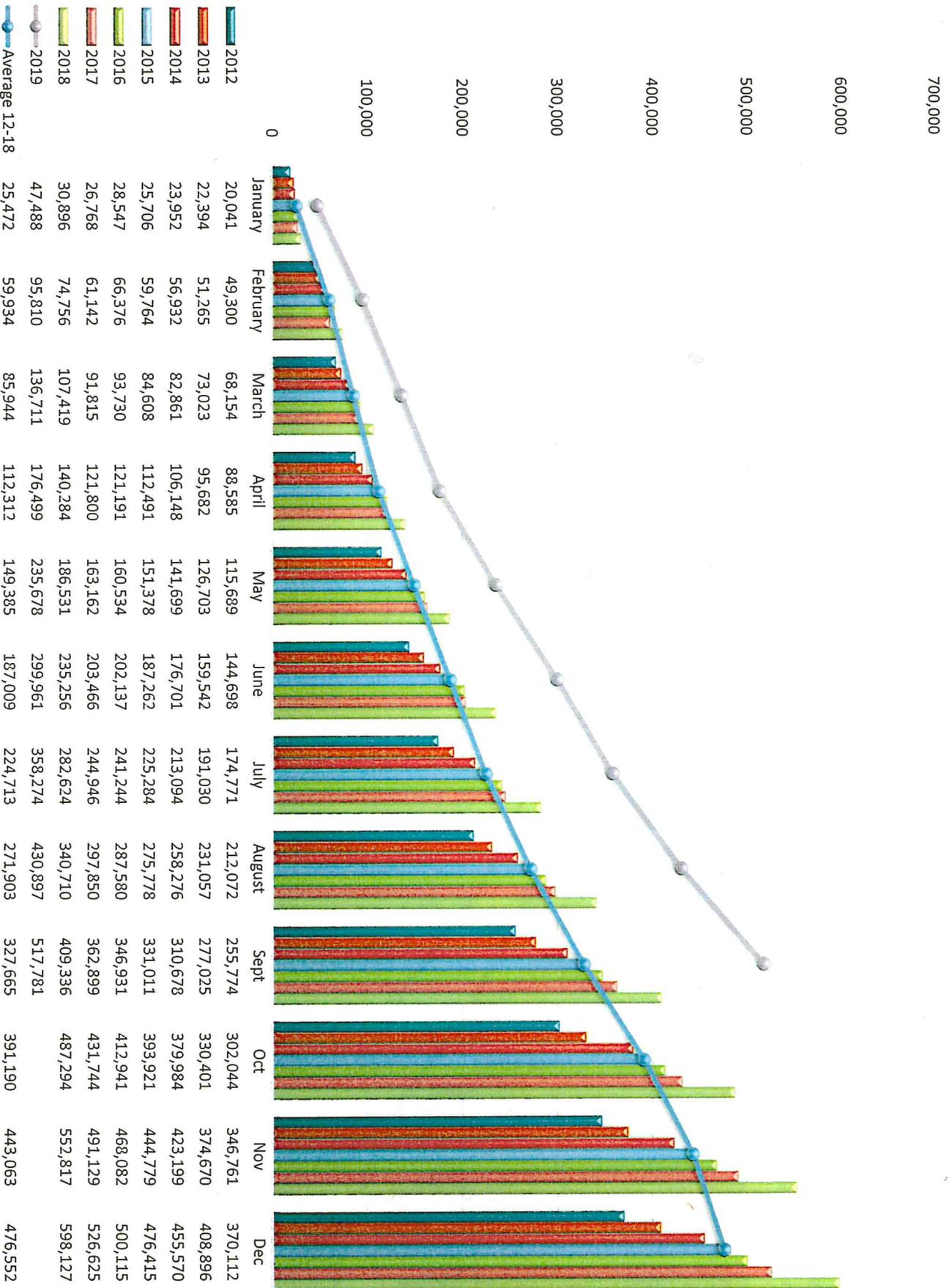
\$1,670 paid per occupied household

*Dean Runyan Associates, Washington State Travel Impacts & Visitor Volume 2010 - 2018p

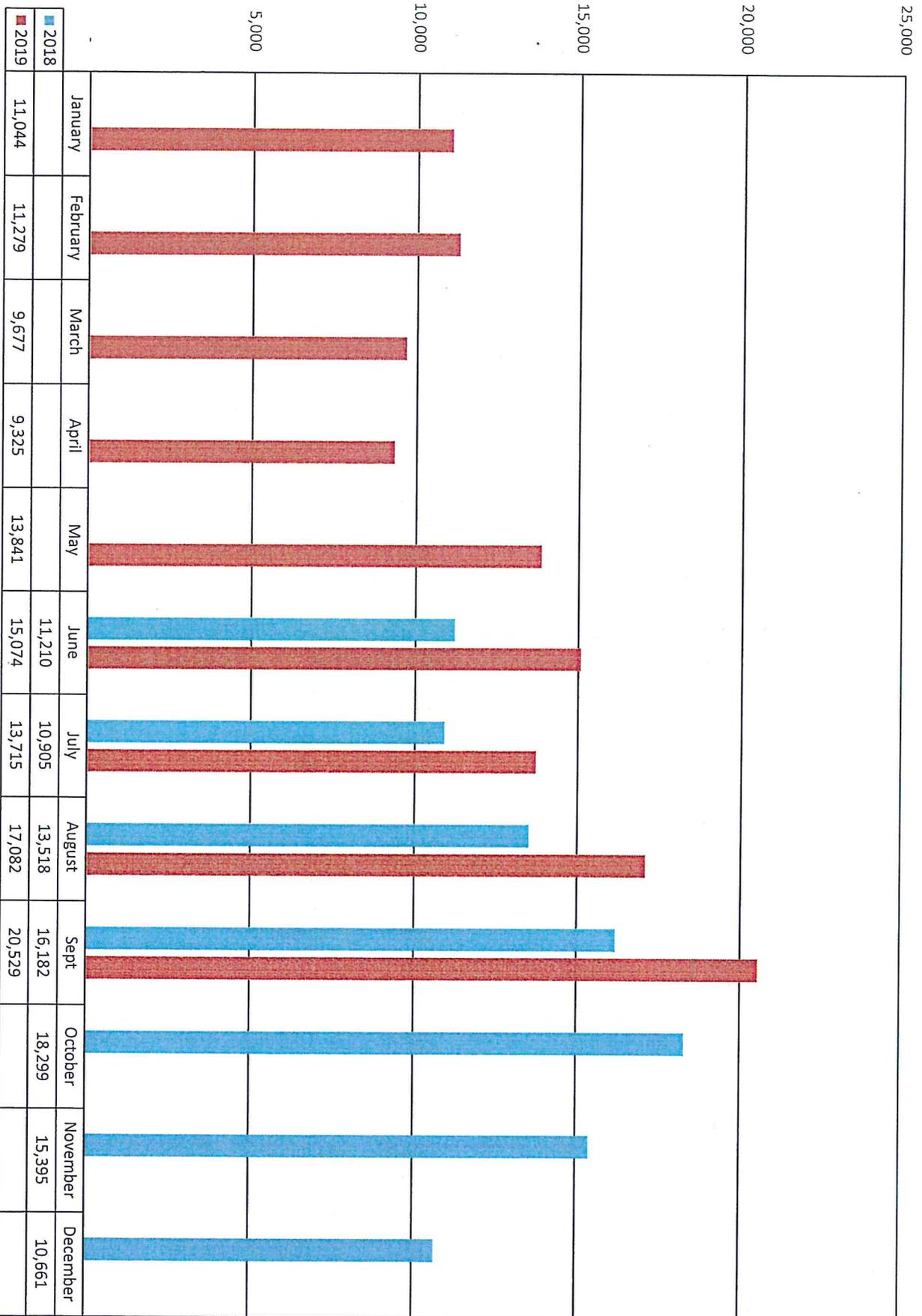
Lodging Tax Collections



Sales Tax Collections



Transportation Benefit District



Long Beach Police

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Long Beach, WA 98631

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10-01-19

Page 1 of 2

To: Mayor Phillips and Long Beach City Council

From: Chief Flint R. Wright

Ref.: Monthly Report for September 2019

During the month of September the Long Beach Police Department handled the following cases and calls:

<u>Long Beach</u>	<u>Ilwaco (Includes 28 Calls At Port)</u>
577 Total Incidents	329 Total Incidents
Aid Call Assists: 6	Aid Call Assists: 2
Alarms: 5	Alarms: 2
Animal Complaints: 1	Animal Complaints: 9
Assaults: 3	Assaults: 3
Assists: 99	Assists: 46
(Includes 8 PCSO, 5 WSP And 0 Other Agency Assists Outside City Boundaries)	
Burglaries: 4	Burglaries: 0
Disturbance: 20	Disturbance: 12
Drug Inv.: 2	Drug Inv.: 3
Fire Call Assists: 3	Fire Call Assists: 2
Follow Up: 105	Follow Up: 69
Found/Lost Property: 14	Found/Lost Property: 2
Harassment: 9	Harassment: 3
Malicious Mischief: 1	Malicious Mischief: 0
MIP – Alcohol: 1	MIP – Alcohol: 0
MIP – Tobacco: 0	MIP – Tobacco: 0
Missing Persons: 0	Missing Persons: 0
Prowler: 3	Prowler: 2
Runaway: 0	Runaway: 2
Security Checks: 138	Security Checks: 116
Suspicious: 16	Suspicious: 1
Thefts: 13	Thefts: 2
Traffic Accidents: 5	Traffic Accidents: 3
Traffic Complaints: 15	Traffic Complaints: 10
Traffic Tickets: 24	Traffic Tickets: 4
Traffic Warnings: 61	Traffic Warnings: 28
Trespass: 10	Trespass: 2
Warrant Contacts: 5	Warrant Contacts: 2
Welfare Checks: 14	Welfare Checks: 4

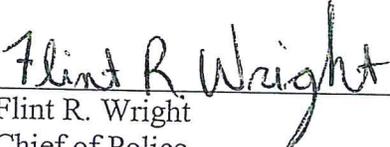
Rod Run Weekend, September 6th-8th, went well. I brought in 16 additional officers for the weekend and our regular officers all worked long shifts. The Slow Drags in Ilwaco went well with no problems. In Long Beach we issued only two negligent driving 2nd citations. A considerable number of DUI's were arrested in Long Beach. Approx. four or five of them were from our officers finding them and then passing the stop onto Washington State Patrol. There was one person arrested for 2 counts of assault 4th. This was in Ilwaco. That was the only person booked over the whole weekend. Overall the weekend went very well.

The department had firearms range training on September 24th. The department shot a "combat" style course.

On the 25th I participated in the 2019 Pacific County Opioid Summit. As you are all aware the nation has been in the midst of a huge problem with opioid use, both legal and illegal. This problem has affected our area as well. This summit was held to try and build solutions to the problem in our area. There were over 125 people in attendance. I participated in a "community leader's panel" and also held one of the afternoon breakout sessions.

The department participated in training on the 27th. The training was put on by the Western States Information Network. "WSIN" is a federally funded program and is part of a nationwide criminal intelligence network. It exists to assist with the investigation, arrest, prosecution and conviction of criminal offenders. The department has been part of "WSIN" for years. This free training was provided to familiarize the officers with all that "WSIN" has to offer and how to make the most of "WSIN".

Most of the department took a "Mental Health First Aid Class" on September 30th. I was one of the instructors. This is similar to other "MHFA" classes that I have taught but had a special emphasis on first responders dealing with persons in crises.



Flint R. Wright
Chief of Police