



SELAH CITY COUNCIL

5:30pm September 24, 2019



Selah City Council
Regular Meeting
Tuesday, Sept. 24, 2019
5:30pm
City Council Chambers

Mayor:
Mayor Pro Tem:
Council Members:

Sherry Raymond
John Tierney
Roger Bell
Russell Carlson
Diane Underwood
Jacquie Matson
Kevin Wickenhagen
Jeremy Burke

CITY OF SELAH
115 West Naches Avenue
Selah, Washington 98942

City Administrator:
City Attorney:
Clerk/Treasurer:

Donald Wayman
Rob Case
Dale Novobielski

AGENDA

- A. Call to Order –Mayor Raymond
- B. Roll Call
- C. Councilmember Absence – Motion to Excuse
- D. Pledge of Allegiance
- E. Invocation
- F. Agenda Changes **None**
- G. Public Appearances/Introductions/Presentations
 - 1. Coleman Miller, Department of Ecology – Presentation of the 2018 Wastewater Treatment Plant Outstanding Performance Award
- H. Getting To Know Our Businesses **None**
- I. Communications
 - 1. Oral

This is a public meeting. If you wish to address the Council concerning any matter that is not on the agenda, you may do so now. Please come forward to the podium, stating your name for the record. Each person wishing to speak shall have two minutes to address the Mayor and Council.

Persons wishing to speak are required to comply with the City's Rules of Decorum and shall maintain appropriate civility. Comments that are impertinent, degrading, slanderous, or impugn the integrity of any member of the Council, employee of the city, or any member of the public shall not be permitted.

- 2. Written **None**
- J. Proclamations/Announcements **None**
- K. Consent Agenda

All items listed with an asterisk (*) are considered routine by the City Council and will be enacted by one motion, without discussion. Should any Council Member request that any item of the Consent Agenda be considered separately, that item will be removed from the Consent Agenda and become a part of the regular Agenda.

- Monica Lake * 1. Approval of Minutes: September 10, 2019 Council Meeting
- Dale N. * 2. Approval of Claims & Payroll
- L. Public Hearings **None**

- M. General Business
 - 1. New Business **None**
 - 2. Old Business **None**
- N. Resolutions
 - Dale N. 1. Resolution Authorizing the Mayor to Sign An Updated Section 125 Cafeteria Plan
 - Joe Henne 2. Resolution Authorizing the Public Works Director to Sign a Water Quality Stormwater Capacity Agreement with the Washington Department of Ecology for \$95,000 in Grant Funds for the City's Stormwater Management Plan
 - Rick Hayes 3. Resolution Declaring a Vehicle Surplus and Providing for Disposition of the Same.
- O. Ordinances **None**
- P. Public Appearances **None**
- Q. Reports/Announcements
 - 1. Departments
 - 2. Council Members
 - 3. City Administrator
 - 4. Boards **None**
 - 5. Mayor
- R. Executive Session
 - 1. 15 Minute Session – Real Estate RCW 42.30.110 (1)(c)
- S. Adjournment

****Next Regular Meeting: October 8, 2019**

<p>Each item on the Council Agenda is covered by an Agenda Item Sheet (AIS)</p> <p style="background-color: yellow;">A yellow AIS indicates an action item.</p> <p style="background-color: blue;">A blue AIS indicates an information/non-action item.</p>



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Council Meeting	Action Item
9/24/2019	K – 1

Title: Approval of Minutes: September 10, 2019 Council Meeting

From: Monica Lake, Executive Assistant

Action Requested: Approval

Staff Recommendation:

Approval of Minutes

Board/Commission Recommendation: Not Applicable

Fiscal Impact: N/A

Funding Source: N/A

Background / Findings & Facts: See Minutes for details

Recommended Motion: Motion to approve the Consent Agenda as read.
(This item is part of the Consent Agenda)

City of Selah
Council Minutes
September 10, 2019

Regular Meeting
Selah Council Chambers
115 West Naches Avenue
Selah, WA 98942

A. Call to Order Mayor Raymond called the meeting to order at 4:00pm.

B. Roll Call

Members Present: Jacquie Matson; John Tierney; Diane Underwood; Russell Carlson

Members Absent: Kevin Wickenhagen; Jeremy Burke; Roger Bell

Staff Present: Donald Wayman, City Administrator; Dale Novobielski, Clerk/Treasurer; Rick Hayes, Police Chief; Gary Hanna, Fire Chief; Jim Lange, Deputy Fire Chief; Joe Henne, Public Works Director; Jeff Peters, Community Development Supervisor; Ty Jones, Public Works Utility Supervisor; Andrew Potter, Human Resources Manager; Monica Lake, Executive Assistant

C. Councilmember Absence – Motion to Excuse

City Administrator Wayman stated that Council Members Bell and Wickenhagen would not be at the meeting, and that Council Member Burke would be arriving late due to a work commitment.

Council Member Carlson moved, and Council Member Underwood seconded, to excuse Council Members Bell, Wickenhagen and Burke. By voice vote, approval was unanimous.

D. Pledge of Allegiance

Council Member Underwood led the Pledge of Allegiance.

E. Invocation

Pastor Chip Nill gave the prayer.

Mayor Raymond introduced Pastor Nill as the new pastor of the Bible Baptist Church.

F. Agenda Changes

1. R -1: Executive Session has been relocated to immediately precede N – 1: Resolutions

G. Public Appearances/Introductions/Presentations **None**

H. Getting To Know Our Businesses **None**

I. Communications

1. Oral

Mayor Raymond opened the meeting.

Connie James, 111 East Goodlander Road, approached the podium and addressed the Council. She expressed concern for the current improvement plan on the north side of East Goodlander Rd, saying that although only two properties would be impacted in a negative way they do pay taxes and expect the City to respect safety accordingly. She went on to describe the sidewalk that was planned to end ninety to a hundred feet from the driveway of 107 East Goodlander, leaving walkers no way to continue on a sidewalk, no safe way to cross the street, and the possibility of an ADA compliance issue as well.

Council Member Tierney moved, and Council Member Carlson seconded, to allow Ms. James an additional two minutes to speak.

Ms. James opined that the appearance of the completed project would be unsightly, with a retaining wall that will end partway up her property and a sidewalk to nowhere, and result in a decrease of property value as well as create a safety issue. She felt that the City had a duty to finish the project, to make the improvements safe and aesthetically pleasing, and requested that the current project be revised to include continuation of the retaining wall and sidewalk to 107 East Goodlander Road. She offered pictures to Council for review.

Council Member Burke joined the meeting.

Bronson Faul, Selah Municipal Court Judge, approached the podium and addressed the Council. He said that, while it's not often he addresses issues other than the budget; he saw that the City was thinking of hiring Rob Case as the new city attorney and wanted to speak as to his qualifications. He stated that Mr. Case is a highly capable attorney, and that they wouldn't be disappointed if they approve the contract.

Mayor Raymond stated that Council Member Burke had joined the meeting.

Council Member Burke apologized for his tardiness.

Tiffany Hein, Selah Downtown Association (SDA), approached the podium and addressed the Council. She said that Viking Pride Spirit Week was next week, and they have partnered with twenty businesses thus far to put together specials for those who shop at participating businesses in the day's theme attire. She encouraged everyone to participate in any way they would like to show off their community spirit, adding that the SDA would be giving away an award for those businesses that show off their community spirit with decor, and that the Viking Crew would be giving awards to students who encompassed school spirit, all of which would be handed out Friday night.

Council Member Carlson requested that she talk about the parade.

Ms. Hein replied that it would be on Wednesday night at 6:30, starting at the Civic Center.

Bill Zirkle approached the podium and addressed the Council. He said that he was born and raised in the community, was active in sports in his day, and came to Council to talk about Carlon Park. He talked briefly about Bill Carlon and his contributions to the community, expressing his concern about what the perceived dilution of the name of Carlon Park. He opined that the resolution naming Wood field for Noel Wood was a sad thing, totally absurd with no documentation or authentication.

Council Member Burke moved to allow Mr. Zirkle two more minutes to speak.

Mr. Zirkle added that when one changes history or alter facts they're in trouble, and that they have an opportunity to make things right.

Mike Carlon approached the podium and addressed the Council.

Mayor Raymond requested that he state his name for the record.

Mr. Carlon identified himself, saying that he is the oldest son of the Bill Carlon that Carlon Park was named for. He gave a brief history of his family in the Selah area, focusing on their involvement in sports, and pointed out that Dave Vick was the only person to come to Council requesting that the Archer name be added to the baseball field.

Council Member Burke moved, and Council Member Carlson seconded, to allow Mr. Carlon an additional two minutes to speak.

Mr. Carlon requested thirty minutes to speak, saying that Council has had no feedback from anyone other than the Archer family, adding that he had asked for a phone call from the Mayor on the matter.

Mayor Raymond responded that they would never disrespect Coach Carlon or remove him name from Carlon Park, that the entire complex is Carlon Park.

Mr. Carlon stated that he was talking specifically about the baseball field.

Mayor Raymond remarked that they would never disrespect Coach Carlon or remove his name from the field, while he wanted the City to remove Noel Woods' name from the field.

Mr. Carlon asked why not.

Mayor Raymond answered that because at that time his name was important to someone.

Mr. Carlon disagreed, saying that he had talked with a hundred baseball players about it.

Mayor Raymond reiterated that when the field was named after Noel Wood a group of people thought it important enough to name after him. She added that they don't know why, and that some people don't know the history of Coach Carlon either. She noted that the Wood family still lives in Selah.

Mr. Carlon stated that he knew that man as well as anyone.

Mayor Raymond remarked that unless Council decides to vote against her, Noel Wood's name would remain on that field, and that removing Mr. Wood's name from the field was not up for discussion.

Mr. Carlon replied that he heard where she was coming from, as she had been adamant all along in that regard. He went on to say that former Council Member Dufault thought the name was Archer-Carlon Park and that the Mayor was the only one who raised the Wood Field issue, referring Council to the handout he provided containing copies of newspaper articles regarding his father supervising the building of the baseball field and coaching under the lights in the field as early as 1947.

Council Member Tierney called time.

Council Member Burke asked if he was allowed to give two minutes.

City Administrator Wayman remarked that Council could give Mr. Carlon whatever time limit they chose by way of a motion, a second, and a vote.

Council Member Burke moved, and Council Member Underwood seconded, to give Mr. Carlon a total of ten minutes to speak. By voice vote approval was unanimous.

Mr. Carlon continued to speak, referring Council to other items in the handout as he spoke about the nonprofit Selah Sports Association formed by his family and the Graf family for baseball, how his dad had talked to Noel Wood, a grower and part-time cop, about lights for the field. He explained how Bill Carlon raised money for the lights and poles, including the acquisition and selection of trees from the forest for light poles, and that the Selah Sports Association was run by Dick Graf and Bob Graf as President and Treasurer respectively. He referenced a letter to the editor in the handout, saying that Bill Carlon supported women's sports very heavily, which was why they had four lighted softball fields, providing more history on his father's involvement with the creation of the softball fields.

Council Member Tierney called time.

Mr. Carlon requested additional time to speak.

Mayor Raymond replied that she believes there are other people who wish to speak. She read aloud from the Resolution naming the baseball field as Wood Field for clarification.

Mr. Carlon commented that he was glad she brought that up, and that it was fake news.

Mayor Raymond asked Mr. Carlon to please sit down.

Mr. Carlon opined that Noel Wood was not involved for forty years and the resolution was a fabrication.

Mayor Raymond requested a second time that Mr. Carlon please sit down.

Police Chief Hayes approached Mr. Carlon at the podium and requested that he take his seat.

Mr. Carlon protested that he wasn't given equal time, that the Resolution wasn't true, and that no officers from the Selah Sports Association did this. He stated that no one knows who submitted Noel Wood's name to Council for naming the baseball field.

Police Chief Hayes told Mr. Carlon that he needed to have a seat.

Mr. Carlon expressed hope that Council would take the information provided and come to a conclusion, adding that they offered the Archers a sweetheart deal without talking to anyone, and that the name was originally to be Archer-Carlon Stadium. He added that if it turns out that Archers fabricated a story for Noel Wood they shouldn't be included, and that it was a very interesting dilemma that in his opinion had yet to come to a satisfactory conclusion.

Robert Graf approached the podium and addressed the Council. He said that he had talked to Council previously about the naming of the baseball field at Carlon Park, and was opposed to it being anything other than Carlon Park, Field or Stadium. He did not think that the Archer name should be included in the name of the field as it was all done prior to the time the Archers have coached. He opined that Bill Carlon was Mr. Baseball of Selah, as he not only coached high school baseball, football and basketball, but was the single person responsible for lighting at the baseball field. He spoke about Mr. Carlon's time as the athletics director and his involvement in the Title IX program for girls, saying that he saw many of his athletes enjoy great success in sports, win championships, and get state recognition.

Council Member Carlson moved, and Council Member Underwood seconded, to allow Mr. Graf an additional two minutes to speak.

Mr. Graf suggested to the Mayor and Council that they send out a letter of apology and regret to the families whose names were added to the Carlon Park field, opining that for a name to be added to the field without any prior announcement, community involvement, or community discussion was wrong and disrespectful to the Carlon family, the citizens of the Selah community, and the athletes Bill Carlon coached.

Allen Melton approached the podium and addressed the Council. He said that he was born and raised in Selah, and spoke about Bill Carlon's involvement with the baseball field maintenance and as a coach. He felt it totally ridiculous to remove his name from that field, adding that the Archers didn't build the field or do a thing, it was built by Mr. Carlon and his bunch. He reiterated that he felt it ridiculous to change it for someone who didn't build the field and was only there ten years, saying that he knows the Archers but doesn't think their name should be there.

Seeing no one else rise to speak Mayor Raymond closed the meeting.

2. Written
 - a. Code Enforcement Report for August 2019
 - b. Permits for August 2019

J. Proclamations/Announcements **None**

K. Consent Agenda

Council Member Tierney moved to add N – 2 and N – 3 to the Consent Agenda.

Council Member Matson wished to discuss N – 3.

Council Member Carlson wished to discuss N – 2.

Executive Assistant Lake read the Consent Agenda.

All items listed with an asterisk (*) were considered as part of the Consent Agenda.

* 1. Approval of Minutes: August 27, 2019 Council Meeting and August 28, 2019 Council Retreat

* 2. Approval of Claims and Payroll:

Payroll Checks Nos. 82999 – 83033 for a total of \$291,695.34

Claim Checks Nos. 73578 – 73668 for a total of \$204,790.58

Council Member Burke moved, and Council Member Underwood seconded, approval of the Consent Agenda as read. Motion passed with four yes votes and one no vote.

L. Public Hearings **None**

M. General Business

1. New Business **None**

2. Old Business **None**

Council took a five minute recess.

P. Executive Session ****RELOCATED****

1. 20 Minute Session –Qualifications for Public Employment RCW 42.30.110 (1)(g)

Council went into Executive Session at 4:48m. At 5:08pm, Council went back on the record. Mayor Raymond stated that they would be extending the Executive Session for an additional 10 minutes following a two minute recess.

Council went back into Executive Session at 5:11pm. At 5:21pm, Council went back on the record. Mayor Raymond stated that no action was taken during the Executive Session.

Council Member Burke asked Mr. Case to step forward.

Rob Case approached the podium to address the Council.

Council Member Burke said that he understands that he represents an employee of the city.

Mr. Case answered in the affirmative.

Council Member Burke asked if he had discussed the need to have a waiver of attorney/client privilege, or a waiver of conflict of interest.

Mr. Case responded with no to the first and yes to the second, noting that the person referred to was City Administrator Wayman, who he is representing in a civil matter. He went on to say that he has had a discussion with his client that was specific to waiving potential conflicts of interest and had a preliminary document drafted for a two way waiver, giving a brief explanation of what the document was for. He added that most civil lawyers represent many different clients, although even with a waiver agreement there was the theoretical possibility that such significant conflict could arise, and that in that scenario he would withdraw from representing Mr. Wayman and stay representing the City. He said that it was only theoretical, based on what he was doing for the City Administrator and would be doing for the City.

Council Member Burke inquired if he felt confident about being able to identify potential conflicts and notifying the Mayor and Council on what he would do about it.

Mr. Case replied in the affirmative, explaining the procedure his firm uses to compile a preliminary conflict background and data about the potential parties, which included checking their system and making sure none of their staff have a conflict either business or personal. He added that the way to approach potential conflicts was to be upfront about them.

Council Member Carlson wondered how he heard about the position.

Mr. Case said that he had heard about the potential availability before it became available, when he was working with Bob Noe as part of City Administrator Wayman's case, and also knew the Yakima School District was looking for an in house counsel. He said that he heard about the RFP through list serve and saw the request for proposals on the City's website, that it wasn't mentioned privately. He noted that City Administrator Wayman was surprised when he learned he was putting his name in for the position.

Council Member Tierney asked what background he had that related to land use issues.

Mr. Case explained that the first firm he clerked at, Ramsey and Stein in Salem, Oregon, had a personal injury lawyer and a land use lawyer, and he worked principally under the land use attorney on land use projects such as proposals for conditional use permits. He went on to say that his current firm is not a large land use firm, although they represent large and small developers and land owners, giving a recent example defeating a civil claim for partitioning. He noted that he would be studying the municipal code and felt that he would be able to handle the legal needs of the City.

N. Resolutions

1. Resolution authorizing the Mayor to sign a Contract for Legal Services with D. R. (Rob) Case (WSBA #34313)

City Administrator Wayman addressed N – 1. He said that the fiscal impact would be nine thousand a month, which was a thousand dollar decrease from the previous city attorney’s contract, and reviewed the funding sources for the fee. He noted that the screening committee was chaired by the Mayor, and she selected Mr. Case from those interviewed.

Council Member Carlson asked if the contract was the same one used for Bob Noe with a change to dates and names.

City Administrator Wayman replied in the negative, saying that this contract was more thorough and detailed with regard to his exact duties and terms of termination, while the one Mr. Noe had was more of a general contract with less specifics.

Council Member Burke stated that it wasn’t the same contract, he would say that this one was more through and detailed without holes or questions one doesn’t wish to have in a contract. He moved to approve N – 1, adding that he would like to say that while there were questions from him that stemmed from a potential appearance of conflict, it falls to Mr. Case to identify them and ensure that the City takes priority if a conflict arises. He added that his motion adds in that the waiver would only be for the current case, and if another arises in the future Council could address it at that time.

City Administrator Wayman commented that as the person who would have to sign he would agree.

Council Member Burke moved, and Council Member Tierney seconded, to approve the Resolution authorizing the Mayor to sign a Contract for Legal Services with D. R. (Rob) Case (WSBA #34313), with the condition that both parties agree to sign a waiver for current representation.

Council Member Carlson inquired if that would include all future dealings with Mr. Wayman outside City purview.

Council Member Burke answered that if there was actual litigation pending they could put actual representation as to that cause number, but this would be just for the current case pending.

Council Member Carlson asked if there was still potential that he could represent the City Administrator in the future.

Council Member Burke responded that as long as the current case has a waiver it would address conflict of interest, adding that he had been slightly appraised of the details and possible appearance of conflict.

Roll was called: Council Member Matson – yes; Council Member Burke – yes; Council Member Tierney – yes; Council Member Underwood – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

2. Resolution authorizing the Mayor to sign Task Order 2019-08 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering services for the Naches Avenue and N. 1st Street Sidewalk Improvements Project

Public Works Director Henne addressed N – 2. He said that this was a resolution for addendum number one to task order 2019-8 for engineering services for the Naches Ave and First Street sidewalks, saying that it takes care of the paperwork and certified documents, and asked for approval.

Council Member Carlson questioned the additional four thousand dollars, wondering why they were asking for more and what had changed.

Public Works Director Henne replied that the original task order was to design and put together a bid package, and there was no guarantee that it would be accepted.

Council Member Carlson asked that he confirm the initial eight thousand was for preparation.

Public Works Director Henne answered in the affirmative, saying that it was not to administer the design packet's financial requirements.

Council Member Carlson wondered why the amount wasn't included when the bid was awarded.

Public Works Director Henne responded that he didn't know if Council would approve the project and also didn't have the task order at that time.

Council Member Carlson felt that it made sense to present all costs when approving a project.

Public Works Director Henne repeated that he didn't know whether they would award the project.

Community Development Supervisor Peters noted that there was a change to the original design.

Council Member Carlson asked when the change was made.

Community Development Supervisor Peters replied that when the original project was put together they had input to put in plain sidewalks, then Public Works was asked to revise it based on an owner's input to revise improvements, which was brought back to council with the additional costs.

Public Works Director Henne added that they were in a time crunch moving forward with it before winter and couldn't get the paperwork done and requirements for the timeline in that packet.

Council Member Burke wondered if the four thousand covered the costs of HLA providing onsite construction observation and confirming that the materials meet the City's requirements.

Public Works Director Henne read aloud from the task order what HLA would provide, saying that they would be doing inspections in-house to save on additional funding.

Council Member Tierney moved to approve the Resolution authorizing the Mayor to sign Task Order 2019-08 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering services for the Naches Avenue and N. 1st Street Sidewalk Improvements Project.

Council Member Matson inquired if this was something that could be done in-house.

Public Works Director Henne answered in the negative.

Council Member Burke asked if Granite Construction had been given notice.

Public Works Director Henne responded that they had started work on the project.

Council Member Burke opined that half the items look like space fillers.

Public Works Director Henne replied that they are doing some inspections on a limited basis.

Council Member Matson wondered why the building inspector wasn't doing that.

Public Works Director Henne remarked that he had a couple guys from Public Works coming out to look at the materials being used.

Council Member Carlson said that his frustration was knowing that there would be additional costs and not having it presented as part of the project, as he felt that when approving a project he wanted to know what was included as far as additional costs.

Public Works Director Henne replied that he mentioned that this would be forthcoming.

Mayor Raymond remarked that they discussed the additional expense when it was brought to Council.

Council Member Burke pointed out that there wasn't extra cost in the budget of the last resolution passed, and that his only issue is that at a certain point in time they should look at the contracts and indicate that this isn't just an endless ask.

Community Development Supervisor Peters commented that when this was brought to Council they heard the original proposal to go with straight concrete sidewalks then gave direction to Public Works Director Henne to come back with a proposal incorporating what the property owner wanted, which resulted in a task order that was significantly higher than what the project was. He added that it was up to Council whether to approve and move forward with it and they were told there would be a second task order brought before them.

Council Member Carlson seconded to approve the Resolution authorizing the Mayor to sign Task Order 2019-08 Addendum No.1 between the City of Selah and HLA Engineering and Land Surveying, Inc. to provide Engineering services for the Naches Avenue and N. 1st Street Sidewalk Improvements Project. Roll was called: Council Member Matson – yes; Council Member Burke –

no; Council Member Tierney – yes; Council Member Underwood – yes; Council Member Carlson – yes. Motion passed with four yes votes and one no vote.

3. Resolution Authorizing the Mayor to sign an Interagency Agreement Amendment No. 2 between the State of Washington Department of Enterprise Services (DES) and the City of Selah

Public Works Director Henne addressed N – 3. He spoke briefly about the history of the agreement between the City and the Department of Enterprise Services, saying that they provided grant and loan funding to do energy improvements, including the replacement of city owned street lights with LED heads, replacing a blower at the treatment plant and some aerators at pretreatment and other lighting. He remarked that they had a clause in the contract it could be extended to keep tracking the amount of energy the project was saving, which they are asking to do through December 2021.

Council Member Matson wondered if they would continue to provide them different options or suggestions for additional savings.

Public Works Director Henne replied in the negative, saying that this was just to monitor that the amount of savings is what they projected, to see whether the program was saving the amount of energy they believed it would and whether it was justifiable savings.

Council Member Burke asked if they shared the data.

Public Works Director Henne answered in the affirmative.

Council Member Carlson inquired if they shared that with staff, adding that nothing had been shared with Council.

Public Works Director Henne responded that he could share the information if requested.

Council Member Burke moved, and Council Member Matson seconded, to approve the Resolution Authorizing the Mayor to sign an Interagency Agreement Amendment No. 2 between the State of Washington Department of Enterprise Services (DES) and the City of Selah. Roll was called: Council Member Matson – yes; Council Member Burke – yes; Council Member Tierney – yes; Council Member Underwood – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

4. Resolution Authorizing the Mayor to Sign a Contract between Schneider Water Services of St Paul, Oregon and the City of Selah for the Evaluation and Redevelopment of Well 7

Public Works Director Henne addressed N – 4. He gave a brief history of the loss of pumping capacity in Well 7, the steps they have taken towards evaluation and redevelopment, the recommendation of the geohydrologist to install a screen and line the well past seven hundred feet, and dropping in a submersible pump once that's done to try to get it back up to two thousand gallons per minute. He noted that pump installation and reprogramming telemetry would cost an additional three hundred twenty-five

thousand, and requested that they award the contract to Schneider Water Services based on the bid spec for the project.

Council Member Tierney asked what they could do to get more than one bid.

Public Works Director Henne replied that they advertised and contacted people, but this is a deep large artesian well and a lot of local well diggers can't handle it.

Council Member Carlson observed that the bid spec didn't plan for a company to drive equipment from Oregon.

Council Member Tierney commented that DOE said would pay for fifty percent of the original amount and wondered if they would increase that amount.

Public Works Director Henne replied that he already asked and the answer was no.

Council Member Burke requested that he put this in perspective versus digging a new well.

Public Works Director Henne responded that a new well would cost around a million or million three.

Council Member Burke inquired if it was better to spend half a million refurbishing or to dig a new well.

Public Works Director Henne answered that there are no guarantees, but they believe it's a pocket down there that was depleted enough that the ability for the aquifer to replenish the pocket is perhaps not there any longer, and that's why static pressure has gone down. He added that the other option was to relinquish five to eight hundred gallons a minute or to build a new pump house and well.

City Administrator Wayman commented that their thinking was to finish the investigation of whether the well can be rehabilitated, and if not than they would re-evaluate the situation.

Public Works Director Henne added that they need to protect their water rights, and that while they don't know what to expect or what they will find, the geologists are telling them this is the best route to try to increase water flow.

Council Member Tierney moved, and Council Member Burke seconded, to approve the Resolution Authorizing the Mayor to Sign a Contract between Schneider Water Services of St Paul, Oregon and the City of Selah for the Evaluation and Redevelopment of Well 7. Roll was called: Council Member Matson – yes; Council Member Burke – yes; Council Member Tierney – yes; Council Member Underwood – yes; Council Member Carlson – yes. By voice vote, approval was unanimous.

- O. Ordinances **None**
- P. Public Appearances **None**
- Q. Reports/Announcements

1. Departments

Police Chief Hayes had no report other than he has decided not to retire at the end of this year. He said that they have had eleven people sign up for VIPS and were currently going through policies and what uniform to put them in.

City Administrator Wayman requested that he provide details on last week's homicide.

Police Chief Hayes stated that two twenty-two year olds were doing some disarmament drills with a live pistol, unloaded it and took a break, and when they came back to continue they failed to unload a second time, which caused it to go off and kill one young man. He said that it was negligence, that the two young men were best friends, and the case would be referred to the prosecutor for review. He noted that the victim's mothers wanted nothing to do with charging him for any crime. He noted that the Fire Department would be offering critical incident debrief that would be open to his officers as well.

Community Development Supervisor Peters gave a brief update on the planning department, adding his thanks to Council for the retreat. He noted that the new building inspector would be starting Monday to train with Roy Brons, and he would introduce him at the next Council Meeting.

Council Member Burke asked about any plans or permits along Crusher Canyon.

Community Development Supervisor Peters answered that it was a Graf Investments project.

City Administrator Wayman noted that their current intent is to help with a property survey.

Community Development Supervisor Peters remarked that he didn't remember the last estimate of when the design proposal would be coming forward, but it should be sometime this year.

Council Member Carlson was curious about whether there would be a retaining wall on the development along Crusher Canyon.

Community Development Supervisor Peters responded that it would be done on a lot by lot basis.

Council Member Burke wondered if there was anything they could do prior to the developer selling those lots to make sure retainage was done without having to talk to new homeowners about it.

Community Development Supervisor Peters explained the process when plans were submitted.

Council Member Burke asked for confirmation that they don't do that until plans are submitted.

Community Development Supervisor Peters replied that was how it had to be done.

City Administrator Wayman added that compaction and excavation would be done prior to the installation of infrastructure, and that all has to be worked out before moving forward.

Public Works Director Henne noted that they required an engineer when the current owner excavated that soil back years prior.

Council Member Burke commented that they were talking about Hayden Homes.

Public Works Director Henne replied that he thought they were talking about Crusher Canyon.

City Administrator Wayman remarked that they can't go forward without proper soil compaction, and as they go forward they'll have to put retaining walls in.

Community Development Supervisor Peters commented that they've already submitted preliminary grading plans for development but final grading for each site depends on how each home fits its lot.

City Administrator Wayman added that they're concerned about the large embankment that runs parallel to Crusher Canyon and touches a city street, and answering that would likely satisfy Council.

Community Development Supervisor Peters replied that he would look at the plans.

Council Member Carlson said that was his concern.

Council Member Burke added that it was his as well.

Council Member Carlson expressed concern about dirt coming down Crusher Canyon, and his desire to see a retaining wall there.

Public Works Director Henne remarked that he had talked to the president of HLA about it, and he was planning to talk with their engineer and find out what's going on, adding that they have to comply with the grading plans submitted that didn't require a retaining wall.

Council Member Carlson reiterated that his question was about stopping that embankment.

Public Works Director Henne responded that it was too steep; they would have to do a retaining wall or shave it back to be in compliance.

Community Development Supervisor Peters noted that they weren't done with grading yet.

Public Works Director Henne gave a brief update on construction projects around town. He said that he had talked with Mr. James about where City right of way ends and County right of way begins along Goodlander Road, and after meeting with the Mayor and City Administrator Wayman they would extend the curb and gutter to tie into the County's curb and gutter. He noted that it wasn't the City's responsibility to make it more aesthetically pleasing, and that at the end of the sidewalk on that side people would have to go up to Lancaster to cross over or jaywalk.

City Administrator Wayman commented that they discussed why the sidewalk was stopped there, that the corner would get developed someday with the future developer required to fund the sidewalk, and they would like to develop as far as they can knowing future development would pay for more.

Council Member Matson asked if the sidewalks would connect at that point.

City Administrator Wayman replied in the affirmative.

Council Member Underwood inquired as to where specifically this was.

Public Works Director Henne replied that it was up to where the County starts at the James house.

Council Member Matson asked if it would be curbing and gutter to the end of their driveway.

Public Works Director Henne explained what would be done, as they have a circular driveway.

Clerk/Treasurer Novobielski said that he has uploaded August financials to the website and was in the process of compiling a preliminary 2020 budget to present to the City Administrator. He noted that they would have meetings with the department heads to go over their requests, and would meet with Council later in the year to review the budget.

City Administrator Wayman said that Recreation Manager Morales was unable to attend but reminded everyone that the Selah Base race was the coming weekend and it should be a great event.

Council Member Matson asked if it started at the Civic Center and at what time.

City Administrator Wayman replied that it starts at 8am at Carlon Park on East Goodlander.

Human Resources Manager Potter said that there would be at least three months of overlap to train the new Building inspector. He remarked that the Fire Department would have a new employee starting on Monday as well, as one of the career staff turned in his notice six weeks prior.

Council Member Carlson wondered if they were allowed to have the names of the new employees.

Human Resources Manager Potter answered that the Building inspector is Jeff Fortner, a journeyman plumber, and the new Firefighter is Tony Roberts.

City Attorney Case said that he looked forward to hitting the ground running, and commented that as far as termination on the contract there was no consequence before if they weren't given thirty days' notice, but in the new contract there would be no payment for whatever month walking out on or for the preceding month. He added that Mr. Noe's contract stipulated thirty days' notice, but his says that the Mayor could remove him with no financial penalty on that. He commented that the waiver does mention a cause number but he would update it to take out future concept language.

2. Council Members

Council Member Matson had no report.

Council Member Burke said that he would be going to the City of Union Gap with the City Administrator and Chief of Police to go over their building, adding that they've offered to give them everything including designs, and that the invitation was open for up to two more Council Members to join them. He thanked City Attorney Case for putting his name in the hat and putting up with their questions, saying that they saved the City twelve thousand dollars and are getting a very qualified attorney who wants to do this. He asked if there was an update on the case from last Friday.

City Administrator Wayman answered that Mr. Owens' attorney filed for an extension last Friday to have more time to prepare their presentation, and that the City had no objection.

Council Member Burke inquired about recouping attorney fees.

City Administrator Wayman replied that the judge did not concur with the City regarding attorney fees; his outlook was that fees that could be charged by the City in execution of demolition, but the statute didn't include attorney fees or expert witnesses. He noted that the discussion wasn't over, and once turnover was complete they would discuss whether to appeal the decision.

Council Member Burke looked forward to hearing Mr. Case's analysis at some point.

Council Member Carlson asked what the dollar amount was.

City Administrator Wayman responded that he didn't know offhand.

City Attorney Case wondered which judge it was.

Council Member Burke replied that it was Judge Federspiel.

Council Member Tierney welcomed the new City Attorney. He noted that they had an LTAC meeting scheduled this month.

Council Member Underwood had no report.

Council Member Carlson welcomed City Attorney Case.

3. City Administrator

City Administrator Wayman welcomed City Attorney Case. He said that he would be presenting the sale of a small piece of property to the Larson family at the next Council Meeting, to allow the coffee shop at the corner of Wenas and East Goodlander to shift their driveway further west. He congratulated Public Works Director Henne for juggling a lot of things right now, thanking him and his staff for what they do.

4. Boards **None**

5. Mayor

Mayor Raymond remarked that she received a letter from dispatch saying that they were impressed with how caring and professional the officers were.

Police Chief Hayes said that he had shared that with them that day.

Mayor Raymond noted that Homecoming week was a big week in Selah and encouraged everyone to be a part of it.

P. Executive Session ****RELOCATED****

Q. Adjournment

Council Member Carlson moved, and Council Member Burke seconded, that the meeting be adjourned. By voice vote, approval was unanimous.

The meeting adjourned at 6:38pm.

Sherry Raymond, Mayor

John Tierney, Council Member

EXCUSED

Roger Bell, Council Member

Russell Carlson, Council Member

Diane Underwood, Council Member

Jacquie Matson, Council Member

EXCUSED

Kevin Wickenhagen, Council Member

Jeremy Burke, Council Member

ATTEST:

Dale E. Novobielski, Clerk/Treasurer



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Council Meeting	Action Item
9/24/2019	K – 2

Title: Claims & Payroll

From: Monica Lake, Executive Assistant

Action Requested: Approval

Staff Recommendation:

Approval of Claims & Payroll as listed on Check Registers.

Board/Commission Recommendation: Not Applicable

Fiscal Impact: See Check Registers

Funding Source: See Check Registers

Background / Findings & Facts: See Check Registers

Recommended Motion: Motion to Approve the Consent Agenda as read.
(This item is part of the Consent Agenda)



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Council Meeting	Action Item
9/24/2019	N – 1

Title: Resolution Authorizing the Mayor to Sign An Updated Section 125 Cafeteria Plan.

From: Dale Novobielski, Clerk/Treasurer

Action Requested: Approval

Staff Recommendation: Approval

Fiscal Impact: The City and employees will continue to save payroll fringe benefit costs (Social Security) and the employee will have reduced Federal Income Tax on eligible voluntary insurance coverage paid by the employee.

Funding Source: n/a

Background / Findings & Facts: In accordance with the Internal Revenue Code (IRC) the City is required to maintain a Section 125 Cafeteria Plan in order to receive exemption from taxes on eligible voluntary insurance coverage

Recommended Motion: I move to approve the Resolution authorizing the Mayor to sign an updated Section 125 Cafeteria Plan.

Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:

10/9/2018

Action Taken:

Resolution Authorizing the Mayor to Sign an Updated Section 125 Cafeteria Plan

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN
AN UPDATED SECTION 125 CAFETERIA PLAN

WHEREAS, the City of Selah wishes to continue to provide its employees with a Section 125 Cafeteria plan for health and disability premiums;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor be authorized to sign an updated Section 125 Cafeteria Plan and that the employees be provided with a copy of the summary description of the Plan in the form of the Summary Plan Description, attached hereto.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH,
WASHINGTON this 24th day of September 2019.

Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski, Clerk Treasurer

Rob Case, City Attorney

**CITY OF SELAH
PREMIUM ONLY PLAN DOCUMENT
SUMMARY PLAN DESCRIPTION**

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SUMMARY

**CITY OF SELAH
PREMIUM ONLY PLAN DOCUMENT**

INTRODUCTION

We have amended the "Premium Payment Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to pay for insurance coverage that we make available to you with a portion of your pay before Federal income or social security taxes are withheld.

Read this Summary Plan Description carefully so that you understand the provisions of our amended Plan and the benefits you will receive. This SPD describes the Plan's benefits and obligations as contained in the legal Plan document, which governs the operation of the Plan. The Plan document is written in much more technical and precise language. If the non-technical language in this SPD and the technical, legal language of the Plan document conflict, the Plan document always governs. Also, if there is a conflict between an insurance contract and either the Plan document or this Summary Plan Description, the insurance contract will control. If you wish to receive a copy of the legal Plan document, please contact the Administrator.

This SPD describes the current provisions of the Plan which are designed to comply with applicable legal requirements. The Plan is subject to federal laws, such as the Internal Revenue Code and other federal and state laws which may affect your rights. The provisions of the Plan are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or other federal agencies. We may also amend or terminate this Plan. If the provisions of the Plan that are described in this SPD change, we will notify you.

We have attempted to answer most of the questions you may have regarding your benefits in the Plan. If this SPD does not answer all of your questions, please contact the Administrator (or other plan representative). The name and address of the Administrator can be found in the Article of this SPD entitled "General Information About the Plan."

**I
ELIGIBILITY**

1. When can I become a participant in the Plan?

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below.

2. What are the eligibility requirements for our Plan?

You will be eligible to join the Plan once you have satisfied the conditions for coverage under our group medical plan. Of course, if you were already a participant before this amendment, you will remain a participant.

3. When is my entry date?

You can join the Plan on the same day you can enter our group medical plan.

4. What must I do to enroll in the Plan?

Before you can join the Plan, you must complete an application to participate in the Plan. You must also authorize us to set some of your earnings aside for you in order to pay the insurance premiums for the coverage you have elected.

**II
OPERATION**

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay paid to the Plan. The money will be used to pay for insurance coverage. The portion of your pay that is contributed to pay the premium expense is not subject to Federal income or Social Security taxes. In other words, the plan allows you to use tax-free dollars to pay for insurance coverage which you normally pay for with out-of-pocket, taxable dollars. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

**III
CONTRIBUTIONS**

1. How much of my pay may the Employer redirect?

Each year, you may elect to have us contribute on your behalf enough of your compensation to pay for the benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the insurance coverage you desire. Then, during each pay period, the contributions will be used to pay the premium expense for the insurance coverage you have selected.

3. When must I decide what insurance coverage I want?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below).

4. When is the election period for our Plan?

You will make your initial election on or before your entry date. (You should review Section I on Eligibility to better understand the eligibility requirements and entry date.) Then, for each following Plan Year, the election period is established by the Administrator and applied uniformly to all Participants. It will normally be a period of time prior to the beginning of each Plan Year. The Administrator will inform you each year about the election period. (See the Article entitled "General Information About Our Plan" for the definition of Plan Year.)

5. May I change my elections during the Plan Year?

Generally, you cannot change the elections you have made after the beginning of the Plan Year. However, there are certain limited situations when you can change your elections. You are permitted to change elections if you have a "change in status" and you make an election change that is consistent with the change in status. Currently, Federal law considers the following events to be a change in status:

- Marriage, divorce, death of a spouse, legal separation or annulment;
- Change in the number of dependents, including birth, adoption, placement for adoption, or death of a dependent;
- Any of the following events for you, your spouse or dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, a change in worksite, or any other change in employment status that affects eligibility for benefits;
- One of your dependents satisfies or ceases to satisfy the requirements for coverage due to change in age, student status, or any similar circumstance; and
- A change in the place of residence of you, your spouse or dependent that would lead to a change in status, such as moving out of a coverage area for insurance.

There are detailed rules on when a change in election is deemed to be consistent with a change in status. In addition, there are laws that give you rights to change health coverage for you, your spouse, or your dependents. If you change coverage due to rights you have under the law, then you can make a corresponding change in your elections under the Plan. If any of these conditions apply to you, you should contact the Administrator.

If the cost of a benefit provided under the Plan increases or decreases during a Plan Year, then we will automatically increase or decrease, as the case may be, your salary redirection election. If the cost increases significantly, you will be permitted to either make corresponding changes in your payments or revoke your election and obtain coverage under another benefit package option with similar coverage, or revoke your election entirely.

If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, then you may revoke your elections and elect to receive on a prospective basis coverage under another plan with similar coverage. In addition, if we add a new coverage option or eliminate an existing option, you may elect the newly-added option (or elect another option if an option has been eliminated) and make corresponding election changes to other options providing similar coverage. If you are not a Participant, you may elect to join the Plan. There are also certain situations when you may be able to change your elections on account of a change under the plan of your spouse's, former spouse's or dependent's employer.

You may revoke your coverage under the employer's group health plan outside of our open enrollment period, if your employment status changes from working at least 30 hours per week to less than 30 hours. This is regardless of whether the reduction in hours has resulted in loss of eligibility. You must show intent to enroll in another health plan.

You may also revoke your coverage under our Employer sponsored group health plan if you are eligible to obtain coverage through the health exchanges.

6. May I make new elections in future Plan Years?

Yes, you may. For each new Plan Year, you may change the elections that you previously made. You may also choose not to participate in the Plan for the upcoming Plan Year. If you do not make new elections during the election period before a new Plan Year begins, we will assume you want your elections for insured benefits only to remain the same.

IV BENEFITS

1. What insurance coverage may I purchase?

Under our Plan, you can purchase the following insurance coverage:

- Health care premiums under our insured group medical plan.
- Our dental insurance plan.
- Our disability insurance plan.
- Our cancer insurance plan.
- Our vision insurance plan.

Certain limits may apply on the amount of coverage that we obtain on your behalf. The insurance contracts will normally control.

The Administrator may terminate or modify Plan benefits at any time, subject to the provisions of any insurance contracts providing benefits described above. We will not be liable to you if an insurance company fails to provide any of the benefits described above. Also, your insurance will end when you leave employment, are no longer eligible under the terms of any insurance policies, or when insurance terminates.

Any benefits to be provided by insurance will be provided only after (1) you have provided the Administrator the necessary information to apply for insurance, and (2) the insurance is in effect for you.

If you cover your children up to age 26 under your insurance, you can pay for that coverage through the Plan.

V BENEFIT PAYMENTS

1. When will I receive benefit payments?

The amount of pay you contribute to the Plan will be used to pay the premiums for the insurance coverage that is available. The provisions of the insurance policies will control what benefits will be paid and when.

2. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return.

If you continue your coverage during your unpaid leave, you may pre-pay for the coverage, you may pay for your coverage on an after-tax basis while you are on leave, or you and your Employer may arrange a schedule for you to "catch up" your payments when you return.

3. What happens if I terminate employment?

If you terminate employment during the Plan Year, your right to benefits will be determined in the following manner:

- (a) For health benefit coverage on termination of employment, please see the Article entitled "Continuation Coverage Rights Under COBRA."

4. Will my Social Security benefits be affected?

Your Social Security benefits may be slightly reduced because when you receive tax-free benefits under our Plan, it reduces the amount of contributions that you make to the Federal Social Security system as well as our contribution to Social Security on your behalf.

VI HIGHLY COMPENSATED EMPLOYEES

1. Do limitations apply to highly compensated employees?

Under the Internal Revenue Code, highly compensated employees generally are Participants who are shareholders or highly paid. You will be notified by the Administrator each Plan Year whether you are a highly compensated employee.

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents.

Plan experience will dictate whether contribution limitations on highly compensated employees will apply. You will be notified of these limitations if you are affected.

VII GENERAL INFORMATION ABOUT OUR PLAN

This Section contains certain general information which you may need to know about the Plan.

1. General Plan Information

City of Selah Premium Only Plan Document is the name of the Plan.

Your Employer has assigned Plan Number 520 to your Plan.

The provisions of your amended Plan become effective on October 1st, 2019. Your Plan was originally effective on October 1st, 2004.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on October 1st and ends on September 30th.

2. Employer Information

Your Employer's name, address, and identification number are:

City of Selah
115 W Naches Avenue
Selah, Washington 98942
91-6001501

3. Plan Administrator Information

The name, address and business telephone number of your Plan's Administrator are:

City of Selah
115 W Naches Avenue
Selah, Washington 98942
509-698-7334

The Administrator keeps the records for the Plan and is responsible for the administration of the Plan. The Administrator will also answer any questions you may have about our Plan. You may contact the Administrator for any further information about the Plan.

4. Service of Legal Process

The name and address of the Plan's agent for service of legal process are:

City of Selah
115 W Naches Avenue
Selah, Washington 98942

5. Type of Administration

The type of Administration is Insurer Administration.

VIII ADDITIONAL PLAN INFORMATION

1. Insurance Procedures

Claims that are insured will be handled in accordance with procedures contained in the insurance policies. All other general requests should be directed to the Administrator of our Plan.

IX CONTINUATION COVERAGE RIGHTS UNDER COBRA

Under federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), certain employees and their families covered under health benefits under this Plan will be entitled to the opportunity to elect a temporary extension of health coverage (called "COBRA continuation coverage") where coverage under the Plan would otherwise end. This notice is intended to inform Plan Participants and beneficiaries, in summary fashion, of their rights and obligations under the continuation coverage provisions of COBRA, as amended and reflected in final and proposed regulations published by the Department of the Treasury. This notice is intended to reflect the law and does not grant or take away any rights under the law.

The Plan Administrator or its designee is responsible for administering COBRA continuation coverage. Complete instructions on COBRA, as well as election forms and other information, will be provided by the Plan Administrator or its designee to Plan Participants who become Qualified Beneficiaries under COBRA. While the Plan itself is not a group health plan, it does provide health benefits. Whenever "Plan" is used in this section, it means any of the health benefits under this Plan.

1. What is COBRA continuation coverage?

COBRA continuation coverage is the temporary extension of group health plan coverage that must be offered to certain Plan Participants and their eligible family members (called "Qualified Beneficiaries") at group rates. The right to COBRA continuation coverage is triggered by the occurrence of a life event that results in the loss of coverage under the terms of the Plan (the "Qualifying Event"). The coverage must be identical to the coverage that the Qualified Beneficiary had immediately before the Qualifying Event, or if the coverage has been changed, the coverage must be identical to the coverage provided to similarly situated active employees who have not experienced a Qualifying Event (in other words, similarly situated non-COBRA beneficiaries).

There may be other options available when you lose group health coverage. For example, you may be eligible to buy an individual plan through the Health Insurance Marketplace. By enrolling in coverage through the Marketplace, you may qualify for lower costs on your monthly premiums and lower out-of-pocket costs. Additionally, you may qualify for a 30-day special enrollment period for another group health plan for which you are eligible (such as a spouse's plan), even if that plan generally doesn't accept late enrollees.

2. Who can become a Qualified Beneficiary?

In general, a Qualified Beneficiary can be:

- (a) Any individual who, on the day before a Qualifying Event, is covered under a Plan by virtue of being on that day either a covered Employee, the Spouse of a covered Employee, or a Dependent child of a covered Employee. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.
- (b) Any child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, and any individual who is covered by the Plan as an alternate recipient under a qualified medical support order. If, however, an individual who otherwise qualifies as a Qualified Beneficiary is denied or not offered coverage under the Plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law, then the individual will be considered to have had the coverage and will be considered a Qualified Beneficiary if that individual experiences a Qualifying Event.

The term "covered Employee" includes any individual who is provided coverage under the Plan due to his or her performance of services for the employer sponsoring the Plan. However, this provision does not establish eligibility of these individuals. Eligibility for Plan coverage shall be determined in accordance with Plan Eligibility provisions.

An individual is not a Qualified Beneficiary if the individual's status as a covered Employee is attributable to a period in which the individual was a nonresident alien who received from the individual's Employer no earned income that constituted income from sources within the United States. If, on account of the preceding reason, an individual is not a Qualified Beneficiary, then a Spouse or Dependent child of the individual will also not be considered a Qualified Beneficiary by virtue of the relationship to the individual. A domestic partner is not a Qualified Beneficiary.

Each Qualified Beneficiary (including a child who is born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage.

3. What is a Qualifying Event?

A Qualifying Event is any of the following if the Plan provided that the Plan participant would lose coverage (i.e., cease to be covered under the same terms and conditions as in effect immediately before the Qualifying Event) in the absence of COBRA continuation coverage:

- (a) The death of a covered Employee.

- (b) The termination (other than by reason of the Employee's gross misconduct), or reduction of hours, of a covered Employee's employment.
- (c) The divorce or legal separation of a covered Employee from the Employee's Spouse. If the Employee reduces or eliminates the Employee's Spouse's Plan coverage in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the divorce or legal separation may be considered a Qualifying Event even though the Spouse's coverage was reduced or eliminated before the divorce or legal separation.
- (d) A covered Employee's enrollment in any part of the Medicare program.
- (e) A Dependent child's ceasing to satisfy the Plan's requirements for a Dependent child (for example, attainment of the maximum age for dependency under the Plan).

If the Qualifying Event causes the covered Employee, or the covered Spouse or a Dependent child of the covered Employee, to cease to be covered under the Plan under the same terms and conditions as in effect immediately before the Qualifying Event, the persons losing such coverage become Qualified Beneficiaries under COBRA if all the other conditions of COBRA are also met. For example, any increase in contribution that must be paid by a covered Employee, or the Spouse, or a Dependent child of the covered Employee, for coverage under the Plan that results from the occurrence of one of the events listed above is a loss of coverage.

The taking of leave under the Family and Medical Leave Act of 1993, as amended ("FMLA") does not constitute a Qualifying Event. A Qualifying Event will occur, however, if an Employee does not return to employment at the end of the FMLA leave and all other COBRA continuation coverage conditions are present. If a Qualifying Event occurs, it occurs on the last day of FMLA leave and the applicable maximum coverage period is measured from this date (unless coverage is lost at a later date and the Plan provides for the extension of the required periods, in which case the maximum coverage date is measured from the date when the coverage is lost.) Note that the covered Employee and family members will be entitled to COBRA continuation coverage even if they failed to pay the employee portion of premiums for coverage under the Plan during the FMLA leave.

4. What factors should be considered when determining to elect COBRA continuation coverage?

When considering options for health coverage, Qualified Beneficiaries should consider:

- **Premiums:** This plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive. Qualified Beneficiaries have special enrollment rights under federal law (HIPAA). They have the right to request special enrollment in another group health plan for which they are otherwise eligible (such as a plan sponsored by a spouse's employer) within 30 days after Plan coverage ends due to one of the Qualifying Events listed above.
- **Provider Networks:** If a Qualified Beneficiary is currently getting care or treatment for a condition, a change in health coverage may affect access to a particular health care provider. You may want to check to see if your current health care providers participate in a network in considering options for health coverage.
- **Drug Formularies:** For Qualified Beneficiaries taking medication, a change in health coverage may affect costs for medication – and in some cases, the medication may not be covered by another plan. Qualified beneficiaries should check to see if current medications are listed in drug formularies for other health coverage.
- **Severance payments:** If COBRA rights arise because the Employee has lost his job and there is a severance package available from the employer, the former employer may have offered to pay some or all of the Employee's COBRA payments for a period of time. This can affect the timing of coverage available in the Marketplace. In this scenario, the Employee may want to contact the Department of Labor at 1-866-444-3272 to discuss options.
- **Medicare Eligibility:** You should be aware of how COBRA coverage coordinates with Medicare eligibility. If you are eligible for Medicare at the time of the Qualifying Event, or if you will become eligible soon after the Qualifying Event, you should know that you have 8 months to enroll in Medicare after your employment –related health coverage ends. Electing COBRA coverage does not extend this 8-month period. For more information, see [medicare.gov/sign-up-change-plan](https://www.medicare.gov/sign-up-change-plan).
- **Service Areas:** If benefits under the Plan are limited to specific service or coverage areas, benefits may not be available to a Qualified Beneficiary who moves out of the area.
- **Other Cost-Sharing:** In addition to premiums or contributions for health coverage, the Plan requires participants to pay copayments, deductibles, coinsurance, or other amounts as benefits are used. Qualified beneficiaries should check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

Are there other coverage options besides COBRA Continuation Coverage? Yes. Instead of enrolling in COBRA continuation coverage, there may be other coverage options for Qualified Beneficiaries through the Health Insurance Marketplace, Medicaid, or other group health plan coverage options (such as a spouse's plan) through what is called a "special enrollment period." Some of these options may cost less than COBRA continuation coverage. You can learn more about many of these options at www.healthcare.gov.

5. What is the procedure for obtaining COBRA continuation coverage?

The Plan has conditioned the availability of COBRA continuation coverage upon the timely election of such coverage. An election is timely if it is made during the election period.

6. What is the election period and how long must it last?

The election period is the time period within which the Qualified Beneficiary must elect COBRA continuation coverage under the Plan. The election period must begin no later than the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event and ends 60 days after the later of the date the Qualified Beneficiary would lose coverage on account of the Qualifying Event or the date notice is provided to the Qualified Beneficiary of her or his right to elect COBRA continuation coverage. If coverage is not elected within the 60 day period, all rights to elect COBRA continuation coverage are forfeited.

Note: If a covered Employee who has been terminated or experienced a reduction of hours qualifies for a trade readjustment allowance or alternative trade adjustment assistance under a federal law called the Trade Act of 2002, as extended by the Trade Preferences Extension Act of 2015, and the employee and his or her covered dependents have not elected COBRA coverage within the normal election period, a second opportunity to elect COBRA coverage will be made available for themselves and certain family members, but only within a limited period of 60 days or less and only during the six months immediately after their group health plan coverage ended. Any person who qualifies or thinks that he or she and/or his or her family members may qualify for assistance under this special provision should contact the Plan Administrator or its designee for further information about the special second election period. If continuation coverage is elected under this extension, it will not become effective prior to the beginning of this special second election period.

7. Is a covered Employee or Qualified Beneficiary responsible for informing the Plan Administrator of the occurrence of a Qualifying Event?

The Plan will offer COBRA continuation coverage to Qualified Beneficiaries only after the Plan Administrator or its designee has been timely notified that a Qualifying Event has occurred. The Employer (if the Employer is not the Plan Administrator) will notify the Plan Administrator or its designee of the Qualifying Event within 30 days following the date coverage ends when the Qualifying Event is:

- (a) the end of employment or reduction of hours of employment,
- (b) death of the employee,
- (c) commencement of a proceeding in bankruptcy with respect to the Employer, or
- (d) entitlement of the employee to any part of Medicare.

IMPORTANT:

For the other Qualifying Events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you or someone on your behalf must notify the Plan Administrator or its designee in writing within 60 days after the Qualifying Event occurs, using the procedures specified below. If these procedures are not followed or if the notice is not provided in writing to the Plan Administrator or its designee during the 60-day notice period, any spouse or dependent child who loses coverage will not be offered the option to elect continuation coverage. You must send this notice to the Plan Administrator or its designee.

NOTICE PROCEDURES:

Any notice that you provide must be *in writing*. Oral notice, including notice by telephone, is not acceptable. You must mail, fax or hand-deliver your notice to the person, department or firm listed below, at the following address:

City of Selah
115 W Naches Avenue
Selah, Washington 98942

If mailed, your notice must be postmarked no later than the last day of the required notice period. Any notice you provide must state:

- the **name of the plan or plans** under which you lost or are losing coverage,
- the **name and address of the employee** covered under the plan,
- the **name(s) and address(es) of the Qualified Beneficiary(ies)**, and
- the **Qualifying Event** and the **date** it happened.

If the Qualifying Event is a **divorce or legal separation**, your notice must include **a copy of the divorce decree or the legal separation agreement**.

Be aware that there are other notice requirements in other contexts, for example, in order to qualify for a disability extension.

Once the Plan Administrator or its designee receives *timely notice* that a Qualifying Event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each Qualified Beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage for their spouses, and parents may elect COBRA continuation coverage on behalf of their children. For each Qualified Beneficiary who elects COBRA continuation coverage, COBRA continuation coverage will begin on the date that plan coverage would otherwise have been lost. If you or your spouse or dependent children do not elect continuation coverage within the 60-day election period described above, the right to elect continuation coverage will be lost.

8. Is a waiver before the end of the election period effective to end a Qualified Beneficiary's election rights?

If, during the election period, a Qualified Beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the Plan Administrator or its designee, as applicable.

9. Is COBRA coverage available if a Qualified Beneficiary has other group health plan coverage or Medicare?

Qualified Beneficiaries who are entitled to elect COBRA continuation coverage may do so even if they are covered under another group health plan or are entitled to Medicare benefits on or before the date on which COBRA is elected. However, a Qualified Beneficiary's COBRA coverage will terminate automatically if, after electing COBRA, he or she becomes entitled to Medicare or becomes covered under other group health plan coverage.

10. When may a Qualified Beneficiary's COBRA continuation coverage be terminated?

During the election period, a Qualified Beneficiary may waive COBRA continuation coverage. Except for an interruption of coverage in connection with a waiver, COBRA continuation coverage that has been elected for a Qualified Beneficiary must extend for at least the period beginning on the date of the Qualifying Event and ending not before the earliest of the following dates:

- (a) The last day of the applicable maximum coverage period.
- (b) The first day for which Timely Payment is not made to the Plan with respect to the Qualified Beneficiary.
- (c) The date upon which the Employer ceases to provide any group health plan (including a successor plan) to any employee.
- (d) The date, after the date of the election, that the Qualified Beneficiary first becomes entitled to Medicare (either part A or part B, whichever occurs earlier).
- (e) In the case of a Qualified Beneficiary entitled to a disability extension, the later of:
 - (1) (i) 29 months after the date of the Qualifying Event, or (ii) the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled Qualified Beneficiary whose disability resulted in the Qualified Beneficiary's entitlement to the disability extension is no longer disabled, whichever is earlier; or
 - (2) the end of the maximum coverage period that applies to the Qualified Beneficiary without regard to the disability extension.

The Plan can terminate for cause the coverage of a Qualified Beneficiary on the same basis that the Plan terminates for cause the coverage of similarly situated non-COBRA beneficiaries, for example, for the submission of a fraudulent claim.

In the case of an individual who is not a Qualified Beneficiary and who is receiving coverage under the Plan solely because of the individual's relationship to a Qualified Beneficiary, if the Plan's obligation to make COBRA continuation coverage available to the Qualified Beneficiary ceases, the Plan is not obligated to make coverage available to the individual who is not a Qualified Beneficiary.

11. What are the maximum coverage periods for COBRA continuation coverage?

The maximum coverage periods are based on the type of the Qualifying Event and the status of the Qualified Beneficiary, as shown below.

- (a) In the case of a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the Qualifying Event if there is not a disability extension and 29 months after the Qualifying Event if there is a disability extension.

(b) In the case of a covered Employee's enrollment in the Medicare program before experiencing a Qualifying Event that is a termination of employment or reduction of hours of employment, the maximum coverage period for Qualified Beneficiaries ends on the later of:

- (1) 36 months after the date the covered Employee becomes enrolled in the Medicare program. This extension does not apply to the covered Employee; or
- (2) 18 months (or 29 months, if there is a disability extension) after the date of the covered Employee's termination of employment or reduction of hours of employment.

(c) In the case of a Qualified Beneficiary who is a child born to or placed for adoption with a covered Employee during a period of COBRA continuation coverage, the maximum coverage period is the maximum coverage period applicable to the Qualifying Event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption.

(d) In the case of any other Qualifying Event than that described above, the maximum coverage period ends 36 months after the Qualifying Event.

12. Under what circumstances can the maximum coverage period be expanded?

If a Qualifying Event that gives rise to an 18-month or 29-month maximum coverage period is followed, within that 18- or 29-month period, by a second Qualifying Event that gives rise to a 36-months maximum coverage period, the original period is expanded to 36 months, but only for individuals who are Qualified Beneficiaries at the time of and with respect to both Qualifying Events. In no circumstance can the COBRA maximum coverage period be expanded to more than 36 months after the date of the first Qualifying Event. The Plan Administrator must be notified of the second qualifying event within 60 days of the second qualifying event. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

13. How does a Qualified Beneficiary become entitled to a disability extension?

A disability extension will be granted if an individual (whether or not the covered Employee) who is a Qualified Beneficiary in connection with the Qualifying Event that is a termination or reduction of hours of a covered Employee's employment, is determined under Title II or XVI of the Social Security Act to have been disabled at any time during the first 60 days of COBRA continuation coverage. To qualify for the disability extension, the Qualified Beneficiary must also provide the Plan Administrator with notice of the disability determination on a date that is both within 60 days after the date of the determination and before the end of the original 18-month maximum coverage. This notice must be sent to the Plan Administrator or its designee in accordance with the procedures above.

14. Does the Plan require payment for COBRA continuation coverage?

For any period of COBRA continuation coverage under the Plan, Qualified Beneficiaries who elect COBRA continuation coverage may be required to pay up to 102% of the applicable premium and up to 150% of the applicable premium for any expanded period of COBRA continuation coverage covering a disabled Qualified Beneficiary due to a disability extension. Your Plan Administrator will inform you of the cost. The Plan will terminate a Qualified Beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made.

15. Must the Plan allow payment for COBRA continuation coverage to be made in monthly installments?

Yes. The Plan is also permitted to allow for payment at other intervals.

16. What is Timely Payment for COBRA continuation coverage?

Timely Payment means a payment made no later than 30 days after the first day of the coverage period. Payment that is made to the Plan by a later date is also considered Timely Payment if either under the terms of the Plan, covered Employees or Qualified Beneficiaries are allowed until that later date to pay for their coverage for the period or under the terms of an arrangement between the Employer and the entity that provides Plan benefits on the Employer's behalf, the Employer is allowed until that later date to pay for coverage of similarly situated non-COBRA beneficiaries for the period.

Notwithstanding the above paragraph, the Plan does not require payment for any period of COBRA continuation coverage for a Qualified Beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that Qualified Beneficiary. Payment is considered made on the date on which it is postmarked to the Plan.

If Timely Payment is made to the Plan in an amount that is not significantly less than the amount the Plan requires to be paid for a period of coverage, then the amount paid will be deemed to satisfy the Plan's requirement for the amount to be paid, unless the Plan notifies the Qualified Beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. A "reasonable period of time" is 30 days after the notice is provided. A shortfall in a Timely Payment is not significant if it is no greater than the lesser of \$50 or 10% of the required amount.

17. Must a Qualified Beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

If a Qualified Beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the applicable maximum coverage period, the Plan will, during the 180-day period that ends on that expiration date, provide the Qualified Beneficiary with the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated non-COBRA beneficiaries under the Plan. If such a conversion option is not otherwise generally available, it need not be made available to Qualified Beneficiaries.

IF YOU HAVE QUESTIONS

If you have questions about your COBRA continuation coverage, you should contact the Plan Administrator or its designee. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website at www.dol.gov/ebsa.

KEEP YOUR PLAN ADMINISTRATOR INFORMED OF ADDRESS CHANGES

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator or its designee.

**X
SUMMARY**

The money you earn is important to you and your family. You need it to pay your bills, enjoy recreational activities and save for the future. Our premium payment plan will help you keep more of the money you earn by lowering the amount of taxes you pay. The Plan is the result of our continuing efforts to find ways to help you get the most for your earnings.

- If you have any questions, please contact the Administrator.

**CITY OF SELAH
PREMIUM ONLY PLAN DOCUMENT**

**AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR
NORTHWEST MARKETING RESOURCES, INC.**

**CITY OF SELAH
PREMIUM ONLY PLAN DOCUMENT**

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**CITY OF SELAH
PREMIUM ONLY PLAN DOCUMENT**

INTRODUCTION

The Employer has amended this Plan effective October 1st, 2019, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on October 1st, 2004. The Plan shall be known as City of Selah Premium Only Plan Document (the "Plan").

The intention of the Employer is that the Plan qualify as a "Cafeteria Plan" within the meaning of Section 125 of the Internal Revenue Code of 1986, as amended, and that the benefits which an Employee elects to receive under the Plan be excludable from the Employee's income under Section 125(a) and other applicable sections of the Internal Revenue Code of 1986, as amended.

**ARTICLE I
DEFINITIONS**

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 7.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

1.2 **"Affiliated Employer"** means the Employer and any corporation which is a member of a controlled group of corporations (as defined in Code Section 414(b)) which includes the Employer; any trade or business (whether or not incorporated) which is under common control (as defined in Code Section 414(c)) with the Employer; any organization (whether or not incorporated) which is a member of an affiliated service group (as defined in Code Section 414(m)) which includes the Employer; and any other entity required to be aggregated with the Employer pursuant to Treasury regulations under Code Section 414(o).

1.3 **"Benefit" or "Benefit Options"** means any of the optional benefit choices available to a Participant as outlined in Section 4.1.

1.4 **"Cafeteria Plan Benefit Dollars"** means the amount available to Participants to purchase Benefit Options as provided under Section 4.1. Each dollar contributed to this Plan shall be converted into one Cafeteria Plan Benefit Dollar.

1.5 **"Code"** means the Internal Revenue Code of 1986, as amended or replaced from time to time.

1.6 **"Compensation"** means the amounts received by the Participant from the Employer during a Plan Year.

1.7 **"Dependent"** means any individual who qualifies as a dependent under an Insurance Contract for purposes of coverage under that Contract only under Code Section 152 (as modified by Code Section 105(b)).

"Dependent" shall include any Child of a Participant who is covered under an Insurance Contract, as defined in the Contract, or as allowed by reason of the Affordable Care Act.

1.8 **"Effective Date"** means October 1st, 2004.

1.9 **"Election Period"** means the period immediately preceding the beginning of each Plan Year established by the Administrator, such period to be applied on a uniform and nondiscriminatory basis for all Employees and Participants. However, an Employee's initial Election Period shall be determined pursuant to Section 5.1.

1.10 **"Eligible Employee"** means any Employee who has satisfied the provisions of Section 2.1.

An individual shall not be an "Eligible Employee" if such individual is not reported on the payroll records of the Employer as a common law employee. In particular, it is expressly intended that individuals not treated as common law employees by the Employer on its payroll records are not "Eligible Employees" and are excluded from Plan participation even if a court or administrative agency determines that such individuals are common law employees and not independent contractors.

1.11 **"Employee"** means any person who is employed by the Employer. The term Employee shall include leased employees within the meaning of Code Section 414(n)(2).

1.12 **"Employer"** means City of Selah and any successor which shall maintain this Plan; and any predecessor which has maintained this Plan. In addition, where appropriate, the term Employer shall include any Participating, Affiliated or Adopting Employer.

1.13 **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended from time to time.

- 1.14 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.
- 1.15 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.
- 1.16 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.
- 1.17 **"Plan"** means this instrument, including all amendments thereto.
- 1.18 **"Plan Year"** means the 12-month period beginning October 1st and ending September 30th. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.
- 1.19 **"Premium Expenses"** or **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.
- 1.20 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.1. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.
- 1.21 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.
- 1.22 **"Spouse"** means spouse as determined under Federal law.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

Any Eligible Employee shall be eligible to participate hereunder as of the date he satisfies the eligibility conditions for the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference. However, any Eligible Employee who was a Participant in the Plan on the effective date of this amendment shall continue to be eligible to participate in the Plan.

2.2 EFFECTIVE DATE OF PARTICIPATION

An Eligible Employee shall become a Participant effective as of the entry date under the Employer's group medical plan, the provisions of which are specifically incorporated herein by reference.

2.3 APPLICATION TO PARTICIPATE

An Employee who is eligible to participate in this Plan shall, during the applicable Election Period, complete an application to participate in a manner set forth by the Administrator. The election shall be irrevocable until the end of the applicable Plan Year unless the Participant is entitled to change his Benefit elections pursuant to Section 5.4 hereof.

An Eligible Employee shall also be required to complete a Salary Redirection Agreement during the Election Period for the Plan Year during which he wishes to participate in this Plan. Any such Salary Redirection Agreement shall be effective for the first pay period beginning on or after the Employee's effective date of participation pursuant to Section 2.2.

2.4 TERMINATION OF PARTICIPATION

A Participant shall no longer participate in this Plan upon the occurrence of any of the following events:

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 8.2.

2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.1 SALARY REDIRECTION

Benefits under the Plan shall be financed by Salary Redirections sufficient to support Benefits that a Participant has elected hereunder and to pay the Participant's Premium Expenses. The salary administration program of the Employer shall be revised to allow each Participant to agree to reduce his pay during a Plan Year by an amount determined necessary to purchase the elected Benefit Options. The amount of such Salary Redirection shall be specified in the Salary Redirection Agreement and shall be applicable for a Plan Year. Notwithstanding the above, for new Participants, the Salary Redirection Agreement shall only be applicable from the first day of the pay period following the Employee's entry date up to and including the last day of the Plan Year. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article IV.

Any Salary Redirection shall be determined prior to the beginning of a Plan Year (subject to initial elections pursuant to Section 5.1) and prior to the end of the Election Period and shall be irrevocable for such Plan Year. However, a Participant may revoke a Benefit election or a Salary Redirection Agreement after the Plan Year has commenced and make a new election with respect to the remainder of the Plan Year, if both the revocation and the new election are on account of and consistent with a change in status and such other permitted events as determined under Article V of the Plan and consistent with the rules and regulations of the Department of the Treasury. Salary Redirection amounts shall be contributed on a pro rata basis for each pay period during the Plan Year. All individual Salary Redirection Agreements are deemed to be part of this Plan and incorporated by reference hereunder.

3.2 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Salary Redirection to provide the Benefits elected by the affected Participants.

3.3 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period.

ARTICLE IV BENEFITS

4.1 BENEFIT OPTIONS

Each Participant may elect any one or more of the following optional Benefits:

- (1) Health Insurance Benefit
- (2) Dental Insurance Benefit
- (3) Disability Insurance Benefit
- (4) Cancer Insurance Benefit
- (5) Vision Insurance Benefit

4.2 HEALTH INSURANCE BENEFIT

(a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.

(b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.3 DENTAL INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's dental Insurance Contract. In addition, the Participant may elect either individual or family coverage under such Insurance Contract.

(b) **Employer selects contracts.** The Employer may select suitable dental Insurance Contracts for use in providing this dental insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such dental Insurance Contract shall be determined therefrom, and such dental Insurance Contract shall be incorporated herein by reference.

4.4 DISABILITY INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's disability Insurance Contract.

(b) **Long term and/or short term coverage selected by Employer.** The Employer may select suitable disability Insurance Contracts for use in providing this disability Benefit. The disability Insurance Contracts may provide for long-term or short-term coverage.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the Benefits payable from such disability Insurance Contract shall be determined therefrom, and such disability Insurance Contract shall be incorporated herein by reference.

4.5 CANCER INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's cancer Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable cancer Insurance Contracts for use in providing this cancer insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such cancer Insurance Contract shall be determined therefrom, and such cancer Insurance Contract shall be incorporated herein by reference.

4.6 VISION INSURANCE BENEFIT

(a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's vision Insurance Contract. In addition, the Participant may elect either individual or family coverage.

(b) **Employer selects contracts.** The Employer may select suitable vision Insurance Contracts for use in providing this vision insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.

(c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such vision Insurance Contract shall be determined therefrom, and such vision Insurance Contract shall be incorporated herein by reference.

4.7 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Plan to provide benefits to a classification of employees which the Secretary of the Treasury finds not to be discriminatory in favor of the group in whose favor discrimination may not occur under Code Section 125.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reject any election or reduce contributions or non-taxable Benefits in order to assure compliance with the Code and regulations. Any act taken by the Administrator shall be carried out in a uniform and nondiscriminatory manner. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among insured Benefits.

**ARTICLE V
PARTICIPANT ELECTIONS**

5.1 INITIAL ELECTIONS

An Employee who meets the eligibility requirements of Section 2.1 on the first day of, or during, a Plan Year may elect to participate in this Plan for all or the remainder of such Plan Year, provided he elects to do so on or before his effective date of participation pursuant to Section 2.2.

5.2 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

- (a) A Participant or Employee who failed to initially elect to participate may elect different or new Benefits under the Plan during the Election Period;
- (b) A Participant may terminate his participation in the Plan by notifying the Administrator in writing during the Election Period that he does not want to participate in the Plan for the next Plan Year;
- (c) An Employee who elects not to participate for the Plan Year following the Election Period will have to wait until the next Election Period before again electing to participate in the Plan, except as provided for in Section 5.4.

5.3 FAILURE TO ELECT

With regard to Benefits available under the Plan for which Premium Expenses apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have made the same Benefit elections as are then in effect for the current Plan Year. The Participant shall also be deemed to have elected Salary Redirection in an amount necessary to purchase such Benefit options.

5.4 CHANGE IN STATUS

- (a) **Change in status defined.** Any Participant may change a Benefit election after the Plan Year (to which such election relates) has commenced and make new elections with respect to the remainder of such Plan Year if, under the facts and circumstances, the changes are necessitated by and are consistent with a change in status which is acceptable under rules and regulations adopted by the Department of the Treasury, the provisions of which are incorporated by reference. Notwithstanding anything herein to the contrary, if the rules and regulations conflict, then such rules and regulations shall control.

In general, a change in election is not consistent if the change in status is the Participant's divorce, annulment or legal separation from a Spouse, the death of a Spouse or Dependent, or a Dependent ceasing to satisfy the eligibility requirements for coverage, and the Participant's election under the Plan is to cancel accident or health insurance coverage for any individual other than the one involved in such event. In addition, if the Participant, Spouse or Dependent gains or loses eligibility for coverage, then a Participant's election under the Plan to cease or decrease coverage for that individual under the Plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan.

Regardless of the consistency requirement, if the individual, the individual's Spouse, or Dependent becomes eligible for continuation coverage under the Employer's group health plan as provided in Code Section 4980B or any similar state law, then the individual may elect to increase payments under this Plan in order to pay for the continuation coverage. However, this does not apply for COBRA eligibility due to divorce, annulment or legal separation.

Any new election shall be effective at such time as the Administrator shall prescribe, but not earlier than the first pay period beginning after the election form is completed and returned to the Administrator. For the purposes of this subsection, a change in status shall only include the following events or other events permitted by Treasury regulations:

- (1) **Legal Marital Status:** events that change a Participant's legal marital status, including marriage, divorce, death of a Spouse, legal separation or annulment;
- (2) **Number of Dependents:** Events that change a Participant's number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent;
- (3) **Employment Status:** Any of the following events that change the employment status of the Participant, Spouse, or Dependent: termination or commencement of employment, a strike or lockout, commencement or return from an unpaid leave of absence, or a change in worksite. In addition, if the eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and

there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;

(4) **Dependent satisfies or ceases to satisfy the eligibility requirements:** An event that causes the Participant's Dependent to satisfy or cease to satisfy the requirements for coverage due to attainment of age, student status, or any similar circumstance; and

(5) **Residency:** A change in the place of residence of the Participant, Spouse or Dependent, that would lead to a change in status (such as a loss of HMO coverage).

Notwithstanding anything in this Section to the contrary, the gain of eligibility or change in eligibility of a child, as allowed under Code Sections 105(b) and 106, and guidance thereunder, shall qualify as a change in status.

(b) **Special enrollment rights.** Notwithstanding subsection (a), the Participants may change an election for group health coverage during a Plan Year and make a new election that corresponds with the special enrollment rights provided in Code Section 9801(f), including those authorized under the provisions of the Children's Health Insurance Program Reauthorization Act of 2009 (SCHIP); provided that such Participant meets the sixty (60) day notice requirement imposed by Code Section 9801(f) (or such longer period as may be permitted by the Plan and communicated to Participants). Such change shall take place on a prospective basis, unless otherwise required by Code Section 9801(f) to be retroactive.

(c) **Qualified Medical Support Order.** Notwithstanding subsection (a), in the event of a judgment, decree, or order (including approval of a property settlement) ("order") resulting from a divorce, legal separation, annulment, or change in legal custody which requires accident or health coverage for a Participant's child (including a foster child who is a Dependent of the Participant):

(1) The Plan may change an election to provide coverage for the child if the order requires coverage under the Participant's plan; or

(2) The Participant shall be permitted to change an election to cancel coverage for the child if the order requires the former Spouse to provide coverage for such child, under that individual's plan and such coverage is actually provided.

(d) **Medicare or Medicaid.** Notwithstanding subsection (a), a Participant may change elections to cancel accident or health coverage for the Participant or the Participant's Spouse or Dependent if the Participant or the Participant's Spouse or Dependent is enrolled in the accident or health coverage of the Employer and becomes entitled to coverage (i.e., enrolled) under Part A or Part B of the Title XVIII of the Social Security Act (Medicare) or Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928 of the Social Security Act (the program for distribution of pediatric vaccines). If the Participant or the Participant's Spouse or Dependent who has been entitled to Medicaid or Medicare coverage loses eligibility, that individual may prospectively elect coverage under the Plan if a benefit package option under the Plan provides similar coverage.

(e) **Cost increase or decrease.** If the cost of a Benefit provided under the Plan increases or decreases during a Plan Year, then the Plan shall automatically increase or decrease, as the case may be, the Salary Redirections of all affected Participants for such Benefit. Alternatively, if the cost of a benefit package option increases significantly, the Administrator shall permit the affected Participants to either make corresponding changes in their payments or revoke their elections and, in lieu thereof, receive on a prospective basis coverage under another benefit package option with similar coverage, or drop coverage prospectively if there is no benefit package option with similar coverage.

A cost increase or decrease refers to an increase or decrease in the amount of elective contributions under the Plan, whether resulting from an action taken by the Participants or an action taken by the Employer.

(f) **Loss of coverage.** If the coverage under a Benefit is significantly curtailed or ceases during a Plan Year, affected Participants may revoke their elections of such Benefit and, in lieu thereof, elect to receive on a prospective basis coverage under another plan with similar coverage, or drop coverage prospectively if no similar coverage is offered.

(g) **Addition of a new benefit.** If, during the period of coverage, a new benefit package option or other coverage option is added, an existing benefit package option is significantly improved, or an existing benefit package option or other coverage option is eliminated, then the affected Participants may elect the newly-added option, or elect another option if an option has been eliminated prospectively and make corresponding election changes with respect to other benefit package options providing similar coverage. In addition, those Eligible Employees who are not participating in the Plan may opt to become Participants and elect the new or newly improved benefit package option.

(h) **Loss of coverage under certain other plans.** A Participant may make a prospective election change to add group health coverage for the Participant, the Participant's Spouse or Dependent if such individual loses group health coverage sponsored by a governmental or educational institution, including a state children's health insurance program under the Social Security Act, the Indian Health Service or a health program offered by an Indian tribal government, a state health benefits risk pool, or a foreign government group health plan.

(i) **Change of coverage due to change under certain other plans.** A Participant may make a prospective election change that is on account of and corresponds with a change made under the plan of a Spouse's, former Spouse's or Dependent's employer if (1) the cafeteria plan or other benefits plan of the Spouse's, former Spouse's or Dependent's employer permits its participants to make a change; or (2) the cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan of a Spouse's, former Spouse's or Dependent's employer.

(j) **Changes due to reduction in hours or enrollment in an Exchange Plan.** A Participant may prospectively revoke coverage under the group health plan (that is not a health Flexible Spending Account) which provides minimum essential coverage (as defined in Code §5000A(f)(1)) provided the following conditions are met:

Conditions for revocation due to reduction in hours of service:

(1) The Participant has been reasonably expected to average at least 30 hours of service per week and there is a change in that Participant's status so that the Participant will reasonably be expected to average less than 30 hours of service per week after the change, even if that reduction does not result in the Participant ceasing to be eligible under the group health plan; and

(2) The revocation of coverage under the group health plan corresponds to the intended enrollment of the Participant, and any related individuals who cease coverage due to the revocation, in another plan that provides minimum essential coverage with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

The Administrator may rely on the reasonable representation of the Participant who is reasonably expected to have an average of less than 30 hours of service per week for future periods that the Participant and related individuals have enrolled or intend to enroll in another plan that provides minimum essential coverage for new coverage that is effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.

Conditions for revocation due to enrollment in a Qualified Health Plan:

(1) The Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and

(2) The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the Participant and any related individuals who cease coverage due to the revocation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

The Administrator may rely on the reasonable representation of a Participant who has an enrollment opportunity for a Qualified Health Plan through a Marketplace that the Participant and related individuals have enrolled or intend to enroll in a Qualified Health Plan for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

ARTICLE VI BENEFITS AND RIGHTS

6.1 CLAIM FOR BENEFITS

(a) **Insurance claims.** Any claim for Benefits underwritten by Insurance Contract(s) shall be made to the Insurer. If the Insurer denies any claim, the Participant or beneficiary shall follow the Insurer's claims review procedure.

ARTICLE VII ADMINISTRATION

7.1 PLAN ADMINISTRATION

The Employer shall be the Administrator, unless the Employer elects otherwise. The Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. An Administrator may resign by delivering a

resignation in writing (or such other form as acceptable to both parties) to the Employer or be removed by the Employer by delivery of notice of removal (in writing or such other form as acceptable to both parties), to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

The operation of the Plan shall be under the supervision of the Administrator. It shall be a principal duty of the Administrator to see that the Plan is carried out in accordance with its terms, and for the exclusive benefit of Employees entitled to participate in the Plan. The Administrator shall have full power and discretion to administer the Plan in all of its details and determine all questions arising in connection with the administration, interpretation, and application of the Plan. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan. The Administrator shall have all powers necessary or appropriate to accomplish the Administrator's duties under the Plan. The Administrator shall be charged with the duties of the general administration of the Plan as set forth under the Plan, including, but not limited to, in addition to all other powers provided by this Plan:

- (a) To make and enforce such procedures, rules and regulations as the Administrator deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the provisions of the Plan, the Administrator's interpretations thereof in good faith to be final and conclusive on all persons claiming benefits by operation of the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan and to receive benefits provided by operation of the Plan;
- (d) To reject elections or to limit contributions or Benefits for certain highly compensated participants if it deems such to be desirable in order to avoid discrimination under the Plan in violation of applicable provisions of the Code;
- (e) To provide Employees with a reasonable notification of their benefits available by operation of the Plan and to assist any Participant regarding the Participant's rights, benefits or elections under the Plan;
- (f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;
- (g) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

Any procedure, discretionary act, interpretation or construction taken by the Administrator shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall continue to comply with the terms of Code Section 125 and the Treasury regulations thereunder.

7.2 EXAMINATION OF RECORDS

The Administrator shall make available to each Participant, Eligible Employee and any other Employee of the Employer such records as pertain to their interest under the Plan for examination at reasonable times during normal business hours.

7.3 PAYMENT OF EXPENSES

Any reasonable administrative expenses shall be paid by the Employer unless the Employer determines that administrative costs shall be borne by the Participants under the Plan or by any Trust Fund which may be established hereunder. The Administrator may impose reasonable conditions for payments, provided that such conditions shall not discriminate in favor of highly compensated employees.

7.4 INSURANCE CONTROL CLAUSE

In the event of a conflict between the terms of this Plan and the terms of an Insurance Contract of an independent third party Insurer whose product is then being used in conjunction with this Plan, the terms of the Insurance Contract shall control as to those Participants receiving coverage under such Insurance Contract. For this purpose, the Insurance Contract shall control in defining the persons eligible for insurance, the dates of their eligibility, the conditions which must be satisfied to become insured, if any, the benefits Participants are entitled to and the circumstances under which insurance terminates.

7.5 INDEMNIFICATION OF ADMINISTRATOR

The Employer agrees to indemnify and to defend to the fullest extent permitted by law any Employee serving as the Administrator or as a member of a committee designated as Administrator (including any Employee or former Employee who previously served as Administrator or as a member of such committee) against all liabilities, damages, costs and expenses (including attorney's fees and amounts paid in settlement of any claims approved by the Employer) occasioned by any act or omission to act in connection with the Plan, if such act or omission is in good faith.

**ARTICLE VIII
AMENDMENT OR TERMINATION OF PLAN**

8.1 AMENDMENT

The Employer, at any time or from time to time, may amend any or all of the provisions of the Plan without the consent of any Employee or Participant. No amendment shall have the effect of modifying any benefit election of any Participant in effect at the time of such amendment, unless such amendment is made to comply with Federal, state or local laws, statutes or regulations.

8.2 TERMINATION

The Employer reserves the right to terminate this Plan, in whole or in part, at any time. In the event the Plan is terminated, no further contributions shall be made. Benefits under any Insurance Contract shall be paid in accordance with the terms of the Insurance Contract.

**ARTICLE IX
MISCELLANEOUS**

9.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 9.12.

9.2 GENDER, NUMBER AND TENSE

Wherever any words are used herein in one gender, they shall be construed as though they were also used in all genders in all cases where they would so apply; whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply; and whenever any words are used herein in the past or present tense, they shall be construed as though they were also used in the other form in all cases where they would so apply.

9.3 WRITTEN DOCUMENT

This Plan, in conjunction with any separate written document which may be required by law, is intended to satisfy the written Plan requirement of Code Section 125 and any Treasury regulations thereunder relating to cafeteria plans.

9.4 EXCLUSIVE BENEFIT

This Plan shall be maintained for the exclusive benefit of the Employees who participate in the Plan.

9.5 PARTICIPANT'S RIGHTS

This Plan shall not be deemed to constitute an employment contract between the Employer and any Participant or to be a consideration or an inducement for the employment of any Participant or Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Participant or Employee at any time regardless of the effect which such discharge shall have upon him as a Participant of this Plan.

9.6 ACTION BY THE EMPLOYER

Whenever the Employer under the terms of the Plan is permitted or required to do or perform any act or matter or thing, it shall be done and performed by a person duly authorized by its legally constituted authority.

9.7 EMPLOYER'S PROTECTIVE CLAUSES

(a) **Insurance purchase.** Upon the failure of either the Participant or the Employer to obtain the insurance contemplated by this Plan (whether as a result of negligence, gross neglect or otherwise), the Participant's Benefits shall be limited to the insurance premium(s), if any, that remained unpaid for the period in question and the actual insurance proceeds, if any, received by the Employer or the Participant as a result of the Participant's claim.

(b) **Validity of insurance contract.** The Employer shall not be responsible for the validity of any Insurance Contract issued hereunder or for the failure on the part of the Insurer to make payments provided for under any Insurance Contract. Once insurance is applied for or obtained, the Employer shall not be liable for any loss which may result from the failure to pay Premiums to the extent Premium notices are not received by the Employer.

9.8 NO GUARANTEE OF TAX CONSEQUENCES

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under the Plan will be excludable from the Participant's gross income for federal or state income tax purposes, or that any other federal or state tax treatment will apply to or be available to any Participant. It shall be the obligation of each Participant to determine whether each payment under the Plan is excludable from the Participant's gross income for federal and state income tax purposes, and to notify the Employer if the Participant has reason to believe that any such payment is not so excludable. Notwithstanding the foregoing, the rights of Participants under this Plan shall be legally enforceable.

9.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

If any Participant receives one or more payments or reimbursements under the Plan that are not for a permitted Benefit, such Participant shall indemnify and reimburse the Employer for any liability it may incur for failure to withhold federal or state income tax or Social Security tax from such payments or reimbursements. However, such indemnification and reimbursement shall not exceed the amount of additional federal and state income tax (plus any penalties) that the Participant would have owed if the payments or reimbursements had been made to the Participant as regular cash compensation, plus the Participant's share of any Social Security tax that would have been paid on such compensation, less any such additional income and Social Security tax actually paid by the Participant.

9.10 FUNDING

Unless otherwise required by law, contributions to the Plan need not be placed in trust or dedicated to a specific Benefit, but may instead be considered general assets of the Employer until the Premium Expense required under the Plan has been paid. Furthermore, and unless otherwise required by law, nothing herein shall be construed to require the Employer or the Administrator to maintain any fund or segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in, any fund, account or asset of the Employer from which any payment under the Plan may be made.

9.11 GOVERNING LAW

This Plan is governed by the Code and the Treasury regulations issued thereunder (as they might be amended from time to time). In no event shall the Employer guarantee the favorable tax treatment sought by this Plan. To the extent not preempted by Federal law, the provisions of this Plan shall be construed, enforced and administered according to the laws of the State of Washington.

9.12 SEVERABILITY

If any provision of the Plan is held invalid or unenforceable, its invalidity or unenforceability shall not affect any other provisions of the Plan, and the Plan shall be construed and enforced as if such provision had not been included herein.

9.13 CAPTIONS

The captions contained herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of the Plan, nor in any way shall affect the Plan or the construction of any provision thereof.

9.14 CONTINUATION OF COVERAGE (COBRA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan subject to the continuation coverage requirement of Code Section 4980B becomes unavailable, each Participant will be entitled to continuation coverage as prescribed in Code Section 4980B, and related regulations. This Section shall only apply if the Employer employs at least twenty (20) employees on more than 50% of its typical business days in the previous calendar year.

9.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)

Notwithstanding anything in the Plan to the contrary, in the event any benefit under this Plan becomes subject to the requirements of the Family and Medical Leave Act and regulations thereunder, this Plan shall be operated in accordance with Regulation 1.125-3.

9.16 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniform Services Employment And Reemployment Rights Act (USERRA) and the regulations thereunder.

IN WITNESS WHEREOF, this Plan document is hereby executed this _____ day of _____.

City of Selah

By _____
EMPLOYER



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Council Meeting Action Item
9/24/2019 N – 2

Title: A Resolution Authorizing the Public Works Director to Sign a Water Quality Stormwater Capacity Agreement with the Washington Department of Ecology for \$95,000 in Grant Funds for the City’s Stormwater Management Plan

From: Joseph K. Henne, Public Works Director

Action Requested: Approval

Staff Recommendation: Staff is requesting the Public Works Director sign a Stormwater Capacity Agreement Grant with Washington Department of Ecology for \$95,000 in grant funds for the City’s Stormwater Management plan

Board/Commission Recommendation: Not Applicable

Fiscal Impact: \$95,000 into the Sewer Fund

Funding Source: Washington State Department of Ecology

Background / Findings & Facts: In May of 2014 the City approved an Intergovernmental Local Agreement for Stormwater Permit Compliance Activities between Yakima County and the Cities of Union Gap and Sunnyside. The City is working with Yakima as a co-permittee to manage and administer our new Eastern Washington Phase II Municipal Stormwater General Permit from the Department of Ecology. The City has been approved for \$95,000 in grant funds from Department of Ecology to assist with implementation or management of municipal Stormwater programs.

Recommended Motion: Authorize the Public Works Director to sign the Stormwater Capacity Agreement Grant with Ecology for \$95,000 in grant funds.



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Record of all prior actions taken by the City Council and/or a City Board, City Committee, Planning Commission, or the Hearing Examiner (where applicable)

Date:	Action Taken:
11/14/2017	Resolution No. 2635 authorized Public Works Director to sign a Stormwater Capacity Agreement Grant with Washington Department of Ecology for \$50,000 in grant funds for the City's Stormwater Management plan.
12/8/2015	Resolution No. 2502 authorizing the Public Works Director to sign a Water Quality Stormwater Capacity Agreement with the Washington Department of Ecology for \$50,000 in grant funds for the City's Stormwater Management plan.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE PUBLIC WORKS DIRECTOR
TO SIGN A WATER QUALITY STORMWATER CAPACITY
AGREEMENT WITH THE WASHINGTON DEPARTMENT OF
ECOLOGY FOR \$95,000 IN GRANT FUNDS FOR THE CITY'S
STORMWATER MANAGEMENT PLAN**

WHEREAS, the Washington Department of Ecology has awarded the City of Selah a grant of \$95,000 for the City's Stormwater Management Plan;

NOW THEREFORE, BE RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, the Public Works Director be authorized to sign a Water Quality Stormwater Capacity Agreement with the Washington Department of Ecology for grant funds in the amount of \$95,000 for the City's Stormwater Management Plan per the requirements of the Secure Access Washington (SAW) and the Department of Ecology's Administration of Grants and Loans (EAGL) account as the main signatory. A copy of the said agreement is attached.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 24th day of September, 2019.

Sherry Raymond, Mayor

ATTEST:

Dale Novobielski, Clerk/ Treasurer

APPROVED AS TO FORM:

Rob Case, City Attorney



Agreement No. WQSWCAP-1921-SelaPW-00087

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF SELAH

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and City of Selah, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2019-2021 Biennial Stormwater Capacity Grants
Total Cost:	\$95,000.00
Total Eligible Cost:	\$95,000.00
Ecology Share:	\$95,000.00
Recipient Share:	\$0.00
The Effective Date of this Agreement is:	07/01/2019
The Expiration Date of this Agreement is no later than:	03/31/2021
Project Type:	Capacity Grant

Project Short Description:

This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:

N/A

Overall Goal:

This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

Agreement No: WQSWCAP-1921-SelaPW-00087
Project Title: 2019-2021 Biennial Stormwater Capacity Grants
Recipient Name: City of Selah

RECIPIENT INFORMATION

Organization Name: City of Selah

Federal Tax ID: 91-6001501

DUNS Number: 606701477

Mailing Address: 222 S Rushmore Rd
Selah, WA 98942

Physical Address: 222 S Rushmore Rd
Selah, Washington 98942

Organization Email: joe.henne@selahwa.gov

Organization Fax: (509) 698-7372

Contacts

Agreement No: WQSWCAP-1921-SelaPW-00087
 Project Title: 2019-2021 Biennial Stormwater Capacity Grants
 Recipient Name: City of Selah

<p>Project Manager</p>	<p>Joseph Henne Public Works Director</p> <p>222 South Rushmore Road Selah, Washington 98942 Email: joe.henne@selahwa.gov Phone: (509) 698-7365</p>
<p>Billing Contact</p>	<p>Caprise Groo Public Works Admin Asistant</p> <p>222 S Rushmore Rd Selah, Washington 98942 Email: caprise.groo@selahwa.gov Phone: (509) 888-3225</p>
<p>Authorized Signatory</p>	<p>Joseph Kenneth Henne Public Works Director</p> <p>222 South Rushmore Road Selah, Washington 98942 Email: joe.henne@selahwa.gov Phone: (509) 698-7365</p>

Agreement No: WQSWCAP-1921-SelaPW-00087
Project Title: 2019-2021 Biennial Stormwater Capacity Grants
Recipient Name: City of Selah

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Water Quality
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452
Financial Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 407-6452

Agreement No: WQSWCAP-1921-SelaPW-00087
Project Title: 2019-2021 Biennial Stormwater Capacity Grants
Recipient Name: City of Selah

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

City of Selah

By: _____

By: _____

Heather R. Bartlett
Water Quality
Program Manager
Date

Joseph Kenneth Henne
Public Works Director
Date

Template Approved to Form by
Attorney General's Office

Agreement No: WQSWCAP-1921-SelaPW-00087
 Project Title: 2019-2021 Biennial Stormwater Capacity Grants
 Recipient Name: City of Selah

SCOPE OF WORK

Task Number: 1 **Task Cost: \$5,000.00**

Task Title: Project Administration/Management

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.

- * Properly maintained project documentation.

Recipient Task Coordinator: Joe Henne

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page draft and Final Outcome Summary Reports.	

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Project Title: 2019-2021 Biennial Stormwater Capacity Grants
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SCOPE OF WORK

Task Number: 2 **Task Cost: \$90,000.00**

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable. The following is a list of elements RECIPIENT's project may include.

- 1) Public education and outreach activities, including stewardship activities.
- 2) Public involvement and participation activities.
- 3) Illicit discharge detection and elimination (IDDE) program activities, including:
 - a) Mapping of municipal separate storm sewer systems (MS4s).
 - b) Staff training.
 - c) Activities to identify and remove illicit stormwater discharges.
 - d) Field screening procedures.
 - e) Complaint hotline database or tracking system improvements.
- 4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
 - a) Development of an ordinance and associated technical manual or update of applicable codes.
 - b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
 - c) Training for plan review or inspection staff.
 - d) Participation in applicable watershed planning effort.
- 5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
 - a) Inspecting and/or maintaining the MS4 infrastructure.
 - b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
- 6) Annual reporting activities.
- 7) Establishing and refining stormwater utilities, including stable rate structures.
- 8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARTMENT approves prior to awarding funding for monitoring.
Monitoring, including:
 - a) Development of applicable QAPPs.
 - b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
- 9) Structural stormwater controls program activities (Phase I permit requirement)
- 10) Source control for existing development (Phase I permit requirement), including:
 - a) Inventory and inspection program.
 - b) Technical assistance and enforcement.
 - c) Staff training.
- 11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a pick-up truck). Equipment

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purchases over \$5,000 must be pre-approved by Ecology.

Documentation of all tasks completed is required. Documentation may include: field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance. Capital construction projects, incentives or give-a-ways, grant application preparation, TAPE review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation are not eligible expenses.

Task Goal Statement:

This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:

RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Caprise Groo

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	

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BUDGET

Funding Distribution EG200244

NOTE: The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.

Funding Title: 1921 stormwater capacity Funding Type: Grant
 Funding Effective Date: 07/01/2019 Funding Expiration Date: 03/31/2021

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)
 Type: State
 Funding Source %: 100%
 Description: Cap Grants-MTC Operating

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
 Recipient Match %: 0%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

1921 stormwater capacity	Task Total
Project Administration/Management	\$ 5,000.00
Permit Implementation	\$ 90,000.00

Total: \$ 95,000.00

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
1921 stormwater capacity	0.00 %	\$ 0.00	\$ 95,000.00	\$ 95,000.00
Total		\$ 0.00	\$ 95,000.00	\$ 95,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal

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Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$25,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required DUNS number, at www.fsr.gov <http://www.fsr.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS AS OF LAST UPDATED 7-1-2019 VERSION

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to archeological and historic resources. The RECIPIENT must agree to hold harmless the State of Washington in relation to any claim related to historical or cultural artifacts discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - For capital construction projects or land acquisitions for capital construction projects, if required, comply with Governor Executive Order 05-05, Archaeology and Cultural Resources.
 - For projects with any federal involvement, if required, comply with the National Historic Preservation Act.
 - Any cultural resources federal or state requirements must be completed prior to the start of any work on the project site.
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves ground disturbing activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.

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- Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff and contractors working at the project site.
 - Implement the IDP when cultural resources or human remains are found at the project site.
- c) If any archeological or historic resources are found while conducting work under this Agreement:
- Immediately stop work and notify the ECOLOGY Program, the Department of Archaeology and Historic Preservation at (360) 586-3064, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement:
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44.055, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting cultural resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.
- j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of

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Washington which affect wages and job safety.

- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement 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.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review. The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

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

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in

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accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

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RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through

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September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.

e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.

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d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder. RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and

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imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

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ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.



CITY OF SELAH
CITY COUNCIL
AGENDA ITEM SUMMARY



Council Meeting Action Item

9/24/2019 N – 3

Title: Resolution Declaring a Vehicle Surplus and Providing for Disposition of the Same.

From: Richard Hayes, Chief of Police

Action Requested: Approval

Staff Recommendation: Approve the surplus of the listed vehicle

Board/Commission Recommendation: Not Applicable

Fiscal Impact: None

Funding Source: N/A

Background / Findings & Facts: We obtained (For Free) a 5-ton military vehicle in November of 2014. Our intention was to use the vehicle for a command center vehicle. That never occurred and isn't fiscally prudent.

Recommended Motion: Move to Approve the Resolution Declaring Vehicle Surplus and Providing for Disposition of the Same

**CITY OF SELAH, WASHINGTON
RESOLUTION NO. _____**

**RESOLUTION DECLARING VEHICLE SURPLUS AND PROVIDING
FOR DISPOSITION OF THE SAME**

WHEREAS, the City of Selah has determined it no longer has need for 1984 M934 5-Ton Truck Lic.#64826D;

WHEREAS, the City of Selah wishes to surplus and dispose of this vehicle;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Police Department motor vehicle as follows is hereby declared surplus:

1984 AM General M934 5-Ton Truck Lic. #64826D

Section 2. The City Police Department is authorized to dispose of the above-listed motor vehicle in a commercially reasonable manner.

PASSED this 24th day of September, 2019.

Sherry Raymond, Mayor

ATTEST:

APPROVED AS TO FORM:

Dale Novobielski, Clerk/Treasurer

Rob Case, City Attorney