



## Vancouver City Council

Anne McEnery-Ogle, Mayor

Bart Hansen · Ty Stober · Erik Paulsen

Sarah J. Fox · Diana H. Perez · Kim D. Harless

# City Council Meeting Agenda April 22, 2024

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In accordance with the Open Public Meetings Act (OPMA), the Vancouver City Council meeting will be open to in-person attendance. Options for viewing and/or participating in the meeting remotely will also be accommodated (see details below). The City Council will be attending this meeting in person.

All City Council workshops and meetings are broadcast (live closed captioning available) on [www.cvtv.org](http://www.cvtv.org), CVTV cable channels 23 / HD 323, and on the City's Facebook page, [www.facebook.com/VancouverUS](http://www.facebook.com/VancouverUS).

**Public testimony** will be accepted regarding any matter on the agenda below. ***Advance registration will be required (see details below).***

Unless otherwise announced by the Presiding Officer, each speaker may testify once for up to three minutes under each public testimony opportunity below and will be asked to provide their name and city of residence for the record.

Testimony will be accepted in the following manner:

- **Written comments submitted in advance**

Comments may be sent to [council@cityofvancouver.us](mailto:council@cityofvancouver.us) until 12:00 p.m. April 22. Comments will be compiled and sent to the City Council and entered into the record.

- **In-person or remote testimony during the meeting**

Register in-person at City Hall. In-person registration is open until 6:30 p.m. on April 22. Instructions will be provided on-site.

Register to testify online. Online registration is open until 12:00 p.m. on April 22.

Visit the following website for more information and to register:

<https://www.cityofvancouver.us/departments/mayor-city-council/> under Public Participation, or call the City Manager's Office at (360) 487-8600.

Further instructions for accessing the virtual meeting (for remote testimony) will be provided upon registration.

Upon request, printouts of agenda materials will be provided, including large print.

**WORKSHOPS: 3:00-6:00 p.m.**

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

**2025-26 Biennial Budget**

(Approximately 2 hours)

*Shannon Olsen, Budget Manager, 360-487-8497*

**Rental Habitability Action Plan**

(Approximately 1 hour, to immediately follow previous workshop)

*Patrick Quintion, Economic Development Director, 360-487-7845*

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**COUNCIL DINNER/ADMINISTRATIVE UPDATES (6:00-6:30 p.m.)**

**REGULAR COUNCIL MEETING**

6:30 PM

Vancouver City Hall - Council Chambers - 415 W 6th Street, Vancouver WA

**Pledge of Allegiance**

**Call to Order and Roll Call**

**Approval of Minutes**

Minutes - April 8, 2024

**Proclamations: National Small Business Week; National Volunteer Week; Imperial Sovereign Court of the Raintree Empire's 50th Anniversary**

**Community Communications**

This is the place on the agenda where the public is invited to speak to Council regarding any matter on the Agenda not already scheduled for Public Hearing. (Separate instructions are provided for offering

testimony on Public Hearing when applicable.) This includes the option to testify about Workshops. Members of the public addressing Council are requested to give their name and city of residence for the audio record. Speakers are to limit their testimony to a total of three minutes for all items combined.

## **Consent Agenda (Items 1-5)**

The following items will be passed by a single motion to approve all listed actions and resolutions. There will be no discussion on these items unless requested by Council. If discussion is requested, the item will be moved from the Consent Agenda and considered separately - after the motion has been made and passed to approve the remaining items.

### **1. Bid Award - NE 137th Avenue Corridor Completion Project (NE 49th Street to NE Fourth Plain Boulevard)**

Staff Report: 080-24

Request: On April 22, 2024, award a construction contract for the NE 137th Avenue Corridor Completion Project (NE 49th Street to NE Fourth Plain Boulevard) to the lowest responsive and responsible bidder, Tapani Inc., of Battle Ground, Washington, USA at their bid price of \$26,368,398.26, which includes Washington State sales tax, and authorize the City Manager or designee to execute the same.

*Hassan Abdalla, Engineering Manager, 360-487-7704*

### **2. On Call Contracts for Owner Representative Professional Services**

Staff Report: 081-24

Request:

1. Authorize the City Manager, or designee, to enter into professional services agreements with OAC Services, Inc. and Parametrix for the provision of owner's representative and other contract applicable services on an as-needed basis for five years in an amount of \$1,000,000.
2. Authorize the City Manager, or designee, to activate services to be provided under this contract with a series of specific task orders. The task order proposal provides for timely "as-needed" service provision, but within the framework, scope, and limitations of the overall master contract.
3. Authorize the City Manager, or designee, to approve any legal action necessary to enforce the terms of the foregoing agreements.

*Jean Singer, Capital Projects Division Manager, 360-487-7755*

### **3. Approval of Participation Agreement for State of Washington Opioid Settlement with Johnson & Johnson/Janssen**

Staff Report: 082-24

Request: Authorize the City Manager or designee to execute the attached Settlement Participation Form to join Washington State's January 22, 2024, settlement with Johnson & Johnson, Johnson & Johnson Innovative Medicine, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

*Dan Lloyd, Assistant City Attorney, 360-487-8520*

#### 4. **Comcast Cable Franchise Renewal**

Staff Report: 083-24

**AN ORDINANCE** relating to cable television, renewing with revised terms and conditions, a nonexclusive and revocable franchise to Comcast Cable Communications Management, LLC, a limited liability corporation organized under the laws of the State of Washington ("Comcast"), pursuant to state and federal law, City Charter and City ordinance codified at Chapter 5.19, Vancouver Municipal Code, to operate, maintain, reconstruct and repair a Cable System for the purpose of providing only cable service, subject to the terms set forth in the Franchise Agreement.

Request: On April 22, 2024, approve the franchise ordinance on first reading, setting date of second reading and public hearing for June 3, 2024.

*Jim Demmon, Video Services Manager, 360-487-8706*

#### 5. **Approval of Claim Vouchers**

Request: Approve claim vouchers for April 22, 2024.

### **Communications**

**A. From the Council**

**B. From the Mayor**

**C. From the City Manager**

**EXECUTIVE SESSION RE: POTENTIAL LITIGATION (RCW 42.30.110(1)(i)(iii)); CONTRACT NEGOTIATIONS (RCW 42.30.110(1)(d)) (1 hour)**

### **Adjournment**

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*information on times, fares, and routes.*

*Anyone needing language interpretation services or accommodations with a disability at a Vancouver City Council meeting may contact the City Manager's staff at (360) 487-8600 (Voice/TTY 487-8602). Assistive listening devices and live Closed Captioning are available for the deaf, hard of hearing and general public use. Please notify a staff person if you wish to use one of the devices. Every attempt at reasonable accommodation will be made. To request this agenda in another format, please also contact the phone numbers listed above.*



**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** 2025-26 Biennial Budget

**ATTACHMENTS:**

- ▣ Presentation
- ▣ Memo
- ▣ 2023-2024 Financial Policies



CITY OF  
**Vancouver**  
WASHINGTON

# 2025-2026 Budget Process

**Shannon Olsen**  
Budget Manager  
Financial & Management Services  
April 22, 2024



# Agenda

- Budget Framework
- Review of Financial Policies
- Review of 2025-2030 Forecast
- Next Steps







# Budget Framework



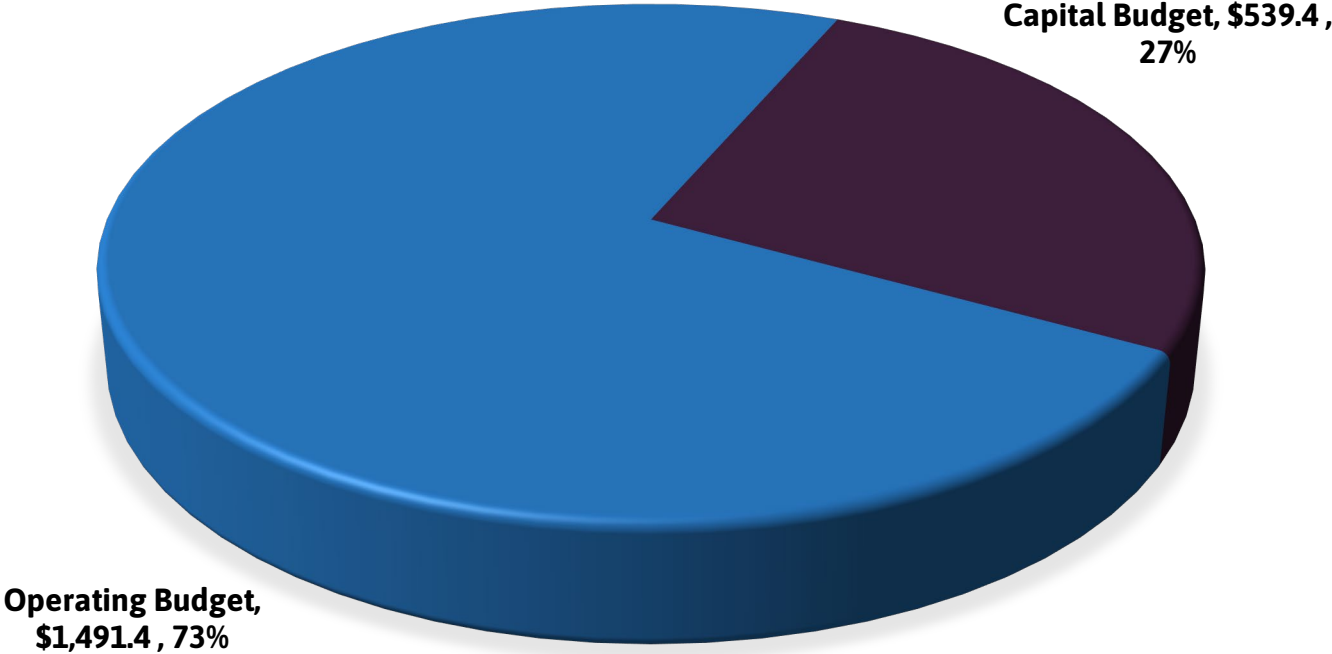
# Budget Framework - *Overview*

- The City of Vancouver budgets on a biennial basis beginning on odd number years (e.g., 2025-2026)
- Total City budget consists of two separate, but integrated budgets:  
**Operating** and **Capital**
  - **Operating budget:** general operations of the City and specific revenue-funded activities
  - **Capital budget:** construction projects in Transportation, Parks & Recreation, Utility and General Capital



# Budget Framework - *Overview*

2023-2024 ADOPTED BUDGET: 2.0B

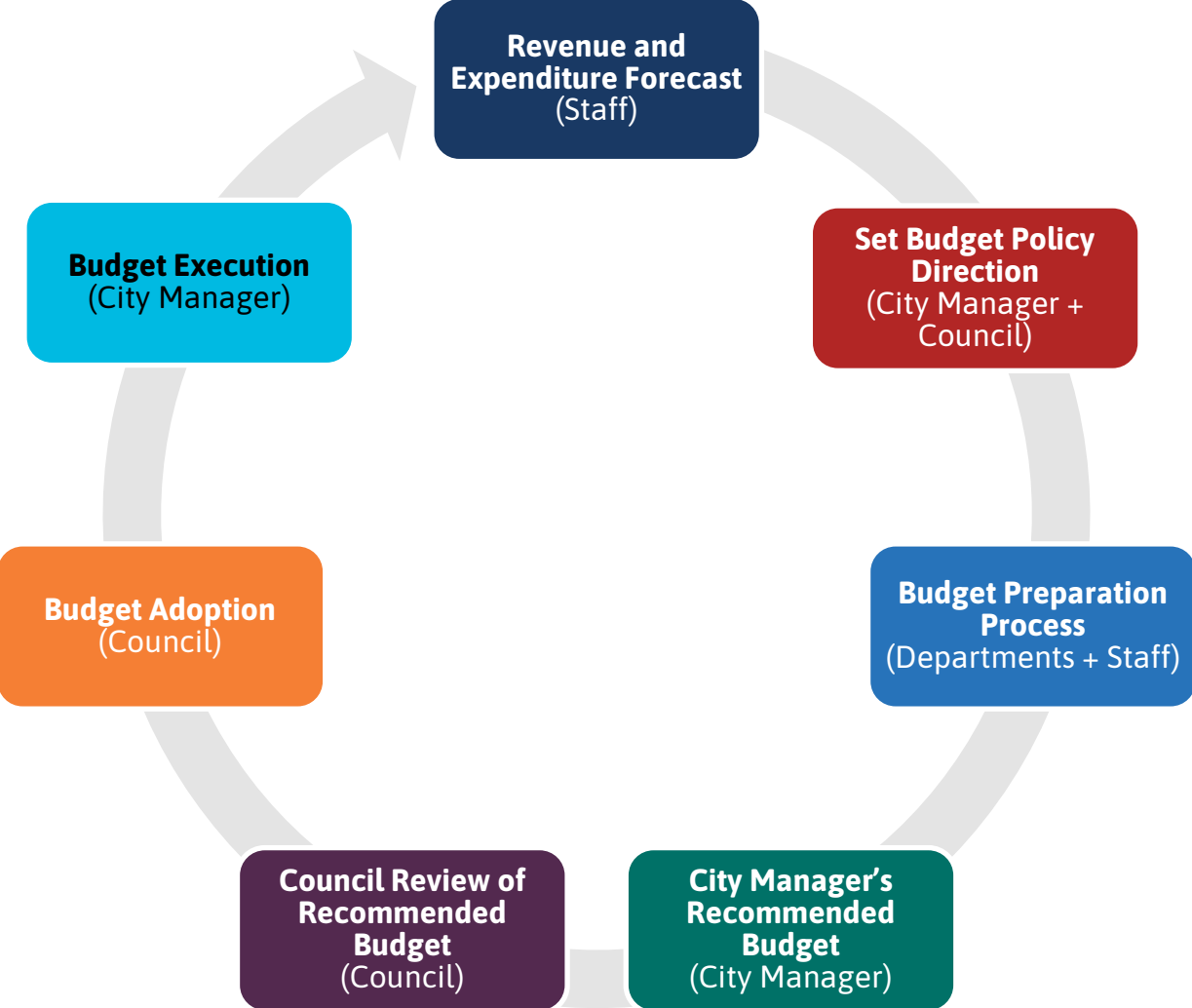


(Dollars in Millions)

1,360.75 FTEs  
authorized in  
Budget



# Budget Framework - *Overview*



# Budget Framework - *Overview*

## Universal Policy Themes

Transcend the biennium

Drivers throughout the forecast period

### Policy Priorities

- Areas of policy focus within biennium
- Projects or programs

### Baseline Framework

Financial assumptions that guides budget construction (zero base, inflation, etc.)



# Budget Framework – *Universal Policy Themes*

- Outcomes of department budgets should support **City priorities**



# Budget Framework – *Strategic Plan*

- Strategic Plan establishes **core values** and **focus areas**
- Outcomes of department budgets should support **core values**
- Equity lens/community vulnerability index applied to all significant investments (capital or program)

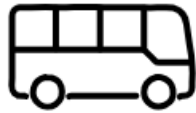


# Budget Framework – *Strategic Plan*

- Department budgets will contain objectives resulting in outcomes aligned with one or more of these **focus areas**



Culture and Heritage



Transportation and Mobility



Vibrant and Distinct  
Neighborhoods



Economic Opportunity



Climate and Natural Systems



High Performing Government



Housing and Human Needs



Safe and Prepared Community







# Financial Policies



# Financial Policies – *Role & Purpose*

- Council updated City financial policies in 2012 and every two years thereafter
- Objectives:
  - Establish framework to build City's financial future in prudent, proactive way
  - Include best practices to ensure long-term fiscal stability
  - Simplify & modernize policies to reflect current economic environment and fiscal constraints



# Financial Policies - *Framework*

- **City Financial Policy Framework**
  - Long Range Financial Planning
  - Reserves, Revenue & Resource Utilization
  - Budget Management
  - Capital Planning & Asset Management
  - Debt and Investment Policies



# Financial Policies

- ***Long Range Financial Planning***

- Prepare long-term revenue & expenditure forecast
- Assess financial impact of proposed budget decisions within context of a 6-year forecast
- Operating budget:
  - Current operations funded with current revenues
  - One-time revenues will not be used for ongoing expenses



# Financial Policies - *Reserves*

- **Emergency Reserve** = 7% of prior year's General, Street & Fire Fund revenue
    - Unexpected, large-scale nature-driven event
    - Each emergency exceeds \$1.0 million
    - Requiring immediate remedial action to protect health & safety of residents (e.g., flood, earthquake, etc.)
    - If used, restoration of reserves begin in year following event
- Status: Funded ~\$18.6M



# Financial Policies - *Reserves*

- **Revenue Stabilization Reserve**

- 2.5% of current year's General Fund revenue
- Offset ongoing revenue fluctuations or unanticipated events
  - Unexpected external mandates
  - Reductions in state shared revenues
- When used, it will be replenished within two years

Status: Funded ~\$6.6 M



# Financial Policies - *Reserves*

- ***Designated Liability Funding Reserve***

- Created when City accepts funding leading to future liabilities
- Equal to identified future obligation

- Status: \$6.5M reserve consistent with HP DA

- ***Compensated Absences***

- Status: \$5.5M reserve, 50% of the value of outstanding liability



# Financial Policies - *Reserves*

- **Council Designated Reserves**

- Reserve for specific purpose as identified and prioritized by City Council
  - Columbia Arts Center: \$0.9M
- Undesignated reserve - None





# Financial Policies - *Reserves*

- ***Working Capital Reserve***

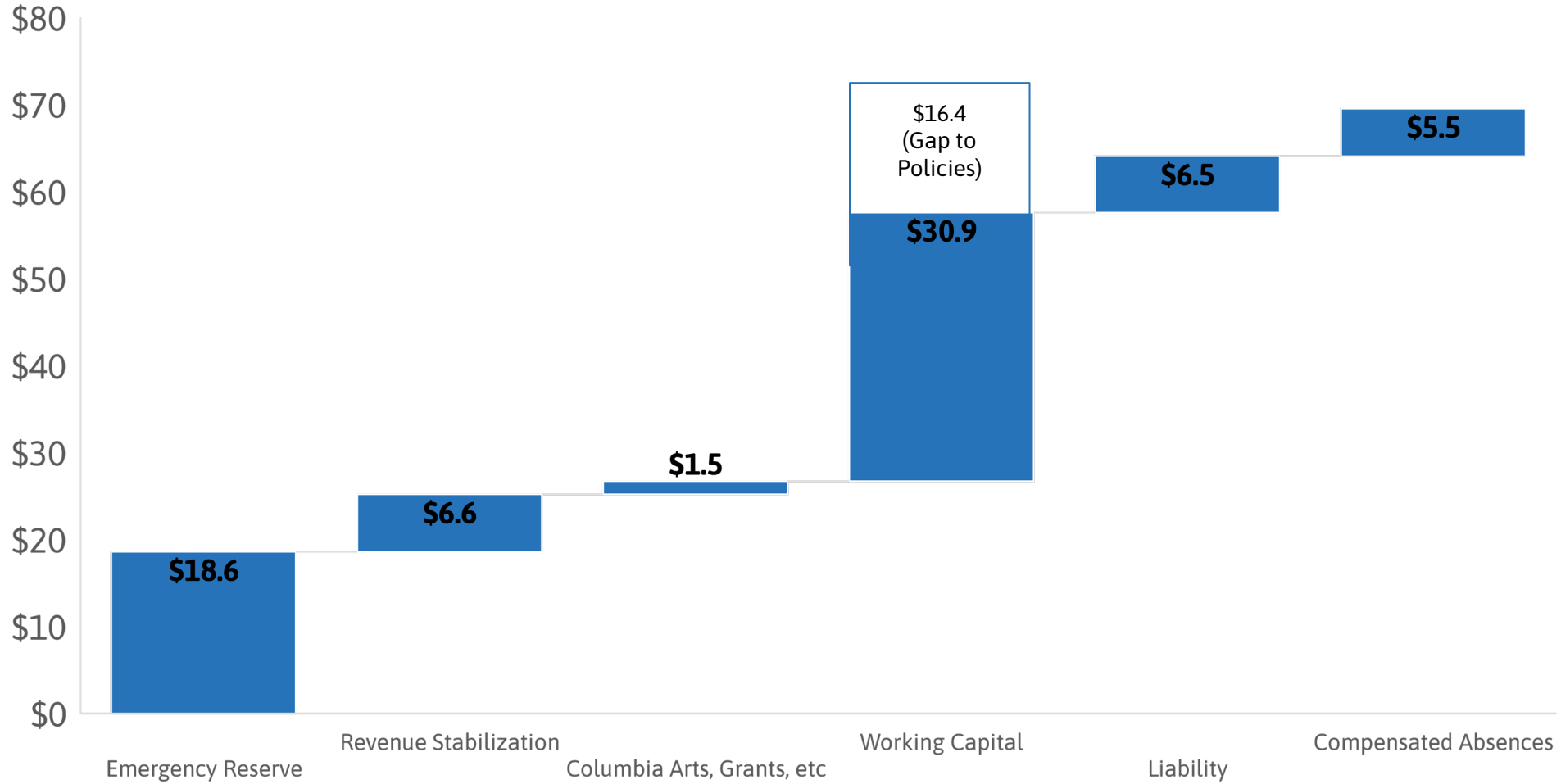
- Sufficient to fund 60-90 days of operations of General, Street, and Fire Funds
- Address City's cash flow requirements
- Provide for normal City operations without short-term borrowing

Status: Partially funded at 39 days ~\$30.9 M



# Financial Policies - *Reserves*

2024 PROJECTED YEAR END - GENERAL FUND CASH BALANCE (\$69.6)  
(IN MILLIONS)



# Financial Policies

- ***Revenues & Resource Utilization***

- User fees & utility rates in all funds based on:

- Full cost of providing service, including inflationary impacts
    - Public benefit
    - Community affordability considerations

- Conduct regular cost of service studies

- Include all reasonable and justifiable direct & indirect costs



# Financial Policies

- **Revenues & Resource Utilization (continued)**
  - Establish specific cost recovery targets for certain departments (update as required)
    - Building Fee Target: 100%
    - Land Use Fee Target: 75%
    - Transportation Review Fee Target: 75%
    - Recreation Fee Target: (currently under review)
    - Parking Fund: 100%



# Financial Policies

- ***Capital Planning & Asset Management***

- Incorporate “pay-as-you-go” approach in Capital Investment Program
- Debt funding for large capital projects with long useful lives to better balance inter-generational equity



# Financial Policies

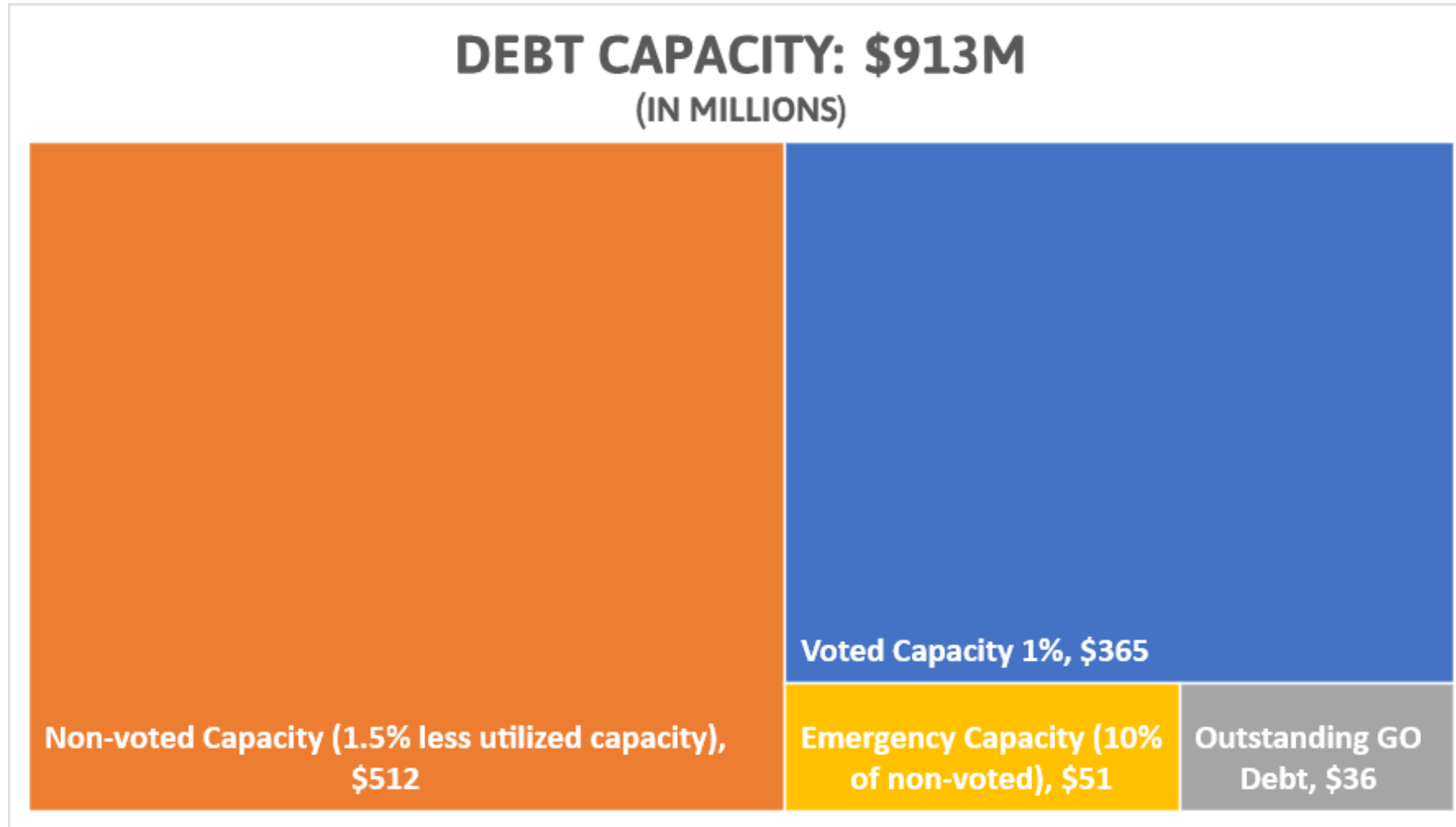
- **Financial Asset & Liability Management**

- Debt Planning, Issuance & Compliance Policies:

- City will reserve 10% of non-voted capacity for emergency purposes
- City will not exceed 85% of non-voted debt limit, excluding 10% reserved for emergency purposes
- Annual payments of GO debt will not exceed 10% of total GF annual expenditure appropriation
- Capital projects financed with debt will be repaid during a period not to exceed project useful life



# Financial Policies



# Financial Policies

- **Budget Management**

- During Biennial Budget process, City Council approves number of permanent City staff positions, their assignments to specific City funds
- City will establish classification & compensation plan:
  - Consistent with labor market and within City's ability to pay





# Financial Policies

- **Budget Management** *(continued)*
  - Council establishes appropriations through budget process
  - Expenditures controlled with annual appropriation at department/fund level
  - No re-appropriation required for carryforward funds into second year of the biennium
  - Quarterly reporting of budget vs. actual data





# 2025-2030 Revenue Forecast General, Street and Fire Funds



# 2025-2030 General, Street & Fire Funds Forecast

- ***Economic Conditions***

- Federal Reserve – Federal Open Market Committee (FOMC) Statement

- Economic activity expanding at slower pace
- Job gains have remained strong; unemployment rate remains low
- Inflation has eased over past year, but remains elevated and had an uptick in the last month

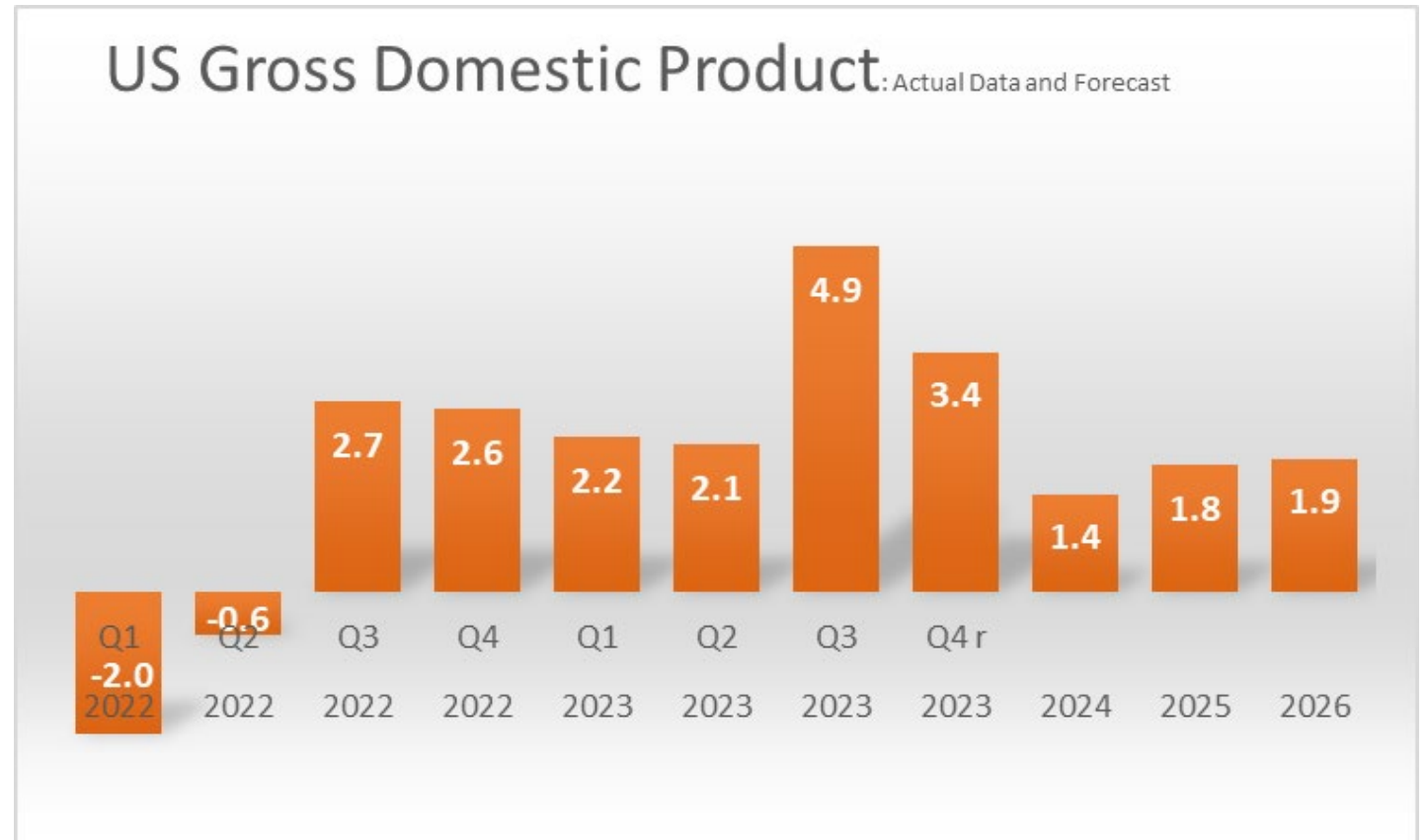


# 2025-2030 General, Street & Fire Funds Forecast

- **Economic Conditions**

- Gross Domestic Product:

- Slowdown in immediate future
- Increased at an annual rate of 3.4% in 4Q2023; in the third quarter, real GDP increased 4.9%.

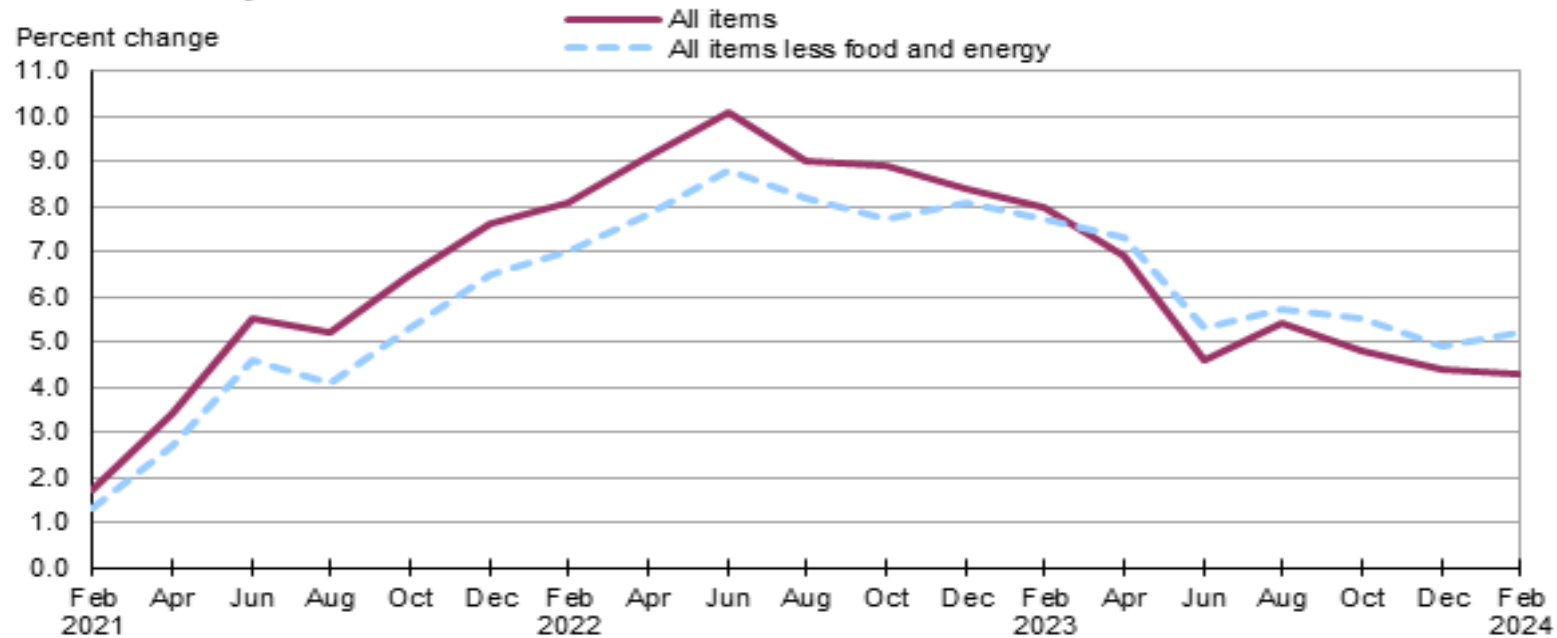


# 2025-2030 General, Street & Fire Funds Forecast

- **Economic Conditions**

- Consumer Price Index Summary

Chart 1. Over-the-year percent change in CPI-U, Seattle-Tacoma-Bellevue, WA, February 2021–February 2024



Source: U.S. Bureau of Labor Statistics.



# 2025-2030 General, Street & Fire Funds Forecast

- ***Economic Conditions***

- Inflation remains high, but forecast anticipates inflation will ease over the long run
- High inflation over last several years impacts all aspects of City spending, from personnel to capital expenditures (lag in impact on City finances)
- Structural Deficit: Expenditures outpacing revenues is anticipated to continue over the length of the forecast



# 2025-2030 General, Street & Fire Funds Forecast

- **“Current law” forecast**

- 2023-2024 biennium assumed as baseline
- Assumes no changes to current authorized staffing or programs
- Assumes no changes to current tax or fee rates or structure

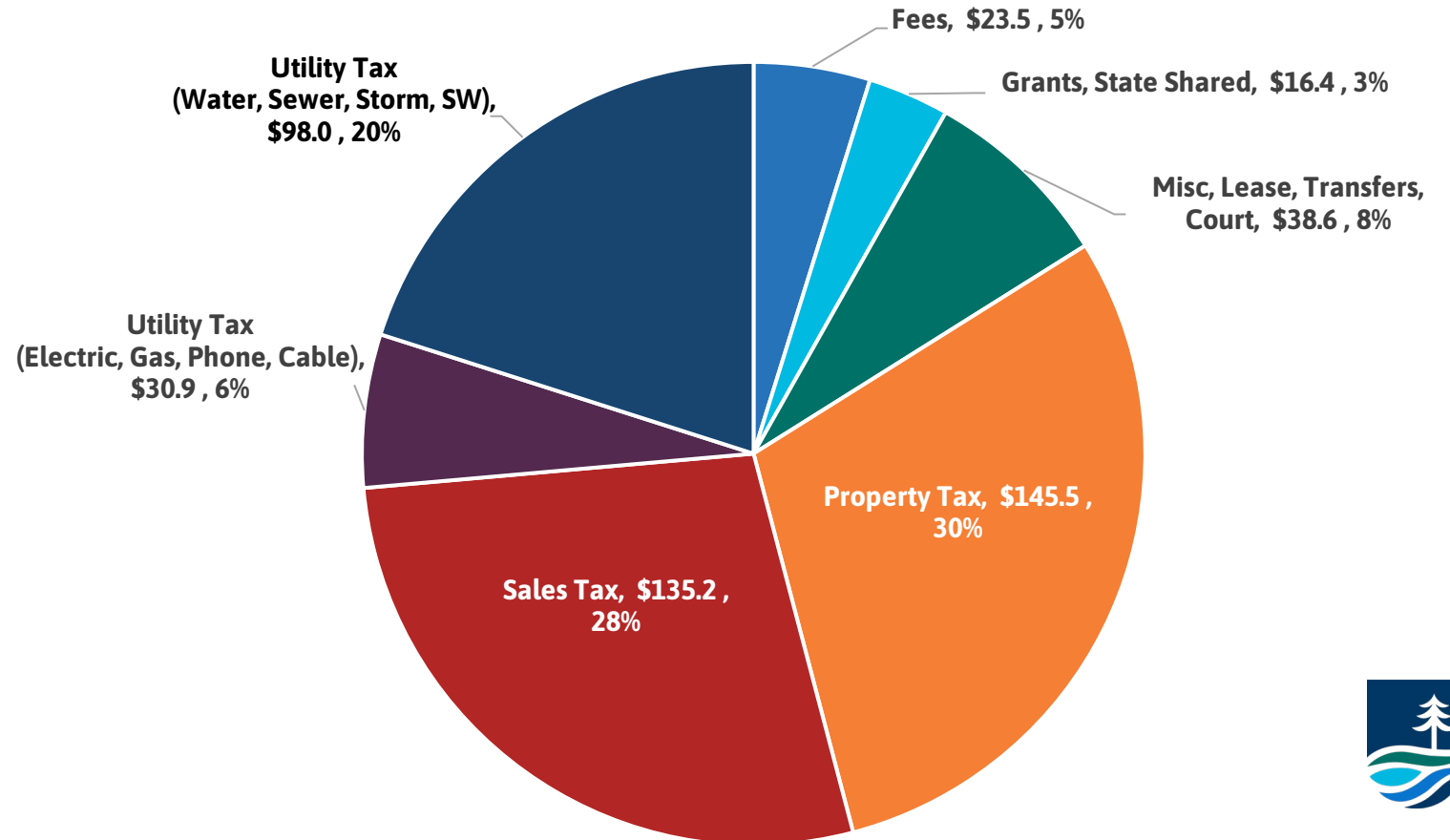


# 2025-2030 General, Street & Fire Funds Forecast

- **Major Sources of Revenue:**

Three major sources of revenue:  
Property, Sales, & Utility Taxes  
  
(~84% of total revenues)

2023-24 Adopted Revenue Budget  
(In Millions)





# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions - Revenue**

- Economy will continue to expand through 2025-2030 time-period, but at a slower pace
- Slowed development and construction due to higher interest rates expected to impact multiple revenue sources
- Sales tax has slowed and anticipated to come in below forecasted amounts in current biennium
  - Assumes an average sales tax growth of 4.4% through 2030



# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions – Property Tax**

- Property tax revenue:

- Continue to increase by 1% per year, plus new construction
- New construction expected to continue at reduced levels during forecasted period:
  - Slowing of construction due to higher interest rates
  - Multi-Family Tax Exemption (MFTE) expansion
- Includes Proposition 2 for fire and emergency services

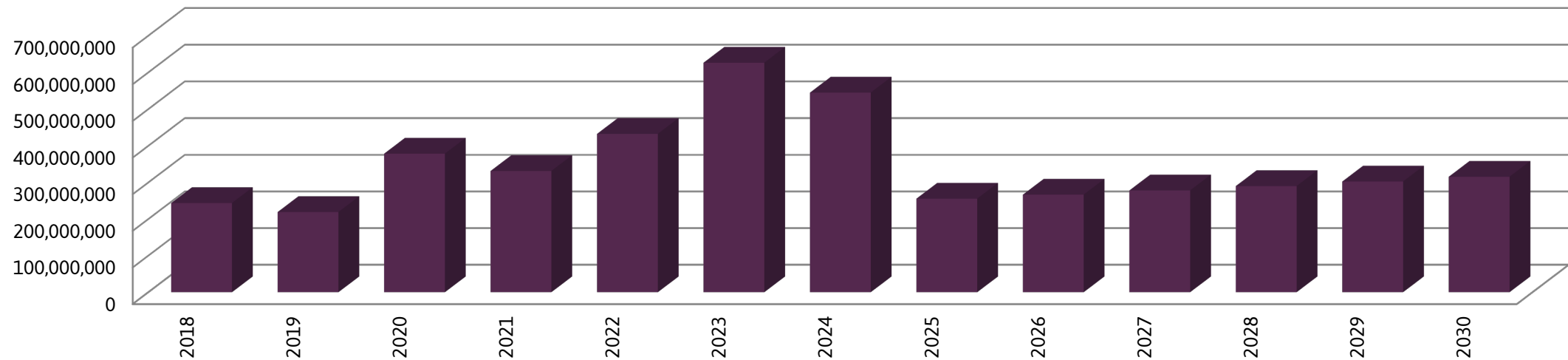


# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions – Property Tax (continued)**

- Increases in AV do not impact property tax revenues, except for new construction
- New construction reduced to 0.7% from 1.25% of the AV due to slowing development and expansion of MFTE program (historical range between 0.5% to 1.8% of AV)

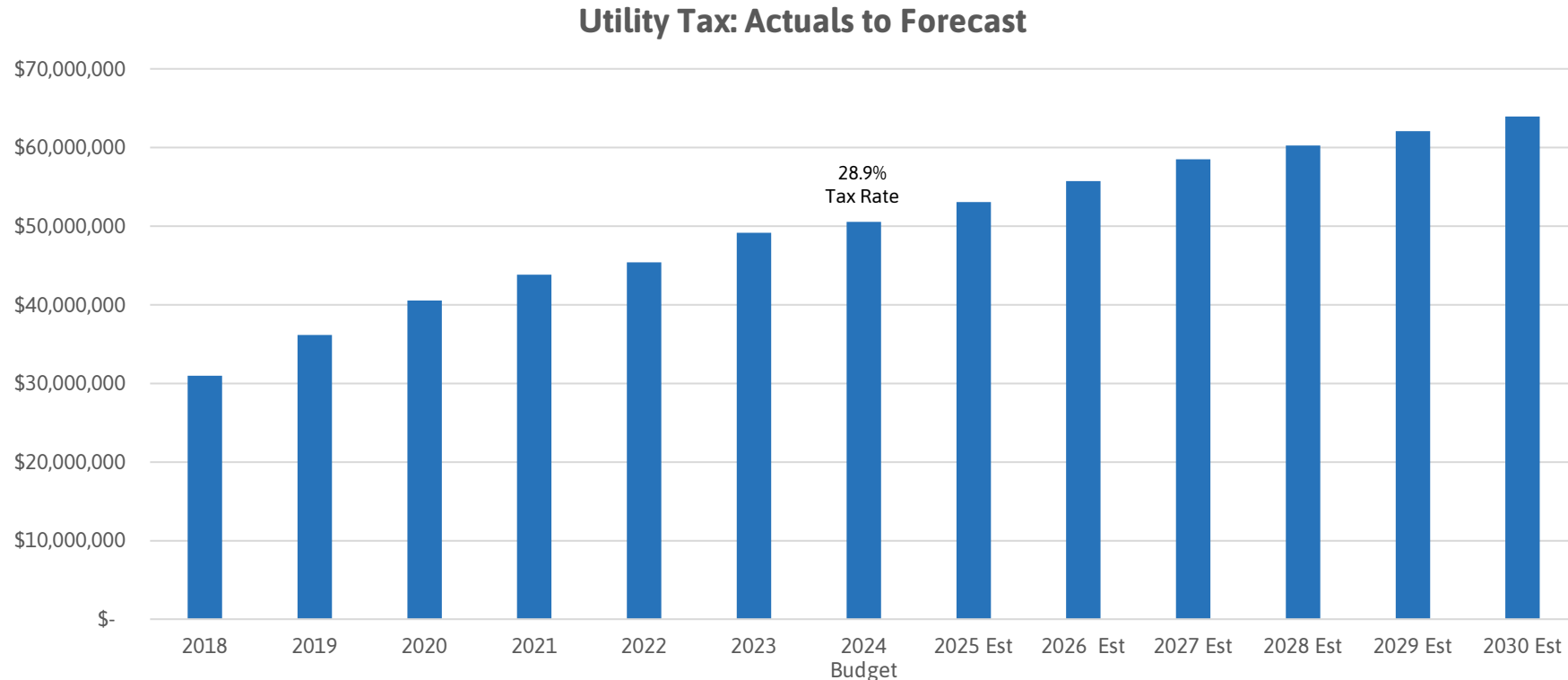
**COV: New Construction**



# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions – Utility Tax**

- Aggregate utility rates on City Owned (sewer, water, stormwater, and solid waste) to increase 4% on average, no changes in tax



# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions – Utility Tax (continued)**
  - Utility tax on privately owned utilities - continue trend of paced level of consumption
  - Recent volatility with natural gas and electric rates
    - Northwest Natural Gas – 2024: 11.9% average increase
    - Clark Public Utilities – 2024: 14% average increase



# 2025-2030 General, Street & Fire Funds Forecast

- **Major Assumptions – Other Revenues**

- Business License and Business License Surcharge revenues lower than anticipated (~\$1M), forecast adjusted and includes programmed increases
- Recreation Center revenues are back to pre-pandemic levels
- Development fee revenue on a declining trend
- Significant reduced collections of Real Estate Excise Tax (REET)
- Other revenues anticipate to follow historical trends



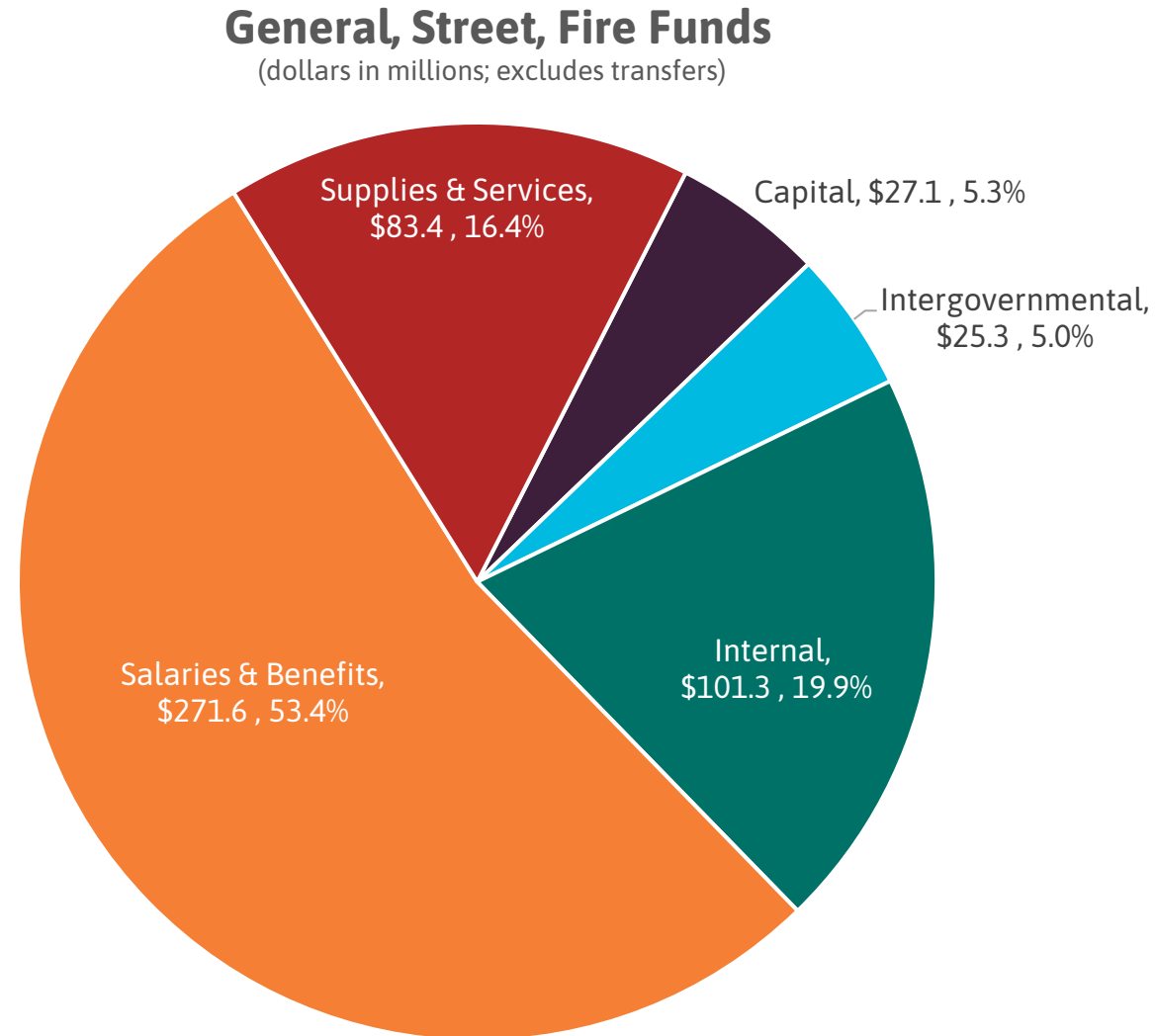


# 2025-2030 Expense Forecast General, Street and Fire Funds



# 2025-2030 General, Street & Fire Funds Forecast

- **Expenditures:  
2023-2024  
Adopted**





# 2025-2030 General, Street & Fire Funds Forecast

- **Personnel Costs Increases**

- Salary & Benefits

- Forecast includes all current, existing ongoing FTEs
- Public safety contracts through 2025
- Other contracts will be negotiated this year
- Assumptions are conservative

- Health Insurance

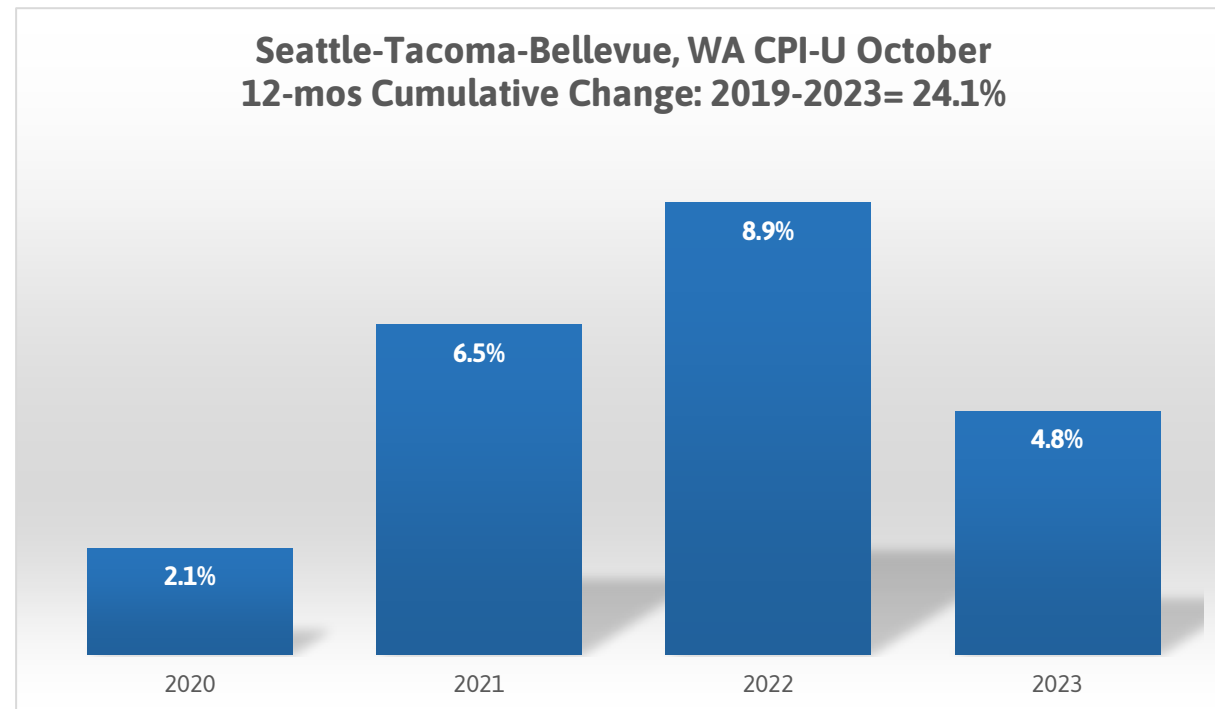
- Liability, Workers Compensation & Risk



# 2025-2030 General, Street & Fire Funds Forecast

- ***Inflationary Increases***

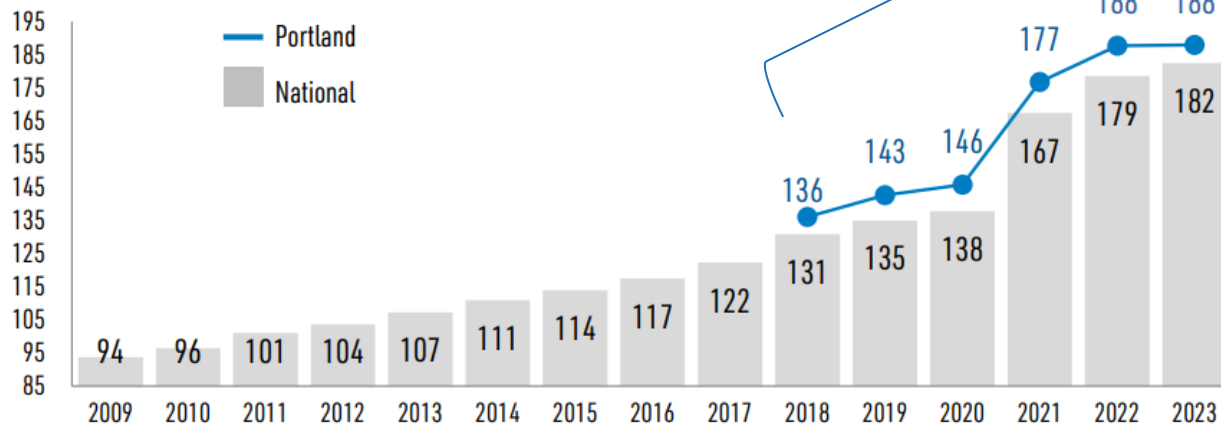
- Labor
- Supplies
- Services
- Utility
- Energy



# 2025-2030 General, Street & Fire Funds Forecast

- ***Inflationary Increases***
  - Construction Costs

**CONSTRUCTION COST INDEX**  
(January 2009 = 100)



The Mortenson Cost Index was flat in the most recent quarters. Over the last twelve months, costs increased 2.2% nationally and 0.1% in Portland.



# 2025-2030 General, Street & Fire Funds Forecast

- ***Other Assumptions:***

- Debt Service to support Operations Center Replacement included (proportional to General Fund project ownership)
- No new FTEs in General Fund (GF) and GF-supported departments
- Minimal capacity for covering new or unavoidable issues



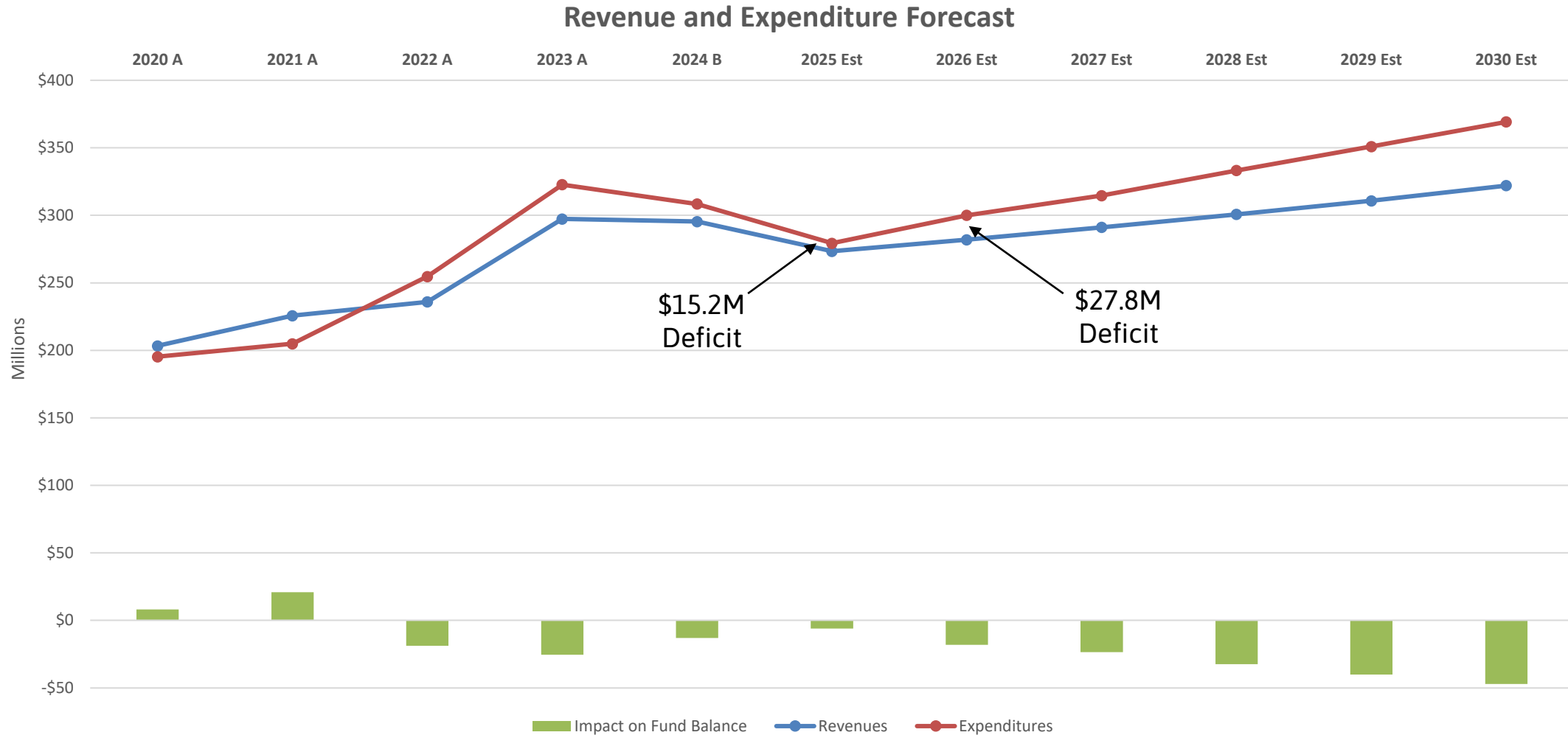
# 2025-2030 General, Street & Fire Funds Forecast

- ***Contributing Factors***

- Softening revenues
- Inflationary increases across all departments
- New and expanded GF initiatives without new additional revenues



# 2025-2030 General, Street, and Fire Funds Forecast



# 2025-2030 General, Street & Fire Funds Forecast

- ***Deficit is Structural***

- Has been deferred for more than a decade through constrained spending and new revenues

- ***Inflationary is Extraordinary***

- Highest in a generation; impacting all departments

- ***Budget Must be Balanced***

- A range of options, including spending reductions and new revenue can be considered





# Next Steps





# 2025-2030 General, Street & Fire Funds Forecast

- ***Next Steps***

- May 6: Revenues and Budget Policy Framework



# Thank You



[shannon.olsen@cityofvancouver.us](mailto:shannon.olsen@cityofvancouver.us) | 360-487-8497 | [cityofvancouver.us](http://cityofvancouver.us)



**DATE:** April 16, 2024

**TO:** Anne McEnery-Ogle, Mayor  
City Council

**FROM:** Eric J. Holmes, City Manager  
Natasha Ramras, CFO  
Shannon Olsen, Budget Manager

**RE: 2025-26 Biennial Budget: Budget Framework**

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The April 22, 2024 Council workshop will focus on reviewing and confirming the policy framework to guide development of the City Manager’s Recommended budget for the 2025-26 biennium. This memorandum and corresponding presentation outline the proposed framework, current fiscal policies, as well as provide a high-level summary of the 2025-2030 forecast. A companion workshop is scheduled for May 6 to review revenue options and confirm the recommended framework for budget development.

### Executive Summary

Washington state revenue structure for municipalities, impacted by voter initiatives restricting the growth of largest revenues, has created an environment of persistent structural deficits, when the revenue growth is not sufficient to cover the expenditure growth. The City has been able to mitigate the structural deficit over the last decade with a combination of constrained spending and new revenue generation. This year, for the upcoming six-year time period, the structural deficit returns, and intervention is needed to close the forecasted gap. Several factors led to the situation the City finds itself in for the next biennium and beyond.

The residual impacts of the pandemic and associated federal interventions have fueled persistent inflation that remains stubborn in the face of the efforts of the federal reserve. The inflation resulted in highest in several decades and an interest rate environment that has put a significant damper on development activity locally and nationally. The inflation is also significantly impacting the majority of City expenses. There is a two to three year lag in inflation’s impact on City expenditures due to the length and timing of the City’s labor contracts and terms of existing contracts. These dynamics are combining to create significant headwinds for Vancouver.

As we begin preparation of the 2025-2026 biennial budget:

- Vancouver is experiencing softening in key revenues that support the general, street and fire funds – mainly the property and sales taxes, planning fees and other development – dependent revenues.
- Vancouver funded several high priority programs over the last two biennial budgets that were not funded by new external revenues.
- Vancouver expanded certain programs, like Multi Family Tax Exemption, to significant large new areas of the City. This action will effectively bring in new demand for services, that will not be covered by ongoing tax revenues through the expiration of the exemption.

- Some of the revenue sources that funded expansion in City services (voted property tax to cover expansion in Fire staffing) are not growing at a sufficient pace to cover rising expenditures.

The preliminary six-year forecast for the General, Street and Fire funds shows a significant budget deficit for 2025-2026, with a forecasted \$15 M in 2025 and \$28 M in 2026. This is a “current law” forecast that projects the future costs of current programs, services and staffing included in the current biennium. Without changes to expenditures or the addition of new revenue, this is forecasted to grow through the end of the decade. A combination of spending reductions and/or new revenues will be needed to balance the budget for the coming biennium.

### **2025-26 Biennial Budget Policy Framework**

Overall, there are three primary facets to the current policy framework:

- **Universal Policy Themes**: these are the highest-level policy themes set by Council that transcend the coming biennium and remain drivers throughout the forecast period. The three universal policy themes are: equity and inclusion, community safety and climate action.
- **Core Values and Focus Areas**: In June 2023, the City Council approved Vancouver’s 2023-2029 Strategic Plan and affirmed the core values and focus areas within the Plan. The core values consist of livability, equity and inclusion, innovation, sustainability and resiliency, as well as trust and relationships. The focus areas include: transportation and mobility, economic opportunity, housing and human needs, vibrant and distinct neighborhoods, culture and heritage, safe and prepared community, climate and natural systems, and high performing government. The Strategic Plan establishes the City’s direction for the next six years and beyond.
- **Financial Policies**: The City Council updated the financial policies in 2012 and has continued to review and update these policies every two years thereafter coinciding with the biennial budget development. The financial policy framework includes: long range financial planning; reserves, revenue, and resource utilization; budget management; capital planning and asset management; and debt and investment policies. (The full version of the financial policies is included as an attachment.) The overarching policy objectives are:
  - Establish a framework to build the City’s financial future in a prudent and proactive way;
  - Include best practices to ensure long-term fiscal stability; and
  - Simplify and modernize policies to reflect current economic environment and fiscal constraints.

### **2025-2030 Budget Forecast Assumptions**

The national and local economies not only impact the City’s revenue outlook, but also our operational expenses. To that end, economic conditions have been considered while building the 2025-2030 financial forecast. Major assumptions in the forecast include:

- Economy will continue to expand through 2025-2030 time-period, but at a significantly slower pace.
- Inflation remains high, but the forecast anticipates inflation will ease over the long run.

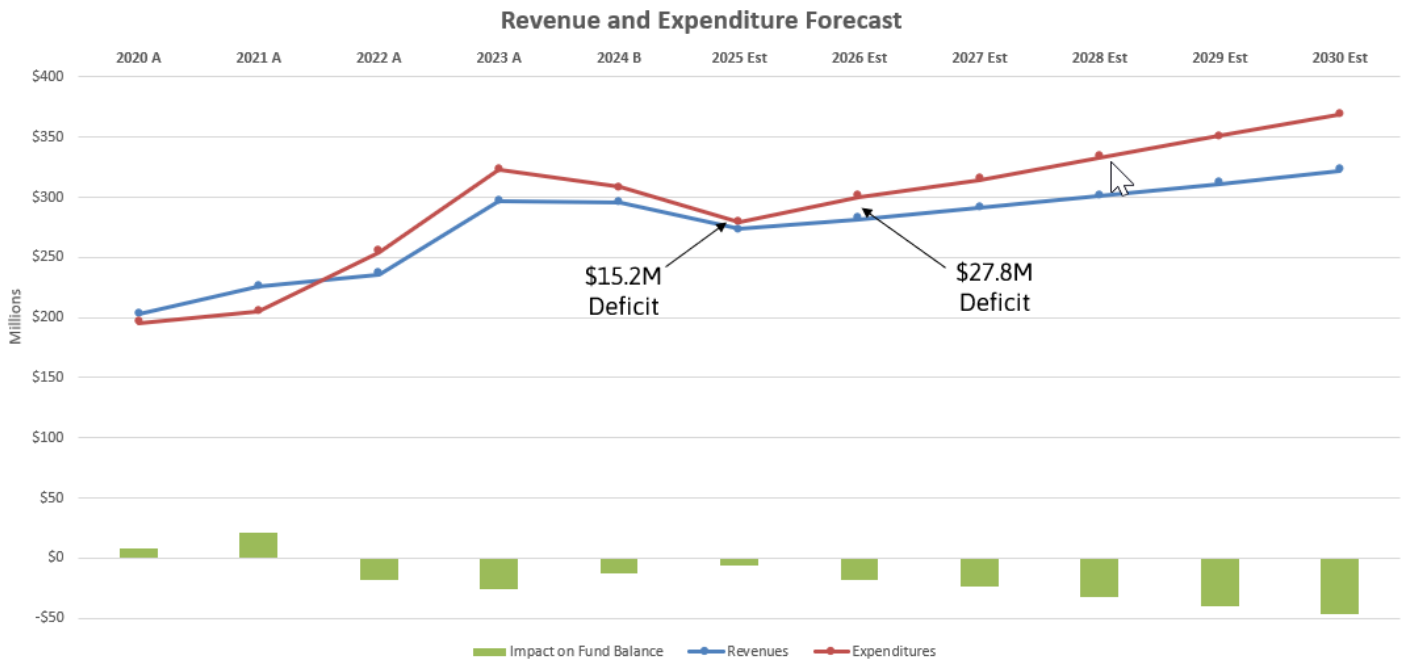
#### **Revenue**

- Slowed development and construction due to higher interest rates are expected to impact multiple revenue sources.
- Sales tax has slowed and anticipated to come in below forecasted amounts in the current biennium.

- Property tax revenue includes the 1% increase per year, plus new construction; however, new construction is expected to continue at reduced levels during the forecasted period as well as be diminished by the expanded MFTE program.
- Business license and business license surcharge revenues came in lower than anticipated; the forecast has been adjusted to incorporate the change, as well as includes programmed increases over the six-year span.

Expense

- Funding of all current, existing ongoing FTEs are included in the forecast. No new FTEs in the General Fund or General Fund-supported departments are included.
- All types of City insurance costs are increasing at double-digit rates: from liability to medical.
- Substantial inflationary increases have impacted and will continue to impact expenses related to labor, supplies, services, utilities, and construction costs.
- Debt service to support Operations Center replacement is included.
- Very conservative capacity is included in the forecast for any other unknown impacts.



**Summary**

In summary, the 2025-2030 forecast reflects a significant deficit in the next biennium. Per Washington State law (RCW 35.33), the City is required to adopt a balanced budget (where anticipated revenues are expected to provide for authorized expenditures). The scale of the deficit will require significant reductions across all city departments to the extent new revenues are not identified to cover the shortfall. The City does not have significant revenue options left to cover the extent of the gap, but has a few options that might help alleviate the scale of the reductions. We have two workshops scheduled to cover the assumptions in the forecast, to review and affirm the policies and to consider revenue options and the recommended budget framework for development of the 2025-2026 Budget.

# City Financial Policies

In addition to following all laws related to budgeting as outlined by RCW 35, the City has internal Financial Management Policies that are adopted by the City Council and reviewed every two years during the budget development process. The Financial Management Policies are a compendium of all city policies that shape the budget. The policies ensure that the City maintains a healthy financial foundation into the future. The goal of these policies is to promote:

- An extended financial planning horizon to increase awareness of future potential challenges and opportunities.
- Setting aside reserves for contingencies, replacement of capital equipment, and other similar needs.
- Maintaining the effective buying power of fees and charges and modifying cost recovery targets when appropriate to do so.
- Accountability for meeting standards for financial management and efficiency in providing services.
- Management of the city's physical assets to provide sustainable service levels into the future.
- Planning for the capital needs of the community and managing them for future use by citizens.
- Improved equity for those we serve through city investments and revenue structures.
- An emphasis on improving community safety through strategic deployment of the City's financial resources.
- Improving the City's overall impact on climate change.
- Maintaining appropriate levels of debt while ensuring quality bond ratings.
- Investing public funds to provide maximum security with appropriate returns and timely liquidity.
- Communication to residents and customers on how the community goals are being addressed.

The policy statements are grouped by major category in alignment with the policy goals and are presented in the following order:

- Long Range Financial Planning and Resource Utilization
- Reserves
- Capital Planning and Asset Management
- Financial Asset and Liability Management

## Long-Range Financial Planning and Resource Utilization

It is very important to the City to incorporate a long-term perspective and to monitor the performance of the programs competing to receive funding. Management will ensure compliance with the legally adopted budget. Purchases and expenditures will comply with legal requirements and policies and procedures as set forth by the City.

1. A **long-term forecast** of revenues and expenditures will be developed for all operating funds for the six-year period following the end of the current biennial budget.
2. The financial **impact** from budget decisions made during the development of the biennial budget will be reviewed in the context of the six-year forecast.
3. The operating budget will be based on the principle that **current operating expenditures**, including debt service, will be **funded with current revenues**. The budget will not use one-time (non-recurring) sources to fund on-going (recurring) uses, postpone expenditures, or use internal borrowing to fund operations. The budget will incorporate the best available estimates of revenues and expenditures.
4. **Performance management** will be utilized in the budget prioritization process to ensure alignment with city goals and strategic commitments. Performance data will be used to support budgetary decisions. Measures will be developed to reflect the City's efficiency and effectiveness. Status of key performance measures will be reported to council.
5. Positive progress towards **climate action, greater equity and inclusion and community safety** will be measured annually. Policy lenses for equity and climate action will be developed and utilized to inform budgetary decisions. Status of key performance measures will be reported to council annually.
6. **Service levels will be defined and measured** in a manner that is based on results, including improving equity, safety and advancing climate action goals in the community, (e.g. units of service delivered, service quality & customer satisfaction) rather than resources allocated to provide the service and shall be considered in development of the 2023-24 Budget
7. The City will endeavor to maintain a **diversified general revenue base** to diminish the effects of short-term fluctuations in any given revenue. The goal is to have a combination of revenues that grow in response to a good economy and those that remain stable during times of economic downturn. Examples of the former include sales taxes, utility taxes, business taxes and building permit fees. Examples of the latter include property taxes, court fine revenues, and the gambling tax.
8. **Revenue estimates** will be developed using reasonably conservative, but realistic assumptions. Every effort shall be made to limit deviation of actual revenues from forecast to no greater than 2.5 percent. Revenues will be monitored and reported quarterly, including trends and year-end estimates.

9. **User fees and utility rates** in all funds will be based on balancing the full cost of providing the service, the competitive market, public benefit, community affordability and other appropriate policy considerations. Beginning on January 1, 2019, fees and rates will be adjusted annually at least by the CPI- W for the Seattle-Bellevue-Tacoma using the index for the 12-month period ending in June of the prior year to reflect increases in the costs of providing services. Fees and rates will be reviewed every three to five years and further adjusted if necessary.
10. On a regular basis, the City will conduct **cost of service studies** to identify the full cost of providing services funded with fees as well as the equity and affordability resulting from the cost recovery structures. The calculation of full cost will include all reasonable and justifiable direct and indirect cost components.
11. Specific council policies related to **cost recovery targets** by specific program are listed below.
12. Building Fee Cost Recovery Target: 100%
13. Land Use Fee Cost Recovery Target: 75%
14. Development Review Fees in Transportation Target: 75%
15. Recreation Fees Cost Recovery Target: under review in context of program, equity and inclusion objectives
16. (The above target rates represent percentage of the full cost of providing the services, including city administrative costs, including Departmental administrative costs, cost of maintenance and operation of facilities that the services are provided from and maintenance and replacement of the equipment used.)
17. **Full cost recovery** will be targeted in the enterprise fund operations:
  18. City Utility Operations (water, sewer, storm water, solid waste);
  19. Pearson Airport (currently is fully recovering its operating costs);
  20. Parking Fund (as of 2018 no longer receives a General Fund subsidy);
  21. Tennis Center (the Center is operated by USTA, since September of 2018, but the General Fund will continue supporting indirect costs and up to \$10,000 per year in maintenance costs of the building).
22. **Overhead costs** will be appropriately shared by all operating funds as determined by the City's indirect cost allocation plan. The amount charged by the City for services provided under interlocal, or similar agreements, will include a factor to cover the city's overhead costs.



23. **Grants** that support city objectives and are consistent with high priority needs, including those helping to address climate action, social justice and community safety, will be aggressively sought. Grants requiring a local match or a continuing city obligation to fund programs will be carefully considered prior to applying for the grant to ensure that ongoing resources will be available to meet the obligation. The City shall attempt to recover all allowable costs, direct and indirect, associated with the administration and implementation of the program funded through grants.
24. **Expenditures will be controlled** by an annual appropriated budget at the department/fund level. The City Council shall establish appropriations through the budget process. The City Council does not require a re-appropriation of carryforward funds in the second year of the biennium. New or increases in appropriations require council approval.
25. If a deficit is projected during the course of a fiscal year, the city will take steps to reduce expenditures, increase revenues, or, if the deficit is caused by an emergency, consider using one of the existing General Fund reserves. The City Manager may institute a variety of measures to ensure spending remains below reduced revenues.
26. The City's **classification and compensation plan** will be maintained in a manner consistent with the labor market by reviewing classification specifications and benchmarks, so that changes in the classification structure may coincide with the budget cycle. The City will compare employee compensation using a total compensation approach that includes the value of benefits. The City will target compensating employees at the market mean level, and may consider other factors as appropriate, within its ability to pay. A schedule of pay ranges of non-represented staff will be attached to the budget for Council review and adoption.
27. Positions may be overfilled by the City Manager or their designee for a limited time period to help maintain minimum staffing, reduce personnel related costs, transfer knowledge, and provide a seamless transition between new, terminating, and retiring employees. Overfills will be managed within the fund/department budget appropriations and the overfill FTEs shall be included in the approved budget.
28. Actual expenditures will be closely and frequently monitored. The comparison of budget to actual expenditures shall be reported to council on a quarterly basis.
29. The new expenditures in Fire that are funded by Proposition No. 2 (2022) levy lid increase include the 43 new FTEs in Fire, and beginning in 2025, provide continued funding for the 13 FTEs for Station 11. Additionally, the levy lid increase includes funding for Capital expenditures and sufficient administrative staff in Internal Services Departments to manage the additional Capital Project program and support the new Fire staffing.

# Reserves

Reserves are an important indicator of the city's financial position and its ability to withstand adverse events. Maintaining reserves is a prudent management practice.

1. An **emergency General Fund reserve** will be maintained equal to 7% of actual external revenues in the preceding fiscal year in the General, Street, and Fire Funds. The emergency reserve is for unexpected, large-scale events where damage in excess of \$1 million is incurred and immediate, remedial action must be taken to protect the health and safety of residents (e.g., major flood, earthquake, etc.). In the event that these "emergency reserve" funds are used, the City shall restore the reserve to the full 7% level within a reasonable amount of time as necessitated by the scale of emergency. A clear plan will be developed to refill the reserve and the first significant deposit will occur the following fiscal year after the event.
2. The City will maintain additional "**working capital**" reserves, sufficient to fund, on average, 60-90 days of operations in each operating city fund. This reserve will address cash flow requirements and allow the City to operate without funding its operations through short-term borrowing.
3. The City will maintain a "**revenue stabilization**" reserve with a goal of reaching 2.5% of the current year's budget in the General Fund. This reserve may be used to provide funding to temporarily offset unanticipated fluctuations in on-going revenues or unanticipated events, such as unexpected external mandates, reductions in state-shared revenues, etc. The reserve funds will provide time for the City to restructure its operations in a deliberate manner to ensure continuance of critical city activities. If the reserve is spent down, it shall be restored within the following two years. This reserve could be utilized if there is an identified 3-6 month trend of reduced revenues.
4. An additional "**designated liability funding**" reserve will be created when the City accepts funding leading to future liabilities. The reserve will be equal to the stated liability in the future. If a federal or state grant requires local resources to fund the initiative after the grant expiration, the cost of funding the initiative is considered to be a liability that will be funded from the "designated liability funding" reserve.
5. The City will set aside a reserve to fund no less than fifty percent of the liability associated with **accrued compensated absences** in all city operating funds.
6. Council may take action to designate reserves for a specific purpose. An example is council's designation of reserves representing proceeds from the sale of the Columbia Arts Center.
7. Funds in excess of the reserves will be considered **unassigned General Fund balance** and could be used to fund high priority council-designated one-time purposes. This includes but is not limited to funding accumulated currently unfunded deferred liabilities.

8. **Equipment replacement reserves** will be maintained in the equipment services capital fund sufficient to replace covered vehicles and heavy equipment at the end of their useful lives with like equipment. Equipment rates will include a factor to accrue the estimated replacement cost over the life of the equipment. Reserve balances and rates will be reviewed biannually for sufficiency.
9. **Technology equipment replacement reserves** will be maintained in the technology equipment replacement fund sufficient to repair covered equipment and major software systems for replacement at the end of its useful life.
10. **A liability self-insurance reserve** will be maintained to cover potential liability for tort claims. The unrestricted fund balance subtracts from available cash all the known claims against the City and those claims that might have occurred, but not yet reported. The fund balance will be based on the most recent actuarial study of the self-insurance fund. The actuarial study of the fund is to be performed no less frequently than once every two years.
11. **A benefits self-insurance reserve** will be maintained to cover two months' of costs associated with benefit insurance premiums. Additional reserve might be set, as needed, to smooth out annual health insurance cost increases over time. Self-insured health insurance reserves will be maintained at a level consistent with State of Washington requirements for self-insured benefit plans.
12. **Fire pension** benefit obligations will be addressed by annual contributions to the fire pension fund in accordance with recommendations in the most recent actuarial study, as required by R.C.W. 41.16.050. (Note: This is a "closed" plan with no new participants.) The current number of members who are retired and receiving pension payments from the city is 33 with no additional members on active duty. City obligations arise only for those firefighters hired prior to March 1, 1970. The State of Washington has assumed all obligations for those hired on or after that date.
  - a. In addition to the pension payments, the City is also responsible for life-time medical benefits for the 59 retired members. The City contribution includes the projected annual pension payments for the retired members eligible for retirement benefits and projected annual medical benefit payments for those retired members eligible for medical and long-term coverage.
13. **Police pension** benefit obligation will be funded on a pay-as-you-go basis by making contributions to the police pension fund in an amount sufficient to meet police pension benefit obligations. (Note: this is a "closed" plan with no new participants). The current number of members who are retired and receiving pension payments from the city is 14, with no additional members on active duty. City obligations arise only for those police officers hired prior to March 1, 1970. The State of Washington has assumed all obligations for those hired on or after that date.) In addition to the pension payments, the city is also responsible for the member's life-time medical benefits of 40 retired members and none on active duty.
14. **A facilities asset management and replacement reserve** shall be established in a separate fund to provide for major maintenance and building replacement of the major city facilities at the end of their useful life. This policy currently applies to facilities of the first and second tiers as defined using contemporary asset management practices.

# Capital Planning and Asset Management

Asset management is a systematic process whereby the assets of the city (i.e., water system, sewer system, transportation system, property, buildings, etc.) are operated, maintained, replaced and upgraded cost-effectively. It includes operations and maintenance costs, as well as capital investments which can take the form of new construction, rehabilitation, or replacement.

1. In pursuit of an asset management strategy that prioritizes safety, equity and climate action, the City will:
  - Consider the climate impacts of asset investments and pursue asset management strategies that reduce its contribution to climate change over time.
  - Consider equity impacts of capital projects and asset management strategies and prioritize investments that improve equity within the City.
  - Consider the potential improvements to community safety associated with capital investments and prioritize investments that improve community safety, particularly in the transportation system.
2. Asset management best practice involves managing the performance, risk and expenditures on infrastructure assets in an optimal and sustainable manner throughout their lifecycle covering planning, design, construction, operation, maintenance, and disposal. The City shall integrate the principles and best practices of asset management such as those embodied in the International Infrastructure Management Manual in the management of its assets. Asset inventory will be maintained with maintenance, repair and deferred maintenance costs identified and updated on an annual basis. Maintenance of city assets shall be addressed on a current need, rather than deferred into the future.
3. In 2015, Council adopted a new **Street Funding Program** in response to formal recommendations from a citizen-led effort. Revenues from this program were established to supplement without supplanting street funding resources identified in the 2015-2016 Adopted Biennial Budget. Annual reporting to Council and the residents of outcomes achieved through the Street Funding Initiatives Program has been initiated in 2017 and shall continue into the future. The City will maintain funding of the **Pavement Management Program** at no less than that in the 2015-2016 Biennial Adopted Budget level increased by an appropriate inflationary factor, if necessary. To ensure accountability and transparency, the increase in program level funded by the new Street Funding Program revenue sources will be fully costed, budgeted for and spent from special funds created to track direct operating, capital and administrative expenses. Annual reporting of the outcomes will be published for the residents and the City Council prior to the end of the first quarter of each year for the prior year beginning for fiscal year 2016.
4. The City will redirect to the new Street Funding Program expiring debt service budget from pre-2015 debt issues for transportation projects, beginning with debt expiring in 2016.

5. A **six-year city-wide Capital Improvement Program** shall be developed annually and shall provide a prioritized list of reasonably funded projects and those in process of securing funding. Capital improvement plans for utility assets shall be updated no less frequently than every two years. The comprehensive plan will identify longer-term capital needs by program area.
6. Funding for capital projects, including major facilities maintenance projects, will be allocated in a manner that balances community needs with city priorities, the potential for attracting matching funds, and the ability to reduce or limit expenses in future years.
7. The City's objective is to incorporate a **"pay-as-you-go"** approach (using available cash and current resources) in the Capital Improvement Program. Proceeds from the sale of city capital assets no longer utilized in operations will be deposited consistent with the initial ownership of the asset and invested in the highest priority city capital projects. Debt funding shall be considered for large capital projects with long useful life to better reflect inter-generational equity.
8. The capital budget will be adopted at the same time the City operating budget is adopted. The capital budget will only include fully funded projects. The capital budget will only contain projects identified in the Capital Improvement Program.
9. A **capital repair appropriation** will be maintained for unanticipated major repairs of general operating facilities and for emergency replacement of general fund equipment. Additions to the capital repair contingency reserve will be made based on council directions.
10. **Impacts on net annual operating and maintenance costs** will be identified as part of the funding considerations for new capital projects such as buildings, parks and street enhancements. This includes identifying potential reductions in maintenance costs if improvements are funded. The necessary funds to operate the capital facility will be identified at the time the capital budget is adopted.
11. In order to provide long-term sustainable utility services, the city will structure utility rates so that system reinvestment including major repair, rehabilitation and replacement of utility assets can be fully funded on an ongoing basis in accordance with the city's "pay as you go" policy. This will be achieved through a plan of smaller incremental rate increases to maintain affordability. As identified by the utility capital improvement plan, rates will also include an investment component for capacity improvements and system expansion.
12. A **system development reserve** will be maintained to fund growth related capital costs. All systems development charge revenue will be contributed to the fund.

# Financial Asset and Liability Management

## Investment Policies

1. The City will invest public funds in a manner which will provide maximum security of principal with the highest investment return, while meeting the daily cash flow demands of the City. Detailed policies are found in Exhibit A – Investment Policies.
2. The City will conform to all state and local statutes governing the investment of public funds.
3. All investment security transactions will be conducted on a delivery-versus-payment (DVP) basis.
4. The City will only deposit money with financial institutions qualified by the Washington Public Deposit Protection Commission and in accordance with the provisions of RCW 39.58.
5. The City will issue Request for Proposals (RFPs) for banking services, safekeeping, trust services, and other contracts related to financial services.

## Debt Management Policies

1. The City will attempt to pay for capital projects on a “pay-as-you-go” basis. However, if debt is required, the City will follow debt policies as detailed in Exhibit A – Debt Management Policy.
2. The City will issue debt in conformance with the requirements of its statutory general obligation debt limits. The non-voted debt limit is a sub-part of that limit.
3. The City will reserve 10% of its non-voted debt capacity as a contingency against unforeseen emergencies requiring the issuance of debt.
4. The City shall not exceed 85% of the non-voted legal debt limit, excluding the 10% reserved for emergency purposes.
5. The City’s annual debt service payments will not exceed 10% of the total General Fund annual expenditure appropriation.
6. Any Capital projects financed through the issuance of bonds shall be financed for a period not to exceed the expected useful life of the project.
7. The City will adhere to all post-debt-issuance compliance policies as described in Exhibit A – Debt Management Policy.



**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** Rental Habitability Action Plan

**ATTACHMENTS:**

- Presentation
- Memo



CITY OF  
**Vancouver**  
WASHINGTON

# Rental Habitability Action Plan

**Patrick Quinton, Director**  
**Samantha Whitley, Housing Manager**  
Economic Prosperity & Housing  
April 22, 2024







# Agenda

- Objectives
- Background
- Existing Programs
- Early Action & Code Updates
- Rental Unit Habitability Options
- Next Steps





# Objectives

- Update on immediate actions
- Solicit feedback on process for reviewing and identifying new habitability measures



# Background



## **Reside Vancouver**

Completed 2019



## **Equitable Development Plan**

Completed 2023



## **State Law Changes**

RCW Updates  
2019 – 2023



## **Existing Programs**

Local & State





# Existing Programs

- Emergency Rental Assistance
- Volunteer Lawyers
- Landlord/Tenant Mediation
- Housing Connector
- Landlord Damage Relief



# Early Actions

- Align local code with state law changes
- Expand landlord notice requirements
- Enhance resources available to landlords & tenants



# Required Code Updates

## State Law Changes for Notice Periods and No Cause Evictions

### **VMC 8.46.020 – rent increase**

- requires 45-day notice if more than 10% increase in rent



### **RCW 59.18.140 – rent increase**

- requires 60-day notice for any rent increase

### **VMC 8.47.030 – no cause**

- owners of 5 or more units can give 60-day notice for “no cause” eviction



### **RCW 59.18.650 – notice periods**

- different notice periods for eviction or end of tenancy; “no cause” evictions only at 6 or 12-month lease expiration





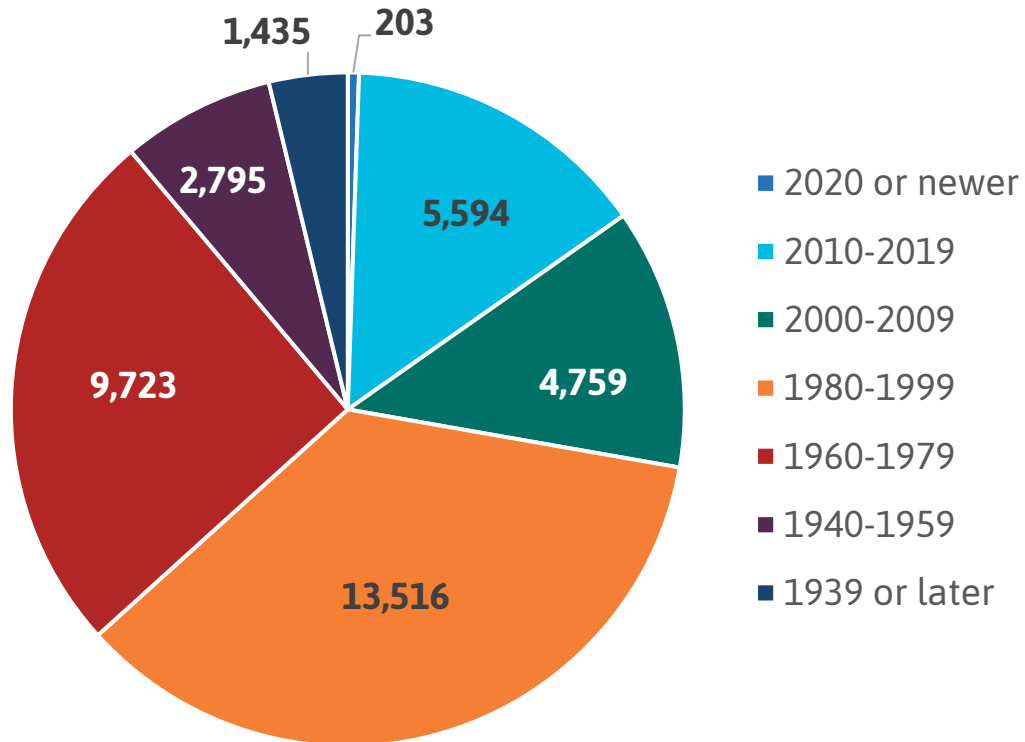
# Proposed Tenant & Landlord Information Updates

- Establish City website with landlord & tenant resources
- Require information at lease up & renewal (VMC change)



# Rental Unit Habitability

Vancouver Rental Units by Year Built



## Benefits of Regular Inspections

- ✓ Helps landlord meet existing code
- ✓ Supports tenant health and safety
- ✓ Can resolve unit condition disputes
- ✓ Helps community maintain public health and neighborhood standards
- ✓ Preserves much needed older housing

**72% of rental units built before 1980**





# Reside Vancouver

Recommendation to create a City registration program to ensure habitability and code compliance.



Preservation

## Rental Registration Program

### Goals

Create a database of all rental properties in Vancouver.

### Equity Strengths

*Centering  
Community  
Voices*

2

out of 2



People



# Rental Unit Habitability

## Potential Program Elements

- Rental registration to allow for effective data collection, communication and program delivery
- Unit habitability certifications
- Proactive rental inspections



# Rental Habitability Advisory Group

Review and recommend new policies and programs to protect quality of rental housing in Vancouver

Representatives from:

- Landlords
- Property Managers
- Tenants Rights Organizations
- Affordable Housing Developers
- Market Rate Developers
- Residents
- Homeless Service Providers
- Landlord Associations
- Landlord & Tenant Attorneys and Mediators



# Other Peer City Program Elements

Relocation	Fees	Payments	Right of First Refusal
<ul style="list-style-type: none"><li>RCW 59.18.440 allows cities to establish relocation assistance of up to \$2,000 for tenants earning less than 50% AMI</li></ul>	<ul style="list-style-type: none"><li>Consider limiting the amount or types of fees that tenants can be charged</li></ul>	<ul style="list-style-type: none"><li>Consider tenant payment plans or adjustable rent due dates</li></ul>	<ul style="list-style-type: none"><li>Allow tenants or local organizations an option to purchase naturally affordable rental housing</li></ul>

Advisory group may consider these and other options



# Next Steps

Immediate	May 2024	July 2024	December 2024
<ul style="list-style-type: none"> <li>• Continue program support</li> <li>• Establish online resource pages for tenants and landlords</li> </ul>	<ul style="list-style-type: none"> <li>• Convene Rental Habitability Advisory Group to review potential new policies and programs</li> </ul>	<ul style="list-style-type: none"> <li>• Council action on VMC changes to comply with RCW and add landlord notice requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Council review and potential action on recommendations from advisory group</li> </ul>



# Discussion





# MEMORANDUM

**DATE:** April 22, 2024

**TO:** Vancouver City Council

**FROM:** Eric Holmes, City Manager

**RE:** **Proposed Rental Habitability Action Plan**

**CC:** Patrick Quinton, Samantha Whitley

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This memorandum outlines a series of proposed steps to expand the City’s protections for renter households within the City of Vancouver. The set of programs and protections included in the memorandum are derived from community conversations and analysis conducted for the Reside Vancouver and Heights Equitable Development plans and constitute a significant part of the City’s efforts to protect both vulnerable residents and preserve the quality of the existing housing supply.

## **Background**

A comprehensive rental habitability program is identified in both the Reside Vancouver and Heights Equitable Development Plans as a key measure to mitigate housing insecurity for low-income and other vulnerable households. Rental registration and inspection programs are designed to ensure that residents at all income levels have access to quality housing. These measures typically include both programs to support landlords and at-risk households and regulations that require landlords to register rental units and maintain minimum habitability standards. Communities throughout Washington State have adopted differing combinations of rental registry and inspection programs, including Seattle, Tacoma, and Olympia.

Vancouver currently does not have rental registration or inspection programs. Because less than 28% of Vancouver’s rental unit was built after 1980, establishing and maintaining a clear

picture of the health of the City’s rental housing stock is critical to ensuring that the city’s existing supply of housing is well-maintained. In addition, because older housing stock tends to rent at naturally affordable rates, regular inspections and maintenance will be particularly beneficial to the city’s most vulnerable households.

**Tenant and Landlord Support Programs**

The City and other local partners currently fund programs that provide support for vulnerable tenants and landlords that rent to these households. These programs serve as the foundation for expanding the support available to rental households and landlords. The existing programs available within the region, including City funded programs, are summarized in Table 1 below:

**Table 1**

<b>Program</b>	<b>Description</b>
Emergency rental assistance	income and geography-based assistance for at risk tenants (AHF funded)
Legal representation for tenants with low incomes	Volunteer Lawyers providing this service with federal funding
Landlord tenant mediation services	Currently funded through CDBG
Housing Connector services	Landlord/tenant liaison service and housing navigator (New HOME-ARP award)
Landlord mitigation program	State program available for landlords renting to low-income tenants for turnover repairs.

**Rental Registration and Inspection Programs**

The programs listed in Table 2 below represent the most frequently adopted programs by peer cities. Most of these actions requires an update to VMC and resources to deploy.

**Table 2**

<b>Action</b>	<b>Description</b>
Expand rent increase notification period	Existing City notice requirement needs to be updated to match RCW or longer
Expand required information at lease sign up and renewal	Landlords would be required to provide information to tenants on tenant rights and resources and Fair Housing laws
Establish City website with landlord and tenant protections and Fair Housing resources	Landlords and tenants will need a resource to access required information. The site will become more valuable as additional protections are implemented



Establish rental registry to track rental properties and facilitate notification and inspection activities	Registry allows for enforcement of other regulations and fee generation to pay additional staff costs.
Require certification of unit habitability prior to new lease	City is lacking inspection protocol and habitability standards
Implement proactive rental inspection program	See above

### Additional Peer City Program Elements

Table 3 below includes a range of additional habitability and tenant protections adopted by peer cities. Most of these actions would require an update to VMC and resources to deploy.

**Table 3**

Action	Description
Require tenant relocation assistance for low-income households displaced due to property redevelopment, substantial rehabilitation	City is authorized to establish a program under RCW 59.18.440; can require landlords to provide up to \$2,000 for tenants earning less than 50% AMI
Limit amount and types of fees	Some WA communities have limited late fees and application fees and prohibited other fees
Allow payment plans or adjustable rent due dates	Beneficial to households on monthly fixed incomes
Adopt Right of First Refusal for sales of single-family rentals	Allows tenants or local organizations opportunity to purchase naturally affordable rental housing

### Implementation

The programs and initiatives in the above tables can be expanded or implemented through a combination of program funding decisions and updates to VMC through City Council action. Given the different requirements and constituencies for the listed initiatives, EP&H recommends the following phased approach to implementation.

#### Phase I – Program Support (Ongoing)

The City will continue to prioritize funding for the programs highlighted in Table 1 and will work with local partners to increase funding and usage of programs offered by the State. In addition, the City will solicit CDBG and HOME funding applications from community partners providing essential tenant services (e.g, mediation services, housing connector services).

## Phase II – Early Action (Council Action by July 2024)

The first three initiatives in Table 2 lend themselves to early action given their narrow impact. In addition, action on the City’s notice periods for rent increases and no cause eviction is required to align VMC with new RCW requirements, which provides an opportunity for Council action on expanded landlord notice and information requirements. Specifically, early action items are:

- Update required notice period for rent increases to match RCW requirement of 60 days (or longer if State extends notice period prior to Council action);
- Update “no cause” language and notice periods for evictions or end of tenancy; and
- Expand requirements for landlords to provide information on tenant rights and Fair Housing

In addition, the Housing team within EP&H can move forward on establishing a website with comprehensive information for tenants and landlords, including information about tenant rights, tenant education, resources available for landlords and notice documents for landlords to provide to tenants.

## Phase III – Broader Action (Council Action by December 2024)

To analyze and potentially implement the remaining programs in Table 2, staff are proposing a 9-month process that starts with the formation of an advisory group of stakeholders including representatives from landlord associations, tenants rights organizations, community-based organizations, and active multifamily development partners (Attachment A). The advisory group would meet for 3 months to analyze the merits and potential impacts of these options and recommend the highest priority habitability programs which may include options included in Table 3. Those recommendations will be presented to City Council in workshop and, based on City Council feedback, staff will bring back actions for Council prior the end of 2024. A proposed schedule for this phase is summarized below:

<b>Action</b>	<b>Timeline</b>
Convene Advisory Group	May 2024
Advisory Group Recommendations	August 2024
City Council Workshop	September 2024
Draft Council Actions	October 2024
Council Action on New Protections	December 2024

## Summary

Implementing a comprehensive rental habitability program is essential to follow through on the commitments made in both Reside Vancouver and the Heights Equitable Development Plan.

This plan is intended to ensure the availability of quality housing for vulnerable tenants while maintaining an economically sustainable market for landlords.

## Attachment A

### **Rental Habitability Advisory Group**

#### Potential Stakeholder Representatives

- Landlords
- Residents
- Property Managers
- Tenants Rights Organizations
- Affordable Housing Developers
- Market Rate Developers
- Homeless Service Providers
- Landlord Associations
- Landlord & Tenant Attorneys & Mediators



Item #

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** Minutes - April 8, 2024

**Action Requested**

Approve the meeting minutes of April 8, 2024.

**ATTACHMENTS:**

- April 8, 2024 Meeting Minutes



# City Council Meeting Minutes

Vancouver City Hall | Council Chambers | 415 W. 6th St.  
PO Box 1995 | Vancouver, WA 98668-1995  
[cityofvancouver.us](http://cityofvancouver.us)

Anne McEnery-Ogle, Mayor • Bart Hansen • Ty Stober • Erik Paulsen • Sarah J. Fox • Diana H. Perez • Kim D. Harless

## April 8, 2024

### COUNCIL DINNER/ADMINISTRATIVE UPDATES

### COUNCIL REGULAR MEETING

*This meeting was conducted as a hybrid meeting with in person and remote viewing and participation over video conference utilizing a GoToMeeting platform. Members of the public were invited to view the meeting in person, via the live broadcast on [www.cvtv.org](http://www.cvtv.org) and CTVV cable channels 23 or HD 323, or on the City's Facebook page, [www.facebook.com/VancouverUS](http://www.facebook.com/VancouverUS). Public access and testimony on Consent Agenda items and under the Community Forum were also facilitated in person and via the GoToMeeting conference call.*

*Vancouver City Council meeting minutes are a record of the action taken by Council. To view the CTVV video recording, including presentations, testimony and discussion, for this meeting please visit: [https://www.cvtv.org/vid\\_link/36369?startStreamAt=0&stopStreamAt=1550](https://www.cvtv.org/vid_link/36369?startStreamAt=0&stopStreamAt=1550) Electronic audio recording of City Council meetings are kept on file in the office of the City Clerk for a period of six years.*

### **Pledge of Allegiance**

### **Call to Order and Roll Call**

The regular meeting of the Vancouver City Council was called to order at 6:30 p.m. by Mayor Pro-Tem Paulsen. This meeting was conducted as a hybrid meeting, including both in person and remotely over video conference.

**Present:** Councilmembers Harless, Perez, Fox, Paulsen, and Hansen

**Absent:** Councilmember Stober and Mayor McEnerny-Ogle

**Motion by Councilmember Hansen, seconded by Councilmember Fox, and approved unanimously to excuse Councilmember Stober and Mayor McEnerny-Ogle.**

## **Approval of Minutes**

Minutes - March 25, 2024

**Motion by Councilmember Hansen, seconded by Councilmember Harless, and carried unanimously to approve the meeting minutes of March 25, 2024.**

## **Proclamations: National Arbor Month; Native Plant Appreciation Month**

Mayor Pro-Tem Paulsen read and presented a proclamation to Charles Ray, City of Vancouver Urban Forestry Coordinator, proclaiming April 10, 2024, as Arbor Day and the month of April as Arbor Month.

Mayor Pro-Tem Paulsen read and presented a proclamation to Hailey Heath, City of Vancouver Volunteer Coordinator, proclaiming April 2024, as Native Plant Appreciation Month.

## **Community Communications**

Mayor Pro-Tem Paulsen opened Community Communication and received testimony from the following community members regarding any matter on the agenda not scheduled for a Public Hearing:

- Kimberlee Goheen Elbon, La Center, WA
- Kyle Roslund, Vancouver
- Carmen DeLeon, Vancouver
- Michael Wood, Vancouver

There being no further testimony, Mayor Pro-Tem Paulsen closed Community Communication.

## **Consent Agenda (Items 1-7)**

**Motion by Councilmember Fox, seconded by Councilmember Perez, and carried unanimously to approve items 1-7 on the Consent Agenda.**

### **1. 2023 West Curb Ramps Project Acceptance**

Staff Report: 068-24

*The 2023 West Curb Ramps project included constructing ADA-compliant curb ramps, installing pedestrian push buttons and traffic cameras, and improving curbs and sidewalks. Advanced Excavating Specialists LLC has satisfactorily completed the subject improvements in accordance with the contract plans and specifications.*

*The original contract bid amount was \$1,418,000. Quantity adjustments during construction resulted in a final contract value of \$1,560,352.67, an approximate 10% cost increase. The cost increase is attributed to additional flagging costs for pedestrian traffic control.*

*There was a 4% apprenticeship goal for this project which the contractor met.*

Request: On April 8, 2024, accept the 2023 West Curb Ramps project as constructed by Advanced Excavating Specialists LLC of Kelso, Washington, and authorize the release of bond, subject to receipt of all documentation required by law.

*Madeline Burke, Civil Engineer, 360-487-7763*

**Motion approved the request.**

**2. Bid Award - Fourth Plain Road Diet - F Street to Fort Vancouver Way**

Staff Report: 069-24

*In preparation for this project, City of Vancouver Pavement Management group delivered two prior construction projects in support of this effort:*

- Fourth Plain Boulevard (F Street to Fort Vancouver Way) Curb Ramps, 2023*
- Fourth Plain Boulevard (Main Street to Fort Vancouver Way) NHS resurfacing, 2023*

*On February 27, 2024, the City received 4 bids for the subject project. The bids ranged between \$1,585,100.00 and \$1,828,760.00. The low bidder was responsive. The bids are as follows:*

<b>SUMMARY OF BIDS</b>	
<b>BIDDER</b>	<b>AMOUNT</b>
<i>Western United Civil Group, LLC, Yacolt, WA</i>	<i>\$1,585,100.00</i>
<i>Daybreak Construction, LaCenter, WA</i>	<i>\$1,617,000.00</i>
<i>Advanced Excavating Specialist, Kelso, WA</i>	<i>\$1,647,804.50</i>
<i>Lee Contractors, Battle Ground, WA</i>	<i>\$1,828,760.00</i>
<i>Engineers' Estimate</i>	<i>\$1,750,000</i>

*Due to the federal funding associated with this project, the Washington*



*State Department of Transportation (WSDOT) has set a Disadvantaged Business Enterprise (DBE) goal of 11%. Western United Civil Group, LLC from Yacolt, Washington is committed to meet this goal. There are no City Apprenticeship goals as federal guidelines for grant projects do not allow the inclusion of local agency apprenticeship programs.*

Request: On April 8, 2024, award a construction contract for the Fourth Plain Road Diet (F Street to Fort Vancouver Way) project to the lowest responsive and responsible bidder, Western United Civil Group, LLC, of Yacolt, Washington, USA at their bid price of \$1,585,100.00, which includes Washington State sales tax, and authorize the City Manager or designee to execute the same.

*Ivar Christensen, Senior Civil Engineer, 360-487-7765*

**Motion approved the request.**

3. **Amendment of Professional Services Contract with Live Love Outreach**

Staff Report: 070-24

**Background**

*At a previous ECHO meeting, Council for the Homeless shared that there were more than 1,100 individuals on the shelter waitlist, and all existing shelter beds were full, which is the norm in Clark County. An estimated 500-600 individuals reside in tents or vehicles within the City of Vancouver, which poses significant health and safety risks to the individuals experiencing unsheltered homelessness, as well as the rest of the community and the environment. At this time, our community does not have an adequate supply of shelter or housing options to meet the growing need. This Council has observed that many individuals who live outdoors on public property do so, not by choice, but due to a lack of financial means to afford adequate shelter. These individuals are adversely mentally and physically impacted by outdoor habitation, and single female encampment occupants experience a disproportionately high incidence of violent crime as compared to other people. In 2023, at least 24 individuals in our community died while experiencing unsheltered homelessness, 14 while living in supportive housing, and 7 while in shelter or medical facility. Nearly **35% of those deaths were due to overdose**, with each of those occurring while individuals were unsheltered or in housing. It is also worth noting that at least 37 of the 45 individuals who passed away in 2023 experienced multiple co-occurring challenges, such as chronic health conditions, mental/behavioral health and substance use, all of which are only compounded by experiences of homelessness.*

*Simultaneously, Council has also observed that the City's sensitive*

*ecological areas are adversely impacted by secondary impacts of outdoor habitation. The City's sensitive waterways, water treatment facilities, stormwater and wastewater facilities are particularly vulnerable to impacts of illegal dumping and improper disposal of human waste. In 2023, HART removed more than **345 tons** of solid waste from encampments city-wide. Additionally, individuals living outdoors in greenways and wooded areas, who utilize fire as a source of heat, or to cook with, increase the potential for wildfire in those areas, particularly during our dry/summer months. While we've addressed the most vulnerable/sensitive areas through City ordinance, and HART works to mitigate impacts as much as possible, negative environmental impacts from people living outdoors will persist as long as there are not enough indoor options for people experiencing homelessness to be.*

*In an effort to reduce the aforementioned negative impacts of unsheltered homelessness, provide for greater safety, stability, and access to needed services for individuals experiencing unsheltered homelessness, and to remain in compliance with *Martin v. Boise*, in 2021, this Council approved the establishment of city-sponsored Safe Stay Communities in designated areas. At the adoption of the 2021 Vancouver Homeless Response Plan, Council expressed concern about local service provider capacity to operate the Safe Stay Communities, and it was agreed that staff would need to work with local providers to build additional capacity and or support the development of newer providers. To date, we have opened 4 Safe Stay Communities, each managed and supported by 3 different, and relatively new, contracted service providers who work to:*

- ensure safety and sanitation within and immediately surrounding the designated Communities,*
- assist Safe Stay Community residents with obtaining stability, accessing needed resources, and transitioning into more permanent housing situations, and*
- proactively engage with the surrounding neighborhoods to mitigate potential negative impacts to the neighborhoods, facilitate neighborhood participation and volunteer opportunities within the designated Community, and encourage participation in neighborhood/community events, neighborhood association meetings, etc. amongst Safe Stay Community residents.*

*Our existing Safe Stay Communities and their operators have met those expectations in the neighborhoods they exist in, but because of the number of people still waiting to get indoors, these sites are still needed; and because of the shortage in service providers with the capacity to provide the kinds of stabilizing supports needed to assist site residents in successfully exiting Safe Stays to housing, growing provider capacity is also still needed.*

## **Current Status**

*Living Hope Church began providing meals, clothing and walk-in severe weather shelter several years ago, and operated a city-sanctioned and funded tent camp on their church property as a COVID response in 2020, with much of that being done utilizing dedicated volunteers and community donations. In 2022, the church established Live Love Outreach as a 501c3, after being selected through a competitive RFP process, to operate the City's second Safe Stay Community, Hope Village. The Safe Stay Community was their first full-time, year-round program as a service provider within the local Homeless Crisis Response System, and they have done a great deal of work in just two years to build their team, in both number and knowledge, to be able to effectively meet the increasingly complex needs of Hope Village residents.*

*In their first year of operations, around 26% of their residents exited to housing, and 43% of the residents served since May 2023 have exited to housing. However, due to a variety of reasons, including housing affordability, an increasing number of residents entering shelter with no or very low fixed incomes, and an increasing number of residents entering with co-occurring and complex needs/barriers (chronic health conditions, significant mental health, substance use, evictions/landlord debt, etc.), lengths of stay in shelters, including Hope Village, have started to increase. To effectively address these growing needs and achieve greater throughput, while also ensuring that residents are prepared for the transition to housing, Live Love Outreach has asked for an increase in budget to hire a Case Manager to add to their current staff of Peers, as well as increase their staff wages and offer additional benefits, like PTO/vacation time, to be more competitive and ensure a livable wage, particularly in light of inflation/cost of living increases.*

**Request:** Approve the amendment of a professional services contract with Live Love Outreach of Vancouver, WA, and to authorize the City Manager, or designee, to execute a contract for delivery of supportive services and site management at city-sanctioned Safe Stay Community #2.

*Jamie Spinelli, Homeless Response Manager, (360) 487-8610*

**Motion approved the request.**

#### **4. Multi-Family Tax Exemption- Amendment to Development Agreement Port Block 1**

Staff Report: 071-24

*City Council adopted resolution M-4264 on February 5, 2024, authorizing the City Manager to execute the associated project development agreement. The Port of Vancouver, as property owner, was included in the signature block for the development agreement. The Port of Vancouver has*

*requested to be removed as a signatory to the development agreement. The City Attorney's office has reviewed the request and agreed that the Port of Vancouver can be removed from the development agreement without any effect to the validity of the adopted resolution or development agreement.*

Request: Approve the removal of the Port of Vancouver as a signatory from Resolution M-4264, Exhibit B "Development Agreement" and authorize the City Manager or their designee to execute the amended development agreement on behalf of the City of Vancouver.

*Bryan Monroe, Associate Housing Project Coordinator, 360-487-7958*

**Motion approved the request.**

5. **Amendments to 2022 and 2023 Department of Housing and Urban Development Action Plans**

Staff Report: 072-24

**A RESOLUTION** relating to two substantial amendments to the City of Vancouver's Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Annual Action Plans for program years (PY) 2022 and 2023; authorizing the City Manager to execute agreements on behalf of the City of Vancouver; providing for severability and an effective date.

*The City of Vancouver intends to submit substantial amendments to both PY2022 and PY2023 Annual Action Plans for CDBG and HOME funds overseen by HUD. Substantial amendments are defined by 24 CFR 91.505 as changes in allocation priorities, new activities proposed for funding, or a change in the purpose, scope, location, or beneficiaries of an activity. HUD requires a public comment period and submission of an updated Action Plan when these types of program updates are made. The 2022 and 2023 proposed amendments are designed to optimize the utilization of funds, notably through the reprogramming of unused allocations and the cancellation of projects. In accordance with regulatory requirements and the Citizen Participation Plan, the proposed changes are being publicly advertised to facilitate community input.*

**Activities and amounts to be reprogrammed:**

- **Agency Cancelled Project:** *Second Step Housing Acquisition. Returned PY2022 and 2023 HOME, \$300,000.*
- **Agency Cancelled Program:** *Mercy Corps NW Business Assistance Program. Returned PY2023 CDBG, \$50,500.*
- **Funding Source Change:** *Hispanic Metropolitan Chamber Small*

*Business Assistance. Previously awarded with City of Vancouver PY2023 CDBG in the amount of \$104,000. Agency is now funded with \$100,000 Washington State CDBG-CV2 and \$4,000 City of Vancouver PY2023 CDBG.*

- **Funding Source Changed:** Proud Ground Buyer-Initiated Land Trust Program. Previously awarded \$100,000 PY2023 HOME, now funded with \$100,000 PY2023 CDBG to meet HUD CDBG spend down requirement.
- **Added Funding:** Family Solutions Integrated Health Center Improvements. Previously funded with \$250,000 PY2022 CDBG, requested additional \$25,000 PY2022 CDBG for construction cost increases. Final award \$275,000 PY2022 CDBG.
- **New Funding:** Council for the Homeless Building Acquisition for Homeless Services. Requested \$300,000 PY2024 CDBG funding, providing \$300,000 in CDBG reprogrammed funding for acquisition to meet HUD CDBG spend down requirement. The funds to be reprogrammed consist of unused funds from projects that were ended or cancelled and program income.

Request: Approve a resolution approving and adopting the substantial amendments to the 2022 and 2023 Community Development Block Grant and HOME Investment Partnerships Action Plans, authorizing the City Manager, or designee, to execute agreements on behalf of the City of Vancouver.

*Samantha Whitley, Housing Programs Manager, 360-487-7952; Tasha Slater, Associate Housing Project Coordinator, 360-487-7952*

**Motion adopted Resolution M-4270 to approve the request.**

## 6. **Waterfront Gateway Ground Lease Approval**

Staff Report: 073-24

**A RESOLUTION** relating to the approval of a form of ground lease between the City of Vancouver and LPC West, LP; establishing the terms and conditions under which the Waterfront Gateway Site may be leased by the City to LPC West; and authorizing the City Manager to execute the ground leases.

*Waterfront Gateway is a 6.4-acre City owned site located at the vacant lot south of City Hall and the City Hall parking lot.*

*The proposed development is described as follows:*

- *95-unit affordable housing residential apartment building with 100% of units at or below 60% Area*

*Median Income*

- *Two market rate residential apartment buildings with approximately 340 units total*

- *Approximately 35,000 square feet of ground floor retail*
- *One approximately 100,000 square feet 8-story cross laminate timber office building*
- *510 parking spaces across a 6-story parking garage for private and public parking and underground parking below the market rate apartment building known as Building 1*
- *Approximately two acres of open space*

*As stated in the DDA, each building will sit on its own parcel and all parcels, except for the affordable housing parcel, will be ground leased. The affordable housing parcel will be sold to Lincoln for \$1 with a 50-year affordability covenant recorded against the land.*

*The substantive terms of the ground lease outlined in the DDA have not changed. The key terms are as follows.*

- *50-year term plus two 15-year extensions with the buildings and improvements reverting to the City at the end of the lease term.*
- *Rent is calculated by multiplying the appraised value of the property (using the value set forth in the February 28, 2023, appraisal prepared for the City by Colliers International) by the square footage of each parcel and then multiplying the allocated value of each parcel by 6% cap rate.*
- *Rent is adjusted annually using Consumer Price Index (CPI) for the Seattle-Tacoma-Bellevue MSA and the CPI is capped at 5.5% with a floor of 2.5%. The rent will be adjusted at the closing dates.*
- *The rent will reset every 20 years by virtue of an appraisal and multiplying the allocated value of each parcel by 6% cap rate but shall not exceed 10% of the rent from the preceding year.*
- *Rent will be abated during first two years of the lease term during construction and is discounted during lease years three through seven.*
- *Lincoln cannot assign the ground lease without the City's consent and without meeting certain conditions of approval (see Section 20.2). However, prior to the issuance of a certificate of occupancy, Lincoln is entitled to assign the ground lease without the City's consent to (i) an affiliate, or (ii) a lender or creditor for security or collateral purposes. Following the issuance of a certificate of occupancy, Lincoln can assign without the City's approval to an affiliate in connection with a public offering, a merger, or a sale to a transferee approved by the City.*
- *Subleasing space within the buildings is permitted without the City's prior consent.*
- *Lincoln has a right of first refusal to purchase the property from the City if it chooses to sell to a nonpublic third party. However, this right does not apply to a transfer to a governmental or quasi-governmental entity.*
- *The public benefits and development and construction requirements*

*in the DDA are carried forward in the ground lease.*

*The City's environmental consultant prepared a Contaminated Media Management Plan, known in the DDA as the Soil Remediation Plan (the CMMP), which provides recommendations for handling and disposing the mild contamination across the site during construction. The CMMP is under final review and is not included in the attached ground lease. A finalized copy will be inserted in the executed ground leases and can be circulated to City Council but does not require City Council's approval.*

Request: Adopt a resolution approving the form of ground lease and authorizing the City Manager, or designee, to execute the ground leases specific to each development parcel in accordance with the DDA, and related implementation documents and certain amendments to the ground lease.

*Amy Zoltie, Real Estate Project Manager, 360487-7953*

**Motion adopted Resolution M-4271 to approve the request.**

**7. Approval of Claim Vouchers**

Request: Approve claim vouchers for April 8, 2024.

**Motion approved claim vouchers in the amount of \$11,925,480.65.**

**Communications**

**A. From the Council**

**B. From the Mayor**

**C. From the City Manager**

**Adjournment**

6:55 p.m.

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Anne McEnery-Ogle, Mayor

Attest:

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Natasha Ramras, City Clerk

The written comments below are those of the submitter alone and are not representative of the views of CVTV or the City of Vancouver, its elected or appointed officials, or its employees.



**Staff Report: 080-24**

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** Bid Award - NE 137th Avenue Corridor Completion Project (NE 49th Street to NE Fourth Plain Boulevard)

**Key Points**

- The project will upgrade and provide urban complete street standards for NE 137th Avenue, originally constructed by Clark County as a rural two-lane roadway.
- City Council approved professional services agreements for design, environmental documentation and permitting, and for right-of-way acquisition. The design, environmental permitting, and right-of-way acquisition are complete. The project was advertised for bids and three bids were received on March 19, 2024.
- The City received federal grants through the Southwest Washington Regional Transportation Council (RTC) in the amount of \$12 million, and a state grant through the Transportation Improvement Board (TIB) in the amount of \$3.25 million. Local matching dollars provide the remainder of the project funding.

**Strategic Plan Alignment**

**Transportation and Mobility** - a safe, future-ready and convenient transportation system.

**Economic Opportunity** - a place where a wide variety of businesses of all sizes grow and thrive.

**Vibrant and Distinct Neighborhoods** – a variety of accessible places and spaces.

**Climate and Natural Systems** – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

**Present Situation**

On March 19, 2024, the City received 3 bids for the subject project. The bids ranged between \$26.37 million and \$32.95 million. One bidder was considered non-responsive because they provided incomplete bid bond form. The low bidder was responsive. The two responsive bids are as follows:

<b>SUMMARY OF BIDS</b>	
<b>BIDDER</b>	<b>AMOUNT</b>
Tapani, Inc., Battle Ground, WA	\$26,368,398.26
Rotschy, Inc., Vancouver, WA	\$32,950,435.18
Nutter Corporation, Vancouver, WA	non-responsive
Engineer's Estimate	\$23.54 million

Due to the federal funding associated with this project, the Washington State Department of Transportation (WSDOT) has set a Disadvantaged Business Enterprise (DBE) goal of 16%, and 1,200 hours of training. Tapani, Inc. from Battle Ground, Washington is committed to meet these goals. There are no City Apprenticeship goals as federal guidelines for grant projects do not allow the inclusion of local agency apprenticeship programs.

### **Advantage(s)**

1. Safer travel for pedestrians and bicyclists along NE 137th Avenue Corridor.
2. Establish an "all ages and abilities" multimodal corridor that enhances the mobility and safety for vulnerable road users.

### **Disadvantage(s)**

1. Business and local traffic will be inconvenienced during the road closure and construction period.
2. Construction will generate noise and dust; however, the contractor will implement dust control and erosion control strategies.

### **Budget Impact**

The project is currently funded through federal grants through the Southwest Washington Regional Transportation Council (RTC), state Transportation Improvement Board (TIB) grant, the Vancouver Transportation Benefit District, and other local matching dollars. Although the low bid is above the engineer's estimate, staff is pursuing additional state and federal grant opportunities to cover the increases. Staff will also utilize additional local revenues as needed to cover this increase. The project is included in the 2023-2024 biannual budget.

### **Prior Council Review**

1. Approval of the 2023-2024 biannual budget which included the referenced project.
2. Approval of the 2024-2029 Transportation Improvement Program (TIP), Resolution No. M-4235. (June 26, 2023).
3. Approval of the Clark Public Utilities (CPU) Utility Easement and Interlocal Agreement (Staff Report 016-24 and Staff Report 017-24 on January 22, 2024).
4. Approval of the design contract with PBS Engineering and Environmental (previously HDJ Design Group, RFQ #2-14, Staff Report 060-14 on June 9, 2014).
5. Approval of an amendment to the PBS Engineering and Environmental contract (Staff Report 076-22 on June 13, 2022).

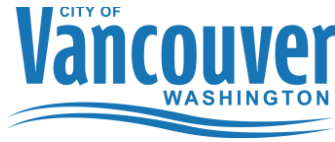
**Action Requested**

On April 22, 2024, award a construction contract for the NE 137th Avenue Corridor Completion Project (NE 49th Street to NE Fourth Plain Boulevard) to the lowest responsive and responsible bidder, Tapani Inc., of Battle Ground, Washington, USA at their bid price of \$26,368,398.26, which includes Washington State sales tax, and authorize the City Manager or designee to execute the same.

*Hassan Abdalla, Engineering Manager, 360-487-7704*

**ATTACHMENTS:**

- ▢ Contract
- ▢ Project Map



**CONSTRUCTION CONTRACT # C-101618  
ITB 24-02: NE 137th Avenue Corridor Completion Project**

This Contract (hereinafter referred to as the "Contract") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington (hereinafter referred to as the "City") and Tapani, Inc., 1705 SE 9<sup>th</sup> Ave., Battle Ground, WA 98604 (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to provide public works construction and other related services for the work described herein;

WHEREAS, Contractor has agreed to offer its services to perform said work per the City issued Invitation to Bid (ITB) No. 24-02 and all addenda thereto, Contractor's Bid to said ITB, the Project Plan Set and Special Provisions, and City Council's approval on **Month Day, Year** per Staff Report No. ##-##; and

WHEREAS, the Contractor represents by entering into this Contract that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, and to the standards required by the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. STATEMENT OF WORK:** The Contractor hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary to complete the work in a professional manner within the time limits stated in this Contract for the construction and installation of the following improvements and will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

**This Contract provides for the improvements of NE 137th Avenue from NE 49th Street to NE Fourth Plain Boulevard. The Project includes clearing and grubbing, roadway excavation, stormwater conveyance, treatment, detention facilities, paving with HMA and/or concrete, irrigation systems, erosion control, curb/gutter, walls, sidewalk, traffic control, pavement marking, illumination system, and landscaping and other work, all in accordance with the attached Contract Plans, these Contract Provisions, and the Standard Specifications.**

**The Contract Work shall be Physically Complete within 390 Working Days from the Notice to Proceed.**

2. **EFFECTIVE DATE:** This Contract is effective as of the last signature of the Contract.
3. **E-VERIFY PROGRAM:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.
4. **CONTRACTOR RESPONSIBILITIES FOR SUBCONTRACTORS:** The Contractor shall include the language of this section in all tier subcontracts and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier. The Contractor shall require all subcontractors to comply with all relevant federal, state and municipal laws, rules and regulations whatsoever.

At the time of subcontract execution, the Contractor shall verify that all tier subcontractors meet the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. Have received training on the requirements related to public works and prevailing wage as required by RCW 39.04.350;
4. Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
5. If applicable, have:
  - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
  - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
  - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
  - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
  - v. An elevator contractor license, if required by Chapter 70.87 RCW.
6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).

5. **DELINQUENT STATE TAXES:** The Contractor shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.

6. **COMPENSATION AND SCHEDULE OF PAYMENTS:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract to the satisfaction of the City, the City agrees to pay to the Contractor as prescribed in the solicitation and Contractor's Bid, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated, which amount does includes 8.7% Washington State Sales Tax (if applicable) \$26,368,398.26 USD.

The amount finally to be paid is, however, variable upon the Work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Bid and as modified by any and all approved Change Orders.

7. **CONTRACTOR'S INSURANCE:** The Contractor agrees to obtain and provide coverage as described in the WSDOT Standard Specifications 1-07.18 or the Special Provisions as applicable.

8. **CONTRACTOR'S BOND:** The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price with a company authorized to do business in the State of Washington as a surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.

9. **DISPUTE RESOLUTION:** In the event of a dispute between the Parties which cannot be resolved by the contract managers, the Contractor and the City shall resolve the dispute pursuant to WSDOT Specification 1-09.11 Disputes and Claims and WSDOT Specification 1-09.13 Claims Resolution or the Special Provisions as applicable.

10. **GOVERNING LAW/VENUE:** This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Contract shall be brought in the Superior Court of Clark County, Washington.

11. **EMPLOYMENT OF LABOR:** The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by Chapter 49.28 RCW and WAC 296-127 and any amendment thereto.

- 12. PAYMENT OF LABOR:** The contract will require the payment and tracking of federal wages through Davis Bacon and will be subject to regulations of the U.S. Department of Labor. The higher wage rate between the Federal and State rates, at minimum shall prevail per WAC 296-127-025.

The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto.

The prevailing wage rates in effect at the time of the bid submittal deadline shall apply for the duration of the project, no matter how long it lasts. However, if the Contract is awarded more than six (6) months after the bids were due, the prevailing wage rates in effect on the award date shall apply.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

- 13. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148):** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- 14. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708):** Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess

of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- 15. PAYMENT TO THE CONTRACTOR:** Progress payments to the Contractor shall be made within 30 days of a fully executed Pay Estimate pending all compliance with all contractual requirements. The City reserves the right to require Contractor to correct any submitted or paid erroneous invoices according to the rates set forth herein. City and Contractor agree that any amount paid in error by City does not constitute a change in the agreed upon amount; Contractor agrees to issue a refund of any overages paid in error by the City.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed and received approval of a Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040 from the Washington State Department a Labor and Industries. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in RCW 39.12.120. A Contractor and all subcontractors shall, file a copy of its certified payroll records using the Department of Labor and Industries online system on a monthly basis. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

- 16. INDEMNIFICATION:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, including but not limited to demands, claims, causes of action, suits or judgments, claims of copyright or patent infringement, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Contract as described in WSDOT Standard Specifications or Special Provisions as applicable.

- 17. OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor or any third party, and any know-how, methodologies or processes used by Contractor to provide the services or project deliverables under this Contract shall remain property of the original City.

- 18. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an "agency" within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of



such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.

- 19. AMENDMENTS:** All changes to this Contract, including changes to the statement of work and compensation, must be made by written Change Order and/or Amendment and signed by all parties to this Contract.
- 20. AUTHORIZATION AND COMPLIANCE WITH THE LAW:** The Contractor certifies that the person signing the Contract is legally authorized to enter into this binding Contract and that the Contractor shall fully comply with all relevant, federal, state and municipal laws, rules, regulations and policies.
- 21. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor will be required to obtain a business license when contracting with the City unless allowable exemptions apply. The Contractor shall contact the State of Washington Business License Service (BLS) at: <http://bls.dor.wa.gov/file.aspx>, or by phone at 800-451-7985, or go to [www.bls.dor.wa.gov/cities/vancouver.aspx](http://www.bls.dor.wa.gov/cities/vancouver.aspx) or [www.cityofvancouver.us/businesslicense](http://www.cityofvancouver.us/businesslicense), to determine whether a business license is required pursuant to the Vancouver Municipal Code (VMC) Chapter 5.04.
- 22. RELATION OF PARTIES:** The Contractor, its subcontractors, agents and employees are independent contractors performing services for The City and are not employees of City; shall not, as a result of this Contract, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees; and, shall not have the authority to bind the City in any way except as may be specifically provided in the Statement of Work.
- 23. ASSIGNMENT:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without the other party's express written authorization.
- 24. TERMINATION FOR CONVENIENCE:** The City, at its sole discretion, may terminate this Contract for convenience as described in the WSDOT Standard Specifications 1-08.10.
- 25. TERMINATION FOR CAUSE:** In the event the Contractor is, or has been, in violation of the terms of this Contract, including the solicitation, the City reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default as described in the WSDOT Standard Specifications 1-08.10.
- 26. WAIVER AND REMEDIES:** City's failure to enforce the terms or conditions herein or to exercise any right or privilege, or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

- 27. ENTIRETY OF CONTRACT:** This Contract incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Contract. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.
- 28. USE OF CITY'S NAME:** Contractor may not use any of City's name, trademark, service marks, or logo in connection with the services contemplated by this Contract or otherwise without the prior written permission of City, which permission may be withheld for any or no reason and may be subject to certain conditions.
- 29. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, Contractor will not discriminate against any employee or applicant for employment in accordance with RCW Chapter 49.60, including, but not limited to creed, religion, race, color, age, sex, marital status, sexual orientation, sexual identity, pregnancy, military status, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical disability, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants and employees are treated fairly, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical disability. Such action shall include all terms and conditions of employment, compensation, and benefits, including apprenticeship.
- 30. EQUAL OPPORTUNITY CLAUSE:** During the performance of this contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Supplier agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Supplier, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
  - c. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in

furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- d. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**31. CLEAN AIR ACT:** The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**32. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.

**33. BINDING EFFECT:** The provisions, covenants and conditions in this Contract bind the parties, their legal heirs, representatives, successors, and assigns.

**34. RATIFICATION:** Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

**35. CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE:** The complete Contract includes all parts listed in the Special Provisions WSDOT Standard Specification Section 1-04.2. On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions.

Whenever reference is made in these Specifications or the Special Provisions to codes, rules, specifications, and standards, the reference shall be construed to mean the code, rule, specification, or standard that is in effect on the Invitation to Bid advertisement date, unless otherwise stated or as required by law.

If any part of the Contract requires Work that does not include a description for how the Work is to be performed, the Work shall be performed in accordance with standard trade practice(s). For purposes of the Contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the Work.

**36. NOTICES:** All notices which are given or required to be given pursuant to this Contract shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the Owner:  
Anna Vogel  
City of Vancouver  
415 W 6th Street  
P O Box 1995  
Vancouver WA 98668-1995  
[anna.vogel@cityofvancouver.us](mailto:anna.vogel@cityofvancouver.us)

For the Contractor:  
Lance Tapani  
Tapani, Inc.  
1705 SE 9<sup>th</sup> Ave  
Battle Ground, WA 98604  
[lancet@tapani.com](mailto:lancet@tapani.com)

The undersigned, as the authorized representatives of the Owner and Contractor respectively, agree to all of the terms and conditions contained in this Contract, as of the dates set forth below.

**CITY OF VANCOUVER**

A municipal corporation

**CONTRACTOR:**

Tapani, Inc.

\_\_\_\_\_  
Eric Holmes, City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name /Title

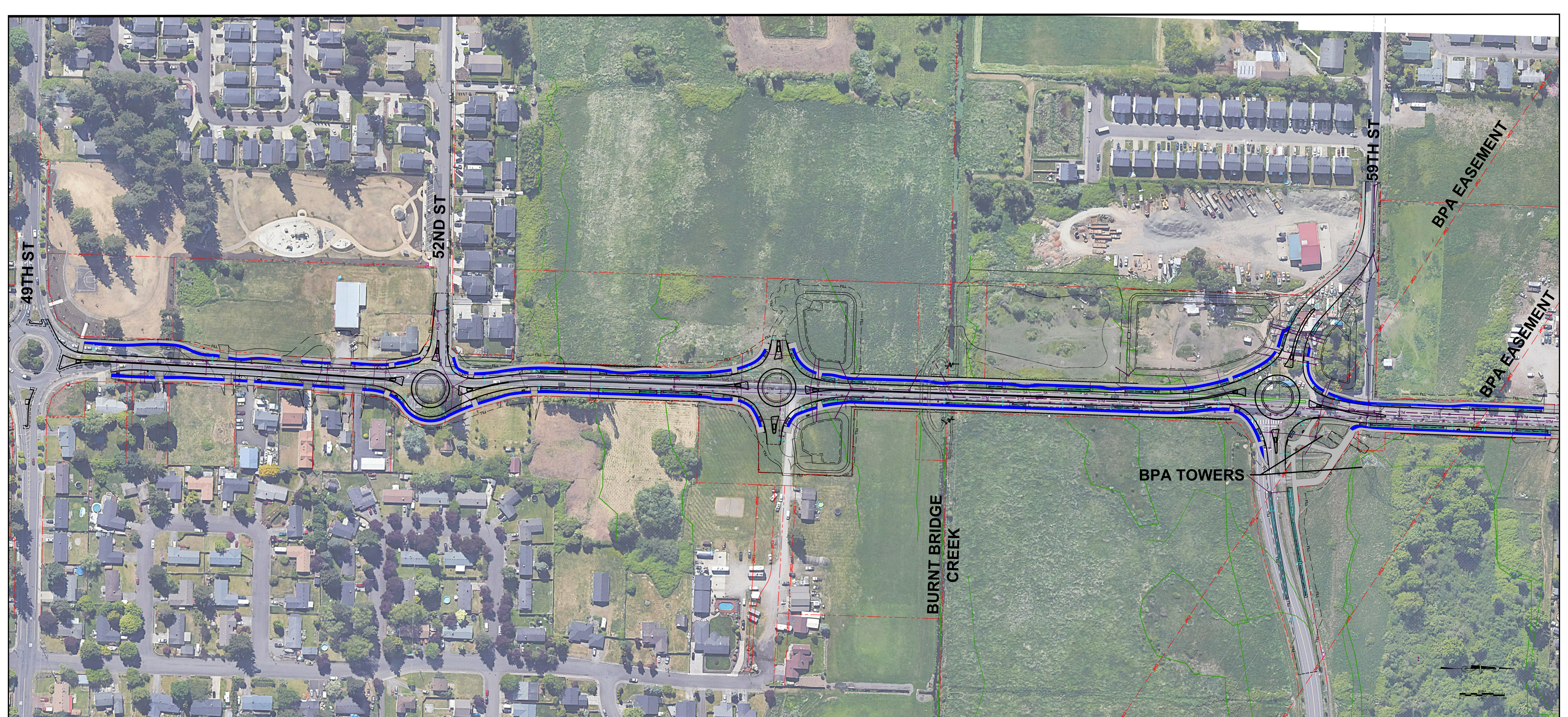
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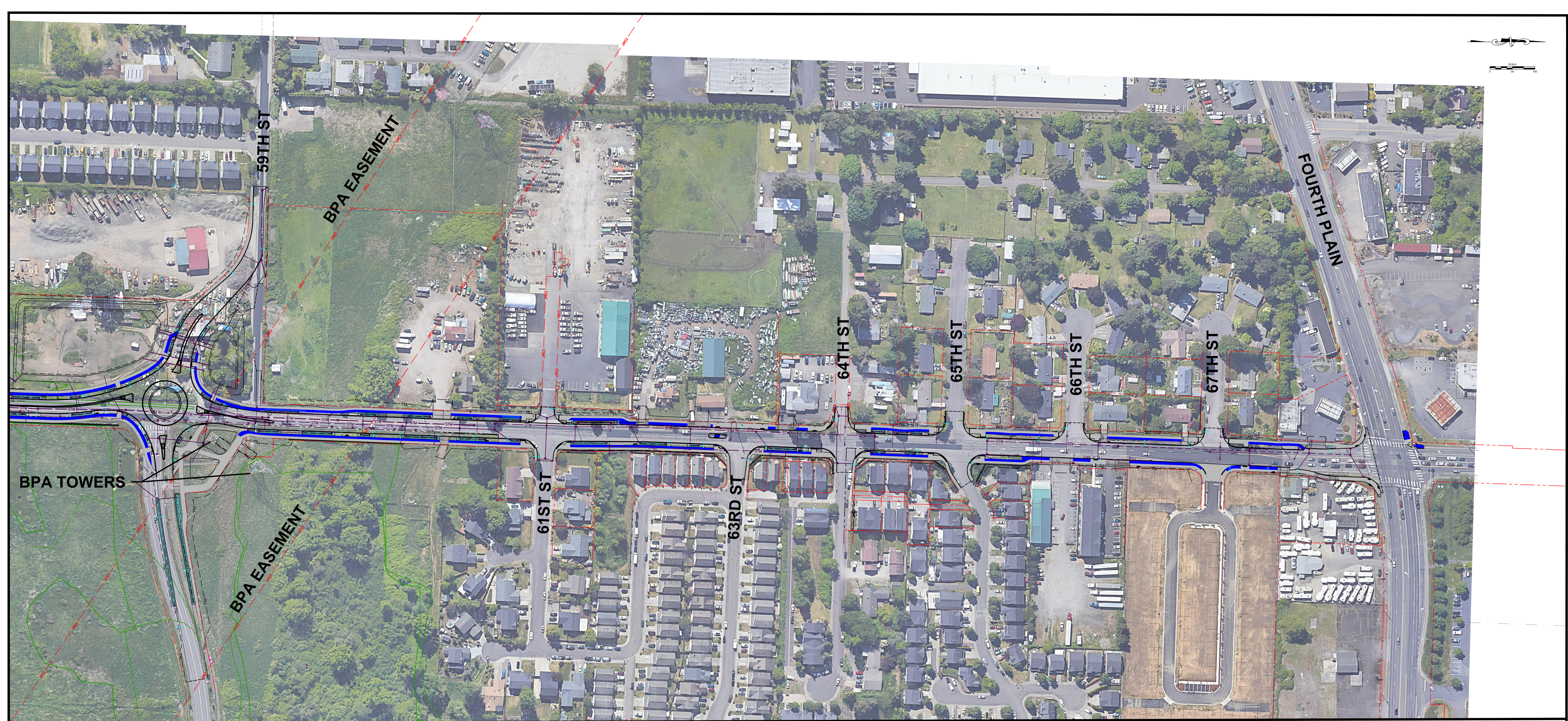
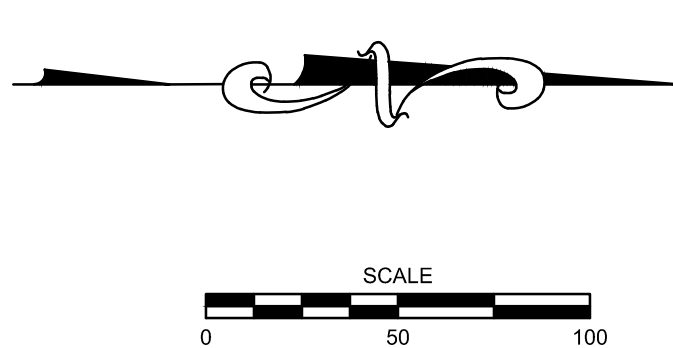
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Date

\_\_\_\_\_  
Natasha Ramras, City Clerk

Approved as to form:

\_\_\_\_\_  
Jonathan Young, City Attorney





**NE 137th AVENUE CORRIDOR COMPLETION PROJECT**



**Staff Report: 081-24**

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** On Call Contracts for Owner Representative Professional Services

**Key Points**

- This action allows the City to use on call professional services for owner's representative and other project support/delivery needs for large capital project delivery over the next several years.
- The City has successfully used on call professional services agreements to deliver capital projects.
- The contracts with OAC and Parametrix are \$1,000,000 each for a period of five years.

**Strategic Plan Alignment**

**Safe and Prepared Community** – a safe place to live, work, learn, and play.

**Climate and Natural Systems** – Environmental stewardship and efforts to address climate change to ensure a sustainable future.

**High Performing Government** – a government that is reliable, fiscally responsible, equitable, and open to compromise.

**Present Situation**

The City routinely utilizes contracts with various companies for the provision of professional services using “on-call” procedures. On-call procedures allow for a master contract establishing rates and scope to be executed without identifying work to be done, or costs incurred, until a project specific task order is issued. There are no costs or budgetary impacts until there is a task order and funding identified for an active project.

The City has large facilities capital projects scheduled for design and construction over the next several years. These projects are in support of multiple citywide initiatives and goals including safety, resiliency, climate action framework, and having a city government that supports vibrant communities.

The City has determined that consideration for utilization of alternative construction delivery



methods, specifically General Construction/Construction Manager (GC/CM) as identified and applicable by Washington State RCWs, can offer successful projects. These contracts enable the City to supplement City staff with qualified consultant staff for GC/CM projects.

The only project currently designated for the GC/CM construction project delivery method is the New Public Works Operations Campus, however it could be used for delivery of future fire stations, large dollar value water and sewer treatment projects and transfer stations.

### **Advantage(s)**

1. Adds qualified team members for specific scope and needs of each project.
2. Provides maximum flexibility to the City to deliver large capital projects which support multiple essential city services and policy objectives.
3. Allows for timely use of needed support. With the base contract in place, specific task orders can be issued in a relatively short time frame.

### **Disadvantage(s)**

The use of consultant services is typically more expensive than using full-time City staff. However, the consultant services solicited are in areas that are not performed by existing City staff. The proposed contract arrangement allows the City to grow and shrink the workforce for short durations, to support specific projects, without the costs of hiring and laying-off full time employees.

### **Budget Impact**

Utilization of a consultant in addition to city staffing will likely increase cost of management of capital projects. At this point the cost is anticipated to be covered by the capital project budget.

### **Prior Council Review**

City Council Workshop GC/CM Project Delivery Method January 22, 2024.

### **Action Requested**

1. Authorize the City Manager, or designee, to enter into professional services agreements with OAC Services, Inc. and Parametrix for the provision of owner's representative and other contract applicable services on an as-needed basis for five years in an amount of \$1,000,000.
2. Authorize the City Manager, or designee, to activate services to be provided under this contract with a series of specific task orders. The task order proposal provides for timely "as-needed" service provision, but within the framework, scope, and limitations of the overall master contract.
3. Authorize the City Manager, or designee, to approve any legal action necessary to enforce the terms of the foregoing agreements.

*Jean Singer, Capital Projects Division Manager, 360-487-7755*

**ATTACHMENTS:**

- ▣ Contract - C-101611
- ▣ Contract - C-101612



**CITY OF VANCOUVER**  
**SERVICES AGREEMENT No. C-101611**  
**OWNER'S REPRESENTATIVE SERVICES**

This Services Agreement (hereinafter referred to as the "Agreement") is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington, (hereinafter referred to as the "City") and OAC Services, Inc. (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the "parties" or individually as a "party".

WHEREAS, the City desires to engage the Contractor to perform services as described in this Agreement; and

WHEREAS, the City advertised and issued a Request for Proposal, numbered 1-24 (hereinafter referred to as the "solicitation") and after evaluation of the Contractor's responsive proposal, found the Contractor be capable of performing the required services; and

WHEREAS, the Contractor represents by entering into this Agreement that it is fully qualified to perform the services described herein in a competent and professional manner, and to the full satisfaction of the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. SCOPE OF WORK:** The Contractor agrees to provide the City all services and materials set forth in the scope of work identified in Attachment "A", and as further described in the City's solicitation, and the Contractor's responsive proposal to the City's solicitation, (collectively referred to herein as the "work") which are each incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

All work must be authorized and approved by the City's Project Manager before any work can begin. The Contractor shall approach each project in a manner consistent with its usual customary business practices. The Contractor shall actively seek collaborative input from City staff.

- 2. COMPENSATION:** Payment to the Contractor for the work described in this Agreement shall not exceed \$ 1,000,000.00 USD.

This payment shall be maximum compensation for the work and for all labor, materials, supplies, equipment and incidentals necessary to complete the work as set forth herein, and it shall not be exceeded without the City's prior written authorization in the form of a negotiated and executed amendment.

Compensation is limited to the amount specified for each specific task and/or sub-task, unless amended in writing. The City requires the Contractor to complete the work stated within the number of hours stated for each task, and/or sub-task, or the lump sum amount. If compensation is made on an hourly basis and the work requires fewer hours than those estimated, the Contractor will be paid for the actual worked hours necessary to complete that task and/or sub-task. If the Contractor underestimated the number of hours required to perform the work, the Contractor shall be paid up to the maximum number of hours stated for the task and/or sub-task. Compensation may be amended, at the City's sole discretion, for documentable circumstances not reasonably foreseeable to either party at the time the task and/or subtask is initiated, or for changes to the scope of work or deliverables requested by the City. All deliverables must be acceptable to the City, at the sole discretion of the City.

Travel expenses are limited to airfare, or mileage at the current IRS rate, and lodging at the U.S. General Services Administration rates. The Contractor is solely responsible for its staff's travel time, including travel to and from the City of Vancouver. The City will reimburse only pre-approved miscellaneous Contractor expenses at-cost upon submission of receipts to City.

- 3. PAYMENT FOR CONTRACTOR SERVICES:** The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net thirty (30) days.

The City reserves the right to correct any invoices paid in error. The Contractor shall be paid according to the rates set forth in Attachment "B", incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed **must** be referenced on any invoice submitted for payment.

- 4. TERM OF AGREEMENT:** The term of this Agreement shall commence on May 1, 2024 and continue until April 30, 2029. Unless directed otherwise by the City, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

5. **ORDER OF PRECEDENCE:** Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Contract Purchase Orders; the Contractor's responsive proposal to the City's solicitation, and the City's solicitation.
6. **RELATION OF PARTIES:** The Contractor, and its subcontractors, agents, employees, or other vendors contracted by the Contractor to provide services or other work for the purpose of meeting the Contractor's obligations under this agreement (collectively referred to as "subcontractors"), are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its subcontractors shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other rights, privileges, or benefits afforded to City employees. The Contractor and its subcontractors shall not have the authority to bind City in any way except as may be specifically provided herein.
7. **E-VERIFY:** The Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. The Contractor shall ensure all Contractor employees and any subcontractors assigned to perform work under this Agreement are eligible to work in the United States. The Contractor shall provide verification of compliance upon the request of the City. Failure by the Contractor to comply with this subsection shall be considered a material breach.
8. **DELAYS AND EXTENSIONS OF TIME:** If the Contractor is delayed at any time in the progress of the work covered by this Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by the Contractor and the City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the City.
9. **OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by the Contractor to provide the services or project deliverables under this Agreement shall remain property of the Contractor.
10. **TERMINATION FOR PUBLIC CONVENIENCE:** The City, at its sole discretion, may terminate this contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, the Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

**11. TERMINATION FOR DEFAULT:** If the Contractor defaults by failing to perform any of the obligations of the Agreement, including violating any law, regulation, rule or ordinance applicable to this Agreement, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere.

If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for public convenience paragraph herein.

**12. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

**13. COMPLIANCE WITH THE LAW:** The Contractor agrees to comply with all relevant, Federal, State, and Municipal laws, rules, policies, regulations or ordinances in the performance of work under this Agreement.

**14. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor, at no expense to the City, shall be responsible to obtain all necessary licenses, permits, and similar legal authorizations required to perform the work associated with this Agreement. The Contractor will be required to hold a city business license if working within Vancouver city limits. The Contractor shall apply for city license via the State of Washington Department of Revenue (DOR), Business Licensing Service (BLS), at: <https://secure.dor.wa.gov/>. For application

assistance, contact DOR BLS at 360-705-6741. For more information about city business license regulations and fees, see: [www.cityofvancouver.us/businesslicense](http://www.cityofvancouver.us/businesslicense) or call 360-487-8410 option 3.

**15. LIABILITY AND HOLD HARMLESS:** The Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 Revised Code of Washington (RCW), except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such costs, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. The Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. The Contractor is an independent contractor and responsible for the safety of its employees.

**16. INSURANCE:** The Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

All liability insurance required herein shall be under a Comprehensive or Commercial General Liability and business policies.

<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000

<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Washington)</b>	
Per Occurrence	
Employer's Liability	\$1,000,000
Disease Each Employee	\$1,000,000
Disease Policy Limit	\$1,000,000
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000
<b>V. Professional Liability</b>	
Policy shall include coverage against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor	\$2,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.



Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

**17. NOTICES:** All notices which are given or required to be given pursuant to this Agreement shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the City:

Anna Vogel

City of Vancouver

415 W 6<sup>th</sup> Street

P O Box 1995

Vancouver WA 98668-1995

Email: [anna.vogel@cityofvancouver.us](mailto:anna.vogel@cityofvancouver.us)

For the Contractor:

Diana Brown

OAC Services, Inc.

2200 1<sup>st</sup> Ave S, Suite 200

Seattle WA 98134

Email: [dbrown@oacsvcs.com](mailto:dbrown@oacsvcs.com)

Either party may change the designated contact or any information listed above by giving advance notice in writing to the other party.

**18. AMENDMENTS:** All changes to this Agreement, including changes to the scope of work and compensation sections, must be made by written amendment and signed by all parties to this Agreement.

**19. SCOPE OF AGREEMENT:** This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

**20. RATIFICATION:** Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

**21. GOVERNING LAW/VENUE:** This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

- 22. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 23. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.
- 24. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.
- 25. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** Supplier must agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 26. BYRD ANTI-LOBBYING AMENDMENT:** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Suppliers that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**27. PROCUREMENT OF RECOVERED MATERIALS:** Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**28. WARRANTIES:** All products shall be warranted against defects or faulty workmanship and materials by the Supplier for one (1) year following inspection and acceptance of the products by the City. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This one-(1) year warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period. Supplier warrants that all goods and services furnished under this Contract are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, comply with all applicable safety and health standards established for such products, all goods are properly packaged, and all appropriate instructions or warnings are supplied. If a defect is found, a component failure occurs, or workmanship is found to cause failure, the Vendor shall replace the product at their own expense, including shipping charges. Any replacement product will be warranted for one (1) year from the date it is delivered. All implied and expressed warranty provisions of the Uniform Commercial Code are incorporated into this Contract.

**29. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, the Supplier agrees as follows: The Supplier will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The undersigned, as the authorized representatives of the City and Contractor respectively, agree to all of the terms and conditions contained in this Agreement, as of the dates set forth below.

**CITY OF VANCOUVER**  
A municipal corporation

**CONTRACTOR:**  
OAC Services, Inc.

---

Eric Holmes, City Manager

---

Signature

---

Date

---

Printed Name /Title

Attest:

---

Date

---

Natasha Ramras, City Clerk

Approved as to form:

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Jonathan Young, City Attorney

## **Attachment A**

### **Scope of Work**

Work under this contract will include, but not be limited to:

1. Write and submit the General Contractor/Construction Manager (GC/CM) Washington State Portfolio Review Committee (PRC) Application. Create and present necessary documentation to the PRC.
2. Help the City obtain PRC approval for the City to proceed with GC/CM construction project delivery method, project specific, per the governing RCWs.
3. Assist the City with the development of a contract for GC/CM. Participate in reviews of the draft contract prior to issuance of the RFP for the GC/CM Services.
4. Lead the development of the scope for a Request for Proposals (RFP) for General Contractor/Construction Manager Services. The Consultant shall work with the City and design team to develop a RFP that represents the subject project, reflects the project's target goals, visions/values of the City, and structures a collaborative project delivery team.
5. Assist in developing a RFP scoring methodology and proposal scoring, and assist in identifying attributes of qualified GC/CM Contractors based on experience.
6. Evaluate and score proposals received from GC/CM contractors as part of the City's evaluation team.
7. Assist in interview format and question development. Attend interviews, in person or remote, with the GC/CM RFP Contractors as part of the interview panel.
8. Assist in the development of the Phase 1: pre-construction services Contract (Construction Management Services) between the City and the selected Contractor. The Consultant shall serve as the owner's representative, as needed, for management of GC/CM services and represent the City in negotiating final Contract terms for the Phase 1: GC/CM pre-construction contract and the Phase 2: GC/CM physical construction contract. This will require in person attendance in meetings and site visits during physical construction.
9. Participate and lead negotiations, in person or remotely, between the City and the selected Phase 1 Contractor for Phase 2. If determined that a new solicitation for Phase 2 work is required, participate and lead, as needed, in that process.
10. Support, in conjunction with City departments, the development of the Phase 2 Contract: GC/CM physical construction (Construction Services) including construction management, material, equipment and labor procurement, physical construction, and all work elements necessary to deliver the entire Construction Project within the required schedule, including warranty periods, at the agreed upon Guaranteed Maximum Price (GMP). Assist in the development of the Maximum Allowable Construction Cost (MACC), reviewing contractor's bid items and creating the Total Contract Cost. The Consultant shall participate and attend any negotiations, in person or remotely, among the City and GC/CM Contractor as to the Contract terms and conditions. The Consultant shall

represent the City and provide recommendations based on the Consultant's experience and knowledge in the field of GC/CM administration and contracting. The Consultant shall inform the City of best practices, risks and mitigation typical of these types of Contracts.

11. After execution of the GC/CM Contract, monitor contractor's competitively bid processes for each of the various subcontracts and equipment bid packages through public advertisement. Confirming responsible low bids are selected. Throughout the Contract, monitor that the Contractor is not self-performing more than 30% of the MACC. Monitor that Contractor is complying with terms and conditions of the GC/CM contract and applicable RCW sections.
12. Participate in and, if necessary, lead the management of contract contingency and contractual allowances. Participate and, if necessary, lead the contract close out process per the contract and applicable RCW sections.
13. Assist the City to develop appropriately project scaled risk registers, risk quantification, and management plans during the design, construction and close out phases of the project. Following guidance from the State of Washington OFM, the risk management should be used to inform contingency allocations and establish a process for routinely re-evaluating risks or uncertainties on projects. Consultant will identify and document key risks, characterizing their impact, and describing the planned approach to mitigating them. Risk management evaluations may include research and information gathering on innovative products, equipment, systems and construction techniques and/or any products, equipment, systems or construction techniques new to the City's projects.
14. Perform other project management or construction management services if needed to supplement internal City staff.

Deliverables:

- A. The Consultant shall provide the City three (3) hardcopies of the PRC Application and one PDF format electronic copy.
- B. The Consultant shall provide the City three (3) hardcopies of the PRC presentation documents and one PDF format electronic copy.
- C. Consultant comments and contract language for GC/M preconstruction services contract as well as GC/CM physical construction services (MACC) contract.
- D. The Consultant shall provide the City the Final GC/CM RFP scope with supporting documents, recommended announcements, and distribution list in the current Microsoft Word format for publishing by the City.
- E. Meeting minutes and action items during development of application, contracts, and contractor evaluation materials.
- F. The Consultant shall provide interview questions and meeting agenda in electronic format.
- G. Contract monitoring updates and progress reports throughout the duration of construction and contract closeout.

H. Risk register, risk quantifications, risk management plan, risk monitoring updates and contingency evaluations.

**Attachment B**  
**Rates**

<b>OAC Services</b>		
Diana Brown	Program Executive	<b>\$240.00</b>
Phil Iverson, Adam Johnson	Senior PM / Alternate Delivery Advisor	<b>\$225.00</b>
Alana Schutt	Sustainability Advisor	<b>\$225.00</b>
Cynthia Balzarini	Project controls & FFE Advisor	<b>\$170.00</b>
	Senior Building Envelope Specialist	<b>\$195.00</b>
	Assistant PM	<b>\$160.00</b>
	Senior Project Coordinator	<b>\$160.00</b>

<b>Subconsultant - Otak</b>		
Sarah Oaks	Principal in Charge	<b>\$200.00</b>
Kevin Moisan, John Guiher	Senior Project Manager	<b>\$170.00</b>
	Project Manager III	<b>\$160.00</b>
	Project Manager II	<b>\$150.00</b>
Alex Cettie	Project Manager I	<b>\$130.00</b>
	Project Coordinator	<b>\$105.00</b>





**CITY OF VANCOUVER**  
**SERVICES AGREEMENT No. C-101612**  
**OWNER'S REPRESENTATIVE SERVICES**

This Services Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the City of Vancouver, Washington, a municipal corporation organized under the laws of the State of Washington, (hereinafter referred to as the "City") and Parametrix (hereinafter referred to as the "Contractor"). The City and Contractor may be collectively referred to herein as the “parties” or individually as a “party”.

WHEREAS, the City desires to engage the Contractor to perform services as described in this Agreement; and

WHEREAS, the City advertised and issued a Request for Proposal, numbered 1-24 (hereinafter referred to as the “solicitation”) and after evaluation of the Contractor’s responsive proposal, found the Contractor be capable of performing the required services; and

WHEREAS, the Contractor represents by entering into this Agreement that it is fully qualified to perform the services described herein in a competent and professional manner, and to the full satisfaction of the City.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

- 1. SCOPE OF WORK:** The Contractor agrees to provide the City all services and materials set forth in the scope of work identified in Attachment "A", and as further described in the City’s solicitation, and the Contractor’s responsive proposal to the City’s solicitation, (collectively referred to herein as the “work”) which are each incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

All work must be authorized and approved by the City’s Project Manager before any work can begin. The Contractor shall approach each project in a manner consistent with its usual customary business practices. The Contractor shall actively seek collaborative input from City staff.

2. **COMPENSATION:** Payment to the Contractor for the work described in this Agreement shall not exceed \$ 1,000,000.00 USD.

This payment shall be maximum compensation for the work and for all labor, materials, supplies, equipment and incidentals necessary to complete the work as set forth herein, and it shall not be exceeded without the City's prior written authorization in the form of a negotiated and executed amendment.

Compensation is limited to the amount specified for each specific task and/or sub-task, unless amended in writing. The City requires the Contractor to complete the work stated within the number of hours stated for each task, and/or sub-task, or the lump sum amount. If compensation is made on an hourly basis and the work requires fewer hours than those estimated, the Contractor will be paid for the actual worked hours necessary to complete that task and/or sub-task. If the Contractor underestimated the number of hours required to perform the work, the Contractor shall be paid up to the maximum number of hours stated for the task and/or sub-task. Compensation may be amended, at the City's sole discretion, for documentable circumstances not reasonably foreseeable to either party at the time the task and/or subtask is initiated, or for changes to the scope of work or deliverables requested by the City. All deliverables must be acceptable to the City, at the sole discretion of the City.

Travel expenses are limited to airfare, or mileage at the current IRS rate, and lodging at the U.S. General Services Administration rates. The Contractor is solely responsible for its staff's travel time, including travel to and from the City of Vancouver. The City will reimburse only pre-approved miscellaneous Contractor expenses at-cost upon submission of receipts to City.

3. **PAYMENT FOR CONTRACTOR SERVICES:** The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any, for fees and expenses from the previous month. Payments to Contractor shall be net thirty (30) days.

The City reserves the right to correct any invoices paid in error. The Contractor shall be paid according to the rates set forth in Attachment "B", incorporated herein by this reference, and made a part of this Agreement as if fully set forth herein.

City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract/purchase order (PO) number given on the notice to proceed **must** be referenced on any invoice submitted for payment.

4. **TERM OF AGREEMENT:** The term of this Agreement shall commence on May 1, 2024 and continue until April 30, 2029. Unless directed otherwise by the City, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

5. **ORDER OF PRECEDENCE:** Where there is a conflict among or between any of these documents, the controlling documents shall be the first listed in the following sequence: Amendments to this Agreement; this Agreement; Contract Purchase Orders; the Contractor's responsive proposal to the City's solicitation, and the City's solicitation.
6. **RELATION OF PARTIES:** The Contractor, and its subcontractors, agents, employees, or other vendors contracted by the Contractor to provide services or other work for the purpose of meeting the Contractor's obligations under this agreement (collectively referred to as "subcontractors"), are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its subcontractors shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other rights, privileges, or benefits afforded to City employees. The Contractor and its subcontractors shall not have the authority to bind City in any way except as may be specifically provided herein.
7. **E-VERIFY:** The Contractor shall enter into and register a Memorandum of Understanding with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. The Contractor shall ensure all Contractor employees and any subcontractors assigned to perform work under this Agreement are eligible to work in the United States. The Contractor shall provide verification of compliance upon the request of the City. Failure by the Contractor to comply with this subsection shall be considered a material breach.
8. **DELAYS AND EXTENSIONS OF TIME:** If the Contractor is delayed at any time in the progress of the work covered by this Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by the Contractor and the City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the City.
9. **OWNERSHIP OF RECORDS AND DOCUMENTS:** Any and all work product prepared by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such work product to the City. A copy may be retained by the Contractor. Previously owned intellectual property of Contractor, and any know-how, methodologies or processes used by the Contractor to provide the services or project deliverables under this Agreement shall remain property of the Contractor.
10. **TERMINATION FOR PUBLIC CONVENIENCE:** The City, at its sole discretion, may terminate this contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

In the event this Agreement is terminated prior to the completion of work, the Contractor will only be paid for the portion of the work completed at the time of termination of the Agreement.

**11. TERMINATION FOR DEFAULT:** If the Contractor defaults by failing to perform any of the obligations of the Agreement, including violating any law, regulation, rule or ordinance applicable to this Agreement, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere.

If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for public convenience paragraph herein.

**12. OPPORTUNITY TO CURE:** The City at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a "Notice to Cure" to Contractor setting forth the remedies sought by City and the deadline to accomplish the remedies. If the Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the City shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against the Contractor and its sureties for said breach or default, including but not limited to termination of this Contract for convenience.

**13. COMPLIANCE WITH THE LAW:** The Contractor agrees to comply with all relevant, Federal, State, and Municipal laws, rules, policies, regulations or ordinances in the performance of work under this Agreement.

**14. CITY BUSINESS AND OCCUPATION LICENSE:** The Contractor, at no expense to the City, shall be responsible to obtain all necessary licenses, permits, and similar legal authorizations required to perform the work associated with this Agreement. The Contractor will be required to hold a city business license if working within Vancouver city limits. The Contractor shall apply for city license via the State of Washington Department of Revenue (DOR), Business Licensing Service (BLS), at: <https://secure.dor.wa.gov/>. For application

assistance, contact DOR BLS at 360-705-6741. For more information about city business license regulations and fees, see: [www.cityofvancouver.us/businesslicense](http://www.cityofvancouver.us/businesslicense) or call 360-487-8410 option 3.

**15. LIABILITY AND HOLD HARMLESS:** The Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, of whatsoever kind or nature (including patent infringement or copyright claims) to the extent arising out of, or in connection with, or incident to, the negligent performance or willful misconduct pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers’ compensation statute, Title 51 Revised Code of Washington (RCW), except to the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such costs, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. The Contractor specifically acknowledges the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that the Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115. The Contractor is an independent contractor and responsible for the safety of its employees.

**16. INSURANCE:** The Contractor shall obtain and keep in force during the entire term of this agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor.

All liability insurance required herein shall be under a Comprehensive or Commercial General Liability and business policies.

<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
<b>I. Commercial General Liability:</b>	
Policy shall include Bodily Injury, Property Damage, Personal Injury and Broad Form Contractual Liability	
Each Occurrence	\$1,000,000
General Aggregate Per Occurrence	\$2,000,000
Products & Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability	\$1,000,000

<b>II. Commercial Automobile Liability</b>	
Policy shall include Bodily Injury and Property Damage, for any owned, Hired, and/or Non-owned vehicles used in the operation, installation and maintenance of facilities under this agreement. Combined Single Limit	\$1,000,000
<b>III. Workers' Compensation (applicable to the State of Washington)</b>	
Per Occurrence Employer's Liability Disease Each Employee Disease Policy Limit Each Claim Annual Aggregate	\$1,000,000 \$1,000,000 \$1,000,000 \$1,000,000 \$1,000,000
<b>V. Professional Liability</b>	
Policy shall include coverage against any and all claims for damages to person or property which may arise out of the performance of this Contract whether such work shall be by the Contractor, subcontractor or anyone directly or indirectly employed by either the Contractor or a subcontractor	\$2,000,000

In addition to the coverage and limits listed above the Contractor's insurance must all contain the following:

- a. City Listed as an Additional Insured. The City of Vancouver, its Agents, Representatives, Officers, Directors, Elected and Appointed Officials, and Employees must be named as an additional insured. The required Additional Insured endorsements shall be at least as broad as ISO CG 20 10 11 85, or its equivalent CG 20 10 07 04 and CG 20 37 07 04 must be included with the Certificate of Insurance.
- b. Either the Commercial General Liability or the Workers' Compensation policy must be endorsed to include "Washington Stop Gap" insurance. The limits and aggregates referenced must apply to the Stop Gap coverage as well and must be indicated on the certificate.
- c. Employment Security. The Contractor shall comply with all employment security laws of the State in which services are provided and shall timely make all required payments in connection therewith.
- d. The City of Vancouver shall be listed on the Certificate as the Certificate Holder.
- e. Coverage Trigger: The insurance must be written on an "occurrence" basis. This must be indicated on the Certificate.

Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "ACORD" or comparable form.

All policies shall be issued by an insurance company licensed to do business in the State of Washington. The City of Vancouver may inspect all policies and copies shall be provided to the City upon request.

**17. NOTICES:** All notices which are given or required to be given pursuant to this Agreement shall be hand delivered, mailed postage paid, or sent by electronic mail as follows:

For the City:

Anna Vogel

City of Vancouver

415 W 6<sup>th</sup> Street

P O Box 1995

Vancouver WA 98668-1995

Email: [anna.vogel@cityofvancouver.us](mailto:anna.vogel@cityofvancouver.us)

For the Contractor:

James Dugan

Parametrix

7147 Pacific Avenue

Tacoma WA 98402

Email: [jdugan@parametrix.com](mailto:jdugan@parametrix.com)

Either party may change the designated contact or any information listed above by giving advance notice in writing to the other party.

**18. AMENDMENTS:** All changes to this Agreement, including changes to the scope of work and compensation sections, must be made by written amendment and signed by all parties to this Agreement.

**19. SCOPE OF AGREEMENT:** This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Agreement.

**20. RATIFICATION:** Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

**21. GOVERNING LAW/VENUE:** This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

- 22. COOPERATIVE PURCHASING:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Agreement, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City incurring any financial or legal liability for such purchases. The City agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.
- 23. PUBLIC DISCLOSURE COMPLIANCE:** The parties acknowledge that the City is an “agency” within the meaning of the Washington Public Records Act, Chapter 42.56 RCW, and that materials submitted by the Contractor to the City become public record. Such records may be subject to public disclosure, in whole or part and may be required to be released by the City in the event of a request for disclosure. In the event the City receives a public record request for any data or deliverable that is provided to the City and that is licensed from the Contractor, the City shall notify the Contractor of such request and withhold disclosure of such information for not less than five (5) business days, to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees or penalty assessment under Chapter 42.56 RCW for withholding or delaying public disclosure of such information.
- 24. DEBARMENT:** The Contractor certifies that that it is not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal, State or local department or agency.
- 25. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT:** Supplier must agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 26. BYRD ANTI-LOBBYING AMENDMENT:** Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Suppliers that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.



**27. PROCUREMENT OF RECOVERED MATERIALS:** Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**28. WARRANTIES:** All products shall be warranted against defects or faulty workmanship and materials by the Supplier for one (1) year following inspection and acceptance of the products by the City. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This one-(1) year warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period. Supplier warrants that all goods and services furnished under this Contract are new, conform strictly to the specifications herein, are merchantable, good workmanship, free from defect, comply with all applicable safety and health standards established for such products, all goods are properly packaged, and all appropriate instructions or warnings are supplied. If a defect is found, a component failure occurs, or workmanship is found to cause failure, the Vendor shall replace the product at their own expense, including shipping charges. Any replacement product will be warranted for one (1) year from the date it is delivered. All implied and expressed warranty provisions of the Uniform Commercial Code are incorporated into this Contract.

**29. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY:** During the term of this Contract, the Supplier agrees as follows: The Supplier will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The undersigned, as the authorized representatives of the City and Contractor respectively, agree to all of the terms and conditions contained in this Agreement, as of the dates set forth below.

**CITY OF VANCOUVER**  
A municipal corporation

**CONTRACTOR:**  
Parametrix

\_\_\_\_\_  
Eric Holmes, City Manager

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name /Title

Attest:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Natasha Ramras, City Clerk

Approved as to form:

\_\_\_\_\_  
Jonathan Young, City Attorney

## **Attachment A**

### **Scope of Work**

Work under this contract will include, but not be limited to:

1. Write and submit the General Contractor/Construction Manager (GC/CM) Washington State Portfolio Review Committee (PRC) Application. Create and present necessary documentation to the PRC.
2. Help the City obtain PRC approval for the City to proceed with GC/CM construction project delivery method, project specific, per the governing RCWs.
3. Assist the City with the development of a contract for GC/CM. Participate in reviews of the draft contract prior to issuance of the RFP for the GC/CM Services.
4. Lead the development of the scope for a Request for Proposals (RFP) for General Contractor/Construction Manager Services. The Consultant shall work with the City and design team to develop a RFP that represents the subject project, reflects the project's target goals, visions/values of the City, and structures a collaborative project delivery team.
5. Assist in developing a RFP scoring methodology and proposal scoring, and assist in identifying attributes of qualified GC/CM Contractors based on experience.
6. Evaluate and score proposals received from GC/CM contractors as part of the City's evaluation team.
7. Assist in interview format and question development. Attend interviews, in person or remote, with the GC/CM RFP Contractors as part of the interview panel.
8. Assist in the development of the Phase 1: pre-construction services Contract (Construction Management Services) between the City and the selected Contractor. The Consultant shall serve as the owner's representative, as needed, for management of GC/CM services and represent the City in negotiating final Contract terms for the Phase 1: GC/CM pre-construction contract and the Phase 2: GC/CM physical construction contract. This will require in person attendance in meetings and site visits during physical construction.
9. Participate and lead negotiations, in person or remotely, between the City and the selected Phase 1 Contractor for Phase 2. If determined that a new solicitation for Phase 2 work is required, participate and lead, as needed, in that process.
10. Support, in conjunction with City departments, the development of the Phase 2 Contract: GC/CM physical construction (Construction Services) including construction management, material, equipment and labor procurement, physical construction, and all work elements necessary to deliver the entire Construction Project within the required schedule, including warranty periods, at the agreed upon Guaranteed Maximum Price (GMP). Assist in the development of the Maximum Allowable Construction Cost (MACC), reviewing contractor's bid items and creating the Total Contract Cost. The Consultant shall participate and attend any negotiations, in person or remotely, among the City and GC/CM Contractor as to the Contract terms and conditions. The Consultant shall

represent the City and provide recommendations based on the Consultant's experience and knowledge in the field of GC/CM administration and contracting. The Consultant shall inform the City of best practices, risks and mitigation typical of these types of Contracts.

11. After execution of the GC/CM Contract, monitor contractor's competitively bid processes for each of the various subcontracts and equipment bid packages through public advertisement. Confirming responsible low bids are selected. Throughout the Contract, monitor that the Contractor is not self-performing more than 30% of the MACC. Monitor that Contractor is complying with terms and conditions of the GC/CM contract and applicable RCW sections.
12. Participate in and, if necessary, lead the management of contract contingency and contractual allowances. Participate and, if necessary, lead the contract close out process per the contract and applicable RCW sections.
13. Assist the City to develop appropriately project scaled risk registers, risk quantification, and management plans during the design, construction and close out phases of the project. Following guidance from the State of Washington OFM, the risk management should be used to inform contingency allocations and establish a process for routinely re-evaluating risks or uncertainties on projects. Consultant will identify and document key risks, characterizing their impact, and describing the planned approach to mitigating them. Risk management evaluations may include research and information gathering on innovative products, equipment, systems and construction techniques and/or any products, equipment, systems or construction techniques new to the City's projects.
14. Perform other project management or construction management services if needed to supplement internal City staff.

Deliverables:

- A. The Consultant shall provide the City three (3) hardcopies of the PRC Application and one PDF format electronic copy.
- B. The Consultant shall provide the City three (3) hardcopies of the PRC presentation documents and one PDF format electronic copy.
- C. Consultant comments and contract language for GC/M preconstruction services contract as well as GC/CM physical construction services (MACC) contract.
- D. The Consultant shall provide the City the Final GC/CM RFP scope with supporting documents, recommended announcements, and distribution list in the current Microsoft Word format for publishing by the City.
- E. Meeting minutes and action items during development of application, contracts, and contractor evaluation materials.
- F. The Consultant shall provide interview questions and meeting agenda in electronic format.
- G. Contract monitoring updates and progress reports throughout the duration of construction and contract closeout.

H. Risk register, risk quantifications, risk management plan, risk monitoring updates and contingency evaluations.

**Attachment B**  
**Rates**

<b>Parametrix</b>		
Jim Dugan	Project Executive/APD Procurement	<b>\$230.00</b>
Doug Wiser	Program Manager/Sr. Project Manager	<b>\$210.00</b>
Dan Cody	APD Procurement/Sr. Project Manager	<b>\$210.00</b>
Tom Rooks	Construction Manager/LEED Advisor	<b>\$185.00</b>
Sharilyn Sage	Project Manager/Construction Manager	<b>\$185.00</b>
Dale Stafford	Project Manager/Construction Manager	<b>\$185.00</b>
Jesse Noga	Construction Observation/Inspection	<b>\$165.00</b>
Maggie Anderson	Project/Program Support	<b>\$150.00</b>

<b>Subconsultants</b>		
Brent Young (LSW)	Design Review/Permit Support	<b>\$250.00</b>
Daniel Junge (RLB)	Cost Estimating	<b>\$260.00</b>
Rachel Abraham (JTS)	Document Controls	<b>\$125.00</b>

**Staff Report: 082-24**

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** Approval of Participation Agreement for State of Washington Opioid Settlement with Johnson & Johnson/Janssen

**Key Points**

- On Council authority in 2019, the City initiated litigation in 2019 against numerous manufacturers, distributors, and retailers of opioids.
- On January 22, 2024, the State of Washington reached a settlement with Johnson & Johnson that is contingent upon every litigating government entity in Washington joining the agreement.
- By joining the Agreement, the City of Vancouver would receive an allocated payment estimated to be \$953,102.70.

**Strategic Plan Alignment**

**Housing and Human Needs** – meeting basic needs and partnering with organizations to support the community.

**Present Situation**

Since 2015, local governments around the Country have been united in efforts seeking to hold the manufacturers, distributors, and pharmacies of opioids responsible for the harms caused to their residents. The City of Vancouver joined this fight in 2019, filing suit against a number of manufacturers, distributors and pharmacies. That lawsuit was then transferred to the Northern District of Ohio as part of a nationwide multi-district litigation. The lawsuit has been pending there ever since. The City has already joined settlements with multiple opioid distributors (AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation) and retailers (Teva, Allergan, CVS, Walgreens, and Walmart).

The Council approved a memorandum of understanding in April 2022 (“One Washington MOU”), that delineates the amount the City of Vancouver would receive if any statewide settlement was reached (1.7306605325% of amounts allocated to local governments) and limits the categories for which opioid funds may be expended. Last month, the City entered into an interlocal agreement with Camas and Washougal to fulfill its obligations under this MOU so that any

expenditure of opioid funds is as transparent as possible to the public.

On January 22, 2024, the State of Washington reached a settlement with the Johnson & Johnson/Janssen retailers for a total of \$123,340,000, fifty percent of which will be allocated to Washington's local governments. (See JNJ WA Settlement, §§ V.C & VI.A). The settlement is contingent on every one of the 37 litigating local governments (of which Vancouver is one) joining the settlement by May 11, 2024. Joining the settlement, assuming all other litigating Washington local governments do as well, would result in an estimated net allocation to local governments in the amount of \$55,071,614.88. The estimate is premised on the total local government share (\$61,670,000) less the current estimate of the total LG contingency fee requirement (\$6,598,385.12) under Section IX.B. of the settlement agreement and the One Washington MOU. Given Vancouver's allocation percentage of 1.7306605325% per the One Washington MOU, it is estimated that Vancouver's allocation would be \$953,102.70. Ninety-five percent of this amount would be paid in a one-time payment this upcoming June. The remainder would be paid once every non-litigating local government joined the settlement, or January 22, 2026, whichever comes first.

### **Advantage(s)**

By approving this agreement, the City will receive funds that may be used to address the community impacts of the opioid epidemic in Vancouver, which range from substance addiction to mental health to homelessness.

### **Disadvantage(s)**

Forecloses (possibly) a greater share of recovery vis-a-vis other Washington local governments, but the City would have to litigate for that result if it was desired. In addition, refusing to join the settlement would nullify the settlement for the State and all other Washington local governments.

### **Budget Impact**

The City would receive a one-time payment of approximately \$950,000, which would be allocated in a supplemental budget to be used for purposes authorized by the April 2022 One Washington MOU.

### **Prior Council Review**

- Council authorized litigation against the opioid manufacturers, distributors, and retailers in 2019.
- Council authorized the One Washington MOU on April 4, 2022.
- Council authorized the City to join a national settlement with distributors on September 12, 2022.
- Council authorized the City to join a national settlement with other retailers on March 6, 2023.
- Council authorized an interlocal agreement with Camas and Washougal to create an Opioid Abatement Council to monitor receipt and expenditure of opioid funds on March 25, 2024.

### **Action Requested**

Authorize the City Manager or designee to execute the attached Settlement Participation Form to join Washington State's January 22, 2024, settlement with Johnson & Johnson, Johnson & Johnson Innovative Medicine, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen



Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.

*Dan Lloyd, Assistant City Attorney, 360-487-8520*

**ATTACHMENTS:**

- ▣ Participation Form
- ▣ Janssen Washington State-Wide Opioid Settlement Agreement

**EXHIBIT B**

**Settlement Participation Form**

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Janssen Washington State-Wide Opioid Settlement Agreement dated January 22, 2024 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 30 days of the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity

elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.

8. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

9. This Settlement Participation Form shall be deemed effective as of the Effective Date of the Janssen Settlement.
10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# JANSSEN WASHINGTON STATE-WIDE OPIOID SETTLEMENT AGREEMENT

## I. Overview

This settlement agreement (the “*Agreement*”) sets forth the terms and conditions of a settlement agreement between and among Janssen, the State of Washington, and Participating Subdivisions (as those terms are defined below). Janssen has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Janssen expressly denies. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Janssen. Unless the contrary is expressly stated, this Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose.

## II. Definitions

Unless otherwise specified, the following definitions apply:

1. “*Agreement*” means this agreement as set forth above, inclusive of all exhibits.
2. “*Alleged Harms*” means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of opioid products, that have allegedly been caused by Janssen.
3. “*Attorney*” means any of the following retained through a legal contract: a solo practitioner, multi-attorney law firm, or other legal representative of a Participating Subdivision.
4. “*Claim*” means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state or local common law, statute, regulation, guidance, ordinance or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including but not limited to any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

5. “*Claim Over*” means a Claim asserted by a Non-Released Entity against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to a Non-Party Covered Conduct Claim asserted by a Releasor.
6. “*Compensatory Restitution Amount*” means the aggregate amount of payments by Janssen hereunder other than amounts used for attorneys’ fees and costs.
7. “*Consent Judgment*” means a consent judgment in the form attached as Exhibit E.
8. “*Court*” means the court to which the Agreement and the Consent Judgment are presented for approval and/or entry.
9. “*Covered Conduct*” means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) relating in any way to (a) the discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, distribution, delivery, monitoring, reporting, supply, sale, prescribing, dispensing, physical security, warehousing, use or abuse of, or operating procedures relating to any Product, or any system, plan, policy, or advocacy relating to any Product or class of Products, including but not limited to any unbranded promotion, marketing, programs, or campaigns relating to any Product or class of Products; (b) the characteristics, properties, risks, or benefits of any Product; (c) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulators of orders for any Product placed with any Released Entity; (d) the selective breeding, harvesting, extracting, purifying, exporting, importing, applying for quota for, procuring quota for, handling, promoting, manufacturing, processing, packaging, supplying, distributing, converting, or selling of, or otherwise engaging in any activity relating to, precursor or component Products, including but not limited to natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, or any related intermediate Products; or (e) diversion control programs or suspicious order monitoring related to any Product.
10. “*Effective Date*” means January 22, 2024.
11. “*Janssen*” means Johnson & Johnson, Johnson & Johnson Innovative Medicine, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc.
12. “*Litigating Subdivision*” means a Subdivision (or Subdivision official asserting the right of or for the Subdivision or the State to recover for alleged harms to the Subdivision, the State, and/or the people thereof) that brought any Released Claims against any Released Entity on or before the Effective Date that were not separately

resolved prior to that date. A list of all Litigating Subdivisions known to the Parties is included in Exhibit F hereto.

13. “*Net Settlement Amount*” means the amount paid by Janssen into the Settlement Fund under subsection V.C. For the avoidance of doubt, the Net Settlement Amount does not include amounts paid for State Outside and Inside Counsel Fees and Costs pursuant to subsection IX.A.
14. “*Non-Litigating Subdivision*” means a Subdivision that is not a Litigating Subdivision.
15. “*Non-Party Covered Conduct Claim*” means a Claim against any Non-Released Entity involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity).
16. “*Non-Party Settlement*” means a settlement by any Releasor that settles any Non-Party Covered Conduct Claim and includes a release of any Non-Released Entity.
17. “*Non-Released Entity*” means an entity that is not a Released Entity.
18. “*Opioid Remediation*” means care, treatment, and other programs and expenditures (including reimbursement for past such programs or expenditures except where this Agreement restricts the use of funds solely to future Opioid Remediation) designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of the opioid abuse crisis, including on those injured as a result of the opioid abuse crisis. Exhibit J provides a non-exhaustive list of expenditures that qualify as being paid for Opioid Remediation. Qualifying expenditures may include reasonable related administrative expenses.
19. “*Participating Subdivision*” means a Subdivision that meets the requirements for becoming a Participating Subdivision under Section VII.
20. “*Parties*” means Janssen and the State of Washington (each, a “*Party*”).
21. “*Product*” means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical product made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. It also includes: 1) the following when used in combination with opioids or opiates: benzodiazepine, carisoprodol, zolpidem, or gabapentin; and 2) a combination or “cocktail” of any stimulant or other chemical substance prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, “*Product*” does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates. “*Product*” includes but is not limited to any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, naloxone,

naltrexone, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, any variant of these substances, or any similar substance. “Product” also includes any natural, synthetic, semi-synthetic or chemical raw materials, starting materials, finished active pharmaceutical ingredients, drug substances, and any related intermediate products used or created in the manufacturing process for any of the substances described in the preceding sentence.

22. “*Released Claims*” means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct occurring prior to the Effective Date. Without limiting the foregoing, “Released Claims” include any Claims that have been asserted against the Released Entities by the State or any of its Litigating Subdivisions in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by the State, any of its Subdivisions, or any Releasers (whether or not such State, Subdivision, or Releaser has brought such action or proceeding), provided the Covered Conduct occurs prior to the Effective Date. Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct, provided the Covered Conduct occurs prior to the Effective Date. The Parties intend that “Released Claims” be interpreted broadly. This Agreement does not release Claims by private individuals. It is the intent of the Parties that Claims by private individuals be treated in accordance with applicable law. Released Claims is also used herein to describe Claims brought by a Subdivision or other non-party Subdivision after the Effective Date that would have been Released Claims if they had been brought by a Releaser against a Released Entity.
23. “*Released Entities*” means Janssen and (1) all of Janssen’s past and present direct or indirect parents, subsidiaries, divisions, predecessors, successors, assigns, including Noramco, Inc. and Tasmanian Alkaloids PTY. LTD.; (2) the past and present direct or indirect subsidiaries, divisions, and joint ventures, of any of the foregoing; (3) all of Janssen’s insurers (solely in their role as insurers with respect to the Released Claims); (4) all of Janssen’s, or of any entity described in subsection (1), past and present joint ventures; and (5) the respective past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, agents, and employees of any of the foregoing (for actions that occurred during and related to their work for, or employment with, Janssen). Any person or entity described in subsections (3)-(5) shall be a Released Entity solely in the capacity described in such clause and shall not be a Released Entity with respect to its conduct in any other capacity. For the avoidance of doubt, the entities listed in Exhibit D are not Released Entities; and provided further that any joint venture partner of Janssen or Janssen’s subsidiary is not a Released Entity unless it falls within subsections (1)-(5) above. A list of Janssen’s present subsidiaries and affiliates is attached as Exhibit G. Janssen’s predecessor entities include but are not limited to those entities listed on Exhibit A. For the avoidance of



doubt, any entity acquired, or joint venture entered into, by Janssen after the Effective Date is not a Released Entity.

24. “*Releasers*” means (1) the State; (2) each Participating Subdivision; and (3) without limitation and to the maximum extent of the power of the State’s Attorney General and/or Participating Subdivision to release the Claims, (a) the State’s and Participating Subdivision’s departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Subdivisions in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Subdivision in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Subdivision. In addition to being a Releaser as provided herein, a Participating Subdivision shall also provide the Settlement Participation Form referenced in Section VII providing for a release to the fullest extent of the Participating Subdivision’s authority, which shall be attached as an exhibit to the Agreement. The State’s Attorney General represents that he or she has or has obtained the authority set forth in the Representation and Warranty subsection of Section IV.
25. “*Settlement Fund*” means the interest-bearing fund established under the Agreement into which all Net Settlement Amount payments by Janssen are made.
26. “*Settlement Fund Administrator*” means the entity that calculates the allocation of payments under Section VI of this Agreement, and administers and distributes amounts from the Settlement Fund. A detailed description of the Settlement Fund Administrator’s duties, including a detailed mechanism for paying the Settlement Fund Administrator’s fees and costs, shall be appended to the Agreement as Exhibit I.
27. “*Settlement Participation Form*” means the form attached as Exhibit B that Participating Subdivisions must execute and return to Janssen and the State of Washington, and which shall (1) make such Participating Subdivisions signatories to this Agreement, (2) include a full and complete release of any and of such Subdivision’s claims, and (3) require the prompt dismissal with prejudice of any Released Claims that have been filed by any such Participating Subdivision.
28. “*Special District*” means a formal and legally recognized sub-entity of the State that is authorized by State law to provide one or a limited number of designated

functions, including but not limited to school districts, fire districts, healthcare & hospital districts, and emergency services districts.

29. “*State*” means the State of Washington.
30. “*State Outside and Inside Counsel Fees and Costs*” means fees and costs of the Washington Attorney General’s Office and State Outside Counsel.
31. “*State Outside Counsel*” means Nix Patterson, LLP and Whitten Burrage, who were engaged by the Washington Attorney General’s Office for *State of Washington v. Johnson & Johnson, et al.*, King County Superior Court, Cause No. 20-2-00184-8SEA.
32. “*Subdivision*” means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity. Unless otherwise specified, “Subdivision” includes all functional counties and other functional levels of sub-entities of the State that provide general governance for a defined area. Historic, non-functioning sub-entities of the State are not Subdivisions, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. For purposes of this Agreement, the term Subdivision also includes Special Districts.

### **III. Injunctive Relief**

As part of the Consent Judgment, the Parties agree to the injunctive relief terms attached as Exhibit C.

### **IV. Release**

- A. *Scope.* As of the Effective Date, the Released Entities will be released and forever discharged from all of the Releasers’ Released Claims. The State of Washington (for itself and its Releasers) and each Participating Subdivision (for itself and its Releasers) will, on or before the Effective Date, absolutely, unconditionally, and irrevocably covenant not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State and its Attorney General to release claims. The Release shall be a complete bar to any Released Claim.
- B. *Claim Over and Non-Party Settlement.*
  1. *Statement of Intent.* It is the intent of the Parties that:

- a. Released Entities should not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;
  - b. The payments made under this Agreement shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity);
  - c. Claims by Releasors against non-Parties should not result in additional payments by Released Entities, whether through contribution, indemnification or any other means; and
  - d. The Agreement meets the requirements of the Uniform Contribution Among Joint Tortfeasors Act and any similar state law or doctrine that reduces or discharges a released party's liability to any other parties.
  - e. The provisions of this subsection IV.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissals provided for herein are made in good faith.
2. *Contribution/Indemnity Prohibited.* No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from a manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.
  3. *Non-Party Settlement.* To the extent that, on or after the Effective Date, any Releasor enters into a Non-Party Settlement, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include), unless prohibited from doing so under applicable law, in the Non-Party Settlement a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Janssen in subsection IV.B.2, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.
  4. *Claim-Over.* In the event that any Releasor obtains a judgment with respect to Non-Party Covered Conduct against a Non-Released Entity that does not contain a prohibition like that in subsection IV.B.3, or any Releasor files a Non-Party Covered Conduct Claim against a Non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party

Settlement as provided in subsection IV.B.3, and such Non-Released Entity asserts a Claim-Over against a Released Entity, that Releasor and Janssen shall take the following actions to ensure that the Released Entities do not pay more with respect to Covered Conduct to Releasors or to Non-Released Entities than the amounts owed under this Agreement by Janssen:

- a. Janssen shall notify that Releasor of the Claim-Over within thirty (30) days of the assertion of the Claim-Over or thirty (30) days of the Effective Date of this Agreement, whichever is later;
- b. Janssen and that Releasor shall meet and confer concerning the means to hold Released Entities harmless and ensure that it is not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Agreement;
- c. That Releasor and Janssen shall take steps sufficient and permissible under the law of the State of the Releasor to hold Released Entities harmless from the Claim-Over and ensure Released Entities are not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement. Such steps may include, where permissible:
  - (1) Filing of motions to dismiss or such other appropriate motion by Janssen or Released Entities, and supported by Releasors, in response to any claim filed in litigation or arbitration;
  - (2) Reduction of that Releasor's Claim and any judgment it has obtained or may obtain against such Non-Released Entity by whatever amount or percentage is necessary to extinguish such Claim-Over under applicable law, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
  - (3) Placement into escrow of funds paid by the Non-Released Entities such that those funds are available to satisfy the Claim-Over;
  - (4) Return of monies paid by Janssen to that Releasor under this Settlement Agreement to permit satisfaction of a judgment against or settlement with the Non-Released Entity to satisfy the Claim-Over;
  - (5) Payment of monies to Janssen by that Releasor to ensure it is held harmless from such Claim-Over, up to the amount that Releasor has obtained, may obtain, or has authority to control from such Non-Released Entity;
  - (6) Credit to Janssen under this Settlement Agreement to reduce the overall amounts to be paid under the Settlement Agreement such that it is held harmless from the Claim-Over; and

(7) Such other actions as that Releasor and Janssen may devise to hold Janssen harmless from the Claim Over.

- d. The actions of that Releasor and Janssen taken pursuant to paragraph (c) must, in combination, ensure Janssen is not required to pay more with respect to Covered Conduct than the amounts owed by Janssen under this Settlement Agreement.
- e. In the event of any dispute over the sufficiency of the actions taken pursuant to paragraph (c), that Releasor and Janssen may seek review by the court that enters the Consent Judgment pursuant to Section X.

5. To the extent that the Claim-Over is based on a contractual indemnity, the obligations under subsection IV.B.4 shall extend solely to a Non-Party Covered Conduct Claim against a pharmacy, clinic, hospital or other purchaser or dispenser of Products, a manufacturer that sold Products, a consultant, and/or a pharmacy benefit manager or other third-party payor. Janssen shall notify the State, to the extent permitted by applicable law, in the event that any of these types of Non-Released Entities asserts a Claim-Over arising out of contractual indemnity against it.

C. *General Release.* In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Subdivision (for itself and its Releasors) will expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Subdivision (for itself and its Releasors) will expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Subdivisions' decision to participate in the Agreement.

D. *Res Judicata.* Nothing in the Agreement shall be deemed to reduce the scope of the res judicata or claim preclusive effect that the settlement memorialized in the Agreement, and/or any Consent Judgment or other judgment entered on the Agreement, gives rise to under applicable law.

- E. *Representation and Warranty.* The signatories hereto on behalf of the State expressly represent and warrant that they will obtain on or before the Effective Date (or have obtained) the authority to settle and release, to the maximum extent of the State's power, all Released Claims of (1) the State; (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts; (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license; and (4) any Participating Subdivisions. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.
- F. *Effectiveness.* The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the Releasers. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the settlement funds or any portion thereof, or by the enactment of future laws, or by any seizure of the settlement funds or any portion thereof.
- G. *Cooperation.* Releasers (i) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (ii) will reasonably cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.
- H. *Non-Released Claims.* Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by private individuals and any claims arising under the Agreement for enforcement of the Agreement.

## V. Monetary Relief and Payments

- A. *Participation.* As consideration for the releases from the State and Participating Subdivisions provided in Section IV above and the Settlement Participation Forms specified in Section VII and Exhibit B below, the State represents and warrants that, subject to the holdback provision in subsection V.D below, it will obtain and deliver (or cause to be obtained and delivered) to Janssen, within one hundred ten (110) days after the Effective Date or such later date as the parties may agree, executed Settlement Participation Forms for all Litigating Subdivisions and all Non-Litigating Subdivisions listed on Exhibit F.
- B. *Conditions to Effectiveness of Agreement.* If the State is able to obtain and deliver executed Settlement Participation Forms for all Litigating Subdivisions listed on Exhibit F to Janssen within one hundred ten (110) days after the Effective Date or such later date as the parties may agree, this Agreement shall become effective. If the State is unable to obtain and

deliver executed Settlement Participation Forms for all Litigating Subdivisions listed on Exhibit F to Janssen within one hundred ten (110) days after the Effective Date or such later date as the parties may agree, this Agreement will have no further effect and all releases and other commitments or obligations contained herein will be void.

- C. *Remediation and Restitution Payments.* Within twenty-one (21) days after the effectiveness of this Agreement as provided for in subsection V.B above, Janssen shall pay into the Settlement Fund a Net Settlement Amount of \$123,340,000, plus fees and costs payable to the Washington Attorney General set forth in subsection IX.A, subject to any holdback under subsection V.D below.
- D. *Holdback for Non-Litigating Subdivisions.* If, by the date this Agreement becomes effective as provided for in subsection V.B, any Non-Litigating Subdivision listed on Exhibit F has not executed a Settlement Participation Form or has not provided Janssen an acknowledgement that the Subdivision has no intention to file a lawsuit asserting Released Claims against Released Entities, then Janssen will hold back \$6,167,000 from the Net Settlement Amount payment described in subsection V.B above, which Janssen will not pay to the Settlement Fund; provided, however, Janssen will pay the \$6,167,000 to the Settlement Fund (1) within thirty (30) days of the date all remaining Non-Litigating Subdivision(s) listed on Exhibit F have executed a Settlement Participation Form and those Forms have been delivered to Janssen; or (2) within (30) days after the two-year anniversary of the Effective Date, if all such Non-Litigating Subdivisions on Exhibit F have not executed Settlement Participation Forms, and no such Non-Litigating Subdivision listed on Exhibit F has filed litigation asserting Released Claims within two years after the Effective Date.

## **VI. Intra-State Allocation**

- A. Janssen's Net Settlement Amount payments to the Settlement Fund shall be allocated as follows:
  - 1. Fifty percent (50%) to the State of Washington.
  - 2. Fifty percent (50%) to the Participating Local Governments ("LG Share").
- B. The LG Share remainder shall be distributed to Participating Local Governments pursuant to the One Washington Memorandum of Understanding Between Washington Municipalities ("One Washington MOU"), which is attached as Exhibit H.
- C. BrownGreer PLC shall be the Settlement Fund Administrator and shall allocate and distribute payments in accordance with the terms of the One Washington MOU and this Agreement, including the detailed description of the Settlement Fund Administrator's duties attached as Exhibit I. As set forth in Exhibit I, the Settlement Fund Administrator's fees and costs shall be paid from the interest on the LG Share portion of the funds in the Settlement Fund between the date of Janssen's payment and the date of disbursement to the Subdivisions. If the aforementioned interest is insufficient to pay the full amount of the Settlement Fund Administrator's fees and costs, the remainder shall be paid by Janssen.

D. Use of Net Settlement Amount.

1. It is the intent of the Parties that the payments disbursed from the Settlement Fund to the State and Participating Subdivisions listed in Exhibit F be for Opioid Remediation, subject to limited exceptions that must be documented in accordance with subsection VI.D.2. In no event may less than 85% of Janssen's Net Settlement Amount payment be spent on Opioid Remediation.
2. While disfavored by the Parties, the State or a Participating Subdivision listed on Exhibit F may use monies from the Settlement Fund for purposes that do not qualify as Opioid Remediation. If, at any time, the State or a Participating Subdivision listed on Exhibit F uses any monies from the Settlement Fund for a purpose that does not qualify as Opioid Remediation, the State or Participating Subdivision shall identify such amounts and report to the Settlement Fund Administrator and Janssen how such funds were used, including if used to pay attorneys' fees other than those provided for in subsection IX.B which shall be identified by BrownGreer, investigation costs, litigation costs, or costs related to the operation and enforcement of this Agreement. It is the intent of the Parties that the reporting under this subsection VI.D.2 shall be available to the public. For the avoidance of doubt, (a) any amounts not identified under this subsection VI.D.2 as used to pay attorneys' fees other than those provided for in subsection IX.A, investigation costs, or litigation costs shall be included in the "Compensatory Restitution Amount" for purposes of subsection XI.B and (b) Participating Subdivisions not listed on Exhibit F that receive monies from the Settlement Fund indirectly may only use such monies from the Settlement Fund for purposes that qualify as Opioid Remediation.

**VII. Participation by Subdivisions**

A Subdivision may become a Participating Subdivision by returning an executed Settlement Participation Form to Janssen and the State and upon prompt dismissal of its legal action pursuant to the terms of this Agreement and the Settlement Participation Form.

**VIII. Filing of Consent Judgment and Dismissals with Prejudice**

No later than 15 days from delivery to Janssen of Settlement Participation Forms for all Subdivisions listed on Exhibit F, the State and Janssen will proceed to file the Consent Judgment. No later than 30 days after receipt of Janssen's payments under Section V, the State and the Participating Subdivisions shall dismiss all actions asserting Released claims with prejudice.

**IX. Attorney Fee and Cost Payments**

- A. *State Outside and Inside Counsel Fees and Costs.* Janssen will pay the Washington Attorney General's Office \$26,160,000.00 within twenty-one (21) days after the date this Agreement becomes effective as provided for in subsection V.B to reimburse the State for State Outside



and Inside Counsel Fees and Costs, which shall be used for any lawful purpose in the discharge of the Attorney General's duties at the sole discretion of the Attorney General.

- B. *Fees and Costs for Participating Litigating Subdivisions' Attorneys.* From the LG Share of the Settlement Fund, the Settlement Fund Administrator shall pay the Participating Litigating Subdivisions' attorneys their fees and costs pursuant to Paragraph D of the One Washington MOU and this Agreement.
- C. An Attorney for a Participating Litigating Subdivision may not receive any payment for attorney fees unless the Attorney represents that s/he has no present intent to represent or participate in the representation of any Subdivision or any Releasor with respect to Released Claims against Released Entities brought after the Effective Date.

#### **X. Enforcement and Dispute Resolution**

- A. The terms of the Agreement and Consent Judgment applicable to the State will be enforceable solely by the State and Janssen.
- B. Janssen consents to the jurisdiction of the Court in which the Consent Judgment is filed, limited to resolution of disputes identified in subsection X.D for resolution in the Court in which the Consent Judgment is filed.
- C. The parties to a dispute shall promptly meet and confer in good faith to resolve any dispute. If the parties cannot resolve the dispute informally, and unless otherwise agreed in writing, they shall follow the remaining provisions of this section to resolve the dispute.
- D. Disputes not resolved informally shall be resolved in the Court that entered the Consent Judgment.

#### **XI. Miscellaneous**

- A. *No Admission.* Janssen does not admit liability or wrongdoing. Neither this Agreement nor the Consent Judgment shall be considered, construed, or represented to be (1) an admission, concession, or evidence of liability or wrongdoing or (2) a waiver or any limitation of any defense otherwise available to Janssen.
- B. *Nature of Payment.* Janssen, the State, and the Participating Subdivisions acknowledge and agree that notwithstanding anything to the contrary in this Agreement, including, but not limited to, the scope of the Released Claims:
  - 1. Janssen has entered into this Agreement to avoid the delay, expense, inconvenience, and uncertainty of further litigation;
  - 2. The State and the Participating Subdivisions sought compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for the Alleged Harms allegedly suffered by the State and Participating Subdivisions;

3. By executing this Agreement the State and the Participating Subdivisions certify that: (a) the Compensatory Restitution Amount is no greater than the amount, in the aggregate, of the Alleged Harms allegedly suffered by the State and Participating Subdivisions; and (b) the portion of the Compensatory Restitution Amount received by the State or Participating Subdivision is no greater than the amount of the Alleged Harms allegedly suffered by the State or Participating Subdivision;
4. The payment of the Compensatory Restitution Amount by Janssen constitutes, and is paid for, compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) for Alleged Harms allegedly caused by Janssen;
5. The Compensatory Restitution Amount is being paid as compensatory restitution (within the meaning of 26 U.S.C. § 162(f)(2)(A)) in order to restore, in whole or in part, the State and Participating Subdivisions to the same position or condition that they would be in had the State and Participating Subdivisions not suffered the Alleged Harms;
6. For the avoidance of doubt: (a) no portion of the Compensatory Restitution Amount represents reimbursement to the State, any Participating Subdivision, or other person or entity for the costs of any investigation or litigation, (b) the entire Compensatory Restitution Amount is properly characterized as described in this subsection XI.B, and (c) no portion of the Compensatory Restitution Amount constitutes disgorgement or is properly characterized as the payment of statutory or other fines, penalties, punitive damages, other punitive assessments, or attorneys' fees; and
7. The State, on behalf of all itself and Participating Subdivisions (the "Form 1098-F Filer") shall complete and file Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the order entering this Agreement becomes binding. On the Form 1098-F, the Form 1098-F Filer shall identify the entire Compensatory Restitution Amount received by the Form 1098-F Filer as remediation/restitution. The Form 1098-F Filer shall also, on or before January 31 of the year following the calendar year in which the order entering this Agreement becomes binding, furnish Copy B of such Form 1098-F (or an acceptable substitute statement) to Janssen.

C. *Tax Reporting and Cooperation.*

1. Upon request by Janssen, the State and Participating Subdivisions agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary for Janssen to establish the statements set forth in subsection XI.B to the satisfaction of their tax advisors, their independent financial auditors, the Internal Revenue Service, or any other governmental authority, including as contemplated by Treasury Regulations Section 1.162-21(b)(3)(ii) and any subsequently proposed or finalized relevant regulations or administrative guidance.
2. Without limiting the generality of this subsection XI.C, the State and each Participating Subdivision shall cooperate in good faith with Janssen with respect to

any tax claim, dispute, investigation, audit, examination, contest, litigation, or other proceeding relating to this Agreement.

3. The State, on behalf of itself and Participating Subdivisions, shall designate one of its officers or employees to act as the “appropriate official” within the meaning of Treasury Regulations Section 1.6050X-1(f)(1)(ii)(B) (the “Appropriate Official”).
  4. For the avoidance of doubt, neither Janssen nor the State and Participating Subdivisions make any warranty or representation to any Settling jurisdiction or Releasor as to the tax consequences of the payment of the Compensatory Restitution Amount (or any portion thereof).
- D. *No Third-Party Beneficiaries.* Except as expressly provided in this Agreement, no portion of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not the State or a Released Entity. The State may not assign or otherwise convey any right to enforce any provision of this Agreement.
- E. *Calculation.* Any figure or percentage referred to in this Agreement shall be carried to seven decimal places.
- F. *Construction.* None of the Parties and no Participating Subdivision shall be considered to be the drafter of this Agreement or of any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement. The headings of the provisions of this Agreement are not binding and are for reference only and do not limit, expand, or otherwise affect the contents or meaning of this Agreement.
- G. *Cooperation.* Each Party and each Participating Subdivision agrees to use its best efforts and to cooperate with the other Parties and Participating Subdivisions to cause this Agreement and the Consent Judgment to become effective, to obtain all necessary approvals, consents and authorizations, if any, and to execute all documents and to take such other action as may be appropriate in connection herewith. Consistent with the foregoing, each Party and each Participating Subdivision agrees that it will not directly or indirectly assist or encourage any challenge to this Agreement or the Consent Judgment by any other person, and will support the integrity and enforcement of the terms of this Agreement and the Consent Judgment.
- H. *Entire Agreement.* This Agreement, its exhibits and any other attachments embodies the entire agreement and understanding between and among the Parties and Participating Subdivisions relating to the subject matter hereof and supersedes (1) all prior agreements and understandings relating to such subject matter, whether written or oral and (2) all purportedly contemporaneous oral agreements and understandings relating to such subject matter.
- I. *Execution.* This Agreement may be executed in counterparts and by different signatories on separate counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Agreement. One or more counterparts of this Agreement may be delivered by facsimile or electronic transmission with the intent that it or they shall

constitute an original counterpart hereof. One or more counterparts of this Agreement may be signed by electronic signature.

- J. *Good Faith and Voluntary Entry.* Each Party warrants and represents that it negotiated the terms of this Agreement in good faith. Each of the Parties and signatories to this Agreement warrants and represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion. The Parties state that no promise of any kind or nature whatsoever (other than the written terms of this Agreement) was made to them to induce them to enter into this Agreement.
- K. *No Prevailing Party.* The Parties each agree that they are not the prevailing party in this action, for purposes of any claim for fees, costs, or expenses as prevailing parties arising under common law or under the terms of any statute, because the Parties have reached a good faith settlement. The Parties each further waive any right to challenge or contest the validity of this Agreement on any ground, including, without limitation, that any term is unconstitutional or is preempted by, or in conflict with, any current or future law.
- L. *Non-Admissibility.* The settlement negotiations resulting in this Agreement have been undertaken by the Parties and by certain representatives of the Participating Subdivisions in good faith and for settlement purposes only, and no evidence of negotiations or discussions underlying this Agreement shall be offered or received in evidence in any action or proceeding for any purpose. This Agreement shall not be offered or received in evidence in any action or proceeding for any purpose other than in an action or proceeding arising under or relating to this Agreement.
- M. *Severability.* If any provision of this Agreement—excepting Section IV (Release), Section V (Monetary Relief and Payments), Section VII (Participation by Local Governments), Section IX (Attorney Fee and Cost Payments), Section XI.B (Nature of Payment), and Section XI.C (Tax Reporting and Cooperation)—were for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- N. *Notices.* All notices or other communications under this Agreement shall be in writing (including but not limited to electronic communications) and shall be given to the recipients indicated below:

For Janssen:

Charles C. Lifland  
Daniel R. Suvor  
O'Melveny & Myers LLP  
400 South Hope Street, 18th Floor Los Angeles, CA 90071  
Phone: (213) 430-6000  
clifland@omm.com  
dsuvor@omm.com

For the Attorney General:

Jeffrey G. Rupert  
Martha Rodríguez López  
Susan Llorens  
Office of the Washington Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
Jeffrey.Rupert@atg.wa.gov  
Martha.RodriguezLopez@atg.wa.gov  
Susan.Llorens@atg.wa.gov

and

Brad Beckworth  
Drew Pate  
Nix Patterson LLP  
8701 Bee Caves Road, Building 1, Suite 500  
Austin, Texas 78746  
bbeckworth@nixlaw.com  
dpate@nixlaw.com

Any Party may change or add the contact information of the persons designated to receive notice on its behalf by notice given (effective upon the giving of such notice) as provided in this subsection.

- O. *No Waiver.* The waiver of any rights conferred hereunder shall be effective only if made by written instrument executed by the waiving Party or Parties. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, nor shall such waiver be deemed to be or construed as a waiver by any other Party.
- P. *Preservation of Privilege.* Nothing contained in this Agreement or any Consent Judgment, and no act required to be performed pursuant to this Agreement or any Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.
- Q. *Successors.* This Agreement shall be binding upon, and inure to the benefit of, Janssen and its respective successors and assigns. Janssen shall not sell the majority of its voting stock or substantially all its assets without obtaining the acquiror's agreement that it will constitute a successor with respect to Janssen's obligations under this Agreement.
- R. *Modification, Amendment, Alteration.* This Agreement may be modified, amended, or altered by a written agreement of the Parties or, in the case of the Consent Judgment, by

court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Janssen may contact the Washington Attorney General to coordinate this process.

S. *Termination.*

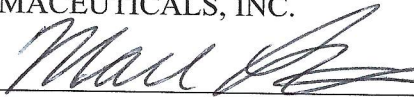
1. Unless otherwise agreed to by Janssen and the State, this Agreement and all of its terms (except subsection XI.L and any other non-admissibility provisions, which shall continue in full force and effect) shall be canceled and terminated with respect to the State, and the Agreement and all orders issued by the Court pursuant to the Agreement shall become null and void and of no effect if one or more of the following conditions applies:
  - a. A Consent Judgment approving this Agreement without modification of any of the Agreement's terms has not been entered as to the State by a court of competent jurisdiction on or before one hundred eighty (180) days after Janssen's payment under Section V; or
  - b. This Agreement or the Consent Judgment has been disapproved by a court of competent jurisdiction to which it was presented for approval and/or entry (or, in the event of an appeal from or review of a decision of such a court to approve this Agreement and the Consent Judgment, by the court hearing such appeal or conducting such review), and the time to appeal from such disapproval has expired, or, in the event of an appeal from such disapproval, the appeal has been dismissed or the disapproval has been affirmed by the court of last resort to which such appeal has been taken and such dismissal or disapproval has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).
2. If this Agreement is terminated with respect to the State and its Participating Subdivisions for whatever reason pursuant to subsection XI.S.1, then:
  - a. An applicable statute of limitation or any similar time requirement (excluding any statute of repose) shall be tolled from the date the State signed this Agreement until the later of the time permitted by applicable law or for one year from the date of such termination, with the effect that Janssen and the State in question shall be in the same position with respect to the statute of limitation as they were at the time the State filed its action; and
  - b. Janssen and the State and its Participating Subdivisions shall jointly move the relevant court of competent jurisdiction for an order reinstating the actions and claims dismissed pursuant to the terms of this Agreement governing dismissal, with the effect that Janssen and the State and its Participating Subdivisions shall be in the same position with respect to those actions and claims as they were at the time the action or claim was stayed or dismissed.

T. *Governing Law.* Except as otherwise provided in the Agreement, this Agreement shall be governed by and interpreted in accordance with the laws of Washington, without regard to the conflict of law rules of Washington.

**Approved:**

Dated: 1-22-2024

JOHNSON & JOHNSON, JOHNSON &  
JOHNSON INNOVATIVE MEDICINE,  
JANSSEN PHARMACEUTICALS, INC.,  
ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC. N/K/A JANSSEN  
PHARMACEUTICALS, INC., AND JANSSEN  
PHARMACEUTICA INC. N/K/A JANSSEN  
PHARMACEUTICALS, INC.

By:   
Marc Larkins  
Corporate Secretary  
Johnson & Johnson

Dated: \_\_\_\_\_

THE STATE OF WASHINGTON

By: \_\_\_\_\_

T. *Governing Law.* Except as otherwise provided in the Agreement, this Agreement shall be governed by and interpreted in accordance with the laws of Washington, without regard to the conflict of law rules of Washington.

**Approved:**

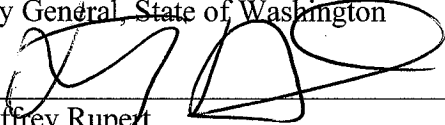
Dated: \_\_\_\_\_

JOHNSON & JOHNSON, JOHNSON &  
JOHNSON INNOVATIVE MEDICINE,  
JANSSEN PHARMACEUTICALS, INC.,  
ORTHO-MCNEIL-JANSSEN  
PHARMACEUTICALS, INC. N/K/A  
JANSSEN PHARMACEUTICALS, INC., AND  
JANSSEN PHARMACEUTICA INC. N/K/A  
JANSSEN PHARMACEUTICALS, INC.

By: \_\_\_\_\_  
Marc Larkins  
Corporate Secretary  
Johnson & Johnson

Dated: 1-22-2024

ROBERT W. FERGUSON  
Attorney General, State of Washington

By:  \_\_\_\_\_  
Jeffrey Rupert  
Division Chief  
Office of the Attorney General



## **EXHIBIT A**

### **Janssen Predecessors and Former Affiliates**

The following includes a non-exclusive list of Janssen's predecessors and former affiliates:

1. Janssen Pharmaceutica, Inc.
2. Janssen Pharmaceutica N.V.
3. Janssen-Cilag Manufacturing, LLC
4. Janssen Global Services, LLC
5. Janssen Ortho LLC
6. Janssen Products, LP
7. Janssen Research & Development, LLC
8. Janssen Supply Group, LLC
9. Janssen Scientific Affairs, LLC
10. JOM Pharmaceutical Services, Inc.
11. OMJ Pharmaceuticals, Inc.
12. Ortho-McNeil Finance Co.
13. Ortho-McNeil Pharmaceutical
14. Ortho-McNeil-Janssen Pharmaceuticals
15. Ortho-McNeil Pharmaceutical Services Division
16. Ortho-McNeil Neurologic
17. Patriot Pharmaceuticals, LLC
18. Pricara, Ortho-McNeil-Janssen Pharmaceuticals
19. Alza Corp.
20. Alza Development Corp.
21. Janssen Supply Chain, Alza Corp.
22. Noramco, Inc.
23. Tasmanian Alkaloids PTY LTD.

**EXHIBIT B**

**Settlement Participation Form**

Governmental Entity:	State:
Authorized Official:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Janssen Washington State-Wide Opioid Settlement Agreement dated January 22, 2024 (“Janssen Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Janssen Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Janssen Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Janssen Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 30 days of the filing of the Consent Judgment, secure the dismissal with prejudice of any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Janssen Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Janssen Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Janssen Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Janssen Settlement.
7. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Janssen Settlement, including but not limited to all provisions of Section IV (Release), and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity

elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Janssen Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Janssen Settlement shall be a complete bar to any Released Claim.

8. In connection with the releases provided for in the Janssen Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Janssen Settlement.

9. This Settlement Participation Form shall be deemed effective as of the Effective Date of the Janssen Settlement.
10. Nothing herein is intended to modify in any way the terms of the Janssen Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Janssen Settlement in any respect, the Janssen Settlement controls.

I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT C

### Injunctive Relief

#### A. **Definitions Specific to this Exhibit**

1. “*Cancer-Related Pain Care*” means care that provides relief from pain resulting from a patient’s active cancer or cancer treatment as distinguished from treatment provided during remission.
2. “*Janssen*” means Johnson & Johnson, Johnson & Johnson Innovative Medicine, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “Janssen”), including all of their subsidiaries, predecessors, successors, current officers, directors, employees, representatives, agents, affiliates, parents, and assigns acting on behalf of Janssen in the United States.
3. “*End-of-Life Care*” means care for persons with a terminal illness or at high risk for dying in the near future in hospice care, hospitals, long-term care settings, or at home.
4. “*Health Care Provider*” means any U.S.-based physician or other health care practitioner who is licensed to provide health care services or to prescribe pharmaceutical products and any medical facility, practice, hospital, clinic, or pharmacy.
5. “*In-Kind Support*” means payment or assistance in the form of goods, commodities, services, or anything else of value.
6. “*Lobby*” and “*Lobbying*” shall have the same meaning as “lobbying activities” and “lobbying contacts” under the federal lobbying disclosure act, 2 U.S.C. § 1602 *et seq.*, and any analogous state or local provisions governing the person or entity being lobbied. As used in this document, “Lobby” and “Lobbying” include Lobbying directly or indirectly, through grantees or Third Parties.
7. “*Opioid(s)*” means all naturally occurring, synthetic, or semisynthetic substances that interact with opioid receptors and act like opium. For the avoidance of doubt, the term “Opioid(s)” does not include Imodium.
8. “*Opioid Product(s)*” means all current and future medications containing Opioids approved by the U.S. Food & Drug Administration (FDA) and listed by the DEA as Schedule II, III, or IV drugs pursuant to the federal Controlled Substances Act (including but not limited to buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, and tramadol). The term “Opioid Products(s)” shall not include (i) methadone and other substances when used exclusively to treat opioid abuse, addiction, or overdose; or (ii) raw materials, immediate precursors, and/or active

pharmaceutical ingredients (APIs) used in the manufacture or study of Opioids or Opioid Products, but only when such materials, immediate precursors, and/or APIs are sold or marketed exclusively to DEA-licensed manufacturers or DEA-licensed researchers.

9. “*OUD*” means opioid use disorder defined in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM–5)*, as updated or amended.
10. “*Product(s) for the Treatment of Opioid-Induced Side Effects*” means any over-the-counter or prescription remedy used to treat those side effects identified on the FDA label for any Opioid Product, except that, for purposes of the Agreement, Product(s) for the Treatment of Opioid-Induced Side Effects shall not include products that treat OUD or respiratory depression.
11. “*Promote*,” “*Promoting*,” “*Promotion*,” and “*Promotional*” means dissemination of information or other practices intended or reasonably anticipated to increase sales, prescriptions, or that attempts to influence prescribing practices in the United States. These terms shall not include the provision of scientific information or data in response to unsolicited requests from Health Care Providers or payors as allowed in subsection C.2.e-h.
12. “*Third Party(ies)*” means any person or entity other than Janssen or a government entity.
13. “*Treatment of Pain*” means the provision of therapeutic modalities to alleviate or reduce pain.
14. “*Unbranded Information*” means any information that does not identify a specific branded or generic product.

## **B. Ban on Selling and Manufacturing Opioids**

1. Janssen shall not manufacture or sell any Opioids or Opioid Products for distribution in the State of Washington. Janssen represents that prior to the Effective Date, it delisted all of its Opioid Products and no longer ships any of them to or within the United States.

## **C. Ban on Promotion**

1. Janssen shall not engage in Promotion of Opioids or Opioid Products including but not limited to, by:
  - a. Employing or contracting with sales representatives or other persons to Promote Opioids or Opioid Products to Health Care Providers or patients, or to persons involved in determining the Opioid Products included in formularies;

- b. Using speakers, key opinion leaders, thought leaders, lecturers, and/or speaking events for Promotion of Opioids or Opioid Products;
  - c. Sponsoring, or otherwise providing financial support or In-Kind Support to medical education programs for Promotion of Opioids or Opioid Products;
  - d. Creating, sponsoring, operating, controlling, or otherwise providing financial support or In-Kind Support to any website, network, and/or social or other media account for the Promotion of Opioids or Opioid Products;
  - e. Creating, sponsoring, distributing, or otherwise providing financial support or In-Kind Support for materials Promoting Opioids or Opioid Products, including but not limited to brochures, newsletters, pamphlets, journals, books, and guides;
  - f. Creating, sponsoring, or otherwise providing financial support or In-Kind Support for advertisements that Promote Opioids or Opioid Products, including but not limited to internet advertisements or similar content, and providing hyperlinks or otherwise directing internet traffic to advertisements; and
  - g. Engaging in internet search engine optimization or other techniques designed to Promote Opioids or Opioid Products by improving rankings or making content appear among the top results in an internet search or otherwise be more visible or more accessible to the public on the internet.
2. Notwithstanding subsection C.1 directly above, Janssen may:
- a. Maintain a corporate website;
  - b. Maintain a website for any Opioid Product that contains principally the following content: the FDA-approved package insert, medication guide, and labeling, and a statement directing patients or caregivers to speak with a licensed Health Care Provider;
  - c. Provide information or support the provision of information as expressly required by law or any state or federal government agency with jurisdiction in Washington;
  - d. Provide the following by mail, electronic mail, on or through Janssen's corporate or product websites or through other electronic or digital methods: FDA-approved package insert, medication guide, approved labeling for Opioid Products, or other prescribing information for Opioid Products that are published by a state or federal government agency with jurisdiction in Washington;
  - e. Provide scientific and/or medical information in response to an unsolicited request by a Health Care Provider consistent with the standards set forth in

the FDA's Draft Guidance for Industry, *Responding to Unsolicited Requests for Off-Label Information About Prescription Drugs and Medical Devices* (Dec. 2011) as updated or amended by the FDA, and Guidance for Industry, *Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices* (Jan. 2009) as updated or amended by the FDA;

- f. Provide a response to any unsolicited question or request from a patient or caregiver, directing the patient or caregiver to the FDA-approved labeling or to speak with a licensed Health Care Provider without describing the safety or effectiveness of Opioids or any Opioid Product or naming any specific provider or healthcare institution; or directing the patient or caregiver to speak with their insurance carrier regarding coverage of an Opioid Product;
  - g. Provide Health Care Economic Information, as defined at 21 U.S.C. § 352(a), to a payor, formulary committee, or other similar entity with knowledge and expertise in the area of health care economic analysis consistent with standards set forth in the FDA's Draft Questions and Answers Guidance for Industry and Review Staff, *Drug and Device Manufacturer Communications With Payors, Formulary Committees, and Similar Entities* (Jan. 2018), as updated or amended by the FDA;
  - h. Provide information relating solely to the pricing of any Opioid Product;
  - i. Sponsor or provide financial support or In-Kind Support for an accredited or approved continuing medical education program required by either an FDA-approved Risk Evaluation and Mitigation Strategy (REMS) program or other federal or state law or regulation applicable in Washington through an independent Third Party, which shall be responsible for the program's content without the participation of Janssen; and
  - j. Provide information in connection with patient support information on co-pay assistance and managing pain in End-of-Life Care and/or Cancer-Related Pain Care relating to the use of Opioids for managing such pain, as long as the information identifies Janssen as the source of the information.
3. Janssen shall not engage in the Promotion of Products for the Treatment of Opioid-induced Side Effects, including but not limited to:
- a. Employing or contracting with sales representatives or other persons to Promote Products for the Treatment of Opioid-induced Side Effects to Health Care Providers or patients;
  - b. Using speakers, key opinion leaders, thought leaders, lecturers, and/or speaking events to Promote Products for the Treatment of Opioid induced Side Effects;



- c. Sponsoring, or otherwise providing financial support or In-Kind Support to medical education programs that Promote Products for the Treatment of Opioid-induced Side Effects;
  - d. Creating, sponsoring, or otherwise providing financial support or In-Kind Support for advertisements that Promote Products for the Treatment of Opioid-induced Side Effects, including but not limited to internet advertisements or similar content, and providing hyperlinks or otherwise directing internet traffic to advertisements.
- 4. Notwithstanding subsection C, Janssen may Promote Products for the Treatment of Opioid-induced Side Effects so long as such Promotion does not associate the product with Opioids or Opioid Products.
- 5. Treatment of Pain
  - a. Janssen shall not, either through Janssen or through Third Parties, engage in any conduct that Promotes the Treatment of Pain, except that Janssen may continue to Promote the Treatment of Pain with branded non-Opioids, including Tylenol and Motrin.
  - b. Janssen shall not, either through Janssen or through Third Parties, engage in any conduct that Promotes the concept that pain is undertreated, except in connection with Promoting the use of branded non-Opioids, including Tylenol and Motrin, for the Treatment of Pain.
  - c. Janssen shall not disseminate Unbranded Information, including Unbranded Information about a medical condition or disease state, that contains links to branded information about Opioid Products or that otherwise Promotes Opioids or Opioid Products.
- 6. Notwithstanding subsection C.5 above:
  - a. Janssen may Promote or provide educational information about the Treatment of Pain with non-Opioids or therapies such as acetaminophen or non-steroidal anti-inflammatory drugs (NSAIDs), including Promoting or providing educational information about such non-Opioids or therapies as alternatives to Opioid use, or as part of multimodal therapy which may include Opioid use, so long as such non-Opioid Promotional or educational information does not Promote Opioids or Opioid Products.
  - b. Janssen may provide educational information about the Treatment of Pain related to medical procedures involving devices manufactured or sold by Janssen, including educational information about Opioids or Opioid Products, so long as such information does not Promote Opioids or Opioid Products.

7. The Promotional conduct prohibited in subsection C is not prohibited insofar as it relates to the Promotion of Opioids or Opioid Products for Cancer-Related Pain Care or End-of-Life Care only, and so long as Janssen is identified as the sponsor or source of such Promotional conduct.

**D. No Financial Reward or Discipline Based on Volume of Opioid Sales**

1. Janssen shall not provide financial incentives to its sales and marketing employees or discipline its sales and marketing employees based upon sales volume or sales quotas for Opioid Products;
2. Janssen shall not offer or pay any remuneration (including any kickback, bribe, or rebate) directly or indirectly, to any person in return for the prescribing, sale, use, or distribution of an Opioid Product; and
3. Janssen's compensation policies and procedures shall ensure compliance with the Agreement.

**E. Ban on Funding/Grants to Third Parties**

1. Janssen shall not directly or indirectly provide financial support or In-Kind Support to any Third Party that primarily engages in conduct that Promotes Opioids, Opioid Products, or Products for the Treatment of Opioid-induced Side Effects (subject to subsections C.2, 4, and 6), including educational programs or websites that Promote Opioids, Opioid Products, or products for the treatment of Opioid-induced side effects, excluding financial support otherwise required by the Agreement, a court order, or by a federal or state agency.
2. Janssen shall not create, sponsor, provide financial support or In-Kind Support to, or otherwise operate or control any medical society or patient advocacy group that primarily engages in conduct that Promotes Opioids, Opioid Products, or products for the treatment of Opioid-induced side effects.
3. Janssen shall not provide links to any Third Party website or materials or otherwise distribute materials created by a Third Party for the purpose of Promoting Opioids, Opioid Products, or products intended for the treatment of Opioid-induced side effects (subject to subsections C.2, 4, and 6).
4. Janssen shall not use, assist, or employ any Third Party to engage in any activity that Janssen itself would be prohibited from engaging in pursuant to the Agreement. To the extent Janssen supports trade groups engaged in Lobbying, Janssen shall stipulate that such support not be used for any purpose prohibited by the Agreement.
5. Janssen shall not enter into any contract or agreement with any person or entity or otherwise attempt to influence any person or entity in such a manner that has the purpose or foreseeable effect of limiting the dissemination of information regarding the risks and side effects of using Opioids.

6. Janssen shall not compensate or support Health Care Providers or organizations to advocate for formulary access or treatment guideline changes for the purpose of increasing access to any Opioid Product through third-party payors, i.e., any entity, other than an individual, that pays or reimburses for the dispensing of prescription medicines, including but not limited to managed care organizations and pharmacy benefit managers.
7. No officer or management-level employee of Janssen may concurrently serve as a director, board member, employee, agent, or officer of any entity that primarily engages in conduct that Promotes Opioids, Opioid Products, or products for the treatment of Opioid-induced side effects. For the avoidance of doubt, nothing in this provision shall preclude an officer or management-level employee of Janssen from concurrently serving on the board of a hospital.
8. Janssen shall play no role in appointing persons to the board, or hiring persons to the staff, of any entity that primarily engages in conduct that Promotes Opioids, Opioid Products, or products for the treatment of Opioid-induced side effects. For avoidance of doubt, nothing in this paragraph shall prohibit Janssen from fully and accurately responding to unsolicited requests or inquiries about a person's fitness to serve as an employee or Board member at any such entity.

**F. Lobbying Restrictions**

1. Janssen shall not Lobby for the enactment of any federal, state, or local legislative or regulatory provision that:
  - a. Encourages or requires Health Care Providers to prescribe Opioids or sanctions Health Care Providers for failing to prescribe Opioids or failing to treat pain with Opioids;
  - b. Has the effect of limiting access to any non-Opioid alternative pain treatments; or
  - c. Pertains to the classification of any Opioid or Opioid Product as a scheduled drug under the Controlled Substances Act.
2. Janssen shall not Lobby against the enactment of any federal, state or local legislative or regulatory provision that supports:
  - a. The use of non-pharmacologic therapy and/or non-Opioid pharmacologic therapy to treat chronic pain over or instead of Opioid use, including but not limited to third party payment or reimbursement for such therapies;
  - b. The use and/or prescription of immediate release Opioids instead of extended release Opioids when Opioid use is initiated, including but not limited to third party reimbursement or payment for such prescriptions;

- c. The prescribing of the lowest effective dose of an Opioid, including but not limited to third party reimbursement or payment for such prescription;
  - d. The limitation of initial prescriptions of Opioids to treat acute pain;
  - e. The prescribing and other means of distribution of naloxone to minimize the risk of overdose, including but not limited to third party reimbursement or payment for naloxone;
  - f. The use of urine testing before starting Opioid use and annual urine testing when Opioids are prescribed, including but not limited to third party reimbursement or payment for such testing;
  - g. Evidence-based treatment (such as using medication-assisted treatment with buprenorphine or methadone in combination with behavioral therapies) for OUD, including but not limited to third party reimbursement or payment for such treatment; or
  - h. The implementation or use of Opioid drug disposal systems.
3. Janssen shall not Lobby against the enactment of any federal, state or local legislative or regulatory provision expanding the operation or use of PDMPs, including but not limited to provisions requiring Health Care Providers to review PDMPs when Opioid use is initiated and with every prescription thereafter.
4. Notwithstanding the foregoing restrictions in subsections F.1-3, the following conduct is not restricted:
- a. Challenging the enforcement of or suing for declaratory or injunctive relief with respect to legislation, rules, or regulations referred to in subsection F.1;
  - b. Communications made by Janssen in response to a statute, rule, regulation, or order requiring such communication;
  - c. Communications by a Janssen representative appearing before a federal or state legislative or administrative body, committee, or subcommittee as result of a mandatory order or subpoena commanding that person to testify;
  - d. Responding, in a manner consistent with the Agreement, to an unsolicited request for the input on the passage of legislation or the promulgation of any rule or regulation when such request is submitted in writing specifically to Janssen from a government entity directly involved in the passage of that legislation or promulgation of that rule or regulation; or
  - e. Lobbying for or against provisions of legislation or regulation that address other subjects in addition to those identified in subsections F.1-3, so long as the company does not support specific portions of such legislation or

regulation covered by subsection F.1 or oppose specific portions of such legislation or regulation covered by subsections F.2-3.

5. Janssen shall provide notice of the prohibitions in subsection F to all employees engaged in Lobbying; shall incorporate the prohibitions in subsection F into trainings provided to Janssen employees engaged in Lobbying; and certify to the State of Washington that it has provided such notice and trainings to Janssen employees engaged in Lobbying.

#### **G. Ban on Prescription Savings Programs**

1. Janssen shall not directly or indirectly offer any discounts, coupons, rebates, or other methods which have the effect of reducing or eliminating a patient's co-payments or the cost of prescriptions (e.g., free trial prescriptions) for any Opioid Product.
2. Janssen shall not directly or indirectly provide financial support to any Third Party for discounts, coupons, rebates, or other methods which have the effect of reducing or eliminating a patient's co-payments or the cost of prescriptions (e.g., free trial prescriptions) for any Opioid Product.
3. Janssen shall not directly or indirectly assist patients, Health Care Providers, or pharmacies with the claims and/or prior authorization process required for third-party payors to approve payment for any Opioid Product.

#### **H. General Terms**

1. Janssen shall not make any written or oral statement about Opioids or any Opioid Product that is unfair, false, misleading, or deceptive as defined under the law of Washington. For purposes of this paragraph, "Opioid Product" shall also include methadone and other substances when used exclusively to treat opioid abuse, addiction, or overdose.
2. Janssen shall not represent that Opioids or any Opioid Product(s) have approvals, characteristics, uses, benefits, or qualities that they do not have. For purposes of this paragraph, "Opioid Product" shall also include methadone and other substances when used exclusively to treat opioid abuse, addiction, or overdose.
3. For the avoidance of doubt, the Agreement shall not be construed or used as a waiver or limitation of any defense otherwise available to Janssen in any action, and nothing in the Agreement is intended to or shall be construed to prohibit Janssen in any way whatsoever from taking legal or factual positions with regard to any Opioid Product(s) in defense of litigation or other legal proceedings.
4. Upon the request of the State of Washington Attorney General, Janssen shall provide the Washington Attorney General with copies of the following, within thirty (30) days of the request:

- a. Any litigation or civil or criminal law enforcement subpoenas or Civil Investigative Demands relating to Janssen’s Opioid Product(s); and
  - b. Warning or untitled letters issued by the FDA regarding Janssen’s Opioid Product(s) and all correspondence between Janssen and the FDA related to such letters.
5. The Agreement applies to conduct that results in the Promotion of Opioids or Opioid Products, or the Treatment of Pain inside the United States.
6. Janssen will enter into the Agreement solely for the purpose of settlement, and nothing contained therein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Janssen expressly denies. No part of the Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Janssen. The Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose.
7. Nothing in the Agreement shall be construed to limit or impair Janssen’s ability to:
- a. Communicate its positions and respond to media inquiries concerning litigation, investigations, reports or other documents or proceedings relating to Janssen or its Opioid Products.
  - b. Maintain a website explaining its litigation positions and responding to allegations concerning its Opioid Products, including the website, [www.factsaboutourprescriptionopioids.com](http://www.factsaboutourprescriptionopioids.com).

**I. Compliance with All State Laws and Regulations Relating to the Sale, Promotion, and Distribution of Any Opioid Product**

1. Janssen shall comply with all applicable state laws and regulations that relate to the sale, promotion, distribution, and disposal of Opioids or Opioid Products, including conduct permitted by subsection B.2, provided that nothing in this paragraph requires Janssen to violate federal law or regulations, including but not limited to:
- a. Washington’s Uniform Controlled Substances Act, including all guidance issued by the applicable state regulator(s);
  - b. Washington’s Consumer Protection Act; and
  - c. Washington State laws, regulations, and guidelines related to opioid prescribing, distribution, and disposal.

**J. Clinical Data Transparency**

1. Janssen agrees to continue sharing clinical trial data under the Yale University Open Data Access (YODA) Project to allow researchers qualified under the program to access the company's proprietary data under the terms of the project.
2. In the event Yale University discontinues or withdraws from the YODA Project agreement with Janssen, Janssen shall make its clinical research data regarding Opioids and Opioid Products, and any additional clinical research data that Janssen sponsors and controls regarding Opioids and Opioid Products, available to an independent entity that is the functional equivalent of the YODA Project under functionally equivalent terms.

#### **K. Enforcement**

1. For the purposes of resolving disputes with respect to compliance with this Exhibit, should the State of Washington have a reasonable basis to believe that Janssen has engaged in a practice that violates a provision of this Exhibit subsequent to the Effective Date, the State of Washington shall notify Janssen in writing of the specific objection, identify with particularity the provision of the Agreement that the practice appears to violate, and give Janssen thirty (30) days to respond in writing to the notification; provided, however, that the State of Washington may take any action if the State believes that, because of the specific practice, a threat to health or safety of the public requires immediate action.
2. Upon receipt of written notice, Janssen shall provide a good faith written response to the State's notification, containing either a statement explaining why Janssen believes it is in compliance with the provisions of this Exhibit of the Agreement, or a detailed explanation of how the alleged violation occurred and a statement explaining how Janssen intends to remedy the alleged breach. Nothing in this section shall be interpreted to limit the State of Washington's civil investigative demand ("CID") or investigative subpoena authority, to the extent such authority exists under applicable law, and Janssen reserves all of its rights in responding to a CID or investigative subpoena issued pursuant to such authority.
3. The State of Washington may agree, in writing, to provide Janssen with additional time beyond thirty (30) days to respond to a notice provided under subsection L.1, above, without Court approval.
4. Upon giving Janssen thirty (30) days to respond to the notification described above, the State shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work product records and documents in possession, custody, or control of Janssen that relate to Janssen's compliance with each provision of the Agreement pursuant to the State of Washington's CID or investigative subpoena authority.
5. The State of Washington may assert any claim that Janssen has violated the Agreement in a separate civil action to enforce compliance with the Agreement, or may seek any other relief afforded by law for violations of the Agreement, but only

after providing Janssen an opportunity to respond to the notification described in subsection L.1, above; provided, however, the State of Washington may take any action if the State believes that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

6. In the event of a conflict between the requirements of the Agreement and any other law, regulation, or requirement such that Janssen cannot comply with the law without violating the terms of the Agreement or being subject to adverse action, including fines and penalties, Janssen shall document such conflicts and notify the State of the extent to which it will comply with the Agreement in order to eliminate the conflict within thirty (30) days of Janssen's discovery of the conflict. Janssen shall comply with the terms of the Agreement to the fullest extent possible without violating the law.
7. Janssen or the State may request that Janssen and the State meet and confer regarding the resolution of an actual or potential conflict between the Agreement and any other law, or between interpretations of the Agreement by different courts. Nothing herein is intended to modify or extend the jurisdiction of any single judicial authority as provided by law.

**L. Compliance Duration**

1. Subsections B-J of this Exhibit shall be effective for 8 years from the Effective Date.
2. Nothing in this Agreement shall relieve Janssen of its independent obligation to fully comply with the laws of the State of Washington after expiration of the 8-year period specified in this subsection.

**M. Compliance Deadlines**

1. Janssen must be in full compliance with the provisions included this Agreement by the Effective Date. Nothing herein shall be construed as permitting Janssen to avoid existing legal obligations.



## **EXHIBIT D**

### **Non-Released Entities**

The following includes a non-exclusive list of non-Released Entities:

1. Actavis LLC
2. Actavis Pharma, Inc.
3. Allergan PLC
4. Allergan Finance, LLC
5. AmerisourceBergen Corporation
6. AmerisourceBergen Drug Corporation
7. Anda, Inc.
8. Cardinal Health, Inc.
9. Cephalon, Inc.
10. Collegium Pharmaceuticals
11. CVS Health Corp.
12. CVS Pharmacy, Inc.
13. Endo Pharmaceuticals Inc.
14. Endo Health Solutions Inc.
15. Mallinckrodt LLC
16. McKesson Corporation
17. McKinsey & Company Inc.
18. Par Pharmaceutical, Inc.
19. Par Pharmaceutical Companies, Inc.
20. Purdue Pharma L.P.
21. Purdue Pharma Inc.
22. SpecGx LLC
23. Teva Pharmaceuticals USA, Inc.
24. The Purdue Frederick Company
25. Walgreen Co.
26. Walgreens Boots Alliance, Inc.
27. Walmart Inc.
28. Watson Laboratories, Inc.

**EXHIBIT E**

**Template Consent Judgment**

[CASE]

[COURT]

C.A. NO.:

**FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE**

The State of Washington (“*State*”) and Johnson & Johnson, Johnson & Johnson Innovative Medicine, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “*Janssen*” or “*Defendants*”) (together with the State, the “*Parties*,” and each a “*Party*”) have entered into a consensual resolution of the above-captioned litigation (the “*Action*”) pursuant to a settlement agreement entitled Janssen Washington State-Wide Opioid Settlement Agreement, dated as of January 22, 2024 (the “*Agreement*”), a copy of which is attached hereto as Exhibit A. The entry of this Final Consent Judgment (the “*Judgment*”) by the Court is made without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

**RECITALS:**

1. Each Party warrants and represents that it engaged in arm’s-length negotiations in good faith. In hereby executing the Agreement, the Parties intend to effect a good-faith settlement.
2. The State has determined that the Agreement is in the public interest.
3. Janssen denies the allegations against it and that it has any liability whatsoever to the State, its Subdivisions, and/or (a) any of the State’s or Subdivisions’ departments, agencies, divisions,

boards, commissions, districts, instrumentalities of any kind and attorneys, including its Attorney General and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, and other Subdivisions, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public.

4. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely will require protracted litigation.

5. The Parties agree to the entry of the injunctive relief terms pursuant to Exhibit C of the Agreement.

6. Therefore, without any admission of liability or wrongdoing by Janssen or any other Released Entities (as defined in the Agreement), the Parties now mutually consent to the entry of this Judgment and agree to dismissal of the claims with prejudice pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

In consideration of the mutual promises, terms, and conditions set forth in the Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Defendants and the State, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Judgment.

2. The Parties have entered into a full and final settlement of all Released Claims of Releasers against Janssen (including but not limited to the State) and the Released Entities pursuant to the terms and conditions set forth in the Agreement.

3. The “Definitions” set forth in Section II of the Agreement are incorporated by reference into this Judgment. Unless otherwise defined herein, capitalized terms in this Judgment shall have the same meaning given to them in the Agreement.

4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Judgment. This Judgment shall not be construed or used as a waiver of any jurisdictional defense Janssen or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreement was entered into in good faith.

6. The Court finds that entry of this Judgment is in the public interest and reflects a negotiated settlement agreed to by the Parties. The Action is dismissed with prejudice, subject to a retention of jurisdiction by the Court as provided herein and in the Agreement.

7. By this Judgment, the Agreement is hereby approved by the Court, and the Court hereby adopts the Agreement’s terms as its own determination of this matter and the Parties’ respective rights and obligations.

8. The Court shall have authority to resolve disputes identified in Section X of the Agreement, governed by the rules and procedures of the Court.

9. [By this Judgment, *[the State-Subdivision Agreement]* *[name of state’s agreement]*], a copy of which is attached hereto as Exhibit [X] and as incorporated into the Agreement, is hereby approved by the Court as the means by which relevant funds paid pursuant to the Agreement will be divided within the State, subject to the full acceptance by any Subdivision receiving such funds of the

terms of the Agreement, including the releases provided therein. [Add any state-specific language necessary for the effectiveness of the state-subdivision agreement.]]

10. The Parties have satisfied all conditions to effectiveness of the Agreement.

11. Release. The Parties acknowledge that the Release in Section IV of the Agreement, which is incorporated by reference herein, is an integral part of this Judgment. Pursuant to the Agreement and the Release and without limitation and to the maximum extent of the power of the State's Attorney General, Janssen and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the State and its Participating Subdivisions and any of their departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including the State's Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing, and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Subdivisions in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or any Subdivision in the State, whether or not any of them participate in the Agreement. Pursuant to the Agreement and the Release and to the maximum extent of the State's power, Janssen and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (1) the State, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, (3) any of the State's past and present executive departments, agencies,

divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution license, and (4) any Participating Subdivision. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. The Parties acknowledge, and the Court finds, that those provisions are an integral part of the Agreement and this Judgment, and shall govern the rights and obligations of all participants in the settlement. Any modification of those rights and obligations may be made based only on a writing signed by all affected parties and approved by the Court.

12. Release of Unknown Claims. The State expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

13. The State may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State expressly waived and fully, finally, and forever settled, released and discharged, through the Agreement and Release, any and all Released Claims that may exist as of the Effective Date but which the State does not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would have materially affected the State's decision to enter into the Agreement.

14. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreement.

15. No Admission of Liability. Defendants are consenting to this Judgment solely for the purpose of effectuating the Agreement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendants expressly deny. No Defendant or Released Entity admits that it caused or contributed to any public nuisance, and no Defendant or Released Entity admits any wrongdoing that was or could have been alleged by the State, its Participating Subdivisions, or any other person or entity. No part of this Judgment shall constitute evidence of any liability, fault, or wrongdoing by Defendants or any other Released Entity. The Parties acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu thereof.

16. No Waiver. This Judgment is entered based on the Agreement without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Judgment shall not be construed or used as a waiver of Janssen's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims or suits relating to the subject matter or terms of this Judgment. Notwithstanding the foregoing, the State may enforce the terms of this Judgment as expressly provided in the Agreement.

17. No Private Right of Action. This Judgment is not intended for use by any third party for any purpose, including submission to any court for any purpose, except pursuant to Section X of the Agreement. Except as expressly provided in the Agreement, no portion of the Agreement or this Judgment shall provide any rights to, or be enforceable by, any person or entity that is not the State or Released Entity. The State shall allow Participating Subdivisions in the State to notify it of any

perceived violations of the Agreement or this Judgment. The State may not assign or otherwise convey any right to enforce any provision of the Agreement.

18. Admissibility. It is the intent of the Parties that this Judgment not be admissible in other cases against Defendants or binding on Defendants in any respect other than in connection with the enforcement of this Judgment or the Agreement. For the avoidance of doubt, nothing herein shall prohibit Defendants from entering this Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Defendants' right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Judgment.

19. Preservation of Privilege. Nothing contained in the Agreement or this Judgment, and no act required to be performed pursuant to the Agreement or this Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

20. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm's-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party, except as expressly provided for in the Agreement.

21. Retention of Jurisdiction. The Court shall retain jurisdiction of the Parties for the limited purpose of the resolution of disputes identified in Section X of the Agreement. The Court shall have jurisdiction over Participating Subdivisions in the State for the limited purposes identified in the Agreement.



22. Successors and Assigns. This Judgment is binding on Defendants' successors and assigns.

23. Modification. This Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the State and Defendants, or as provided for in Section XI.R of the Agreement.

So ORDERED this \_\_\_\_\_ day of [[\*]], 2024.

Enter:

By Order:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED, AGREED TO AND PRESENTED BY:**

[[SIGNATURE BLOCKS]]

**EXHIBIT F**

**Litigating Subdivisions:**

1. Anacortes City
2. Bainbridge Island City
3. Burlington City
4. Chelan County
5. Clallam County
6. Clark County
7. Everett City
8. Franklin County
9. Island County
10. Jefferson County
11. Kent City
12. King County
13. Kirkland City
14. Kitsap County
15. Kittitas County
16. La Conner School District
17. Lakewood City
18. Lewis County
19. Lincoln County
20. Mount Vernon City
21. Mount Vernon School District
22. Olympia City
23. Pierce County
24. San Juan County
25. Seattle City
26. Sedro-Woolley City
27. Sedro-Woolley School District
28. Skagit County
29. Snohomish County
30. Spokane City
31. Spokane County
32. Tacoma City
33. Thurston County
34. Vancouver City
35. Walla Walla County
36. Whatcom County
37. Whitman County

**Non-litigating Subdivisions:**

1. Aberdeen City
2. Adams County
3. Arlington City
4. Asotin County
5. Auburn City
6. Battle Ground City
7. Bellevue City
8. Bellingham City
9. Benton County
10. Bonney Lake City
11. Bothell City
12. Bremerton City
13. Burien City
14. Camas City
15. Centralia City
16. Cheney City
17. Covington City
18. Cowlitz County
19. Des Moines City
20. Douglas County
21. East Wenatchee City
22. Edgewood City
23. Edmonds City
24. Ellensburg City
25. Enumclaw City
26. Federal Way City
27. Ferndale City
28. Fife City
29. Gig Harbor City
30. Grandview City
31. Grant County
32. Grays Harbor County
33. Issaquah City
34. Kelso City
35. Kenmore City
36. Kennewick City
37. Klickitat County
38. Lacey City
39. Lake Forest Park City
40. Lake Stevens City
41. Liberty Lake City
42. Longview City
43. Lynden City
44. Lynnwood City

45. Maple Valley City
46. Marysville City
47. Mason County
48. Mercer Island City
49. Mill Creek City
50. Monroe City
51. Moses Lake City
52. Mountlake Terrace City
53. Mukilteo City
54. Newcastle City
55. Oak Harbor City
56. Okanogan County
57. Pacific County
58. Pasco City
59. Pend Oreille County
60. Port Angeles City
61. Port Orchard City
62. Poulsbo City
63. Pullman City
64. Puyallup City
65. Redmond City
66. Renton City
67. Richland City
68. Sammamish City
69. Seatac City
70. Shelton City
71. Shoreline City
72. Skamania County
73. Snohomish City
74. Snoqualmie City
75. Spokane Valley City
76. Stevens County
77. Sumner City
78. Sunnyside City
79. Tukwila City
80. Tumwater City
81. University Place City
82. Walla Walla City
83. Washougal City
84. Wenatchee City
85. West Richland City
86. Woodinville City
87. Yakima City
88. Yakima County

## EXHIBIT G

### List of Johnson & Johnson Subsidiaries

Johnson & Johnson, a New Jersey corporation, had the U.S. and international subsidiaries shown below as of January 1, 2023. Johnson & Johnson is not a subsidiary of any other entity.

<b><u>Name of Subsidiary</u></b>	<b><u>Jurisdiction</u></b>
<b>U.S. Subsidiaries:</b>	
ABD Holding Company, Inc.	Delaware
ABIOMED R&D, Inc.	Delaware
ABIOMED, Inc.	Delaware
Acclarent, Inc.	Delaware
Actelion Pharmaceuticals US, Inc.	Delaware
Albany Street LLC	New Jersey
ALZA Corporation	Delaware
Alza Land Management, Inc.	Delaware
AMO Development, LLC	Delaware
AMO Manufacturing USA, LLC	Delaware
AMO Nominee Holdings, LLC	Delaware
AMO Sales and Service, Inc.	Delaware
AMO Spain Holdings, LLC	Delaware
Anakuria Therapeutics, Inc.	Delaware
AorTx, Inc.	Delaware
Aragon Pharmaceuticals, Inc.	Delaware
Asia Pacific Holdings, LLC	New Jersey
Atrionix, Inc.	California
AUB Holdings LLC	Delaware
Auris Health, Inc.	Delaware
BeneVir BioPharm, Inc.	Delaware
BioMedical Enterprises, Inc.	Texas
Biosense Webster, Inc.	California
Brethe, Inc.	Delaware
Centocor Biologics, LLC	Pennsylvania
Centocor Research & Development, Inc.	Pennsylvania
Cerenovus, Inc.	New Jersey
Coherex Medical, Inc.	Delaware
CoTherix Inc.	Delaware
CRES Holdings, Inc.	Delaware
CrossRoads Extremity Systems, LLC	Tennessee

CSATS, Inc.	Washington
DePuy Mitek, LLC	Massachusetts
DePuy Orthopaedics, Inc.	Indiana
DePuy Products, Inc.	Indiana
DePuy Spine, LLC	Ohio
DePuy Synthes Institute, LLC	Delaware
DePuy Synthes Products, Inc.	Delaware
DePuy Synthes Sales, Inc.	Massachusetts
DePuy Synthes, Inc.	Delaware
Dutch Holding LLC	Delaware
ECL7, LLC	Delaware
Ethicon Endo-Surgery, Inc.	Ohio
Ethicon Endo-Surgery, LLC	Delaware
Ethicon LLC	Delaware
Ethicon US, LLC	Texas
Ethicon, Inc.	New Jersey
Hansen Medical International, Inc.	Delaware
Hansen Medical, Inc.	Delaware
I.D. Acquisition Corp.	New Jersey
Janssen BioPharma, LLC	Delaware
Janssen Biotech, Inc.	Pennsylvania
Janssen Global Services, LLC	New Jersey
Janssen Oncology, Inc.	Delaware
Janssen Ortho LLC	Delaware
Janssen Pharmaceuticals, Inc.	Pennsylvania
Janssen Products, LP	New Jersey
Janssen Research & Development, LLC	New Jersey
Janssen Scientific Affairs, LLC	New Jersey
Janssen Supply Group, LLC	Pennsylvania
Janssen-Cilag Manufacturing, LLC	Delaware
Jevco Holding, Inc.	New Jersey
JJHC, LLC	Delaware
JNJ International Investment LLC	Delaware
JNTL (APAC) HoldCo 2 LLC	Delaware
JNTL (APAC) HoldCo LLC	Delaware

JNTL (Japan) HoldCo Inc.	Delaware
JNTL (Middle East) HoldCo LLC	Delaware
JNTL (Thailand) HoldCo LLC	Delaware
JNTL Consumer Health (Services) LLC	Delaware
JNTL HoldCo 2 LLC	Delaware
JNTL HoldCo 3 LLC	Delaware
JNTL HoldCo 4 LLC	Delaware
JNTL HoldCo 5 LLC	Delaware
JNTL HoldCo 6 LLC	Delaware
JNTL HoldCo 7 LLC	Delaware
JNTL HoldCo 8 LLC	Delaware
JNTL HoldCo LLC	Delaware
JNTL Holdings 2, Inc.	Delaware
JNTL Holdings 3, Inc.	Delaware
JNTL Holdings, Inc.	Delaware
Johnson & Johnson	New Jersey
Johnson & Johnson (Middle East) Inc.	New Jersey
Johnson & Johnson (Singapore) Holdco LLC	Delaware
Johnson & Johnson Consumer Inc.	Nevada
Johnson & Johnson Consumer Inc.	New Jersey
Johnson & Johnson Enterprise Innovation Inc.	Delaware
Johnson & Johnson Finance Corporation	New Jersey
Johnson & Johnson Gateway, LLC	New Jersey
Johnson & Johnson Health and Wellness Solutions, Inc.	Michigan
Johnson & Johnson Health Care Systems Inc.	New Jersey
Johnson & Johnson Innovation - JJDC, Inc.	New Jersey
Johnson & Johnson Innovation LLC	Delaware
Johnson & Johnson International	New Jersey
Johnson & Johnson Medical Devices & Diagnostics Group - Latin America, L.L.C.	Florida
Johnson & Johnson S.E., Inc.	New Jersey
Johnson & Johnson Services, Inc.	New Jersey
Johnson & Johnson Surgical Vision, Inc.	Delaware
Johnson & Johnson Urban Renewal Associates	New Jersey



Johnson & Johnson Vision Care, Inc.	Florida
JOM Pharmaceutical Services, Inc.	Delaware
Kenvue Inc.	Delaware
LTL Management LLC	North Carolina
McNeil Consumer Pharmaceuticals Co.	New Jersey
McNeil Healthcare LLC	Delaware
McNeil LA LLC	Delaware
McNEIL MMP, LLC	New Jersey
McNeil Nutritionals, LLC	Delaware
Medical Device Business Services, Inc.	Indiana
Medical Devices & Diagnostics Global Services, LLC	Delaware
Medical Devices International LLC	Delaware
MegaDyne Medical Products, Inc.	Utah
Mentor Partnership Holding Company I, LLC	Delaware
Mentor Texas GP LLC	Delaware
Mentor Texas L.P.	Delaware
Mentor Worldwide LLC	Delaware
Middlesex Assurance Company Limited	Vermont
Momenta Pharmaceuticals, Inc.	Delaware
NeoStrata Company, Inc.	Delaware
Netherlands Holding Company	Delaware
NeuWave Medical, Inc.	Delaware
Novira Therapeutics, LLC	Delaware
NuVera Medical, Inc.	Delaware
OMJ Pharmaceuticals, Inc.	Delaware
Omrix Biopharmaceuticals, Inc.	Delaware
Ortho Biologics LLC	Delaware
Ortho Biotech Holding LLC	Delaware

Patriot Pharmaceuticals, LLC	Pennsylvania
Peninsula Pharmaceuticals, LLC	Delaware
Percivia LLC	Delaware
preCARDIA, Inc.	Delaware
Princeton Laboratories, Inc.	Delaware
Prosidyan, Inc.	Delaware
Pulsar Vascular, Inc.	Delaware
Regency Urban Renewal Associates	New Jersey
Royalty A&M LLC	North Carolina
Rutan Realty LLC	New Jersey
Scios LLC	Delaware
SterilMed, Inc.	Minnesota
Synthes USA Products, LLC	Delaware
Synthes USA, LLC	Delaware
Synthes, Inc.	Delaware
TARIS Biomedical LLC	Delaware
TearScience, Inc.	Delaware
The Anspach Effort, LLC	Florida
The Vision Care Institute, LLC	Florida
Tibotec, LLC	Delaware
Torax Medical, Inc.	Delaware
Verb Surgical Inc.	Delaware
Vogue International LLC	Delaware
WH4110 Development Company, L.L.C.	Georgia
Zarbee's, Inc.	Delaware

<b>International Subsidiaries:</b>	
3Dintegrated ApS	Denmark
Actelion Ltd	Switzerland
Actelion Pharmaceuticals Ltd	Switzerland
Actelion Pharmaceuticals Trading (Shanghai) Co., Ltd.	China
Actelion Treasury Unlimited Company	Ireland

AMO (Hangzhou) Co., Ltd.	China
AMO (Shanghai) Medical Devices Trading Co., Ltd.	China
AMO ASIA LIMITED	Hong Kong
AMO Australia Pty Limited	Australia
AMO Canada Company	Canada
AMO Denmark ApS	Denmark
AMO France	France
AMO Germany GmbH	Germany
AMO Groningen B.V.	Netherlands
AMO International Holdings Unlimited Company	Ireland
AMO Ireland	Cayman Islands
AMO Italy SRL	Italy
AMO Japan K.K.	Japan
AMO Netherlands BV	Netherlands
AMO Norway AS	Norway
AMO Puerto Rico Manufacturing, Inc.	Cayman Islands
AMO Singapore Pte. Ltd.	Singapore
AMO Switzerland GmbH	Switzerland
AMO United Kingdom, Ltd.	United Kingdom
AMO Uppsala AB	Sweden
Apsis	France
Backsvalan 6 Handelsbolag	Sweden
Beijing Dabao Cosmetics Co., Ltd.	China
Berna Rhein B.V.	Netherlands
Biosense Webster (Israel) Ltd.	Israel
C Consumer Products Denmark ApS	Denmark
Carlo Erba OTC S.r.l.	Italy
ChromaGenics B.V.	Netherlands

Ci:z. Labo Co., Ltd.	Japan
Cilag AG	Switzerland
Cilag GmbH International	Switzerland
Cilag Holding AG	Switzerland
Cilag Holding Treasury Unlimited Company	Ireland
Cilag-Biotech, S.L.	Spain
ColBar LifeScience Ltd.	Israel
Cordis de Mexico, S.A. de C.V.	Mexico
Corimmun GmbH	Germany
Debs-Vogue Corporation (Proprietary) Limited	South Africa
DePuy Hellas SA	Greece
DePuy International Limited	United Kingdom
DePuy Ireland Unlimited Company	Ireland
DePuy Mexico, S.A. de C.V.	Mexico
EES Holdings de Mexico, S. de R.L. de C.V.	Mexico
EES, S.A. de C.V.	Mexico
EIT Emerging Implant Technologies GmbH	Germany
Ethicon Endo-Surgery (Europe) GmbH	Germany
Ethicon Sarl	Switzerland
Ethicon Women's Health & Urology Sarl	Switzerland
Ethnor (Proprietary) Limited	South Africa
Ethnor del Istmo S.A.	Panama
Ethnor Farmaceutica, S.A.	Venezuela, Bolivarian Republic of
Finsbury (Development) Limited	United Kingdom
Finsbury (Instruments) Limited	United Kingdom
Finsbury Medical Limited	United Kingdom
Finsbury Orthopaedics International Limited	United Kingdom
Finsbury Orthopaedics Limited	United Kingdom

FMS Future Medical System SA	Switzerland
GATT Technologies B.V.	Netherlands
GH Biotech Holdings Limited	Ireland
Global Investment Participation B.V.	Netherlands
GMED Healthcare BV	Belgium
Guangzhou Bioseal Biotech Co., Ltd.	China
Hansen Medical Deutschland GmbH	Germany
Hansen Medical UK Limited	United Kingdom
Healthcare Services (Shanghai) Ltd.	China
Innomedic Gesellschaft für innovative Medizintechnik und Informatik mbH	Germany
J & J Company West Africa Limited	Nigeria
J&J Argentina S.A.	Argentina
J&J Pension Trustees Limited	United Kingdom
J&J Productos Medicos & Farmaceuticos del Peru S.A.	Peru
J.C. General Services BV	Belgium
Janssen Biologics (Ireland) Limited	Ireland
Janssen Biologics B.V.	Netherlands
Janssen Cilag Farmaceutica S.A.	Argentina
Janssen Cilag S.p.A.	Italy
Janssen Cilag SPA	Algeria
Janssen Cilag, C.A.	Venezuela, Bolivarian Republic of
Janssen Development Finance Unlimited Company	Ireland
Janssen Egypt LLC	Egypt
Janssen Farmaceutica Portugal Lda	Portugal
Janssen France Treasury Unlimited Company	France
Janssen Holding GmbH	Switzerland
Janssen Inc.	Canada
Janssen Irish Finance Unlimited Company	Ireland

Janssen Japan Treasury Unlimited Company	Japan
Janssen Korea Ltd.	Korea, Republic of
Janssen Mexico Treasury Unlimited Company	Ireland
Janssen Pharmaceutica (Proprietary) Limited	South Africa
Janssen Pharmaceutica NV	Belgium
Janssen Pharmaceutica S.A.	Peru
Janssen Pharmaceutical K.K.	Japan
Janssen Pharmaceutical Sciences Unlimited Company	Ireland
Janssen Pharmaceutical Unlimited Company	Ireland
Janssen R&D Ireland Unlimited Company	Ireland
Janssen Sciences Ireland Unlimited Company	Ireland
Janssen Vaccines & Prevention B.V.	Netherlands
Janssen Vaccines Corp.	Korea, Republic of
Janssen-Cilag	France
Janssen-Cilag (New Zealand) Limited	New Zealand
Janssen-Cilag A/S	Denmark
Janssen-Cilag AG	Switzerland
Janssen-Cilag Aktiebolag	Sweden
Janssen-Cilag AS	Norway
Janssen-Cilag B.V.	Netherlands
Janssen-Cilag d.o.o. Beograd	Serbia
Janssen-Cilag de Mexico S. de R.L. de C.V.	Mexico
Janssen-Cilag Farmaceutica Lda.	Portugal
Janssen-Cilag Farmaceutica Ltda.	Brazil
Janssen-Cilag GmbH	Germany
Janssen-Cilag International NV	Belgium
Janssen-Cilag Kft.	Hungary
Janssen-Cilag Limited	United Kingdom

Janssen-Cilag Limited	Thailand
Janssen-Cilag NV	Belgium
Janssen-Cilag OY	Finland
Janssen-Cilag Pharma GmbH	Austria
Janssen-Cilag Pharmaceutical S.A.C.I.	Greece
Janssen-Cilag Polska, Sp. z o.o.	Poland
Janssen-Cilag Pty Ltd	Australia
Janssen-Cilag S.A.	Colombia
Janssen-Cilag s.r.o.	Czech Republic
Janssen-Cilag, S.A.	Spain
Janssen-Cilag, S.A. de C.V.	Mexico
Janssen-Pharma, S.L.	Spain
J-C Health Care Ltd.	Israel
JJ Surgical Vision Spain, S.L.	Spain
JJC Acquisition Company B.V.	Netherlands
JJSV Belgium BV	Belgium
JJSV Manufacturing Malaysia SDN. BHD.	Malaysia
JJSV Norden AB	Sweden
JJSV Produtos Oticos Ltda.	Brazil
JNJ Global Business Services s.r.o.	Czech Republic
JNJ Holding EMEA B.V.	Netherlands
JNTL (APAC) HoldCo 3 Pte. Ltd.	Singapore
JNTL (APAC) HoldCo Pte. Ltd.	Singapore
JNTL (Malaysia) Sdn. Bhd.	Malaysia
JNTL (Puerto Rico) HoldCo GmbH	Switzerland
JNTL (Shanghai) Investment Co., Ltd.	China
JNTL (Switzerland) HoldCo GmbH	Switzerland
JNTL (UK) HoldCo Limited	United Kingdom

JNTL Consumer Health (Vietnam) Co. Ltd.	Vietnam
JNTL Consumer Health (Belgium) BV	Belgium
JNTL Consumer Health (Brazil) Ltda.	Brazil
JNTL Consumer Health (Czech Republic) s.r.o.	Czech Republic
JNTL Consumer Health (Dominican Republic), S.A.S.	Dominican Republic
JNTL Consumer Health (Finland) Oy	Finland
JNTL Consumer Health (France) SAS	France
JNTL Consumer Health (Hungary) Kft	Hungary
JNTL Consumer Health (India) Private Limited	India
JNTL Consumer Health (New Zealand) Limited	New Zealand
JNTL Consumer Health (Norway) AS	Norway
JNTL Consumer Health (Philippines) Inc.	Philippines
JNTL Consumer Health (Poland) sp. z o.o.	Poland
JNTL Consumer Health (Portugal) Limitada	Portugal
JNTL Consumer Health (Slovakia), s.r.o.	Slovakia
JNTL Consumer Health (Spain), S.L.	Spain
JNTL Consumer Health (Taiwan) Limited	Taiwan (Province of China)
JNTL Consumer Health General Services BV	Belgium
JNTL Consumer Health I (Ireland) Limited	Ireland
JNTL Consumer Health I (Switzerland) GmbH	Switzerland
JNTL Consumer Health II (Switzerland) GmbH	Switzerland
JNTL Consumer Health LLC	Egypt
JNTL Consumer Health Mexico, S. de R.L. de C.V.	Mexico
JNTL Consumer Health Middle East FZ-LLC	United Arab Emirates



JNTL Holdings B.V.	Netherlands
JNTL Ireland HoldCo 2 B.V.	Netherlands
JNTL Netherlands HoldCo B.V.	Netherlands
JNTL Turkey Tüketici Sağlığı Limited Şirketi	Turkey
Johnson & Johnson - Societa' Per Azioni	Italy
Johnson & Johnson (Angola), Limitada	Angola
Johnson & Johnson (Australia) Pty Ltd	Australia
Johnson & Johnson (Canada) Inc.	Canada
Johnson & Johnson (China) Investment Ltd.	China
Johnson & Johnson (Ecuador) S.A.	Ecuador
Johnson & Johnson (Egypt) S.A.E.	Egypt
Johnson & Johnson (Hong Kong) Limited	Hong Kong
Johnson & Johnson (Ireland) Limited	Ireland
Johnson & Johnson (Jamaica) Limited	Jamaica
Johnson & Johnson (Kenya) Limited	Kenya
Johnson & Johnson (Mozambique), Limitada	Mozambique
Johnson & Johnson (Namibia) (Proprietary) Limited	Namibia
Johnson & Johnson (New Zealand) Limited	New Zealand

Johnson & Johnson (Philippines), Inc.	Philippines
Johnson & Johnson (Private) Limited	Zimbabwe
Johnson & Johnson (Thailand) Ltd.	Thailand
Johnson & Johnson (Trinidad) Limited	Trinidad and Tobago
Johnson & Johnson (Vietnam) Co., Ltd	Vietnam
Johnson & Johnson AB	Sweden
Johnson & Johnson AG	Switzerland
Johnson & Johnson Bulgaria EOOD	Bulgaria
Johnson & Johnson China Ltd.	China
Johnson & Johnson Consumer (Hong Kong) Limited	Hong Kong
Johnson & Johnson Consumer (Thailand) Limited	Thailand
Johnson & Johnson Consumer B.V.	Netherlands
Johnson & Johnson Consumer Holdings France	France
Johnson & Johnson Consumer NV	Belgium
Johnson & Johnson Consumer Saudi Arabia Limited	Saudi Arabia
Johnson & Johnson Consumer Services EAME Ltd.	United Kingdom
Johnson & Johnson d.o.o.	Slovenia
Johnson & Johnson de Argentina S.A.C. e. I.	Argentina
Johnson & Johnson de Chile S.A.	Chile
Johnson & Johnson de Colombia S.A.	Colombia
Johnson & Johnson de Mexico, S.A. de C.V.	Mexico
Johnson & Johnson de Uruguay S.A.	Uruguay
Johnson & Johnson de Venezuela, S.A.	Venezuela, Bolivarian Republic of
Johnson & Johnson del Ecuador, S.A.	Ecuador
Johnson & Johnson Del Paraguay, S.A.	Paraguay
Johnson & Johnson del Peru S.A.	Peru
Johnson & Johnson do Brasil Industria E Comercio de Produtos Para Saude Ltda.	Brazil
Johnson & Johnson Dominicana, S.A.S.	Dominican Republic
Johnson & Johnson European Treasury Unlimited Company	Ireland

Johnson & Johnson Finance Limited	United Kingdom
Johnson & Johnson Financial Services GmbH	Germany
Johnson & Johnson for Export and Import LLC	Egypt
Johnson & Johnson Gesellschaft m.b.H.	Austria
Johnson & Johnson GmbH	Germany
Johnson & Johnson GT, Sociedad Anónima	Guatemala
Johnson & Johnson Guatemala, S.A.	Guatemala
Johnson & Johnson Hellas Commercial and Industrial S.A.	Greece
Johnson & Johnson Hellas Consumer Products Commercial Societe Anonyme	Greece
Johnson & Johnson Hemisferica S.A.	Puerto Rico
Johnson & Johnson Holding GmbH	Germany
Johnson & Johnson Holdings (Austria) GmbH	Austria
Johnson & Johnson Inc.	Canada
Johnson & Johnson Industrial Ltda.	Brazil
Johnson & Johnson Innovation Limited	United Kingdom

Johnson & Johnson International (Singapore) Pte. Ltd.	Singapore
Johnson & Johnson International Financial Services Unlimited Company	Ireland
Johnson & Johnson Irish Finance Company Limited	Ireland
Johnson & Johnson K.K.	Japan
Johnson & Johnson Kft.	Hungary
Johnson & Johnson Korea Selling & Distribution LLC	Korea, Republic of
Johnson & Johnson Korea, Ltd.	Korea, Republic of
Johnson & Johnson Limited	United Kingdom
Johnson & Johnson LLC	Russian Federation
Johnson & Johnson Luxembourg Finance Company Sarl	Luxembourg
Johnson & Johnson Management Limited	United Kingdom
Johnson & Johnson Medical (China) Ltd.	China
Johnson & Johnson Medical (Proprietary) Ltd	South Africa
Johnson & Johnson Medical (Shanghai) Ltd.	China
Johnson & Johnson Medical (Suzhou) Ltd.	China
Johnson & Johnson Medical B.V.	Netherlands
Johnson & Johnson Medical GmbH	Germany

Johnson & Johnson Medical Greece Single Member S.A.	Greece
Johnson & Johnson Medical Korea Ltd.	Korea, Republic of
Johnson & Johnson Medical Limited	United Kingdom
Johnson & Johnson Medical Mexico, S.A. de C.V.	Mexico
Johnson & Johnson Medical NV	Belgium
Johnson & Johnson Medical Products GmbH	Austria
Johnson & Johnson Medical Pty Ltd	Australia
Johnson & Johnson Medical S.A.	Argentina
Johnson & Johnson Medical S.p.A.	Italy
Johnson & Johnson Medical SAS	France
Johnson & Johnson Medical Saudi Arabia Limited	Saudi Arabia
Johnson & Johnson Medical Taiwan Ltd.	Taiwan (Province of China)
Johnson & Johnson Medical, S.C.S.	Venezuela, Bolivarian Republic of
Johnson & Johnson Medikal Sanayi ve Ticaret Limited Sirketi	Turkey
Johnson & Johnson MedTech (Thailand) Ltd.	Thailand
Johnson & Johnson Medtech Colombia S.A.S.	Colombia
Johnson & Johnson Middle East FZ-LLC	United Arab Emirates
Johnson & Johnson Morocco Societe Anonyme	Morocco
Johnson & Johnson Nordic AB	Sweden
Johnson & Johnson Pacific Pty Limited	Australia
Johnson & Johnson Pakistan (Private) Limited	Pakistan
Johnson & Johnson Panama, S.A.	Panama
Johnson & Johnson Personal Care (Chile) S.A.	Chile
Johnson & Johnson Pharmaceutical Ltd.	China
Johnson & Johnson Poland Sp. z o.o.	Poland
Johnson & Johnson Private Limited	India
Johnson & Johnson Pte. Ltd.	Singapore

Johnson & Johnson Pty. Limited	Australia
Johnson & Johnson Romania S.R.L.	Romania
Johnson & Johnson S.E. d.o.o.	Croatia
Johnson & Johnson Sante Beaute France	France
Johnson & Johnson SDN. BHD.	Malaysia
Johnson & Johnson Surgical Vision India Private Limited	India
Johnson & Johnson Taiwan Ltd.	Taiwan (Province of China)
Johnson & Johnson UK Treasury Company Limited	United Kingdom
Johnson & Johnson Ukraine LLC	Ukraine
Johnson & Johnson Vision Care (Australia) Pty Ltd	Australia
Johnson & Johnson Vision Care (Shanghai) Ltd.	China
Johnson & Johnson Vision Care Ireland Unlimited Company	Ireland
Johnson & Johnson Vision Korea, Ltd.	Korea, Republic of
Johnson & Johnson, Lda	Portugal
Johnson & Johnson, S.A.	Spain
Johnson & Johnson, S.A. de C.V.	Mexico
Johnson & Johnson, s.r.o.	Slovakia
Johnson & Johnson, s.r.o.	Czech Republic

Johnson and Johnson (Proprietary) Limited	South Africa
Johnson and Johnson Sihhi Malzeme Sanayi Ve Ticaret Limited Sirketi	Turkey
Johnson Y Johnson de Costa Rica, S.A.	Costa Rica
La Concha Land Investment Corporation	Philippines
McNeil AB	Sweden
McNeil Denmark ApS	Denmark
McNeil Healthcare (Ireland) Limited	Ireland
McNeil Healthcare (UK) Limited	United Kingdom
McNeil Iberica S.L.U.	Spain
McNeil Panama, LLC	Panama
McNeil Products Limited	United Kingdom
McNeil Sweden AB	Sweden
Medos International Sarl	Switzerland
Medos Sarl	Switzerland
Menlo Care De Mexico, S.A. de C.V.	Mexico
Mentor B.V.	Netherlands
Mentor Deutschland GmbH	Germany
Mentor Medical Systems B.V.	Netherlands
Momenta Ireland Limited	Ireland
NeoStrata UG (haftungsbeschränkt)	Germany
Neuravi Limited	Ireland
Obtech Medical Mexico, S.A. de C.V.	Mexico
OBTECH Medical Sarl	Switzerland
OGX Beauty Limited	United Kingdom
OMJ Holding GmbH	Switzerland
Omrix Biopharmaceuticals Ltd.	Israel
Omrix Biopharmaceuticals NV	Belgium
Orthospin Ltd.	Israel
Orthotaxy	France
Pharmadirect Ltd.	Canada
Pharmedica Laboratories (Proprietary) Limited	South Africa
Productos de Cuidado Personal y de La Salud de Bolivia S.R.L.	Bolivia
Proleader S.A.	Uruguay

PT Integrated Healthcare Indonesia	Indonesia
PT Johnson & Johnson Indonesia	Indonesia
PT Johnson and Johnson Indonesia Two	Indonesia
RespiVert Ltd.	United Kingdom
Review Manager Test Entity 2	France
Serhum S.A. de C.V.	Mexico
Shanghai Elsker Mother & Baby Co., Ltd	China
Shanghai Johnson & Johnson Ltd.	China
Shanghai Johnson & Johnson Pharmaceuticals Ltd.	China
Sodiac ESV	Belgium
Spectrum Vision Limited Liability Company	Russian Federation
Spectrum Vision Limited Liability Company	Ukraine
Spectrum Vision Limited Liability Partnership	Kazakhstan
Surgical Process Institute Deutschland GmbH	Germany
Synthes Costa Rica S.C.R., Limitada	Costa Rica
SYNTHES GmbH	Germany
Synthes GmbH	Switzerland
Synthes Holding AG	Switzerland
Synthes Holding Limited	United Arab Emirates
SYNTHES Medical Immobilien GmbH	Germany
Synthes Medical Surgical Equipment & Instruments Trading LLC	United Arab Emirates
Synthes Produktions GmbH	Switzerland
Synthes Proprietary Limited	South Africa
Synthes S.M.P., S. de R.L. de C.V.	Mexico
Synthes Tuttlingen GmbH	Germany
UAB "Johnson & Johnson"	Lithuania
Vania Expansion	France
Vision Care Finance Unlimited Company	Ireland
Xian Janssen Pharmaceutical Ltd.	China
XOI Limited	United Kingdom



**EXHIBIT H**

**One Washington Memorandum of Understanding between the Washington Municipalities**

**ONE WASHINGTON MEMORANDUM OF UNDERSTANDING BETWEEN  
WASHINGTON MUNICIPALITIES**

Whereas, the people of the State of Washington and its communities have been harmed by entities within the Pharmaceutical Supply Chain who manufacture, distribute, and dispense prescription opioids;

Whereas, certain Local Governments, through their elected representatives and counsel, are engaged in litigation seeking to hold these entities within the Pharmaceutical Supply Chain of prescription opioids accountable for the damage they have caused to the Local Governments;

Whereas, Local Governments and elected officials share a common desire to abate and alleviate the impacts of harms caused by these entities within the Pharmaceutical Supply Chain throughout the State of Washington, and strive to ensure that principals of equity and equitable service delivery are factors considered in the allocation and use of Opioid Funds; and

Whereas, certain Local Governments engaged in litigation and the other cities and counties in Washington desire to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain.

Now therefore, the Local Governments enter into this Memorandum of Understanding (“MOU”) relating to the allocation and use of the proceeds of Settlements described.

**A. Definitions**

As used in this MOU:

1. “Allocation Regions” are the same geographic areas as the existing nine (9) Washington State Accountable Community of Health (ACH) Regions and have the purpose described in Section C below.
2. “Approved Purpose(s)” shall mean the strategies specified and set forth in the Opioid Abatement Strategies attached as Exhibit A.
3. “Effective Date” shall mean the date on which a court of competent jurisdiction enters the first Settlement by order or consent decree. The Parties anticipate that more than one Settlement will be administered according to the terms of this MOU, but that the first entered Settlement will trigger allocation of Opioid Funds in accordance with Section B herein, and the formation of the Opioid Abatement Councils in Section C.
4. “Litigating Local Government(s)” shall mean Local Governments that filed suit against any Pharmaceutical Supply Chain Participant pertaining to the Opioid epidemic prior to September 1, 2020.

5. “Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State of Washington.

6. “National Settlement Agreements” means the national opioid settlement agreements dated July 21, 2021 involving Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors named in the National Settlement Agreements, including all amendments thereto.

7. “Opioid Funds” shall mean monetary amounts obtained through a Settlement as defined in this MOU.

8. “Opioid Abatement Council” shall have the meaning described in Section C below.

9. “Participating Local Government(s)” shall mean all counties, cities, and towns within the geographic boundaries of the State that have chosen to sign on to this MOU. The Participating Local Governments may be referred to separately in this MOU as “Participating Counties” and “Participating Cities and Towns” (or “Participating Cities or Towns,” as appropriate) or “Parties.”

10. “Pharmaceutical Supply Chain” shall mean the process and channels through which controlled substances are manufactured, marketed, promoted, distributed, and/or dispensed, including prescription opioids.

11. “Pharmaceutical Supply Chain Participant” shall mean any entity that engages in or has engaged in the manufacture, marketing, promotion, distribution, and/or dispensing of a prescription opioid, including any entity that has assisted in any of the above.

12. “Qualified Settlement Fund Account,” or “QSF Account,” shall mean an account set up as a qualified settlement fund, 468b fund, as authorized by Treasury Regulations 1.468B-1(c) (26 CFR §1.468B-1).

13. “Regional Agreements” shall mean the understanding reached by the Participating Local Counties and Cities within an Allocation Region governing the allocation, management, distribution of Opioid Funds within that Allocation Region.

14. “Settlement” shall mean the future negotiated resolution of legal or equitable claims against a Pharmaceutical Supply Chain Participant when that resolution has been jointly entered into by the Participating Local Governments. “Settlement” expressly does not include a plan of reorganization confirmed under Title 11 of the United States Code, irrespective of the extent to which Participating Local Governments vote in favor of or otherwise support such plan of reorganization.

15. “Trustee” shall mean an independent trustee who shall be responsible for the ministerial task of releasing Opioid Funds from a QSF account to Participating Local Governments as authorized herein and accounting for all payments into or out of the trust.

16. The “Washington State Accountable Communities of Health” or “ACH” shall mean the nine (9) regions described in Section C below.

## **B. Allocation of Settlement Proceeds for Approved Purposes**

1. All Opioid Funds shall be held in a QSF and distributed by the Trustee, for the benefit of the Participating Local Governments, only in a manner consistent with this MOU. Distribution of Opioid Funds will be subject to the mechanisms for auditing and reporting set forth below to provide public accountability and transparency.

2. All Opioid Funds, regardless of allocation, shall be utilized pursuant to Approved Purposes as defined herein and set forth in Exhibit A. Compliance with this requirement shall be verified through reporting, as set out in this MOU.

3. The division of Opioid Funds shall first be allocated to Participating Counties based on the methodology utilized for the Negotiation Class in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP. The allocation model uses three equally weighted factors: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. The allocation percentages that result from application of this methodology are set forth in the “County Total” line item in Exhibit B. In the event any county does not participate in this MOU, that county’s percentage share shall be reallocated proportionally amongst the Participating Counties by applying this same methodology to only the Participating Counties.

4. Allocation and distribution of Opioid Funds within each Participating County will be based on regional agreements as described in Section C.

## **C. Regional Agreements**

1. For the purpose of this MOU, the regional structure for decision-making related to opioid fund allocation will be based upon the nine (9) pre-defined Washington State Accountable Community of Health Regions (Allocation Regions). Reference to these pre-defined regions is solely for the purpose of

drawing geographic boundaries to facilitate regional agreements for use of Opioid Funds. The Allocation Regions are as follows:

- King County (Single County Region)
- Pierce County (Single County Region)
- Olympic Community of Health Region (Clallam, Jefferson, and Kitsap Counties)
- Cascade Pacific Action Alliance Region (Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Thurston, and Wahkiakum Counties)
- North Sound Region (Island, San Juan, Skagit, Snohomish, and Whatcom Counties)
- SouthWest Region (Clark, Klickitat, and Skamania Counties)
- Greater Columbia Region (Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Walla Walla, Whitman, and Yakima Counties)
- Spokane Region (Adams, Ferry, Lincoln, Pend Oreille, Spokane, and Stevens Counties)
- North Central Region (Chelan, Douglas, Grant, and Okanogan Counties)

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, and does not subsequently adopt a Regional Agreement per Section C.5, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply. Each Allocation Region must have an OAC whose composition and responsibilities shall be defined by Regional Agreement or as set forth in Section C.4.

3. King County's Regional Agreement is reflected in Exhibit C to this MOU.

4. All other Allocation Regions that have not specified a Regional Agreement for allocating, distributing and managing Opioid Funds, will apply the following default methodology:

a. Opioid Funds shall be allocated within each Allocation Region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to the Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in Section B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have

made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

b. 10% of the Opioid Funds received by the Region will be reserved, on an annual basis, for administrative costs related to the OAC. The OAC will provide an annual accounting for actual costs and any reserved funds that exceed actual costs will be reallocated to Participating Local Governments within the Region.

c. Cities and towns with a population of less than 10,000 shall be excluded from the allocation, with the exception of cities and towns that are Litigating Participating Local Governments. The portion of the Opioid Funds that would have been allocated to a city or town with a population of less than 10,000 that is not a Litigating Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.

d. Each Participating County, City, or Town may elect to have its share re-allocated to the OAC in which it is located. The OAC will then utilize this share for the benefit of Participating Local Governments within that Allocation Region, consistent with the Approved Purposes set forth in Exhibit A. A Participating Local Government's election to forego its allocation of Opioid Funds shall apply to all future allocations unless the Participating Local Government notifies its respective OAC otherwise. If a Participating Local Government elects to forego its allocation of the Opioid Funds, the Participating Local Government shall be excused from the reporting requirements set forth in this Agreement.

e. Participating Local Governments that receive a direct payment maintain full discretion over the use and distribution of their allocation of Opioid Funds, provided the Opioid Funds are used solely for Approved Purposes. Reasonable administrative costs for a Participating Local Government to administer its allocation of Opioid Funds shall not exceed actual costs or 10% of the Participating Local Government's allocation of Opioid Funds, whichever is less.

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be

redistributed to Participating Counties in the manner directed in C.4.a above.

g. As a condition of receiving a direct payment, each Participating Local Government that receives a direct payment agrees to undertake the following actions:

- i. Developing a methodology for obtaining proposals for use of Opioid Funds.
- ii. Ensuring there is opportunity for community-based input on priorities for Opioid Fund programs and services.
- iii. Receiving and reviewing proposals for use of Opioid Funds for Approved Purposes.
- iv. Approving or denying proposals for use of Opioid Funds for Approved Purposes.
- v. Receiving funds from the Trustee for approved proposals and distributing the Opioid Funds to the recipient.
- vi. Reporting to the OAC and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures.

h. Prior to any distribution of Opioid Funds within the Allocation Region, The Participating Local Governments must establish an Opioid Abatement Council (OAC) to oversee Opioid Fund allocation, distribution, expenditures and dispute resolution. The OAC may be a preexisting regional body or may be a new body created for purposes of executing the obligations of this MOU.

i. The OAC for each Allocation Region shall be composed of representation from both Participating Counties and Participating Towns or Cities within the Region. The method of selecting members, and the terms for which they will serve will be determined by the Allocation Region's Participating Local Governments. All persons who serve on the OAC must have work or educational experience pertaining to one or more Approved Uses.

j. The Regional OAC will be responsible for the following actions:

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.

- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.
- iii. In the case where Participating Local Governments chose to forego their allocation of Opioid Funds:
  - (i) Approving or denying proposals by Participating Local Governments or community groups to the OAC for use of Opioid Funds within the Allocation Region.
  - (ii) Directing the Trustee to distribute Opioid Funds for use by Participating Local Governments or community groups whose proposals are approved by the OAC.
  - (iii) Administrating and maintaining records of all OAC decisions and distributions of Opioid Funds.
- iv. Reporting and making publicly available all decisions on Opioid Fund allocation applications, distributions and expenditures by the OAC or directly by Participating Local Governments.
- v. Developing and maintaining a centralized public dashboard or other repository for the publication of expenditure data from any Participating Local Government that receives Opioid Funds, and for expenditures by the OAC in that Allocation Region, which it shall update at least annually.
- vi. If necessary, requiring and collecting additional outcome-related data from Participating Local Governments to evaluate the use of Opioid Funds, and all Participating Local Governments shall comply with such requirements.
- vii. Hearing complaints by Participating Local Governments within the Allocation Region regarding alleged failure to (1) use Opioid Funds for Approved Purposes or (2) comply with reporting requirements.

5. Participating Local Governments may agree and elect to share, pool, or collaborate with their respective allocation of Opioid Funds in any manner they choose by adopting a Regional Agreement, so long as such sharing, pooling, or collaboration is used for Approved Purposes and complies with the terms of this MOU and any Settlement.



6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

7. If any Participating Local Government disputes the amount it receives from its allocation of Opioid Funds, the Participating Local Government shall alert its respective OAC within sixty (60) days of discovering the information underlying the dispute. Failure to alert its OAC within this time frame shall not constitute a waiver of the Participating Local Government's right to seek recoupment of any deficiency in its allocation of Opioid Funds.

8. If any OAC concludes that a Participating Local Government's expenditure of its allocation of Opioid Funds did not comply with the Approved Purposes listed in Exhibit A, or the terms of this MOU, or that the Participating Local Government otherwise misused its allocation of Opioid Funds, the OAC may take remedial action against the alleged offending Participating Local Government. Such remedial action is left to the discretion of the OAC and may include withholding future Opioid Funds owed to the offending Participating Local Government or requiring the offending Participating Local Government to reimburse improperly expended Opioid Funds back to the OAC to be re-allocated to the remaining Participating Local Governments within that Region.

9. All Participating Local Governments and OAC shall maintain all records related to the receipt and expenditure of Opioid Funds for no less than five (5) years and shall make such records available for review by any other Participating Local Government or OAC, or the public. Records requested by the public shall be produced in accordance with Washington's Public Records Act RCW 42.56.001 *et seq.* Records requested by another Participating Local Government or an OAC shall be produced within twenty-one (21) days of the date the record request was received. This requirement does not supplant any Participating Local Government or OAC's obligations under Washington's Public Records Act RCW 42.56.001 *et seq.*

#### **D. Payment of Counsel and Litigation Expenses**

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington

Government Fee Fund (“GFF”) shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

2. The amount of the GFF shall be based as follows: the funds to be deposited in the GFF shall be equal to 15% of the total cash value of the Opioid Funds.

3. The maximum percentage of any contingency fee agreement permitted for compensation shall be 15% of the portion of the Opioid Funds allocated to the Litigating Local Government that is a party to the contingency fee agreement, plus expenses attributable to that Litigating Local Government. Under no circumstances may counsel collect more for its work on behalf of a Litigating Local Government than it would under its contingency agreement with that Litigating Local Government.

4. Payments from the GFF shall be overseen by a committee (the “Opioid Fee and Expense Committee”) consisting of one representative of the following law firms: (a) Keller Rohrback L.L.P.; (b) Hagens Berman Sobol Shapiro LLP; (c) Goldfarb & Huck Roth Riojas, PLLC; and (d) Napoli Shkolnik PLLC. The role of the Opioid Fee and Expense Committee shall be limited to ensuring that the GFF is administered in accordance with this Section.

5. In the event that settling Pharmaceutical Supply Chain Participants do not pay the fees and expenses of the Participating Local Governments directly at the time settlement is achieved, payments to counsel for Participating Local Governments shall be made from the GFF over not more than three years, with 50% paid within 12 months of the date of Settlement and 25% paid in each subsequent year, or at the time the total Settlement amount is paid to the Trustee by the Defendants, whichever is sooner.

6. Any funds remaining in the GFF in excess of: (i) the amounts needed to cover Litigating Local Governments’ private counsel’s representation agreements, and (ii) the amounts needed to cover the common benefit tax discussed in Section C.8 below (if not paid directly by the Defendants in connection with future settlement(s), shall revert to the Participating Local Governments *pro rata* according to the percentages set forth in Exhibits B, to be used for Approved Purposes as set forth herein and in Exhibit A.

7. In the event that funds in the GFF are not sufficient to pay all fees and expenses owed under this Section, payments to counsel for all Litigating Local Governments shall be reduced on a *pro rata* basis. The Litigating Local Governments will not be responsible for any of these reduced amounts.

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments’ private counsel’s representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

## **E. General Terms**

1. If any Participating Local Government believes another Participating Local Government, not including the Regional Abatement Advisory Councils, violated the terms of this MOU, the alleging Participating Local Government may seek to enforce the terms of this MOU in the court in which any applicable Settlement(s) was entered, provided the alleging Participating Local Government first provides the alleged offending Participating Local Government notice of the alleged violation(s) and a reasonable opportunity to cure the alleged violation(s). In such an enforcement action, any alleging Participating Local Government or alleged offending Participating Local Government may be represented by their respective public entity in accordance with Washington law.

2. Nothing in this MOU shall be interpreted to waive the right of any Participating Local Government to seek judicial relief for conduct occurring outside the scope of this MOU that violates any Washington law. In such an action, the alleged offending Participating Local Government, including the Regional Abatement Advisory Councils, may be represented by their respective public entities in accordance with Washington law. In the event of a conflict, any Participating Local Government, including the Regional Abatement Advisory Councils and its Members, may seek outside representation to defend itself against such an action.

3. Venue for any legal action related to this MOU shall be in the court in which the Participating Local Government is located or in accordance with the court rules on venue in that jurisdiction. This provision is not intended to expand the court rules on venue.

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures

shall be governed by the Uniform Electronic Transactions Act. The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

5. Each Participating Local Government represents that all procedures necessary to authorize such Participating Local Government's execution of this MOU have been performed and that the person signing for such Party has been authorized to execute the MOU.

**[Remainder of Page Intentionally Left Blank – Signature Pages Follow]**

**This One Washington Memorandum of Understanding Between Washington Municipalities is signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by:**

\_\_\_\_\_

**Name & Title** \_\_\_\_\_

**On behalf of** \_\_\_\_\_

4894-0031-1574, v. 2

# **EXHIBIT A**

# OPIOID ABATEMENT STRATEGIES

## PART ONE: TREATMENT

### A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including all forms of Medication-Assisted Treatment (MAT) approved by the U.S. Food and Drug Administration.
2. Support and reimburse services that include the full American Society of Addiction Medicine (ASAM) continuum of care for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to:
  - a. Medication-Assisted Treatment (MAT);
  - b. Abstinence-based treatment;
  - c. Treatment, recovery, or other services provided by states, subdivisions, community health centers; non-for-profit providers; or for-profit providers;
  - d. Treatment by providers that focus on OUD treatment as well as treatment by providers that offer OUD treatment along with treatment for other SUD/MH conditions, co-usage, and/or co-addiction; or
  - e. Evidence-informed residential services programs, as noted below.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (OTPs) to assure evidence-based, evidence-informed, or promising practices such as adequate methadone dosing.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction and for persons who have experienced an opioid overdose.
6. Support treatment of mental health trauma resulting from the traumatic experiences of the opioid user (e.g., violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (e.g., surviving family members after an overdose

or overdose fatality), and training of health care personnel to identify and address such trauma.

7. Support detoxification (detox) and withdrawal management services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including medical detox, referral to treatment, or connections to other services or supports.
8. Support training on MAT for health care providers, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Provide fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (DATA 2000) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
12. Support the dissemination of web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service-Opioids web-based training curriculum and motivational interviewing.
13. Support the development and dissemination of new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication-Assisted Treatment.

## **B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in treatment for and recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Provide the full continuum of care of recovery services for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, residential treatment, medical detox services, peer support services and counseling, community navigators, case management, and connections to community-based services.
2. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.



3. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including supportive housing, recovery housing, housing assistance programs, or training for housing providers.
4. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
5. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
6. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
7. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
8. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to manage the opioid user in the family.
9. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to current and recovering opioid users, including reducing stigma.
10. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED (CONNECTIONS TO CARE)**

Provide connections to care for people who have – or are at risk of developing – OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Support Screening, Brief Intervention and Referral to Treatment (SBIRT) programs to reduce the transition from use to disorders.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Support training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
6. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or persons who have experienced an opioid overdose, into community treatment or recovery services through a bridge clinic or similar approach.
7. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or persons that have experienced an opioid overdose.
8. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
9. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced an opioid overdose.
10. Provide funding for peer navigators, recovery coaches, care coordinators, or care managers that offer assistance to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction or to persons who have experienced on opioid overdose.
11. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
12. Develop and support best practices on addressing OUD in the workplace.
13. Support assistance programs for health care providers with OUD.
14. Engage non-profits and the faith community as a system to support outreach for treatment.
15. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
16. Create or support intake and call centers to facilitate education and access to treatment, prevention, and recovery services for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.

17. Develop or support a National Treatment Availability Clearinghouse – a multistate/nationally accessible database whereby health care providers can list locations for currently available in-patient and out-patient OUD treatment services that are accessible on a real-time basis by persons who seek treatment.

**D. ADDRESS THE NEEDS OF CRIMINAL-JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are involved – or are at risk of becoming involved – in the criminal justice system through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support pre-arrest or post-arrest diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including established strategies such as:
  - a. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (PAARI);
  - b. Active outreach strategies such as the Drug Abuse Response Team (DART) model;
  - c. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
  - d. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (LEAD) model;
  - e. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative;
  - f. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise and to reduce perceived barriers associated with law enforcement 911 responses; or
  - g. County prosecution diversion programs, including diversion officer salary, only for counties with a population of 50,000 or less. Any diversion services in matters involving opioids must include drug testing, monitoring, or treatment.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts for persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, but only if these courts provide referrals to evidence-informed treatment, including MAT.

4. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction who are leaving jail or prison have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (CTI), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal-justice-involved persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME**

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and the needs of their families, including babies with neonatal abstinence syndrome, through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Support evidence-based, evidence-informed, or promising treatment, including MAT, recovery services and supports, and prevention services for pregnant women – or women who could become pregnant – who have OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Provide training for obstetricians or other healthcare personnel that work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
3. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with Neonatal Abstinence Syndrome get referred to appropriate services and receive a plan of safe care.
4. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

5. Offer enhanced family supports and home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, including but not limited to parent skills training.
6. Support for Children’s Services – Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION
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**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
2. Academic counter-detailing to educate prescribers on appropriate opioid prescribing.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Support enhancements or improvements to Prescription Drug Monitoring Programs (PDMPs), including but not limited to improvements that:
  - a. Increase the number of prescribers using PDMPs;
  - b. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs or by improving the interface that prescribers use to access PDMP data, or both; or
  - c. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD.
6. Development and implementation of a national PDMP – Fund development of a multistate/national PDMP that permits information sharing while providing appropriate safeguards on sharing of private health information, including but not limited to:
  - a. Integration of PDMP data with electronic health records, overdose episodes, and decision support tools for health care providers relating to OUD.

- b. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database.
7. Increase electronic prescribing to prevent diversion or forgery.
8. Educate Dispensers on appropriate opioid dispensing.

**G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Corrective advertising or affirmative public education campaigns based on evidence.
2. Public education relating to drug disposal.
3. Drug take-back disposal or destruction programs.
4. Fund community anti-drug coalitions that engage in drug prevention efforts.
5. Support community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction – including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA).
6. Engage non-profits and faith-based communities as systems to support prevention.
7. Support evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
8. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
9. Support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
10. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
11. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses or other school staff, to

address mental health needs in young people that (when not properly addressed) increase the risk of opioid or other drug misuse.

#### **H. PREVENT OVERDOSE DEATHS AND OTHER HARMS**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based, evidence-informed, or promising programs or strategies that may include, but are not limited to, the following:

1. Increase availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, opioid users, families and friends of opioid users, schools, community navigators and outreach workers, drug offenders upon release from jail/prison, or other members of the general public.
2. Provision by public health entities of free naloxone to anyone in the community, including but not limited to provision of intra-nasal naloxone in settings where other options are not available or allowed.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, and other members of the general public.
4. Enable school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expand, improve, or develop data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educate first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Expand access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
10. Support mobile units that offer or provide referrals to treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
11. Provide training in treatment and recovery strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction.
12. Support screening for fentanyl in routine clinical toxicology testing.

## PART THREE: OTHER STRATEGIES

### **I. FIRST RESPONDERS**

In addition to items C8, D1 through D7, H1, H3, and H8, support the following:

1. Current and future law enforcement expenditures relating to the opioid epidemic.
2. Educate law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

### **J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, and coordination to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Community regional planning to identify goals for reducing harms related to the opioid epidemic, to identify areas and populations with the greatest needs for treatment intervention services, or to support other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A government dashboard to track key opioid-related indicators and supports as identified through collaborative community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

### **K. TRAINING**

In addition to the training referred to in various items above, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Invest in infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, co-usage, and/or co-addiction, or implement other



strategies to abate the opioid epidemic described in this opioid abatement strategy list (e.g., health care, primary care, pharmacies, PDMPs, etc.).

**L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
5. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (e.g. Hawaii HOPE and Dakota 24/7).
6. Research on expanded modalities such as prescription methadone that can expand access to MAT.

## EXHIBIT B

County	Local Government	% Allocation
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### Adams County

Adams County		0.1638732475%
Hatton		
Lind		
Othello		
Ritzville		
Washtucna		
<b>County Total:</b>		<b>0.1638732475%</b>

### Asotin County

Asotin County		0.4694498386%
Asotin		
Clarkston		
<b>County Total:</b>		<b>0.4694498386%</b>

### Benton County

Benton County		1.4848831892%
Benton City		
Kennewick		0.5415650564%
Prosser		
Richland		0.4756779517%
West Richland		0.0459360490%
<b>County Total:</b>		<b>2.5480622463%</b>

### Chelan County

Chelan County		0.7434914485%
Cashmere		
Chelan		
Entiat		
Leavenworth		
Wenatchee		0.2968333494%
<b>County Total:</b>		<b>1.0403247979%</b>

### Clallam County

Clallam County		1.3076983401%
Forks		
Port Angeles		0.4598370527%
Sequim		
<b>County Total:</b>		<b>1.7675353928%</b>

## EXHIBIT B

County	Local Government	% Allocation
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### Clark County

Clark County		4.5149775326%
Battle Ground		0.1384729857%
Camas		0.2691592724%
La Center		
Ridgefield		
Vancouver		1.7306605325%
Washougal		0.1279328220%
Woodland***		
Yacolt		
<b>County Total:</b>		6.7812031452%

### Columbia County

Columbia County		0.0561699537%
Dayton		
Starbuck		
<b>County Total:</b>		0.0561699537%

### Cowlitz County

Cowlitz County		1.7226945990%
Castle Rock		
Kalama		
Kelso		0.1331145270%
Longview		0.6162736905%
Woodland***		
<b>County Total:</b>		2.4720828165%

### Douglas County

Douglas County		0.3932175175%
Bridgeport		
Coulee Dam***		
East Wenatchee		0.0799810865%
Mansfield		
Rock Island		
Waterville		
<b>County Total:</b>		0.4731986040%

### Ferry County

Ferry County		0.1153487994%
Republic		
<b>County Total:</b>		0.1153487994%

## EXHIBIT B

County	Local Government	% Allocation
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### Franklin County

Franklin County		0.3361237144%
Connell		
Kahlotus		
Mesa		
Pasco		0.4278056066%
<b>County Total:</b>		0.7639293210%

### Garfield County

Garfield County		0.0321982209%
Pomeroy		
<b>County Total:</b>		0.0321982209%

### Grant County

Grant County		0.9932572167%
Coulee City		
Coulee Dam***		
Electric City		
Ephrata		
George		
Grand Coulee		
Hartline		
Krupp		
Mattawa		
Moses Lake		0.2078293909%
Quincy		
Royal City		
Soap Lake		
Warden		
Wilson Creek		
<b>County Total:</b>		1.2010866076%

## EXHIBIT B

County	Local Government	% Allocation
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**Grays Harbor County**

Grays Harbor County	0.9992429138%
Aberdeen	0.2491525333%
Cosmopolis	
Elma	
Hoquiam	
McCleary	
Montesano	
Oakville	
Ocean Shores	
Westport	
<b>County Total:</b>	<b>1.2483954471%</b>

**Island County**

Island County	0.6820422610%
Coupeville	
Langley	
Oak Harbor	0.2511550431%
<b>County Total:</b>	<b>0.9331973041%</b>

**Jefferson County**

Jefferson County	0.4417137380%
Port Townsend	
<b>County Total:</b>	<b>0.4417137380%</b>

## EXHIBIT B

County	Local Government	% Allocation
<b>King County</b>		
	King County	13.9743722662%
	Algona	
	Auburn***	0.2622774917%
	Beaux Arts Village	
	Bellevue	1.1300592573%
	Black Diamond	
	Bothell***	0.1821602716%
	Burien	0.0270962921%
	Carnation	
	Clyde Hill	
	Covington	0.0118134406%
	Des Moines	0.1179764526%
	Duvall	
	Enumclaw***	0.0537768326%
	Federal Way	0.3061452240%
	Hunts Point	
	Issaquah	0.1876240107%
	Kenmore	0.0204441024%
	Kent	0.5377397676%
	Kirkland	0.5453525246%
	Lake Forest Park	0.0525439124%
	Maple Valley	0.0093761587%
	Medina	
	Mercer Island	0.1751797481%
	Milton***	
	Newcastle	0.0033117880%
	Normandy Park	
	North Bend	
	Pacific***	
	Redmond	0.4839486007%
	Renton	0.7652626920%
	Sammamish	0.0224369090%
	SeaTac	0.1481551278%
	Seattle	6.6032403816%
	Shoreline	0.0435834501%
	Skykomish	
	Snoqualmie	0.0649164481%
	Tukwila	0.3032205739%
	Woodinville	0.0185516364%
	Yarrow Point	
	<b>County Total:</b>	<b>26.0505653608%</b>

## EXHIBIT B

County	Local Government	% Allocation
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### Kitsap County

Kitsap County		2.6294133668%
Bainbridge Island		0.1364686014%
Bremerton		0.6193374389%
Port Orchard		0.1009497162%
Poulsbo		0.0773748246%
<b>County Total:</b>		<b>3.5635439479%</b>

### Kittitas County

Kittitas County		0.3855704683%
Cle Elum		
Ellensburg		0.0955824915%
Kittitas		
Roslyn		
South Cle Elum		
<b>County Total:</b>		<b>0.4811529598%</b>

### Klickitat County

Klickitat County		0.2211673457%
Bingen		
Goldendale		
White Salmon		
<b>County Total:</b>		<b>0.2211673457%</b>

### Lewis County

Lewis County		1.0777377479%
Centralia		0.1909990353%
Chehalis		
Morton		
Mossyrock		
Napavine		
Pe Ell		
Toledo		
Vader		
Winlock		
<b>County Total:</b>		<b>1.2687367832%</b>

## EXHIBIT B

County	Local Government	% Allocation
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**Lincoln County**

Lincoln County	0.1712669645%
Almira	
Creston	
Davenport	
Harrington	
Odessa	
Reardan	
Sprague	
Wilbur	
<b>County Total:</b>	<b>0.1712669645%</b>

**Mason County**

Mason County	0.8089918012%
Shelton	0.1239179888%
<b>County Total:</b>	<b>0.9329097900%</b>

**Okanogan County**

Okanogan County	0.6145043345%
Brewster	
Conconully	
Coulee Dam***	
Elmer City	
Nespelem	
Okanogan	
Omak	
Oroville	
Pateros	
Riverside	
Tonasket	
Twisp	
Winthrop	
<b>County Total:</b>	<b>0.6145043345%</b>

**Pacific County**

Pacific County	0.4895416466%
Ilwaco	
Long Beach	
Raymond	
South Bend	
<b>County Total:</b>	<b>0.4895416466%</b>

\*\*\* - Local Government appears in multiple counties



## EXHIBIT B

County	Local Government	% Allocation
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**Pend Oreille County**

Pend Oreille County	0.2566374940%
Cusick	
Ione	
Metaline	
Metaline Falls	
Newport	
<b>County Total:</b>	<b>0.2566374940%</b>

**Pierce County**

Pierce County	7.2310164020%
Auburn***	0.0628522112%
Bonney Lake	0.1190773864%
Buckley	
Carbonado	
DuPont	
Eatonville	
Edgewood	0.0048016791%
Enumclaw***	0.0000000000%
Fife	0.1955185481%
Fircrest	
Gig Harbor	0.0859963345%
Lakewood	0.5253640894%
Milton***	
Orting	
Pacific***	
Puyallup	0.3845704814%
Roy	
Ruston	
South Prairie	
Steilacoom	
Sumner	0.1083157569%
Tacoma	3.2816374617%
University Place	0.0353733363%
Wilkeson	
<b>County Total:</b>	<b>12.0345236870%</b>

**San Juan County**

San Juan County	0.2101495171%
Friday Harbor	
<b>County Total:</b>	<b>0.2101495171%</b>

## EXHIBIT B

County	Local Government	% Allocation
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### Skagit County

Skagit County		1.0526023961%
Anacortes		0.1774962906%
Burlington		0.1146861661%
Concrete		
Hamilton		
La Conner		
Lyman		
Mount Vernon		0.2801063665%
Sedro-Woolley		0.0661146351%
<b>County Total:</b>		<b>1.6910058544%</b>

### Skamania County

Skamania County		0.1631931925%
North Bonneville		
Stevenson		
<b>County Total:</b>		<b>0.1631931925%</b>

### Snohomish County

Snohomish County		6.9054415622%
Arlington		0.2620524080%
Bothell***		0.2654558588%
Brier		
Darrington		
Edmonds		0.3058936009%
Everett		1.9258363241%
Gold Bar		
Granite Falls		
Index		
Lake Stevens		0.1385202891%
Lynnwood		0.7704629214%
Marysville		0.3945067827%
Mill Creek		0.1227939546%
Monroe		0.1771621898%
Mountlake Terrace		0.2108935805%
Mukilteo		0.2561790702%
Snohomish		0.0861097964%
Stanwood		
Sultan		
Woodway		
<b>County Total:</b>		<b>11.8213083387%</b>

## EXHIBIT B

County	Local Government	% Allocation
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### Spokane County

Spokane County		5.5623859292%
Airway Heights		
Cheney		0.1238454349%
Deer Park		
Fairfield		
Latah		
Liberty Lake		0.0389636519%
Medical Lake		
Millwood		
Rockford		
Spangle		
Spokane		3.0872078287%
Spokane Valley		0.0684217500%
Waverly		
<b>County Total:</b>		<b>8.8808245947%</b>

### Stevens County

Stevens County		0.7479240179%
Chewelah		
Colville		
Kettle Falls		
Marcus		
Northport		
Springdale		
<b>County Total:</b>		<b>0.7479240179%</b>

### Thurston County

Thurston County		2.3258492094%
Bucoda		
Lacey		0.2348627221%
Olympia		0.6039423385%
Rainier		
Tenino		
Tumwater		0.2065982350%
Yelm		
<b>County Total:</b>		<b>3.3712525050%</b>

### Wahkiakum County

Wahkiakum County		0.0596582197%
Cathlamet		
<b>County Total:</b>		<b>0.0596582197%</b>

## EXHIBIT B

County	Local Government	% Allocation
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### Walla Walla County

Walla Walla County	0.5543870294%
College Place	
Prescott	
Waitsburg	
Walla Walla	0.3140768654%
<b>County Total:</b>	<b>0.8684638948%</b>

### Whatcom County

Whatcom County	1.3452637306%
Bellingham	0.8978614577%
Blaine	
Everson	
Ferndale	0.0646101891%
Lynden	0.0827115612%
Nooksack	
Sumas	
<b>County Total:</b>	<b>2.3904469386%</b>

### Whitman County

Whitman County	0.2626805837%
Albion	
Colfax	
Colton	
Endicott	
Farmington	
Garfield	
LaCrosse	
Lamont	
Malden	
Oakesdale	
Palouse	
Pullman	0.2214837491%
Rosalia	
St. John	
Tekoa	
Uniontown	
<b>County Total:</b>	<b>0.4841643328%</b>

**EXHIBIT B**

<b>County</b>	<b>Local Government</b>	<b>% Allocation</b>
<b><u>Yakima County</u></b>		
	Yakima County	1.9388392959%
	Grandview	0.0530606109%
	Granger	
	Harrah	
	Mabton	
	Moxee	
	Naches	
	Selah	
	Sunnyside	0.1213478384%
	Tieton	
	Toppenish	
	Union Gap	
	Wapato	
	Yakima	0.6060410539%
	Zillah	
	<b>County Total:</b>	<b>2.7192887991%</b>

# Exhibit C

## **KING COUNTY REGIONAL AGREEMENT**

King County intends to explore coordination with its cities and towns to facilitate a Regional Agreement for Opioid Fund allocation. Should some cities and towns choose not to participate in a Regional Agreement, this shall not preclude coordinated allocation for programs and services between the County and those cities and towns who elect to pursue a Regional Agreement. As contemplated in C.5 of the MOU, any Regional Agreement shall comply with the terms of the MOU and any Settlement. If no Regional Agreement is achieved, the default methodology for allocation in C.4 of the MOU shall apply.

**EXHIBIT I**

[Settlement Fund Administrator terms to be inserted]



**EXHIBIT J**

**List of Opioid Remediation Uses**

**Schedule A  
Core Strategies**

States and Qualifying Block Grantees shall choose from among the abatement strategies listed in Schedule B. However, priority shall be given to the following core abatement strategies (“*Core Strategies*”).<sup>1</sup>

**A. NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES**

Expand training for first responders, schools, community support groups and families; and

Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.

**B. MEDICATION-ASSISTED TREATMENT (“MAT”) DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT**

1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;
2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

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<sup>1</sup> As used in this Schedule A, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

**C. PREGNANT & POSTPARTUM WOMEN**

1. Expand Screening, Brief Intervention, and Referral to Treatment (“*SBIRT*”) services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder (“*OUD*”) and other Substance Use Disorder (“*SUD*”)/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

**D. EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME (“*NAS*”)**

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

**E. EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES**

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;
2. Expand warm hand-off services to transition to recovery services;
3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;
4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and
5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

**F. TREATMENT FOR INCARCERATED POPULATION**

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and
2. Increase funding for jails to provide treatment to inmates with OUD.

**G. PREVENTION PROGRAMS**

1. Funding for media campaigns to prevent opioid use (similar to the FDA’s “Real Cost” campaign to prevent youth from misusing tobacco);
2. Funding for evidence-based prevention programs in schools;
3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the 2016 CDC guidelines, including providers at hospitals (academic detailing);
4. Funding for community drug disposal programs; and
5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

**H. EXPANDING SYRINGE SERVICE PROGRAMS**

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

**I. EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE**

## Schedule B Approved Uses

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT
---------------------

### **A. TREAT OPIOID USE DISORDER (OUD)**

Support treatment of Opioid Use Disorder (“*OUD*”) and any co-occurring Substance Use Disorder or Mental Health (“*SUD/MH*”) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:<sup>2</sup>

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment (“*MAT*”) approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine (“*ASAM*”) continuum of care for OUD and any co-occurring SUD/MH conditions.
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. Improve oversight of Opioid Treatment Programs (“*OTPs*”) to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

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<sup>2</sup> As used in this Schedule B, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“*DATA 2000*”) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
13. Disseminate web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication–Assisted Treatment.

**B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.
11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.
14. Create and/or support recovery high schools.
15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED  
(CONNECTIONS TO CARE)**

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.
8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.
11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.
14. Support assistance programs for health care providers with OUD.

15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

**D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
  1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative (“*PAARP*”);
  2. Active outreach strategies such as the Drug Abuse Response Team (“*DART*”) model;
  3. “Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;
  4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion (“*LEAD*”) model;
  5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
  6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.
4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.



5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. Support critical time interventions (“*CTP*”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.
7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME**

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome (“*NAS*”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.
5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.

6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.
7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.
8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
10. Provide support for Children’s Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs (“*PDMPs*”), including, but not limited to, improvements that:
  1. Increase the number of prescribers using PDMPs;
  2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or

3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation’s Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

**G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”).
7. Engaging non-profits and faith-based communities as systems to support prevention.
8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.

10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

#### **H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.
7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.

10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.
12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.
13. Supporting screening for fentanyl in routine clinical toxicology testing.

<b>PART THREE: OTHER STRATEGIES</b>
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**I. FIRST RESPONDERS**

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

**J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing

overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

4. Provide resources to staff government oversight and management of opioid abatement programs.

## **K. TRAINING**

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

## **L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.
4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).

7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“*ADAM*”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.
9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.

**Staff Report: 083-24**

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024  
6/3/2024

**SUBJECT** Comcast Cable Franchise Renewal

**Key Points**

- The current cable franchise agreement between the City and Comcast expires on June 30, 2024.
- The renewed cable franchise agreement with Comcast would be for 10 years, effective July 1, 2024 – July 1, 2034.
- The City/County Telecommunications Commission on April 10, 2024, recommended approval of the proposed cable franchise.

**Strategic Plan Alignment**

**Culture and Heritage** – celebrating culture and heritage.

**High Performing Government** – a government that is reliable, fiscally responsible, equitable, and open to compromise.

**Present Situation**

The current cable franchise agreement between the City (and Clark County) and Comcast will expire June 30, 2024. Federal law outlines the process which local governments must follow in determining whether to renew a franchise with an existing operator. Beginning in 2021, the Vancouver/Clark County Telecommunications Commission (Commission) conducted an extensive public process, consistent with the requirements of federal law, to determine community needs and priorities regarding a renewed franchise with Comcast. A City/County team has negotiated a proposed new agreement which reflects those needs and priorities, as highlighted in the attached “Priority Issues of the Vancouver/Clark County Franchise Renewal Process.” The Commission conducted public hearings and adopted Findings and Recommendations (attached), unanimously recommending that the City and Clark County each award Comcast a renewed franchise agreement to be effective July 1, 2024 through July 1, 2034. **(NOTE: City charter requires that franchise agreements be published for at least 30 days between first and second reading.)**



The Commission finds that the proposed renewed franchise agreement, if approved, would meet the identified community needs and interests as follows:

1. Franchise term of 10 years, effective July 1, 2024 – July 1, 2034;
2. Comcast would continue to pay 5% of gross revenues in franchise fees to the City and County;
3. Comcast would switch from collecting \$1/month per residential subscriber PEG Capital Fees to support capital equipment needs of Public, Education and Government (PEG) channels to 1% of gross revenues;
4. The proposed franchise would provide expanded customer service provisions;
5. The density buildout requirements for extending the cable service moves from requiring 30 homes per cable mile to 20 homes in aerial neighborhoods;
6. Comcast would provide two additional High-Definition (“HD”) simulcast PEG channels by November 2024 for a maximum of five HD channels;
7. PEG channels would be available to all cable subscribers; and
8. Comcast would maintain where possible Washington State and local programming (including continuation of TVW, the Washington State public affairs station).

#### **Advantage(s)**

1. The PEG provisions of the proposed franchise present an opportunity for substantial public benefit; and
2. The proposed franchise is responsive to the special and unique needs of Vancouver and Clark County.

#### **Disadvantage(s)**

Although this would be a nonexclusive franchise, Comcast remains the only cable operator in Vancouver\Clark County, which means that consumers don't have the opportunity to benefit from the competition another cable operator would provide. However, Comcast has committed to positively impacting the future of this community by agreeing to the proposed new franchise.

#### **Budget Impact**

Franchise fees and PEG Capital Support would continue to be paid under the current franchise. PEG Capital Support will change from being \$1 per subscriber per month to 1% of gross revenue. Due to the impacts of the Federal Communications Commission Order 621, the proposed cable franchise agreement will not allow for future award of funds to public users of Comcast Business Services to offset transport costs from the PEG Capital Support Grant Program. Under the expiring cable franchise, the City was receiving \$64,000 annually to help offset the transport costs of Comcast Business Services for certain public facilities. The impact of the new agreement will result in a reduction of annual revenue to the PEG grant in excess of \$400,000 per year. The budget for PEG grants will be adjusted accordingly in the next Supplemental action and incorporated into the 2025-2026 biennial budget.

#### **Prior Council Review**

November 20, 2023, Council Workshop

**Action Requested**

On April 22, 2024, approve the franchise ordinance on first reading, setting date of second reading and public hearing for June 3, 2024.

*Jim Demmon, Video Services Manager, 360-487-8706*

**ATTACHMENTS:**

- ▣ Ordinance
- ▣ 2024-01 TCC Resolution
- ▣ Comcast Cable Franchise
- ▣ Comcast Cable Franchise Exhibit A - Access Centers
- ▣ Comcast Franchise Renewal Side Letter Agreement
- ▣ Cable Franchise Renewal Priority Issues Recap

4/22/24 (Date of First Reading)  
6/03/24 (Date of Public Hearing)

ORDINANCE NO. M- [Ordinance Number]

AN ORDINANCE relating to cable television, renewing with revised terms and conditions, a nonexclusive and revocable franchise to Comcast Cable Communications Management, LLC, a limited liability corporation organized under the laws of the State of Washington (“Comcast”), pursuant to state and federal law, City Charter and City ordinance codified at Chapter 5.19, Vancouver Municipal Code, to operate, maintain, reconstruct and repair a Cable System for the purpose of providing only cable service, subject to the terms set forth in the Franchise Agreement.

WHEREAS, City Charter Section 2.12, consistent with Article 11, Section 11 of the State Constitution and state law at RCW 35.22.280, RCW 35.22.570 and RCW 35.27.280, and with the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, (collectively, the “Cable Acts”), authorize the City Council to issue franchises to use the rights-of-way of city streets and highways for the construction and maintenance of cable television lines and other cable television facilities; and

ORDINANCE - 1

WHEREAS, the Cable Acts at 47 USC §546 identify specific procedures to be followed by local franchising authorities, which in this case is the City of Vancouver, in order to renew a cable television franchise; and

WHEREAS, under Chapter 5.19 of the Vancouver Municipal Code (“V.M.C.”), the City Council has adopted comprehensive and detailed regulations relating to the granting and renewal of cable television franchises and the provision of cable television and related services; and

WHEREAS, the City has granted a series of nonexclusive franchises for cable television services, has approved transfer of such franchises, and has approved the change of control of the franchise-holders, resulting in cable television services being provided to the residents of Vancouver continuously since 1981; and

WHEREAS, on June 3, 2013, by Ordinance M-4053, the most recent such nonexclusive franchise for cable television services was granted to Comcast of Washington V, LLC for the period July 1, 2013, through June 30, 2023; and

WHEREAS, in order to provide additional time to complete the renewal process in an orderly manner, a twelve-month extension of the current cable franchise was granted to Comcast on June 5, 2023, by Ordinance M-4412, not to exceed June 30, 2024; and

WHEREAS, the Vancouver-Clark Telecommunications Commission (“Commission”) is established by Ch. 5.19 V.M.C. to, among other duties, review and make recommendations on all applications for franchises (including renewed franchises) to provide cable television service within the city, and in such connection hold public hearings thereon and to make written reports and recommendations to the City Council; and

ORDINANCE - 2

WHEREAS, the Commission established a process for franchise renewal negotiations with Comcast which provided for public education as well as ascertainment of the community's future cable-related needs and interests starting in June 2021; and

WHEREAS the Commission established priority issues following extensive public discussion and ascertainment activities as outlined in Commission Resolution 2024-01, attached as EXHIBIT A; and

WHEREAS, CBG Communications, Inc., a telecommunications consulting firm engaged by the City and County, conducted a community ascertainment process and prepared assessment reports at the request of the Commission; and

WHEREAS, City and County staff, working with the guidance of the Commission, negotiated a proposed renewed franchise agreement with Comcast; and

WHEREAS, the Commission received such proposed draft franchise agreement on April 10, 2024; and

WHEREAS, in a public meeting on April 10, 2024, the Commission unanimously adopted Resolution 2024-01, which included Findings and Recommendations regarding a proposed renewed franchise agreement with Comcast; and

WHEREAS, Commission Resolution 2024-01 concludes that the "proposed renewed franchise agreement with Comcast Cable Communications Management, LLC as detailed in the cable franchise draft and side letter agreement, would meet or exceed the criteria established by federal law and would meet or exceed the Commission's identified priorities for a renewed franchise agreement with Comcast.;" and

WHEREAS, the City Council has considered all the testimony and arguments, both oral and written, and the Commission's Findings and Recommendations as contained in Commission

ORDINANCE - 3

Resolution 2024-01 including study of all the records and the community ascertainment and assessment reports, and has analyzed all of these on the basis of the standards and criteria of federal and state law, and local ordinance, and the City Council has also relied on its own understanding and judgment as to the future cable television-related needs of the city.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

Section 1. Findings. Based upon the detailed and unanimous Findings and Conclusions contained in the report from the Commission dated April 10, 2024, contained in Commission Resolution 2024-01, which findings and conclusions are hereby adopted and incorporated herein as EXHIBIT A by this reference, and upon the testimony and argument presented to Council at public hearing on this Franchise Ordinance, the City Council finds and concludes that the proposed renewed Franchise Agreement with Comcast Cable Communications Management, LLC, a limited liability corporation organized under the laws of the State of Washington (hereinafter “Comcast”), provides for a cable television system that meets or exceeds the future cable-related needs of the Vancouver/Clark County community.

Section 2. Franchise Award. There is hereby granted to Comcast, pursuant to state and federal law, city charter and Chapter 5.19 of the Vancouver Municipal Code, the nonexclusive and revocable authorization to make reasonable and lawful use of the streets of the City of Vancouver to construct, operate, maintain, reconstruct, and repair a cable system for the purpose of providing only Cable Service, subject to the terms and conditions set forth in the Franchise Agreement incorporated herein by reference.

ORDINANCE - 4

Section 3. Franchise Area. The rights and privileges granted herein shall apply within all of the City of Vancouver as now exists or as it may come to exist as a result of any annexations hereto.

Section 4. Incorporation of Franchise Agreement. The Franchise Agreement agreed to and attached hereto as EXHIBIT B is incorporated herein by this reference as if fully set forth as part of this ordinance. A copy of the Franchise Agreement is and shall be maintained on file in the office of the City Clerk and the City/County Cable Television Office.

Section 5. Cable Television Ordinance. In addition to other applicable ordinances, laws and regulations, this franchise shall be subject to the terms and provisions of Chapter 5.19 of the Vancouver Municipal Code, as amended.

Section 6. Effective Date of Ordinance and Term of Franchise. Subject to the provisions of Section 7 of this ordinance, this ordinance and the franchise awarded hereby shall go into effect July 1, 2024. The term of the franchise awarded hereby shall extend from such effective date for ten (10) years through and including July 1, 2034, unless otherwise terminated or extended as provided by the franchise.

Section 7. Acceptance of Franchise. Pursuant to Ch. 5.19 V.M.C. and the franchise agreement, Comcast shall, within 30 (thirty) days of approval by the City of award of this franchise, file with the Commission its written and sworn unconditional acceptance and promise to comply with all terms of the franchise and shall post with the Commission the security required by the franchise or this ordinance and the franchise granted hereby shall become null and void and any and all rights of Comcast to own or operate a cable system within the city under the franchise shall be terminated.

DATE OF FINAL PASSAGE by the Vancouver City Council: \_\_\_\_\_.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Anne McEnemy-Ogle, Mayor

Attest:

\_\_\_\_\_  
Natasha Ramras, City Clerk

Approved as to form:

\_\_\_\_\_  
Jonathan Young, City Attorney

EXHIBITS:

Exhibit A - Commission Resolution 2024-01

Exhibit B – Franchise Agreement and Franchise Agreement Exhibit:

ORDINANCE - 6



SUMMARY

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE relating to cable television, renewing with revised terms and conditions, a nonexclusive and revocable franchise to Comcast Cable Communications Management, LLC, a limited liability corporation organized under the laws of the State of Washington (“Comcast”), pursuant to state and federal law, City Charter and City ordinance codified at Chapter 5.19, Vancouver Municipal Code, to operate, maintain, reconstruct and repair a Cable System for the purpose of providing only cable service, subject to the terms set forth in the Franchise Agreement.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 487-8711, or via [www.cityofvancouver.us](http://www.cityofvancouver.us) (Go to City Government and Public Records).

Exhibit A

**City/County Telecommunications Commission**

**RESOLUTION 2024 – 01**

**Regarding Findings and Recommendations to the Vancouver City Council and the Clark County Council Regarding Approval of a Renewed Franchise Agreement with Comcast Cable Communications Management, LLC**

**Section 1. Findings**

- 1.1 The City of Vancouver (“City”), Washington and Clark County (“County”), Washington granted separate, but parallel, non-exclusive ten-year franchises for cable television services to Comcast of Washington V, LLC, for the period July 1, 2013, through July 1, 2023.
- 1.2 In order to provide additional time to complete the renewal process in an orderly manner, a twelve-month extension of the current cable franchise was granted to Comcast of Washington V, LLC, not to exceed June 30, 2024.
- 1.3 The Commission is established by chapter 5.19 Vancouver Municipal Code (“VMC”) and chapter 36 Clark County Code (“CCC”) to, among other duties, review and make recommendations on all applications for franchises (including renewed franchises) to provide cable television service within the City or the unincorporated County, and in such connection to hold public hearings thereon and to make written reports and recommendations to the Vancouver City Council (“City Council”) and the Clark County Council (“County Council”).
- 1.4 Section 626 of the Federal Cable Act of 1984 (“Act”) as amended in 1992 and 1996 (47 USC 546) identifies specific procedures to be followed by local franchising authorities (in this case the City and County) in order to renew a cable franchise.
- 1.5 Factors the franchise authorities may consider in renewing a franchise with an existing cable operator (in this case, Comcast Cable Communications Management, LLC) pursuant to Section 626 of the Act are limited to the following areas:
  - 1.5.1 Whether the current cable operator has substantially complied with material terms of the existing franchise and with applicable law;
  - 1.5.2 The quality of the operator’s service including signal quality, response to consumer complaints and billing practices, and whether the services provided have been reasonable in light of community needs;
  - 1.5.3 Whether the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment proposed in a new agreement; and

- 1.5.4 Whether the proposed agreement is reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- 1.6 Beginning in 2020 and continuing through this date, the Commission initiated an informal process (under the definition of the Act) that provided for public education as well as ascertainment of the community's needs and interests in preparing for franchise renewal discussions with Comcast.
- 1.7 The public education and community ascertainment process included workshop sessions of the Commission as well as more conventional ascertainment surveys, focus groups and public hearings. Most of the public sessions were televised on CVTV Channel 23, the government access channel. Details of the Commission's public education and ascertainment efforts are outlined in Exhibit 1.
- 1.8 To assist with the community ascertainment process in determining the future cable-related needs and interests of the community, the Commission retained the services of CBG Communications, Inc. ("CBG"). Their report is available as an appendix to this Resolution and their findings and recommendations are hereby incorporated as part of the Commission's Findings and Recommendations.
- 1.9 Based upon the expressed needs and interests of the community, as determined through the ascertainment process outlines above, the Commission identified the following priorities which must be met or exceeded in a renewed franchise agreement with Comcast:
  - 1.9.1 Expand customer service provisions;
  - 1.9.2 Improve density buildout requirements;
  - 1.9.3 Increase number of High-Definition ("HD") simulcast channels for Public, Education and Governmental ("PEG") programming;
  - 1.9.4 Retain or expand the current level of Washington State programming;
  - 1.9.5 Assure adequate funding for PEG capital needs;
  - 1.9.6 Update, modify and clarify certain language in the agreement.
- 1.10 Franchise renewal negotiations proceeded between Comcast and representatives of the City and County. The City/County negotiation team was composed of Jim Demmon, Cable Television Manager of the City/County Cable Television Office; Taylor Hallvik, Assistant City Attorney; and Stephen Archer, Deputy County Prosecutor. Additional support was provided to the negotiation team by Tracie Ramirez, Support Specialist III from the City/County Cable Television Office and Cary Driskell, Assistant City Attorney. Samantha Ridderbusch, Director of Government and Regulatory Affairs, for the Pacific Northwest Region and Tim

Goodman, Senior Director of Government and Regulatory Affairs, for the Pacific Northwest Region represented Comcast.

1.11 Between October 18, 2023, and November 20, 2023, the City/County negotiation team briefed the Commission, City Council and County Council separately on the progress of negotiations. In addition, separate briefings were provided to representatives of TV ETC, the educational access provider, and public users of Comcast Business Services. The City/County negotiation team received direction and feedback during these sessions.

1.12 Based upon review and deliberations of the community ascertainment process, public testimony, and review of the written and oral record of all proceedings, the Commission evaluates the proposed franchise agreement draft, Exhibit 2, and side letter agreement, Exhibit 3, with Comcast as follows:

1.12.1 Past Performance

Based upon the Commission’s most recent review of Comcast performance as documented in the June 7, 2023 “Progress Report on the Comcast Corporation Vancouver/Clark County Franchise Agreement,” Comcast was, and remains, in compliance with all requirements of the current franchise agreement.

1.12.2 Quality of Service

Records on file with the Commission indicate that fewer than 1% of total subscribers have registered complaints about Comcast service, billing and related customer service issues since Comcast received a renewed cable television franchise in July 2013.

1.12.3 Financial, Technical and Legal Ability

Comcast has the legal ability to operate the cable system in Vancouver/Clark County. The performance guarantees outlined in the proposed renewed agreement demonstrate that Comcast has the financial, technical and legal ability to continue to operate a cable system in Vancouver/Clark County.

1.12.4 Meeting Future Cable-Related Community Needs and Interests

Based upon the community ascertainment process, testimony received during Commission proceedings, and a total review of the record, the Commission finds that the proposed new franchise agreement would meet the Future Cable-Related Needs and Interests of the Community as follows:

- i) Comcast’s commitment to simultaneously carry five of the existing PEG access channels in High-Definition (“HD”) by November 2024;

- ii) Expansion of customer service provisions within the cable television franchise;
- iii) Preserve PEG channel access to the lowest tier available to subscribers;
- iv) Washington State and local programming identified as broad programming categories to be provided by the operator;
- v) Maintenance and potential increase to capital funding support for education, and government access programming.

1.13 Based upon the foregoing findings, the Commission concludes that the proposed renewed franchise agreement with Comcast Cable Communications Management, LLC as detailed in the cable franchise draft and side letter agreement, would meet or exceed the criteria established by federal law and would meet or exceed the Commission's identified priorities for a renewed franchise agreement with Comcast.

**NOW, THEREFORE BE IT RESOLVED:**

**Section 2.**

- 2.1 The City/County Telecommunications Commission adopts the findings and recommendations as presented in Section 1 above, including all attachments, and incorporations by reference regarding a proposed renewed franchise agreement with Comcast Cable Communications Management, LLC.
- 2.2 The Commission unanimously recommends that after all appropriate and required public hearings that the Vancouver City Council and the Clark County Council respectively award Comcast Cable Communications Management, LLC a renewed franchise effective July 1, 2024, through June 30, 2034, by ordinance to be based upon the proposed franchise agreement and these findings.
- 2.3 The Commission is confident of its recommendation; however it realizes that the final decision will be made by the legislative bodies after hearings and realizes that this Resolution will only be one factor in the final decisions of the respective Councils and that they are not bound by the findings and/or conclusions herein, which are advisory only.
- 2.4 The Commission expresses its sincere appreciation to Comcast for listening to and hearing the concerns of the residents of Vancouver/Clark County in preparing to agree to a renewed franchise agreement that is expected to meet the needs and interests of the community over the life of the franchise.

- 2.5 The Commission directs staff to immediately forward a copy of this Resolution 2024 – 01 and its attachments to the Vancouver City Council and Clark County Council.

Approved (Date): 04/10/2024, ~~2024~~



**Chair, Paul Dicker, City/County Telecommunications Commission**

**Exhibits:**

**Exhibit 1** – City of Vancouver/Clark County Cable Television Franchise Renewal Process – Community Ascertainment Public Process, submitted April 10, 2024

**Exhibit 2** – Draft of Cable Television Franchise Agreement with Comcast Cable Communications Management, LLC, dated April 10, 2024

**Exhibit 3** – Draft of Letter Agreement between Clark County and Comcast

2024 -01.doc

**Exhibit 1**

**City of Vancouver/Clark County  
Cable Television Franchise Renewal Process**

**Community Ascertainment Public Process**

**August 2020 – April 2024**

*Note: All meetings and work sessions of the City/County Telecommunications Commission have been open to the public and televised LIVE on CTVV Channel 23/323HD.*

**I. Telecommunications Commission**

- A. August 2020 – Comcast sends letter to initiate informal franchise renewal process
- B. September 2020 – City/County acknowledge Comcast’s letter of February to initiate informal renewal process
- C. June 2021 –Regular session discussing cable franchise priority issues, summary of current franchise, legal & regulatory framework, comparison of recently negotiated Comcast national and local franchises, and review of initial timeline
- D. January 2022 – Work session with CBG Communications to review Community Ascertainment Report
- E. October 2023 - Work session to review highlights of negotiated franchise and solicit feedback
- F. March 2024 – Work session to review proposed cable franchise

**II. Vancouver City Council & Clark County Council**

- A. November 2023 – Separate workshop sessions to review highlights of negotiated franchise and solicit feedback

**III. Focus Groups & Surveys**

- A. June 2021 – Residential Subscribers/Non-subscriber mail survey conducted with both cable subscribers and non-subscribers (598 responses received)
- B. August 2021 –CBG Communications, Inc. met with the designated educational and government access providers to discuss needs and tour facilities
- C. August 2021 – CBG Communications, Inc. held community and stakeholder focus groups. Included representatives from: WSU Vancouver Creative Media and Digital Culture Program, Clark County Arts Commission, West Hazel Dell Neighborhood Association, East Fork Alliance Neighborhood Association and the Clark County Youth Council

- D. September – November 2021 – Conducted on-line survey of subscribers and non-subscribers (532 people completed the survey)

#### **IV. Negotiation Sessions – City/County Negotiation Team/Comcast**

- |                        |                         |
|------------------------|-------------------------|
| 1. August 2, 2022      | 33. July 18, 2023       |
| 2. August 16, 2022     | 34. July 26, 2023*      |
| 3. September 6, 2022   | 35. August 1, 2023      |
| 4. September 22, 2022* | 36. August 15, 2023     |
| 5. October 4, 2022     | 37. August 29, 2023     |
| 6. October 11, 2022    | 38. September 1, 2023*  |
| 7. October 17, 2022*   | 39. September 5, 2023   |
| 8. November 1, 2022    | 40. September 14, 2023* |
| 9. December 1, 2022*   | 41. September 19, 2023  |
| 10. December 5, 2022*  | 42. September 28, 2023* |
| 11. December 6, 2022   | 43. October 3, 2023     |
| 12. January 3, 2023    | 44. October 12, 2023*   |
| 13. January 13, 2023*  | 45. October 16, 2023*   |
| 14. January 17, 2023   | 46. October 17, 2023    |
| 15. February 7, 2023   | 47. November 7, 2023    |
| 16. February 15, 2023* | 48. November 13, 2023   |
| 17. February 21, 2023  | 49. November 21, 2023   |
| 18. March 2, 2023*     | 50. November 27, 2023*  |
| 19. March 7, 2023      | 51. December 5, 2023    |
| 20. March 14, 2023*    | 52. December 15, 2023*  |
| 21. March 21, 2023     | 53. December 19, 2023   |
| 22. April 4, 2023      | 54. January 10, 2024*   |
| 23. April 17, 2023*    | 55. January 16, 2024    |
| 24. April 18, 2023     | 56. January 22, 2024*   |
| 25. May 1, 2023*       | 57. January 23, 2024    |
| 26. May 2, 2023        | 58. February 6, 2024    |
| 27. May 15, 2023*      | 59. February 8, 2024*   |
| 28. May 16, 2023       | 60. February 20, 2024*  |
| 29. May 24, 2023*      | 61. February 22, 2024*  |
| 30. June 6, 2023       | 62. March 5, 2024       |
| 31. June 20, 2023      | 63. March 7, 2024*      |
| 32. June 29, 2023*     | 64. March 26, 2024*     |

*\*City/County Staff only negotiation planning sessions*

#### **V. Community Outreach**

- A. Franchise renewal information and updates on Telecommunications Commission page on City's website (linked to CVTV and County sites)



B. Telecommunications Commission regular meeting updates

1. June 2, 2021
2. September 1, 2021
3. December 1, 2021
4. January 19, 2022
5. March 2, 2022
6. June 1, 2022
7. June 15, 2022
8. December 7, 2022
9. March 1, 2023
10. April 19, 2023
11. June 7, 2023
12. October 18, 2023
13. December 6, 2023
14. March 6, 2024
15. March 20, 2024
16. April 3, 2024

**Exhibit B**

**CABLE TELEVISION SYSTEM  
FRANCHISE RENEWAL AGREEMENT**

**Between**

**CITY OF VANCOUVER, WASHINGTON**

**and**

**COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC**

## TABLE OF CONTENTS

	<u>Page</u>
<b>SECTION 1. DEFINITIONS</b>	<b>1</b>
<b>SECTION 2. GRANT OF FRANCHISE</b>	<b>7</b>
2.1 Grant	7
2.2 Use of Public Rights-of-Way	8
2.3 Duration	8
2.4 Effective Date	8
2.5 Franchise Nonexclusive	8
2.6 Grant of Other Franchises – Competitive Equity	9
2.7 Police Powers	10
2.8 Relations to Other Provisions of Law	10
2.9 Change of Law	11
2.10 Effect of Acceptance	11
<b>SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS</b>	<b>11</b>
3.1 Franchise Fee	11
3.2 Payments	11
3.3 Acceptance of Payment and Recomputation	12
3.4 Quarterly Franchise Fee Reports	12
3.5 Annual Franchise Fee Reports	12
3.6 Audits	12
3.7 Interest on Late Payments	12
3.8 Alternative Remedies	13
3.9 Additional Commitments Not Franchise Fees	13
3.10 Costs of Publication	13
3.11 Tax Liability	13
3.12 Payment on Termination	13
<b>SECTION 4. ADMINISTRATION AND REGULATION</b>	<b>14</b>
4.1 Authority	14
4.2 Rates and Charges	14
4.3 Filing of Rates and Charges	14
4.4 Time Limits Strictly Construed	14
4.5 Performance Evaluation Sessions	15
<b>SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS</b>	<b>15</b>
5.1 Insurance Requirements	15
5.2 Deductibles and Self-Insured Retentions	16
5.3 Indemnification	17
5.4 Faithful Performance Bond	20
<b>SECTION 6. CUSTOMER SERVICE</b>	<b>21</b>
6.1 Customer Service Standards	21
6.2 Subscriber Privacy	25
6.3 Local Office	25

6.4	Emergency Broadcast	26
<b>SECTION 7.</b>	<b>REPORTS AND RECORDS</b>	<b>26</b>
7.1	Open Records	26
7.2	Confidentiality	26
7.3	Copies of Federal and State Documents	27
7.4	Complaint File and Reports	27
7.5	Inspection of Facilities	28
7.6	False Statements	28
<b>SECTION 8.</b>	<b>PROGRAMMING</b>	<b>28</b>
8.1	Broad Programming Categories	28
8.2	Parental Control Device	29
8.3	Leased Access Channels	29
8.4	Continuity of Service	29
8.5	Service for the Disabled	30
<b>SECTION 9.</b>	<b>PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS</b>	<b>30</b>
9.1	General Definitions	30
9.2	Management and Control of Access Channels	30
9.3	Channel Capacity and Use	31
9.4	Standard Definition (SD) Channels	32
9.5	HD Channels	32
9.6	Relocation of Access Channels	33
9.7	Access Interconnections	33
9.8	Support for Access Costs	33
9.9	Access Support Not Franchise Fees	35
9.10	Access Channels on Lowest Tier	35
9.11	Technology Changes and Migrations	35
9.12	Technical Quality	36
<b>SECTION 10.</b>	<b>GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION</b>	<b>36</b>
10.1	Construction	36
10.2	Location of Facilities	37
10.3	Relocation	37
10.4	Restoration of Public Rights-of-Way and Property	38
10.5	Maintenance and Workmanship	39
10.6	Reservation of Grantor Public Right-of-Way Rights	40
10.7	Public Right-of-Way Vacation	40
10.8	Discontinuing Use of Facilities	40
10.9	Hazardous Substances	41
10.10	Undergrounding of Cable	41
10.11	Codes	42
10.12	Standards	42
10.13	Tree Trimming	42
<b>SECTION 11.</b>	<b>SYSTEM DESIGN</b>	<b>43</b>
<b>SECTION 12.</b>	<b>TEST AND COMPLIANCE PROCEDURE</b>	<b>43</b>
<b>SECTION 13.</b>	<b>SERVICE EXTENSION, CONSTRUCTION AND INTERCONNECTION</b>	<b>44</b>

<b>13.1 Equivalent Service</b>	<b>44</b>
<b>13.2 Service Availability</b>	<b>44</b>
<b>13.3 Connection of Public Facilities</b>	<b>45</b>
<b>SECTION 14. STANDBY POWER AND STATUS MONITORING</b>	<b>46</b>
<b>SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE</b>	<b>47</b>
<b>15.1 Procedure for Remediating Franchise Violations</b>	<b>47</b>
<b>15.2 Revocation</b>	<b>48</b>
<b>15.3 Liquidated Damages</b>	<b>49</b>
<b>15.4 Removal</b>	<b>50</b>
<b>15.5 Receivership and Foreclosure</b>	<b>50</b>
<b>15.6 No Recourse Against Grantor</b>	<b>51</b>
<b>15.7 Nonenforcement by Grantor</b>	<b>51</b>
<b>15.8 Relationship of Remedies</b>	<b>51</b>
<b>SECTION 16. ABANDONMENT</b>	<b>52</b>
<b>16.1 Effect of Abandonment</b>	<b>52</b>
<b>16.2 What Constitutes Abandonment</b>	<b>52</b>
<b>SECTION 17. FRANCHISE RENEWAL AND TRANSFER</b>	<b>52</b>
<b>17.1 Renewal</b>	<b>52</b>
<b>17.2 Transfer of Ownership or Control</b>	<b>53</b>
<b>SECTION 18. SEVERABILITY</b>	<b>54</b>
<b>SECTION 19. MISCELLANEOUS PROVISIONS</b>	<b>54</b>
<b>19.1 Preferential or Discriminatory Practices Prohibited</b>	<b>54</b>
<b>19.2 Notices</b>	<b>54</b>
<b>19.3 Binding Effect</b>	<b>55</b>
<b>19.4 Authority to Amend</b>	<b>55</b>
<b>19.5 Governing Law</b>	<b>55</b>
<b>19.6 Captions</b>	<b>55</b>
<b>19.7 Construction of Agreement</b>	<b>56</b>
<b>19.8 Force Majeure</b>	<b>56</b>
<b>19.9 Attorneys' Fees</b>	<b>56</b>
<b>19.10 Survival</b>	<b>56</b>

## CABLE TELEVISION SYSTEM FRANCHISE AGREEMENT

This Cable Television System Franchise Agreement ("Agreement") is entered into in Vancouver, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the **CITY OF VANCOUVER** ("Grantor" or "City"), and **COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC** ("Grantee").

WHEREAS, the Grantor is authorized to grant one or more nonexclusive Franchises to construct, operate and maintain a cable television system within the municipal boundaries of the City; and

WHEREAS, the Grantor has considered the financial condition, technical ability and legal qualifications of Grantee; and

WHEREAS, the Grantor, after such consideration, analysis and deliberation as are required by applicable law, has approved and found sufficient the financial, technical and legal qualifications of Grantee to provide cable television service within the City; and

WHEREAS, the Grantee is willing to accept this Agreement subject to such terms and conditions, and to abide by those terms and conditions; and

WHEREAS, the public has had adequate notice and opportunity to comment on Grantee's application to provide cable television service within the City;

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Grantor and Grantee do hereby agree as follows:

### SECTION 1. DEFINITIONS

For the purposes of this Agreement and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

**1.1** "**Access**" means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video, Cable Service, and signals as permitted under applicable law, including, but not limited to:

(A) "**Public Access**" which means Access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users;

(B) **“Educational Access”** which means Access where Schools, colleges and universities are the primary users of programming and service;

(C) **“Governmental Access”** which means Access where governmental institutions or their designees are the primary users of programming and service; and

(D) **“PEG Access”** which means Public Access, Educational Access, and Governmental Access, collectively.

**1.2 “Access Center”** means a facility or facilities where Public, Educational, or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers or to other Access Centers via a dedicated connection.

**1.3 “Access Channel”** means any Channel, or portion thereof, designated for non-commercial Access purposes or otherwise made available to facilitate or transmit Access programming or service.

**1.4 “Affiliate”** when used in connection with Grantee means any corporation, Person or entity who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

**1.5 “Basic Service”** means any service tier which includes the retransmission of local television broadcast signals and Public, Educational and Governmental Access Channels or as such service tier may be further defined by federal law.

**1.6. “Cable Act”** means the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992 and any amendments thereto, including those contained in the Telecommunications Act of 1996, as amended.

**1.7 “Cable Operator”** means any Person or groups of Persons, including Grantee, who provide Cable Service over a Cable System and directly or through one or more Affiliates own a significant interest in such Cable System or who otherwise control or are responsible for, through any arrangement, the management and operation of such a Cable System.

**1.8 “Cable Service”** means the one-way transmission of video programming or other programming service to Subscribers, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

**1.9 “Cable System”** shall have the meaning set forth in the Cable Act.

**1.10 “Telecommunications Commission”** means the Telecommunications Commission which advises the City of Vancouver/Clark County on matters pertaining to cable television.

**1.11 “Channel”** means a time or frequency slot or technical equivalent on the Cable System in a specified format, discretely identified and capable of carrying full motion color video and audio, and may include other non-video subcarriers and digital information.

**1.12 “Designated Access Provider”** means the entity or entities designated by the Grantor to manage or co-manage Public, Educational or Governmental use Channels and facilities. The Grantor may be a Designated Access Provider.

**1.13 “Downstream”** means the transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

**1.14 “FCC”** means the Federal Communications Commission.

**1.15 “Franchise”** means the non-exclusive and revocable authorization or renewal thereof for the construction or operation of a Cable System such as is granted by this Agreement, whether such authorization is designated as a Franchise, license, resolution, contract, certificate, agreement or otherwise.

**1.16 “Franchise Area”** means the area within the jurisdictional boundaries of the City, including any areas annexed by Grantor during the term of this Agreement.

**1.17 “Gross Revenues”** means all amounts earned by the Grantee and derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area in accordance with Generally Accepted Accounting Principles and shall be construed broadly to include, all revenues derived by Grantee or an Affiliated Entity that is the cable operator of the Cable System from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross revenues include, by way of illustration and not limitation:

- fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including, but not limited to, pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event, video-on-demand Cable Services and other video services);
- broadcast retransmission fees;
- regional sports programming fees;
- inside wiring service plans and maintenance charges;
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;



- fees paid to Grantee for channels designated for commercial leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, set-top unit, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- franchise fees;
- Public, Education and Government (“PEG”) Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area; and
- all other revenues derived from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area, regardless of whether initially recorded to an Affiliate.

“Gross Revenues” shall also include any amounts received or earned by any Affiliate of the Grantee in whatever form and from all sources, derived from the operation of the Grantee’s Cable System to provide cable services within the Franchise Area. However, “Gross Revenues” shall not be double counted. Revenues of both Grantee and an Affiliate that represent a transfer of funds between the Grantee and the Affiliate, and that would otherwise constitute “Gross Revenues” of both the Grantee and the Affiliate, shall be counted only once for purposes of determining “Gross Revenues.”

“Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to Comcast EffecTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

“Gross Revenues” shall exclude revenues from high speed cable modem service unless it is determined to be a Cable Service under federal law or regulation, programming launch fees, reimbursements by programmers of marketing costs incurred by Grantee for introduction of new programming pursuant to written marketing agreements, 3<sup>rd</sup> party ad sales commissions, bad debt written off by Grantee in the normal course of business, provided, however, that bad debt recoveries shall be included in Gross Revenue during the period collected, and any taxes of general applicability collected from subscribers and paid to a governmental entity.

To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. Grantor reserves its right to review and to challenge Grantee’s calculations. Late fees will be treated like bundled services as described in this Section.

Grantee reserves the right to change the allocation methodologies set forth in this definition in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Grantee will explain and document the required changes to Grantor as part of the next quarterly franchise fee report, upon request and as part of any audit or review of franchise fee payments, and any such changes shall be subject to the following subsection.

Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, Grantor reserves its right to challenge Grantee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

**1.18** **“Headend”** means a facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switches, modulators, processors and all other related equipment and facilities.

**1.19** **“High Definition” (“HD”)** means, for the purposes of this Franchise, a display format for digital television transmissions of PEG Channels transmitted in a 16:9 aspect ratio with a resolution of 1080p, or the highest resolution used for the delivery of HD signals of local broadcast stations, if lower than 1080p.

**1.20** “**Interconnect**” means the provision by Grantee of technical, engineering, physical, and all other necessary components to provide and adequately maintain a physical linking of Grantee's Cable System for PEG Access programming under Section 9.7 of this Franchise with any other designated cable system or any separate communications network so that services of technically adequate quality may be sent to and received from such other cable systems to the extent required by this Franchise.

**1.21** “**Leased Access Channel**” means any Channel or portion of a Channel commercially available for programming for a fee or charge by Grantee to members of the general public.

**1.22** “**Origination Point**” means a location other than an Access Center, where Public, Educational or Governmental use programming is delivered to the Grantee for Upstream transmission.

**1.23** “**Person**” means any individual, natural Person, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

**1.24** “**Programming**” means the process of causing television programs or other patterns of signals in video, voice or data formats to be transmitted on the Cable System, and includes all programs or patterns of signals transmitted or capable of being transmitted, on the Cable System.

**1.25** “**Public Right-of-Way**” means the surface of, the space below and above, along, and upon each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under City authority or by others authorized by the City and located within the Franchise Area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, planter areas not including moveable planter boxes, easements, other City rights-of-way and similar areas.

**1.26** “**School**” means any accredited educational institution public or private primary and secondary schools.

**1.27** “**Standard Definition**” (“**SD**”) means, for the purposes of this Franchise, a display format for digital television transmissions of PEG Channels transmitted in a 4:3 aspect ratio with a resolution of 480p, or the highest resolution used for the delivery of SD signals of local broadcast stations, if lower than 480p.

**1.28** “**Subscriber**” means any Person who elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of, or in connection with, the Cable System, and whose premises are physically wired and lawfully activated to receive Cable Service from Grantee's Cable System.

(A) “**Residential Subscriber**” which means any Subscriber who receives Cable Service delivered to single or multiple dwelling units, excluding such multiple dwelling units billed on a

bulk-billing basis. For the purpose of this definition, “dwelling unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is lawfully occupied for residential purposes. Buildings with more than one set of facilities for cooking shall be considered multiple dwelling units unless the additional facilities are clearly accessory.

**1.29 “Upstream”** means the carrying of a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

## **SECTION 2. GRANT OF FRANCHISE**

### **2.1 Grant**

(A) Grantor hereby grants to Grantee a nonexclusive and revocable authorization to make reasonable and lawful use of the Public Rights-of-Way within the Franchise Area to construct, operate, maintain, reconstruct, and repair a Cable System for the purpose of providing only Cable Services, subject to the terms and conditions set forth in this Agreement.

(B) This Agreement is intended to convey limited rights and interests only as to those Public Rights-of-Way in which the Grantor has an actual interest. It is not a warranty of title or interest in any right-of-way; it does not provide the Grantee any interest in any particular location within the right-of-way; and it does not confer rights other than as expressly provided in the grant hereof. This Agreement does not deprive the Grantor of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the Grantor's Public Rights-of-Way covered by this Agreement, including without limitation the right to perform work on its roadways, right-of-way or appurtenant drainage facilities, including constructing, altering, paving, widening, grading, or excavating thereof.

(C) This Agreement is subject to the general lawful police power of Grantor affecting matters of municipal concern and not merely existing contractual rights of Grantee. Nothing in this Agreement shall be deemed to waive the requirements of the other codes and ordinances of general applicability enacted, or hereafter enacted, by Grantor.

(D) This Agreement authorizes Grantee to engage in providing Cable Service, as that term is defined in 47 U.S.C. Sec. 522(6), as amended. This Agreement shall not be interpreted to prevent the Grantor from imposing lawful additional conditions, including additional compensation conditions for use of the rights-of-way should Grantee provide service other than Cable Service. However, this Agreement shall not be read as a concession by Grantee that it needs authorization to provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Agreement, that any Affiliate or joint venture or partner of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the

management or operation of the Cable System in the Franchise Area will also comply with the terms and conditions of this Agreement.

## **2.2 Use of Public Rights-of-Way**

Subject to Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Public Rights-of-Way, and public easements within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System for the provision of Cable Service within the Franchise Area. Grantee shall comply with all applicable construction codes, laws, ordinances, regulations and procedures, now in effect or enacted hereafter, and must obtain any and all necessary permits from the Public Works Department prior to commencing any construction activities. Grantee, through this Agreement, is granted extensive and valuable rights to operate its Cable System for profit using Grantor's public rights-of-way and public utility easements within the Franchise Area in compliance with all applicable Grantor construction codes and procedures. As trustee for the public, Grantor is entitled to fair compensation to be paid for these valuable rights throughout the term of this Agreement.

## **2.3 Duration**

The term of this Agreement shall be for ten (10) years and all rights, privileges, obligations and restrictions pertaining thereto shall be from the effective date of this Agreement through July \_\_, 2034, unless extended or terminated sooner as hereinafter provided.

## **2.4 Effective Date**

The effective date of this Agreement shall be July \_\_, 2024, unless Grantee fails to file an unconditional written acceptance of this Agreement and post the security required hereunder by the date specified by Grantor's approving ordinance, in which event this Agreement shall be null and void, and any and all rights of Grantee to own or operate a Cable System within the Franchise Area under this Agreement are hereby terminated.

## **2.5 Franchise Nonexclusive**

This Agreement shall be nonexclusive, and is subject to all prior rights, interests, agreements, permits, easements or licenses granted by Grantor to any Person to use any public right-of-way, easement, or property for any purpose whatsoever, including the right of Grantor to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. Grantor may at any time grant authorization to use the public rights-of-way for any purpose not incompatible with Grantee's authority under this Agreement and for such additional Franchises for Cable Systems as Grantor deems appropriate, upon such terms and conditions as Grantor deems appropriate.

## **2.6 Grant of Other Franchises – Competitive Equity**

(A) The Grantee acknowledges and agrees that the Grantor may be required by federal law, and reserves the right, to grant one or more additional franchises to provide Cable Service within the Franchise Area. If any additional competitive franchise is granted by the Grantor to provide Cable Service in the Grantee’s Franchise Area, and the competitive franchise is for an area where services have been extended by the Grantee and the Grantee believes the competitive franchise contains material terms and conditions that are, taken together, more favorable or less burdensome than the terms or conditions of this Franchise Agreement, then Grantor and Grantee shall negotiate amendments to this Franchise to ensure that the material provisions of such other franchises and this Franchise are, taken together, materially equivalent or to the extent as may be required by law. “Material terms and conditions” include but are not limited to: franchise fees; system build-out requirements, except for the exemptions as described in Section (B) below; performance bonds or similar instruments; public, education and government access channels and PEG capital support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity. The parties agree that, notwithstanding any provision of this subsection, the Grantor shall not be obligated to comply with the provisions of this subsection to the extent doing so would cause the Grantor to violate applicable laws or FCC rules. Video Programming services delivered over broadband internet service networks are specifically exempted from the requirements of this Section so long as Grantor does not have lawful authority to regulate the provision of video programming services over such broadband internet service networks within the Franchise Area.

(B) The provisions of subsections (A) and (C) do not apply if the Grantor is ordered or required to issue a Franchise on different terms and conditions or it is legally unable to do so; and the relief is contingent on the new Cable Operator actually commencing provision of service in the market to its first customer. In the event that this agreement is modified pursuant to subsection (A) and the new Cable Operator’s franchise is revoked by Grantor within five (5) years from the effective date of this Agreement, then the Grantor, upon one hundred eighty (180) days’ notice to the Grantee, may implement this Agreement with its original terms. These subsections (A) and (C) also do not apply to open video systems, nor do they apply to common carrier systems exempted from Franchise requirements pursuant to 47 U.S.C. Section 571; or to systems that serve less than five percent (5%) of the geographic area of the Grantor, if that geographic area is not being provided service by the Grantee at the time an application is made for a franchise by a new Cable Operator.

(C) In the event that a competitive franchise is granted by Grantor and does not meet an exemption as described in Section 2.6(A) and (B) above which contains material terms and conditions that, taken together, are more favorable or less burdensome than the terms of this Franchise, and notice thereof is duly provided by Grantee, the Grantee shall submit to Grantor in writing (1) the basis for Grantee’s belief that certain provisions of its Franchise place Grantee at a competitive disadvantage; (2) the provisions of this Franchise that Grantee desires to be

amended; and (3) specific language modifying any such Franchise provisions. Grantor and Grantee shall negotiate in good faith such amendments to the Franchise within one hundred twenty (120) days, unless otherwise agreed to by the parties. If the parties fail to reach agreement in informal negotiations, either party may thereafter initiate mediation and the other agrees to participate in mediation in good faith. Each party shall bear its own cost for mediation. In the event the parties are not able to reach agreement in informal negotiations or mediation, Grantee may exercise its rights under Subsection (D) below.

(D) Grantee's notice to Grantor under this Subsection (C) shall be deemed to be Grantee's renewal notification pursuant to Section 626 of the Cable Act. Grantee may elect at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by 47 USC §546 to file a written notice indicating an election to shorten the term of this Franchise, and thereafter the term of Grantee's Franchise shall, one hundred twenty (120) days from the Grantee's written notice, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the end of the one hundred twenty (120) days. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the Grantor required. The Grantor and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The Grantor and Grantee shall have all rights and obligations provided under said Section 626 (47 U.S.C. Section 546).

## **2.7 Police Powers**

Grantee's rights hereunder are subject to the lawful police powers of Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by Grantor or any other legally-constituted governmental unit having lawful jurisdiction over the subject matter hereof.

## **2.8 Relations to Other Provisions of Law**

This Franchise Agreement and all rights and privileges granted under the Franchise are subject to, and the Grantee must exercise all rights in accordance with, applicable law, including the Cable Ordinance, as amended over the Franchise term. However, this Franchise is a contract, subject only to the Grantor's exercise of its police and other powers and applicable law, and any amendments based on changes in federal and state law, made by agreement of Grantee and Grantor in accordance with Section 2.9. This Franchise does not confer rights or immunities upon the Grantee other than as expressly provided herein. In the case of any conflict between the express terms of the Cable Ordinance and this Franchise Agreement, the Franchise Agreement shall govern. Grantee does not waive its right to challenge the lawfulness of a particular enactment, including on the grounds that a particular action is an unconstitutional impairment of contractual rights. The Franchise issued and the Franchise fee paid hereunder are not in lieu of any other required permit, authorization, fee, charge or tax, unless expressly stated herein.

## **2.9 Change of Law**

In the event there is a change in federal or state statute or regulation applicable to the Cable System or to this Agreement, the Grantor or Grantee may notify the other party of its desire to amend this Agreement in order to comply with the change in statute or regulation. The Grantor and Grantee may amend this Agreement to comply with such change in statute or regulation provided such amendment is approved by the Grantor and Grantee. Grantor and Grantee shall work diligently within a one hundred twenty (120) day period after notification to negotiate a mutually agreeable amendment.

## **2.10 Effect of Acceptance**

By accepting the Agreement, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Agreement; (2) agrees that it will not oppose the Grantor's intervening in any proceeding affecting the Cable System; (3) accepts and agrees to comply with each and every provision of this Agreement; and (4) agrees that the Agreement was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary. Notwithstanding the provisions of Section 5.3, the Grantee shall not be obligated to indemnify Grantor in a proceeding affecting the Cable System in which the Grantor chooses to intervene.

## **SECTION 3. FRANCHISE FEE AND FINANCIAL CONTROLS**

### **3.1 Franchise Fee**

As compensation for the benefits and privileges granted under this Agreement and in consideration of permission to use Grantor's Public Rights-of-Way, Grantee shall pay as a Franchise fee to Grantor, throughout the duration of this Agreement, an amount equal to five percent (5%) of Grantee's Gross Revenues derived from the operation of the Cable System to provide Cable Service in the Franchise Area. Accrual of such Franchise fees shall commence as of the effective date of this Agreement. The Franchise fees are in addition to all other fees, assessments, taxes or payments of general applicability that the Grantee may be required to pay under any federal, state or local law. This Agreement and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge or tax.

### **3.2 Payments**

Grantee's Franchise fee payments to Grantor shall be computed quarterly. Each quarterly payment shall be due and payable no later than forty-five (45) days after the last day of the preceding quarter.



### **3.3 Acceptance of Payment and Recomputation**

No acceptance of any payment shall be construed as an accord by Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee.

### **3.4 Quarterly Franchise Fee Reports**

Each payment shall be accompanied by a written report to Grantor, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

### **3.5 Annual Franchise Fee Reports**

Upon request, Grantee shall, no later than one-hundred twenty (120) days after the end of the calendar year, furnish to Grantor a certified statement by an officer of the company stating the total amount of Gross Revenues and all payments, deductions and computations for the period covered by the payments.

### **3.6 Audits**

On an annual basis, upon thirty (30) days' prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Agreement, in accordance with generally accepted accounting principles. The audit may review payments made and supporting records up to and including three (3) years of previously unaudited years, prior to the date of initiation of the audit. The Telecommunications Commission may hire for both the Grantor and Clark County an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchisee fees have been underpaid by five percent (5%) or more, Grantee shall pay the reasonable cost of the combined audit up to \$30,000.

### **3.7 Interest on Late Payments**

In the event that a franchise fee payment or other sum is not received by the Grantor on or before the due date, or is underpaid, the Grantee shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to the interest rate specified for judgments entered in the Superior Court of the State of Washington.

### **3.8 Alternative Remedies**

If any Section, subsection, paragraph, term or provision of this Franchise Agreement or any ordinance, law, or document incorporated herein by reference is held by a court of competent jurisdiction to be invalid, unconstitutional or unenforceable, such holding shall be confined in its operation to the Section, subsection, paragraph, term or provision directly involved in the controversy in which such holding shall have been rendered and shall not in any way affect the validity of any other Section, subsection, paragraph, term or provision hereof. Under such a circumstance, the Grantee shall, upon the Grantor's request, meet and confer with the Grantor to consider amendments to the Franchise Agreement. The purpose of the amendments shall be to place the parties, as nearly as possible, in the position that they were in prior to such determination, consistent with applicable law. In the event the parties are unable to agree to a modification of this Agreement within one hundred twenty (120) days, either party may either (1) resort to litigation to amend the Agreement; or (2) shorten the Agreement to 36 months, at which point either party may invoke the renewal procedures under 47 U.S.C. subsection 546. Each party agrees to participate in up to thirty-two (32) hours of negotiation during the one hundred twenty (120) day period.

### **3.9 Additional Commitments Not Franchise Fees**

No term or condition in this Agreement shall in any way modify or affect Grantee's obligation to pay Franchise fees to Grantor. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Agreement may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, Grantee agrees that the additional commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to Grantor.

### **3.10 Costs of Publication**

Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to the renewal of this Agreement and any amendments thereto, as such notice or publication is reasonably required by applicable law.

### **3.11 Tax Liability**

Payment of the Franchise fees under this Agreement shall not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by Grantor.

### **3.12 Payment on Termination**

If this Agreement terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, showing the Gross

Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in a performance bond or other security provided by the Grantee.

## **SECTION 4. ADMINISTRATION AND REGULATION**

### **4.1 Authority**

Grantor is vested with the power and right to regulate the exercise of the privileges permitted by this Agreement in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under state and local law, to any agent, in its sole discretion.

### **4.2 Rates and Charges**

All of Grantee's rates and charges related to or regarding Cable Service shall be subject to regulation by Grantor to the full extent authorized by applicable federal, state and local laws.

### **4.3 Filing of Rates and Charges**

(A) Throughout the term of this Agreement, Grantee shall maintain on file with Grantor a complete schedule of applicable rates and charges for Cable Service provided under this Agreement. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Grantee shall provide upon request from Grantor a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms and conditions established by Grantee for Leased Access Channels.

### **4.4 Time Limits Strictly Construed**

Whenever this Agreement sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a material violation of this Agreement and sufficient grounds for Grantor to invoke any relevant provision of this Agreement. However, in the event that Grantee is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond the reasonable control of Grantee, such as acts of God (for example, floods, tornadoes, earthquakes or unusually severe weather conditions), Grantee's performance shall be excused during the force majeure occurrence and Grantee thereafter shall, under the circumstances, promptly perform the affected obligations under this Agreement or procure a substitute for such obligation which is satisfactory to Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

#### **4.5 Performance Evaluation Sessions**

- (A) Grantor may hold performance evaluation sessions every three (3) years on the anniversary date of the effective date of this Agreement. All such evaluation sessions shall be conducted by Grantor.
- (B) Special evaluation sessions related to potential franchise violations may be held at any time by Grantor during the term of this Agreement.
- (C) All performance evaluation sessions shall be open to the public and announced at least one week in advance in the Franchise Area.
- (D) Evaluation sessions shall deal with the Grantee's performance of the terms and conditions of the Franchise and compliance with state and federal laws and regulations.
- (E) As part of the performance evaluation session, Grantee shall submit to the Grantor a plant survey report, or map, acceptable to the Grantor which includes a description of the portions of the Franchise Area that are cabled and have all Cable Services available. Such report shall also include the number of miles of overhead and underground cable plant. If the Grantor has reason to believe that a portion or all of the Cable System does not meet the applicable FCC technical standards or other required codes and standards, the Grantor, at its expense, retains the right to appoint a qualified independent engineer to evaluate and verify the technical performance of the Cable System.
- (F) During evaluations under this Section, Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to perform the evaluation.

### **SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS**

#### **5.1 Insurance Requirements**

- (A) General Requirement. Grantee must have adequate insurance in full force and effect at its own cost and expense during the entire term of this Agreement to protect against claims for injuries to Persons or damages to property which in any way relate to, arise from, or are connected with this Agreement or involve Grantee, its agents, representatives, contractors, subcontractors and their employees.
- (B) Initial Insurance Limits. Grantee must keep insurance in effect in accordance with the minimum insurance limits herein set forth by the Grantor from time to time. The Grantee shall obtain policies for the following initial minimum insurance limits:
- (1) Commercial General Liability insurance with limits of no less than three

million dollars (\$3,000,000.00) per occurrence and three million dollars (\$3,000,000.00) general aggregate. Coverage shall include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations, property damage, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The Grantor shall be included as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to this Franchise Agreement.

(2) Commercial Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of three million dollars (\$3,000,000.00) per accident. The policy shall contain a severability of interest provision with respect to each additional insured.

(3) Employer's Liability: Three million dollars (\$3,000,000);

(4) Workers Compensation: With coverages and limits in accordance with applicable State of Washington statutes;

(5) Excess or Umbrella Liability Insurance shall be written with limits of not less than three million dollars (\$3,000,000.00) per occurrence and annual aggregate. The Excess or Umbrella Liability requirements and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability Insurance, or any combination thereof that achieves the overall required limits.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required may constitute a material breach of this Agreement.

## **5.2 Deductibles and Self-Insured Retentions**

If Grantee changes its policy to include a self-insured retention, the Grantee shall give notice of such change to the Grantor. Grantor's approval will be given if the self-insured retention is consistent with standard industry practices. Any deductible or self-insured retention of the policies shall not in any way limit Grantee's liability to the Grantor.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Grantor, its officers, officials, employees, boards, commissions and agents are to be covered as, and have the rights of, additional insureds with

respect to liability arising out of activities performed by, or on behalf of, Grantee under this Agreement or applicable law, or in the construction, operation or repair, or ownership of its Cable System;

(b) The Grantee's insurance coverage shall be primary insurance with respect to the Grantor, its officers, officials, employees, boards, commissions and agents. Any insurance or self-insurance maintained by the Grantor, its officers, officials, employees, boards, commissions and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) All policies shall contain, or shall be endorsed so that:

(a) The policy shall not be suspended, voided, canceled, or reduced in coverage or in limits, nor shall the intention not to renew be stated by the insurance company except after forty-five (45) days prior written notice, return receipt requested, has been provided to Grantor's representative pursuant to Section 19.2.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A: VII."

(C) Verification of Coverage. The Grantee shall furnish the Grantor with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices and are to be received and approved by the Grantor prior to the commencement of activities associated with this Agreement. The Grantee hereby warrants that its insurance policies satisfy the requirements of this Agreement.

(D) Adequacy of Limits and Coverage. It is agreed that the insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

### **5.3 Indemnification**

(A) Scope of Indemnity. Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the Grantor and its officers, officials, boards, commissions, agents, volunteers and employees against any and all claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses,

including, but not limited to, third party claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of, or by reason of, the design, construction, excavation, reconstruction, operation, maintenance or repair of its Cable System or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this Agreement provided, however, the Grantee will not be obligated to indemnify Grantor for damage or injury resulting from the sole and willful negligence of Grantor. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The provisions of this section shall survive the expiration or termination of this Agreement. Without limiting in any way the Grantee's obligation to indemnify the Grantor and its officers, officials, boards, commissions, agents, and employees, as set forth above, this indemnity provision also includes damages and liabilities such as:

(1) Casualty or accident to Persons or property, in any way arising out of or through the acts or omissions of the Grantee, its contractors, subcontractors and their officers, employees, or agents, or to which the Grantee's negligence shall in any way contribute;

(2) Arising out of any claim for invasion of the right of privacy; for defamation of any Person, firm or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark, or patent; for a failure by the Grantee to secure consents from the owners, licensees/licensors or authorized distributors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise; or for violation of any other right of any Person, provided, however, that Grantee will not be required to indemnify Grantor for any claims arising out of use of PEG Access Channels by Grantor and/or Designated Access Providers;

(3) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, ordinance, rule or regulation applicable to the Grantee with respect to any aspect of its business to which this Agreement applies; and

(4) Arising from any third party suit, action or litigation, whether brought by a competitor to Grantee or by any other Person or entity, whether such Person or entity does or does not have standing to bring such suit, action or litigation if such action (1) challenges the authority of the Grantor to issue this Agreement to Grantee; or (2) alleges that, in issuing this Agreement to Grantee, the Grantor has acted in a disparate or discriminatory manner.

(B) Indemnification for Relocation. Grantee shall indemnify Grantor for any damages, claims, documented additional costs or reasonable expenses assessed against, or

payable by, Grantor arising out of, or resulting from, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with a relocation required by Grantor. Grantee shall always be provided reasonable notice to perform such relocation, except in the case of an emergency and therefore the obligation to indemnify would not apply.

(C) Additional Circumstance. Grantee shall also indemnify, defend and hold Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of the lawful actions of Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(D) Duty to Give Notice and Tender Defense. The Grantor shall give the Grantee timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the obligation and duty to defend, settle or compromise any claims arising thereunder, and the Grantor shall cooperate fully therein. Grantee shall consult and cooperate with Grantor while conducting its defense of Grantor. Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense, then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.3(F) is required. In that event, the provisions of Paragraph 5.3(F) shall govern Grantee's responsibility for Grantor's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting Grantor without Grantor's approval. In the event that the Grantee declines defense of the claim in violation of Section 5.3, the Grantor may defend such claim and seek recovery from Grantee its expenses for reasonable attorneys' fees and disbursements, including expert witness fees, incurred by Grantor for defense and in seeking such recovery.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between Grantor and the counsel selected by Grantee to represent Grantor, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by Grantor in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. Grantor's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the



reasonable value of any services rendered by Grantor's Attorney or his/her assistants or any employees of Grantor or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided Grantor by Grantee.

(G) Exclusions. The indemnification set forth in this section shall not apply to claims arising between the Grantor and Grantee related to the obligations set forth in this Franchise, such as: franchise fee audit disputes, non-compliance with customer service standards, or the franchise renewal process. In all such matters the parties shall each bear their own costs of the dispute unless otherwise provided by applicable law.

#### **5.4 Faithful Performance Bond**

(A) The Grantee shall furnish proof of the posting of a faithful performance bond running to the Grantor, in a form approved by the Grantor, with good and sufficient surety approved by the Grantor in the total sum of two hundred thousand dollars (\$200,000.00), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Such bond shall be posted as provided in Section 2.4 and by the Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for any bond required under Section 5.4 (A), and unless the Grantor specifically directs otherwise, shall keep the same in full force and effect at all times through the later of either:

(1) The remaining term of this Franchise; or

(2) If required by the Grantor, the removal of all of Grantee's system installed in Grantor's Public Rights-of-Way and other public property.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days written notice first given to the Grantor. During the term of the bond, Grantee shall file with the Grantor a duplicate copy of the bond along with written evidence of payment of the required premiums unless the bond otherwise provides that the bond shall not expire or be terminated without thirty (30) days prior written notice to the Grantor. Notice shall be given in conformity with section 19.2 of this Franchise Agreement.

(D) In a form approved by the Grantor, the Grantee may provide an irrevocable letter of credit, guaranty in lieu of bond, or other form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the Grantor in all material respects the same rights and guarantees provided by a faithful performance bond.

## SECTION 6. CUSTOMER SERVICE

### 6.1 Customer Service Standards

The Grantee shall meet the following customer service standards and requirements. The term “normal operating conditions” as used in the subsections below shall mean those service conditions within the control of Grantee as defined under 47 C.F.R. Section 76.309 (c)(4)(ii).

(A) Telephone Responsiveness. The Grantee shall maintain, on average as verifiable by statistical data, sufficient customer service staff and telephone line capacity to handle normal call volume with a minimum of delay to customers measured as follows:

(1) Under normal operating conditions, the customer will receive a busy signal less than 3% of the time during any quarter.

(2) Under normal operating conditions, telephone answer time by a trained customer representative, including wait time, shall not exceed thirty (30) seconds. Grantee may use an Automated Response Unit (“ARU”) or Voice Response Unit (“VRU”) in answering and distributing calls from customers. If a foreign language option is provided, and the subscriber does not enter an option, the menu may default to the first tier menu of English options. After the first tier menu (not including a foreign language rollout) has run through three (3) times, if customers do not select any option, the ARU or VRU may forward the call to a queue for a live representative. Grantee may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Measurement of this standard shall include all calls received by Grantee from subscribers whether they are answered by a live representative, by an automated attendant, or abandoned after 30 seconds of call waiting. If a call needs to be transferred, transfer time shall not exceed an additional 30 seconds.

(B) Service and Repair Calls.

(1) Under normal operating conditions, at least 95% of the time measured on a quarterly basis, requests from subscribers for repair and maintenance service must be responded to, and repairs must commence within twenty-four (24) hours of being notified for service interruptions and within twenty-four (24) hours or prior to the end of the next business day, whichever is earlier, for all other repair and maintenance service. Grantee will work diligently to complete repair and maintenance for service interruptions or other repairs not requiring on-premises work within twenty-four (24) hours under normal circumstances and diligently to complete all other repairs within seventy-two (72) hours under normal circumstances.

(2) Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, as a normal operating procedure, upon subscriber request

the Grantee shall offer either a specific appointment time or a pre-designated block of time (not to exceed four hours) for subscriber service appointments to be scheduled Monday through Saturday in the morning, the afternoon, and after 5:00 p.m.

(a) The Grantee shall not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(b) If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) As a normal operating procedure, and with particular regard to the needs of working or mobility-limited customers, upon subscriber request the Grantee shall arrange for pickup and/or replacement of converters or other company equipment at the subscriber's address, or else a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

(4) Under normal operating conditions, at least ninety-five percent (95%) of the time measured on a quarterly basis, where the service requested is installation of service, standard installations shall be performed by the Grantee within seven (7) business days after an order has been placed. "Standard" installations, for the purposes of this Section, shall mean those that are located up to one-hundred twenty-five (125) feet from the existing distribution system.

(C) Disconnection.

(1) The Grantee may disconnect a subscriber if:

(a) at least thirty (30) days have elapsed without payment after the due date for payment of the bill of the affected subscriber; and

(b) the Grantee has provided at least ten (10) days written notice to the affected subscriber prior to disconnection, specifying the effective date after which cable services are subject to disconnection.

(2) Regardless of Subsection 1 hereof, the Grantee may disconnect a subscriber for cause at any time if the Grantee in good faith determines that the subscriber has tampered with or abused company equipment, is proven to be abusive or threatening to employees or representatives, or is or may be engaged unlawfully in theft of cable services, or is causing a system violation of FCC rules or regulations.

Nothing in these standards shall limit the right of Grantee to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to Grantee's equipment, proven abusive and/or

threatening behavior towards Grantee's employees and representatives, or, unless prohibited by law, refusal to provide credit history information or refusal to allow Grantee to validate the identity, credit history and credit worthiness via an external credit agency.

(3) The Grantee shall promptly disconnect any subscriber who so requests from the Grantee's cable system. No period of notice prior to voluntary termination of service may be required of subscribers by the Grantee. No charge may be imposed by the Grantee for any cable services delivered after the date of the disconnect request, other than contractually obligated early termination fees or charges. Upon the later of the date of actual disconnection or the return of all company equipment to Grantee, the Grantee shall under normal operating conditions, within thirty (30) days return to such subscriber the amount of the deposit, if any, collected by Grantee from such subscriber, less any disputed amounts owed to Grantee for cable services or charges prior to the date of disconnection.

(D) Credits Upon Outage. Except for planned outages where subscribers are provided reasonable notification in advance, upon a subscriber's request the Grantee shall provide a pro-rated twenty-four (24) hour credit to the subscriber's account for any period of four (4) hours or more during which that subscriber experienced the effective loss or substantial impairment of video or audio service on the system.

(E) Downgrade Charges. Grantee may impose Downgrade Charges in a manner consistent with applicable law.

(F) Billing Information Required. The Grantee's bill to subscribers shall itemize each category of service, equipment, or other applicable fees, and state clearly the charge therefore. The Grantee shall make its best effort to inform subscribers as clearly as possible when payments are due and when late fees and disconnection may occur.

(G) Information to Subscribers.

(1) Upon installing initial service to or reconnecting each customer, and upon request thereafter, the Grantee shall advise the customer, in writing, of:

(a) the equipment and services currently available (including parental lock-out devices) and the rates and charges which apply;

(b) the amount and criteria for any deposit required by Grantee, if applicable, and the manner in which the deposit will be refunded;

(c) the Grantee's policies and procedures by which complaints or inquiries of any nature will be addressed;

(d) the toll-free telephone number and address of the Grantee's office to which complaints and inquiries may be reported;

(e) the Grantee's practices and procedures for protecting against invasions of subscriber privacy;

(f) service termination policy;

(g) billing procedures shall be clearly explained and easily accessible in a customer friendly location; additionally, the portion of the Grantee's bill retained by the customer shall include a phone number for requesting billing procedures;

(h) the notice and referral information, as set forth in Subsection 2 hereof;

(i) liability specifications;

(j) converter/subscriber terminal policy; and

(k) breach of agreement policy.

(2) Notice to Subscribers.

(a) The Grantee shall inform the Grantor and subscribers in writing within thirty (30) days, prior to any changes in programming or increases in rates, costs, or charges to subscribers, or any channel repositioning within the control of Grantee.

(b) All Grantee promotional materials, announcements, and advertising of residential cable services to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all Grantee prepared promotional materials must clearly and accurately disclose price terms and any restrictions for use. Likewise, in the case of telephone orders, the Grantee shall take appropriate steps to ensure that Grantee customer service representatives clearly and accurately disclose price terms and any restrictions for use to potential customers in advance of taking the order.

(c) Grantee must provide the name, address and phone number of the Grantor on subscriber's monthly bills unless Grantor, in writing, requests that such information be omitted.

(3) Complaint Acknowledgment. Within ten (10) days following receipt of a complaint by e-mail, telephone, written letter or other means, received at the Grantee's principal business from a subscriber, the Grantee shall provide an acknowledgment to the subscriber of receipt of the complaint. Within ten (10) days following receipt of a complaint made by or forwarded by the Grantor via e-mail, telephone, written letter or other means, received by a representative of the Grantee, the Grantee shall advise the Grantor of any action the Grantee has

taken or intends to take in response to the complaint. This requirement does not apply to complaints submitted for processing by a regulatory agency other than the City, such as the FCC.

#### H. Complaint Resolution.

(1) The Grantor may take all necessary steps to ensure that all subscribers and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the Grantee has not settled the complaint of the person initiating the complaint.

(2) For purposes of this section, a "complaint" is a grievance received by Grantee pursuant to subsection (G)(3) of this Section related to Cable Service provided within the Franchise Area that is reasonably remediable by the Grantee, but does not include grievances regarding the content of programming or information services other than grievances regarding broad categories of programming, and does not include customer contacts resulting in routine service calls that resolve the customer's problem satisfactorily to the customer.

I. Failure to Resolve Complaints. If Grantee fails to resolve a "complaint" within thirty (30) days following the date on which a complaint was made to the Grantor and communicated to Grantee, then Grantee may be deemed in violation of the Franchise, and Grantor may assert any of the remedies set out in Section 15.1 and Section 15.3.

### **6.2 Subscriber Privacy**

Grantee will comply with privacy rights of Subscribers in accordance with federal, state and local law.

### **6.3 Local Office**

Throughout the Agreement term, the Grantee must maintain, at a minimum, one (1) customer service center conveniently located in the City of Vancouver/Clark County Franchise Area to provide Subscribers the opportunity for the receipt and pickup of Subscriber equipment and for bill payments and complaints. Under normal operating conditions the Customer Service Center must be adequately staffed and able to respond to subscribers and the public not less than forty-five (45) hours per week, with a minimum of eight (8) hours per day on weekdays, including some evening hours, and five (5) hours on weekends. Grantee shall install telephones and other equipment so that customer complaints and service requests can be received by Grantee on a 24-hour basis at a toll-free telephone number. Grantee shall also provide online chat capability to answer questions on a 24/7 basis. Grantee shall have the option to substitute the service center requirement by providing for pick up or drop off of equipment free of charge in any one of the following manners: (a) by having Grantee representative going to the customer's residence, or (b) by using a prepaid mailer. Grantee also has the option to provide payment drop off locations within the Franchise Area. Grantee shall provide Grantor and

Subscribers with at least one hundred twenty (120) days' notice of election to discontinue the service center.

#### **6.4 Emergency Broadcast**

Grantee will activate the Emergency Alert System (EAS) in compliance with the provisions and amendments of FCC Regulations Part 11, the Washington State EAS plan, and the local area EAS plan that applies to Clark County.

### **SECTION 7. REPORTS AND RECORDS**

#### **7.1 Open Records**

(A) Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to Grantor. Grantor shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliated entities which are reasonably related and necessary to the administration or enforcement of the terms of this Agreement. Grantee shall not deny Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, affiliated entity or a third party. Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One copy of all reports and records required under this or any other Section shall be furnished to Grantor at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that Grantor inspect them at one of Grantee's local area offices. If any books or records of Grantee are not kept in a local area office and not made available in copies to Grantor upon written request as set forth above, and if Grantor determines that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, administration or enforcement of this Agreement, then all reasonable travel expenses incurred in making such examination shall be paid by Grantee. If any books or records of Grantee are not kept in a local office, Grantee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) working days.

(B) Grantee shall at all times maintain and allow Grantor access and the right to review a full and complete set of plans, records and "as built" maps showing the exact location of all Cable System equipment installed or in use in the Franchise Area, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in a standard geospatial format and medium agreed upon by the Grantor and the Grantee.

#### **7.2 Confidentiality**

Grantor agrees to treat as confidential any books and records that constitute proprietary or confidential information under federal or state law, to the extent Grantee makes Grantor aware of

such confidentiality. Grantee shall be responsible for clearly and conspicuously marking or identifying as "Confidential" on each page that contains confidential or proprietary information. If Grantor believes it must release any such books and records marked or identified as "Confidential" in the course of enforcing this Agreement, in response to a public record request, subpoena or other court order, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If Grantor receives a demand from any Person for disclosure of any information designated by Grantee as confidential, Grantor shall, so far as consistent with applicable law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time so Grantee may take appropriate steps to protect the information from disclosure.

### **7.3 Copies of Federal and State Documents**

Upon request, Grantee shall submit to Grantor a list, or copies of actual documents, of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporations or Affiliates to any federal, state or local courts; regulatory agencies or other government bodies if such documents specifically relate to the operations of Grantee's Cable System within the Franchise Area. Grantee may claim such information and documents are confidential, privileged or proprietary consistent with applicable public records law.

### **7.4 Complaint File and Reports**

(A) Grantee shall keep an accurate and comprehensive file of any and all complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. Those files shall remain open to Grantor during normal business hours. Upon written request, Grantee shall provide an executive summary report of previous quarter (within 45 days of the end of the preceding quarter) to Grantor, which shall include the following information:

- (1) Nature, type, status and resolution of customer complaints;
- (2) Number, duration, general location and customer impact of unplanned service interruptions;
- (3) Any significant construction activities which affect the quality or otherwise enhance the service of the Cable System;
- (4) Average response time for service calls;
- (5) Phone activity report that includes use of automated response unit or voice response unit in answering and distributing calls from Subscribers at all call centers whether the calls are answered by a live representative, by an automated attendant or abandoned after 30 seconds of call waiting;



- (6) New areas constructed and available for Cable Service, including multiple dwelling units;
- (7) Video programming changes (additions/deletions);
- (8) Subscriber reports indicating the total number of Subscribers by service categories in such format as Grantee customarily prepares such reports and may be considered confidential per Section 7.2; and
- (9) Such other information about special problems, activities, or achievements as Grantee may want to provide Grantor.

(B) Grantor shall also have the right to request such information as appropriate and reasonable to determine whether or not Grantee is in compliance with applicable Customer Service Standards as referenced in Section 6.1, Technical Standards and other requirements of this Franchise. Grantee shall fully cooperate with Grantor and shall provide such information and documents as necessary and reasonable for Grantor to evaluate compliance. Grantee reserves the right to object to any request made under this Section as unnecessary, unreasonable or inappropriate under the circumstances.

### **7.5 Inspection of Facilities**

Grantor may inspect upon request any of Grantee's facilities and equipment to confirm performance under this Agreement at any time upon at least twenty-four (24) hours' notice, or, in case of an emergency upon demand without prior notice. Nothing herein shall prevent Grantor or its agents from performing inspections of the Cable System in the Rights-of-Way or on private property, with owners' permission as needed, at any time and without prior notice.

### **7.6 False Statements**

Any intentional false or misleading statement or representation in any report required by this Agreement may be deemed a material violation of this Agreement and may subject Grantee to all remedies, legal or equitable, which are available to Grantor under this Agreement or otherwise.

## **SECTION 8. PROGRAMMING**

### **8.1 Broad Programming Categories**

Grantee's cable television system shall provide the widest diversity of programming possible. Grantee shall provide at least the following broad categories of programming to the extent such categories are reasonably available:

- (1) Educational programming;

- (2) Washington State news and information;
- (3) Sports;
- (4) General entertainment (including movies);
- (5) Children/family-oriented;
- (6) Arts, culture and performing arts;
- (7) Foreign language;
- (8) Science/documentary;
- (9) Weather information;
- (10) Programming addressed to diverse ethnic and minority interests in the Franchise Area;
- (11) National, state, and local government affairs; and
- (12) Local programming regarding the City/Clark County, as well as regional issues, events and affairs.

## **8.2 Parental Control Device**

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter.

## **8.3 Leased Access Channels**

Grantee shall meet the requirements for Leased Access Channels imposed by federal law.

## **8.4 Continuity of Service**

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are satisfied. Subject to the *force majeure* provisions of this Agreement, Grantee shall use its best efforts to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances.

(B) In the event of a change in ownership, or in the event a new Cable Operator acquires the Cable System in accordance with this Agreement, Grantee shall cooperate with Grantor and such new Cable Operator in maintaining continuity of service to all Subscribers.

## **8.5 Service for the Disabled**

Grantee shall comply with the Americans with Disabilities Act, any amendments thereto and any other applicable federal, state or local laws or regulations.

## **SECTION 9. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS**

### **9.1 General Definitions**

With respect to purposes of this section, the following definitions will apply with respect to Public, Educational and Governmental use of the Cable Channels as provided herein.

(A) The term “channel”, as used in this Section, referencing access channels, refers to the channels designated for Public, Educational and Governmental (PEG) access use. The channels can be used to transmit signals in any format, and can be used to transmit audio only, video, or other information (including, by way of example and not limitation, secondary audio, text, digital information, high definition signals and compressed signals). A non-standard NTSC use shall be subject to the Grantee’s prompt prior review and approval to ensure that the use will not cause unreasonable technical interference with other channels. Such uses must be in furtherance of PEG uses. Additionally, there shall not be any lease of such PEG capacity without the express written permission of the Grantee.

(B) The term “Access Center” refers to a facility or facilities listed in Exhibit A where Public, Educational or Governmental use signals are managed and delivered to the Grantee for Downstream transmission to Subscribers, or to other Access Centers via a dedicated connection.

(C) “Designated Access Providers” refers to the entity or entities designated by the Grantor to manage or co-manage Public, Educational and Governmental use channels. The Grantor can be a Designated Access Provider.

(D) The term “Origination Point” refers to a location listed in Exhibit A, other than an Access Center, where Public, Educational and Governmental use programming is delivered to the Grantee for Upstream transmission.

(E) The term “PEG” refers to “Public, Educational and Governmental.”

### **9.2 Management and Control of Access Channels**

(A) Grantor may authorize Designated Access Providers to control and manage the use of any and all Access facilities provided by Grantee under this Agreement, including,

without limitation, the operation of Access channels. To the extent of such designation by Grantor, as between the Designated Access Provider and Grantee, the Designated Access Provider shall have sole and exclusive responsibility for operating and managing such Access facilities. The Grantor or its designee may formulate rules for the operation of the Public Access channel, consistent with this Franchise; such rules shall not be designed to control the content of Public Access programming. Nothing herein shall prohibit the Grantor from authorizing itself to be a Designated Access Provider.

(B) Grantee shall cooperate with Grantor and Designated Access Providers in the use of the Cable System and Access facilities for the provision of PEG Access.

(C) Except as provided in this Franchise, the Grantor shall allocate Access resources to Designated Access Providers only. Grantee shall cooperate with the Grantor in such allocations, in such manner as the Grantor shall direct.

(D) If the Grantor designates new Access providers, or if a current Designated Access Provider moves its site or location at its own instigation after the effective date of this Franchise, the direct costs to construct the Cable System from the new site or location to the nearest distribution point of the Cable System shall not be the responsibility of Grantee and may be funded from the Capital Access Contribution under Section 9.8 of this Franchise.

### **9.3 Channel Capacity and Use**

(A) Upon the Effective Date of this Agreement, all Access channels provided for herein are administered by the Grantor or designee.

(B) Downstream Channels. As of the Effective Date, Grantee shall provide five (5) Downstream High Definition (HD) channels for distribution of Public, Educational, and Governmental Access programming; and one (1) standard definition (“SD”) Downstream Channel for distribution of Public Access Programming. Grantee shall continue to also provide all of the PEG Access channels in Standard Definition (SD) format, until SD format is no longer utilized on the Cable System. If Grantee discontinues carriage of the “Community Area Network” Public Access on channel 11 on all of Grantee's cable systems located in the Portland Oregon Designated Market Area, Grantee may also discontinue carriage of this channel on the cable system in the Franchise Area, as the term Franchise Area is defined in the Franchise.

(C) Initially and throughout the term of this Franchise, Grantee shall provide operating fiber-optic cable-based connections sufficient to enable character generated, pre-recorded and live cablecasts from Origination Points and Access Centers listed in Exhibit A to enable the distribution of PEG Access programming to Residential Subscribers on Access channels and to all Interconnection points on the Cable System.

#### **9.4 Standard Definition (SD) Channels**

Grantee shall carry all components of the standard definition Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the programming. SD PEG channels shall be made available on Grantee's channel lineup in the same manner as regular commercial SD channels. With respect to signal quality, Grantee shall not be required to carry a PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall distribute the Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section.

#### **9.5 High Definition (HD) Channels**

Grantee shall continue to carry three (3) existing Access Channels in high definition (HD) format Channels for PEG Access use. In addition, within 120 days written notice from Grantor, Grantee will provide two (2) additional existing Access Channels in high definition (HD) format Channels for PEG Access use. Grantee shall also simultaneously carry the standard digital Access Channels provided under Section 9.4. Grantee shall carry all components of the HD format Access Channel Signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the programming. The Designated Access Provider shall be responsible for providing the Access Channel signal in an HD format to the demarcation point at the designated point of origination for the Access Channel. Grantee shall transport and distribute the Access programming without degradation. Grantee shall provide all necessary equipment including HD encoders or its equivalent outside the demarcation point at the Designated Access Provider Channel origination point, at its Headend and hubs or similar distribution facilities necessary to deliver the Access Channel(s) in the HD format to Subscribers. HD PEG channels shall be made available on Grantee's channel lineup in the same manner as regular commercial HD channels. With respect to signal quality, Grantee shall not be required to carry an HD PEG Access Channel in a higher quality format than that of the Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel Signal without degradation. Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of this Section, in a manner and on a timetable as to ensure that the HD format Access Channels are continuously and reliably offered to Subscribers.

The Grantor acknowledges that receipt of HD format Access Channels may require Subscribers to buy or lease special equipment, or pay additional HD charges applicable to HD services. Grantee shall not be obligated to provide complimentary HD receiving equipment to institutional or courtesy accounts as a result of the obligations set forth in this Section 9.5, except for HD receiving equipment provided to Access Centers to verify reliable delivery of the Access Channels to subscribers, consistent with required standards.

## **9.6 Relocation of Access Channels**

Grantee shall provide Grantor with a minimum of sixty (60) days' notice, and use its best efforts to provide one-hundred-twenty (120) days notice, prior to the time Public, Educational, and Governmental Access channel designations are changed. Grantee shall consult with Grantor prior to making a final determination regarding any changes in PEG Access channel designations/assignments. Any new channel designations for the Public, Educational and Governmental Access channels provided pursuant to this Agreement shall be in full compliance with FCC signal quality standards and the requirements in Section 9.12 of this Franchise.

## **9.7 Access Interconnections**

(A) Upon request by the Grantor, and based on a demonstrated need, Grantee shall work in good faith with the Grantor to interconnect with other cable operators at a designated meet point and not at Grantee's headend or hubs in order to hand off PEG Access Channel signals for the purposes of sharing PEG Programming throughout the Franchise Area. Such interconnection shall preserve the technical quality of the PEG Access Channels without degradation to Grantee's demarcation at the designated meet point of the interconnect. The Grantor shall not require such interconnection without the prior consent of Grantee, which shall not be unreasonably withheld. Grantee shall not be obligated to interconnect with any cable system providing competitive Cable Services within the Franchise Area, except that Grantee shall use reasonable efforts to agree with a competitive Cable Services provider on reasonable terms, conditions and costs of a viable interconnection of the PEG Access Channel signals. Any incremental, direct capital costs incurred by Grantee to interconnect may be paid by the Grantor from the Capital Access Contribution or other arrangement.

(B) Grantee shall take all necessary technical steps to ensure that technically adequate signal quality and routing/switching systems are initially and continuously provided for all Access Interconnections. The cost for any equipment dedicated to Access Interconnection shall be shared on a pro rata basis or as mutually agreed upon among all participating jurisdictions and paid to Grantee.

## **9.8 Support for Access Capital Costs**

(A) Except as otherwise provided herein, during the term of this Agreement, Grantee shall provide to the Grantor one percent (1 %) of Gross Revenues (the "Capital Access Contribution") for Public, Educational and Governmental Access, including, but not limited to, PEG Access facilities and equipment (and repair of such equipment). Grantee shall make payments quarterly, following the effective date of this Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. Grantor shall have discretion to allocate such payments for Access costs in accordance with applicable law.

(B) The Grantor shall provide a report annually to the Grantee on the use of the funds provided to the Grantor under Section 9.8 (A). Reports shall be submitted to the Grantee within one hundred twenty (120) days of the close of the Grantor's fiscal year. Grantee may review records of the Grantor and Designated Access Providers regarding the use of funds described in such report. Grantor agrees that the report shall document that, for each dollar spent on PEG support for Access, an equivalent amount will be spent, in aggregate, by Grantor and Designated Access Providers on operating support for PEG Access.

(C) Grantee may conduct a financial review or audit for the purpose of verifying whether use of the PEG fee is in accordance with this Franchise. The Grantee shall notify the Grantor in writing at least thirty (30) days prior to the date of an audit or review and identify the relevant financial records of Grantor and the Designated Access Provider that Grantee wants to review. The time period of the review or audit shall be for PEG fee payments received no more than thirty-six (36) months prior to the date the Grantee notifies the Grantor of its intent to perform an audit or review. The Grantor and recipients of the PEG fee shall make such documents available for inspection and copying. Documents shall be reviewed during normal business hours at a time and place made available by the Grantor or the Designated Access Provider.

Grantee shall promptly provide the Grantor with written notice of the audit or review's conclusions and reasons therefor. The Grantor shall have sixty (60) days to provide a written response. If the Grantor disputes Grantee's conclusions, the parties shall attempt in good faith to reach a mutually acceptable resolution. If the parties are unable to agree, either party may submit the issue to non-binding mediation or pursue any legal remedies. If it is determined that any PEG fee has not been used in accordance with this Franchise, then within 30 days, one of the following actions shall occur:

- (1) If the Grantor determines that the recipient has access to sufficient unrestricted funds, the Grantor may require either:
  - (a) That the recipient expend its unrestricted funds to achieve the stated purposes of the original PEG funding not spent in accordance with this Franchise; or,
  - (b) Upon demand, the recipient shall return the full amount of the PEG funding amount not spent in accordance with this Franchise to the PEG funding account.
- (2) If the Grantor determines that the recipient does not have access to sufficient unrestricted funds, the Grantor may decide to either:
  - (a) Directly reimburse the PEG funding account for the amount not spent in accordance with this Franchise; or,
  - (b) Allow the Grantee to reduce future PEG payments by the amount not spent in accordance with this Franchise.

(3) The decision as to which of these options to exercise, under this Section shall be at the Grantor's sole discretion.

### **9.9 Access Support Not Franchise Fees**

(A) Grantee agrees that financial support for Access Capital Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay franchise fees to Grantor. Grantee agrees that although the sum of Franchise Fees and the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any franchise fee payments under this Agreement.

(B) Grantor recognizes franchise fees and certain additional commitments are external costs as defined under the Federal Communications Commission rate regulations in force at the time of adoption of this Franchise and Grantee has the right and ability to include franchise fees and certain other commitments on the bills of cable customers.

### **9.10 Access Channels On Lowest Tier**

All Access channels provided to Subscribers under this Agreement shall be included by Grantee on its lowest tier available to Subscribers. If Basic Service or its equivalent is no longer provided to all Subscribers, then Grantee shall ensure that PEG channels continue to be provided to all Subscribers.

### **9.11 Technology Changes and Migrations**

(A) Except as otherwise provided in Section 9.5 of this Agreement, in the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly substantially affects the signal quality or transmission of Access services or programming, Grantee shall, at its own expense, take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access Personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change.

(B) Whenever Grantee or its affiliates provide PEG Access channels in a more advanced, successor format (such as HD4K) in any Cable System in the Portland Metropolitan area, Grantee shall also migrate the HD channels described in this Franchise to such more advanced format. The Grantor acknowledges any such change may require the purchase of special equipment.



## **9.12 Technical Quality**

Grantee shall maintain all Upstream and Downstream Access services, channels and Interconnections at the same level of technical quality and reliability required by this Agreement and all other applicable laws, rules and regulations for Residential Subscriber channels. Grantee shall provide routine maintenance and shall repair and replace all transmission equipment, including modulators, associated cable and equipment in use upon the effective date of this Franchise, necessary to carry a quality signal to and from Grantor's facilities.

## **SECTION 10. GENERAL PUBLIC RIGHT-OF-WAY USE AND CONSTRUCTION**

### **10.1 Construction**

(A) Subject to applicable laws, regulations and ordinances of Grantor and the provisions of this Franchise, Grantee may perform all construction necessary for the operation of its Cable System. All construction and maintenance of any and all Grantee's facilities within Public Rights-of-Way incidental to Grantee's Cable System shall, regardless of who performs the construction, be and remain Grantee's responsibility. Grantee shall apply for, and obtain, all permits necessary for construction or installation of any facilities, and for excavating and laying any facilities within the Public Rights-of-Way including rebuilding pavement, sidewalk, curb and gutter plus associated traffic control to Grantor's standards. The Grantee will warrant the condition of any pavement patches, curb work and sidewalk work until such time as the Grantor reconstructs or structurally rehabilitates those facilities. Grantee shall pay all applicable fees of the requisite construction permits.

(B) Prior to beginning any construction, Grantee shall provide Grantor with a construction schedule for work in the Public Rights-of-Way. All construction shall be performed in compliance with this Franchise and all applicable Grantor Ordinances and Codes. When obtaining a permit, Grantee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. The Grantor reserves the right to limit days and hours of construction activity. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees and franchisees so as to reduce as far as possible the number of street cuts or other excavations in the Public Rights-of-Way.

(C) If the Grantee proposes street excavations or borings in order to install maintain, or alter its facilities, then Grantee shall apply for utility-street/right-of-way permit. If Grantee damages Grantor's underground facilities, then Grantee, at Grantee's cost, shall immediately repair the damaged facilities to as good as prior condition. All Grantee work to repair or replace damaged facilities shall be warranted until such time as the Grantor reconstructs or structurally rehabilitates the facility that is repaired or replaced.

## 10.2 Location of Facilities

In doing work in the Public Right-of-Way, Grantee shall comply with all applicable statutes, including but not limited to contacting the Utility Notification Center established pursuant to Chapter 19.122 RCW. Grantee shall further comply with applicable ordinances, standards, rules, regulations and ordinances of Grantor when working within the Public Right-of-Way. If the Grantee's facilities create a safety hazard, such as impeding the sight distances or a hazard such as a fixed object, the Grantee shall immediately remedy the situation to the satisfaction of the City Public Works Director or designee upon notice by the Grantor.

## 10.3 Relocation

(A) Relocation Within Public Rights-of-Way. Grantor shall have the right to require Grantee to change the location of any part of Grantee's Cable System within the Public Rights-of-Way when the public convenience requires such change, and the expense thereof shall be paid by Grantee. Should Grantee fail to remove or relocate any such facilities by the date established by Grantor, Grantor may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by Grantor due to Grantee's delay. If Grantor requires Grantee to relocate its facilities located within the Public Rights-of-Way, Grantor shall make a reasonable effort to provide Grantee with an alternate location within the Public Rights-of-Way.

If funds which Grantor received, are available to impacted occupants of the Public Rights-of-Way for the purpose of defraying the cost of relocating or removing facilities and Grantee relocates or removes its facilities as required by Grantor under this Franchise, the Grantor shall notify Grantee of such funding available to reimburse Grantee for such costs to the extent permitted or allowed by the funding source or applicable state law.

(B) Movement of Cable System For and By Grantor. The Grantor may remove, replace, modify or disconnect Grantee's facilities and equipment located in the public right-of-way or on any other property of the Grantor in the case of fire, disaster, or other emergency, or when a project of the Grantor's makes the removal, replacement, modification or disconnection necessary. Except during an emergency, the Grantor shall attempt to provide reasonable notice to Grantee prior to taking such action and shall, when feasible, provide Grantee with the opportunity to perform such action. Following notice by the Grantor, Grantee shall remove, replace, modify or disconnect any of its facilities or equipment within any Public Right-of-Way, or on any other property of the Grantor, except that the Grantor shall provide at least sixty (60) days' written notice of any major capital improvement project which would require the removal, replacement, modification or disconnection of Grantee's facilities or equipment. If the Grantee fails to complete this work within the time prescribed and to the Grantor's satisfaction, the Grantor may cause such work to be done and bill the reasonable cost of the work to the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Grantor. If in response to a request by the Grantor the Grantee removes or replaces any portion of its Cable System at its own expense in order to accommodate the installation or repair of a

communications system used by the Grantor to provide commercial services in competition with Grantee, then Grantor shall reimburse Grantee for the reasonable expense of the removal or replacement.

(C) Movement for Other Franchise Holders or Utilities. If any removal, replacement, modification or disconnection is requested by another franchise holder or utility to accommodate the construction, operation or repair of the facilities or equipment of such other franchise holder or utility, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee and such other franchise holder or utility shall determine how costs associated with the removal or relocation shall be allocated.

(D) Movement for Other Permittees. At the request of any Person holding a valid over legal load or structure move permit issued by Grantor, and upon reasonable advance notice by the Person holding the permit, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment or payment of the full amount in advance.

#### **10.4 Restoration of Public Rights-of-Way and Property**

(A) Disturbance of Public Right-of-Way Surface. Whenever Grantee disturbs the surface of any Public Right-of-Way for any purpose, Grantee shall promptly restore the Public Right-of-Way in accordance with applicable ordinances, standards, rules, and regulations of Grantor. When any opening is made by Grantee in a hard surface pavement in any Public Right-of-Way, Grantee shall refill within twenty-four (24) hours the opening and restore the surface to a condition satisfactory to Grantor. In cases where seasonal conditions do not allow full restoration within twenty-four (24) hours, Grantee will patch the surface consistent with the requirements of the Grantor, and then permanently restore the surface as soon as conditions allow.

(B) Public Right-of-Way Excavations. If Grantee excavates the surface of any Public Right-of-Way, Grantee shall be responsible for restoration in accordance with applicable ordinances, standards, rules, and regulations of Grantor within the area affected by the excavation. Grantor may, after providing notice to Grantee, refill or repave any opening made by Grantee in the Public Right-of-Way, and the expense thereof shall be paid by Grantee. Grantor may, after providing notice to Grantee, perform any required work, or remove or repair any work done by Grantee which, in the determination of Grantor, is inadequate. The cost thereof, including the costs of inspection and supervision, shall be paid by Grantee. All excavations made by Grantee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Agreement, and this Section in particular, shall be done in compliance with applicable rules, regulations and ordinances of Grantor. Prior to making any Public Right-of-Way cuts or openings, Grantee shall obtain the required construction permit from Grantor.

(C) Protection, Repair and Restoration of Property.

(1) The Grantee shall protect public and private property from damage in connection with construction, maintenance and repair of its Cable System. If damage occurs the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(2) If public or private property is disturbed or damaged, the Grantee shall restore the property to as good as the former condition, normal wear and tear excepted. The Grantee agrees to undertake all work related to the installation, construction or maintenance of its Facilities within the Public Rights-of-Ways in compliance with federal, state and local law as adopted or amended. Public Rights-of-Way or other Grantor property shall be restored, in a manner consistent with applicable ordinances, standards, rules and regulations of Grantor. If restoration of Public Right-of-Way or other property of the Grantor is not satisfactorily performed within a reasonable time, the City Public Works Director or designee may, after prior notice to the Grantee, or without notice where the disturbance or damage may create an immediate risk to public health or safety, or cause delay or added expense to a public project, cause the repairs to be made at the Grantee's expense and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Grantor. If suit is brought upon Grantee's failure to pay for repair or restoration, and if judgment in such a suit is entered in favor of the Grantor, then the Grantee shall pay all of the Grantor's actual costs and expenses resulting from the non-payment, including damages, interest from the date the bill was presented, disbursements, attorneys' fees and litigation-related costs. Private property must be restored promptly, considering the nature of the work that must be performed and in no event later than seventy-two (72) hours except for circumstances beyond Grantee's control.

(D) Notice – Private Property. Prior to entering onto private property to construct, operate or repair its Cable System, Grantee shall give the Person residing on or using the property adequate written notice (such as a door hanger which clearly identifies the anticipated construction) that it intends to work on the property, a description of the work it intends to perform and a name and phone number the Person can call to protest or seek modification of the work. Work shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners, residents and users.

## **10.5 Maintenance and Workmanship**

(A) Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of Grantor, or with any other pipes, wires, conduits, pedestals, structures, equipment or other facilities that may have been laid in the Public Rights-of-Way by, or under, Grantor's authority.

(B) Grantee shall provide and use any equipment necessary to control and carry Grantee's cable television signals so as to prevent injury to Grantor's property or property

belonging to any Person. Grantee, at its own expense, shall repair, change and improve its facilities to keep them in good repair, and safe and presentable condition.

#### **10.6 Reservation of Grantor Public Right-of-Way Rights**

(A) Nothing in this Agreement shall prevent Grantor or utilities owned, maintained or operated by public entities other than Grantor, from constructing or repairing sewers; grading, paving, repairing or altering any Public Right-of-Way; constructing, repairing or removing water mains, sewers, surface water or storm sewers; or constructing, repairing, or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

(B) However, if any of Grantee's Cable System interferes with the construction or repair of any Public Right-of-Way or public improvement, including, but not limited to construction, repair or removal of streets, sidewalks, traffic signals, street lighting, water mains, sewers, surface water or storm sewers, Grantee shall remove or replace Grantee's Cable System in the manner Grantor shall direct. Should Grantee fail to remove, adjust or relocate its facilities within a reasonable period of time established by Grantor in its written notice to Grantee, Grantor may effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all reasonable costs and expenses incurred by Grantor due to Grantee's delay. Grantor shall in no event be liable for any damage to any portion of Grantee's Cable System on account of the removal, adjustment or relocation of Grantee's facilities pursuant to this subsection.

#### **10.7 Public Right-of-Way Vacation**

If any Public Right-of-Way or portion thereof used by Grantee is vacated by Grantor during the term of this Agreement, unless Grantor specifically reserves to Grantee the right to continue its installation in the vacated Public Right-of-Way, Grantee shall, without delay or expense to Grantor, remove its facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by Grantor. In the event of failure, neglect or refusal of Grantee, after thirty (30) days' notice by Grantor, to restore, repair or reconstruct such Public Right-of-Way, Grantor may do such work or cause it to be done, and the reasonable cost thereof shall be paid by Grantee within thirty (30) days of receipt of an invoice and documentation, and failure to make such payment shall be considered a material violation of this Agreement.

#### **10.8 Discontinuing Use of Facilities**

Whenever Grantee intends to discontinue using any facility within the Public Rights-of-Way, Grantee shall submit for Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that Grantor allow it to remain in place. Notwithstanding Grantee's request that any

such facility remain in place, Grantor may require Grantee to remove the facility from the Public Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by Grantor. Until such time as Grantee removes or modifies the facility as directed by Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Public Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, public, governmental, or educational purposes.

### **10.9 Hazardous Substances**

(A) Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Public Rights-of-Way.

(B) Grantee shall maintain and inspect its Cable System located in the Public Rights-of-Way. Upon reasonable notice to Grantee, Grantor may inspect Grantee's facilities in the Public Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Agreement, Grantee shall also remove all residue of hazardous substances related thereto.

### **10.10 Undergrounding of Cable**

(A) Wiring. Where all electric and telephone utility wiring is installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, Grantee's Cable System lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with other wire line service at no additional expense to the Grantor. Related Cable System equipment such as pedestals must be placed in accordance with applicable ordinances, standards, rules, and regulations of Grantor. However, nothing in this Franchise shall be construed to require Grantee to place underground its pedestals, appurtenances and equipment. In areas where electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(B) Poles, Conduit and Equipment.

(1) The Grantee shall utilize existing poles and conduit wherever possible.

(2) This Agreement does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of the City or any other Person without their permission. Grantor may request copies of agreements for use of poles, conduits or other utility facilities upon demonstrated need and subject to protecting Grantee's proprietary information from disclosure to third parties.

If the Grantee has infrastructure that is on private easements, or is on private property by prescriptive rights, the Grantee will be responsible in all cases for the costs associated with relocating the infrastructure from the private easement or unperfected easements on private land to new locations due to roadway projects requiring moving of the infrastructure. The Grantee shall be entitled to recoup its costs for such relocating from the entity that requested the relocation including the Grantor when applicable.

### **10.11 Codes**

Grantee shall adhere to all applicable building and zoning codes currently or hereafter in effect. Grantee shall arrange its lines, cables and other appurtenances, on both public and private property, in such a manner as to not cause unreasonable interference with the use of said public or private property by any Person. In the event of such interference, Grantor may require the removal or relocation of Grantee's lines, cables and other appurtenances from the property in question.

### **10.12 Standards**

(A) All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. The Grantee must comply with all safety requirements, rules and practices and employ all necessary devices as required by applicable law during construction, operation and repair of its Cable System. By way of illustration and not limitation, the Grantee must comply with applicable National Electrical Code, National Electrical Safety Code, Occupational Safety and Health Administration (OSHA) Standards and the Vancouver Municipal Code.

(B) Grantee shall ensure that the drops are properly bonded to the electrical power ground at the home, consistent with the applicable requirements of the National Electrical Code and the National Electrical Safety Code. All non-conforming or non-performing drops shall be replaced by Grantee as necessary.

### **10.13 Tree Trimming.**

Subject to acquiring prior written permission of the Grantor, the Grantee shall have the authority to trim trees that overhang a Public Right-of-Way of Grantor so as to prevent the branches of such trees from coming in contact with its Cable System, in accordance with applicable codes and regulations and current, accepted professional tree trimming practices.

## **SECTION 11. SYSTEM DESIGN**

(A) As of the effective date of this Franchise, the Cable System utilizes a fiber to the node architecture. All active electronics will be 750 MHz capable equipment, or equipment of higher bandwidth.

The Cable System is two-way capable and able to support two-way high speed cable modem service via the Cable System. Passive devices will pass a minimum bandwidth of 750MHz.

As of the effective date of this Franchise, the Cable System is capable of delivering as many as 200 channels or more including but not limited to digital music and video on demand to Subscribers.

(B) The system performance, capacity and services offered may be reviewed to assure the system keeps pace with changes in technology and is at least comparable to other systems in the Portland Metropolitan area.

## **SECTION 12. Compliance Procedures**

(A) Grantee shall comply with technical standards required by the FCC and this Franchise. Compliance shall include, at a minimum:

- (1) Initial proof of performance for any construction;
- (2) Responding to subscriber complaints; and
- (3) Responding to Grantor's requests relating to compliance with applicable technical standards, in accordance with 47 CFR § 76.1717.

(B) Grantee shall promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified shall be a violation of this Franchise.

(C) As required by FCC Rules, Grantee shall conduct cumulative leakage index tests and other tests designed to demonstrate compliance with FCC requirements. Grantee shall provide Grantor summary written reports of the results of such tests.



## SECTION 13. SERVICE EXTENSION, CONSTRUCTION, AND INTERCONNECTION

### 13.1 Equivalent Service

It is Grantee's general policy that all residential dwelling units in the Franchise Area have equivalent availability to Cable Service from Grantee's Cable System under nondiscriminatory rates and reasonable terms and conditions. Grantee shall not arbitrarily refuse to provide Cable Service to any Person within its Franchise Area, provided that Grantee is authorized to activate the upgraded system node by node.

### 13.2 Service Availability

(A) New Construction. Except for circumstances beyond Grantee's control and subject to Section 13.2 (B) and (C), Grantee shall provide Cable Service within thirty (30) days following request for service in newly constructed areas. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request.

(B) Required Extensions of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from a potential customer where there are at least four (4) residences within 1,056 aerial cable-bearing strand feet (one-fifth cable mile) or twenty (20) residences within a mile of its trunk or distribution cable capable of supporting the additional distance, or at least eight (8) residences within 1,056 underground trench feet (one-fifth mile) of trunk or distribution cable or forty (40) residences within a mile of its trunk or distribution cable capable of supporting the additional distance it shall extend its Cable System to such customers at no cost to said customers for Cable System extension, other than the usual connection fees for all customers within ninety (90) days except for circumstances beyond Grantee's control.

(C) Customer Charges for Extensions of Service. Potential subscribers requesting service but not entitled to availability of service under Section 13.2 (B) shall be provided service under the following circumstances, through contractual agreement between the Grantee and the person requesting service for payment of line extension construction costs:

(1) Grantee shall provide service at its normal, published installation charge for the initial 125 (one-hundred twenty-five) feet of extension.

(2) The subscriber and the Grantee shall share equally the actual cost of the extension for the distance over 125 (one-hundred twenty-five) feet but less than five hundred (500) feet.

(3) The subscriber shall pay all costs for the extension for the distance greater than five hundred (500) feet.

(4) The amount of cable extension as measured in feet, which is the basis for the cost sharing, will be computed as follows: The starting point shall be a point at the nearest reasonably usable existing cable plant using public right-of-way, exclusive of a street crossing; provided that the Grantee shall make a reasonable effort to secure and use private rights of way if the use of such rights of way reduces the cost of the line extension to the subscriber. The actual length of cable needed from the starting point to the subscriber's home shall be the total number of feet. The cost of the project from the starting point to the home shall be divided by the total number of feet. The resultant cost per foot shall be used to compute each party's share. Street bores or crossings needed to bring the existing cable plant to the requesting subscriber's side of the street shall be included as part of any line extension greater than 125 (one-hundred twenty-five) feet, otherwise these costs shall not be charged to the subscriber.

### **13.3 Connection of Public Facilities**

(A) As voluntary initiative, Grantee shall, at no cost to Grantor, provide at least one (1) outlet of Basic and expanded basic programming or its equivalent to all Grantor's buildings, as designated by the Grantor, and all libraries and Schools passed by the Cable System within the Franchise Area, except for home schools and buildings or facilities housing jail populations. In addition, Grantee shall provide, at no cost to the Grantor or other agency, one (1) outlet of Basic and expanded basic programming or its equivalent to all future public buildings passed by the Cable System within the Franchise Area if the drop line to such building does not exceed one-hundred twenty-five (125) cable feet or if Grantor or other agency agrees to pay the incremental cost of such drop line in excess of one-hundred twenty-five (125) cable feet, including the cost of such excess labor and materials. Outlets of Basic and expanded basic programming provided in accordance with this subsection may be used to distribute Cable Service throughout such buildings at the cost of Grantor or agency, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. The Cable Service provided in this Section shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Grantor shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The Grantor shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this Section. If additional outlets of Basic Cable and expanded basic service and other services are provided to such buildings, the building owner/occupant shall pay Grantee's usual installation and service fees.

(B) The parties acknowledge that as of the Effective Date of this Franchise agreement, Grantee continues to provide Complimentary Services to certain schools, libraries, and public institutions within the Franchise Area. In the event Grantee elects, to the extent permitted by applicable laws, to charge the marginal cost to Grantee of providing Complimentary Services, Grantee agrees that it will do so only after providing Grantor with one hundred twenty (120) days' prior written notice. Grantee agrees not to unfairly or unreasonably

discriminate against the Grantor with respect to other Washington served local franchising authorities, with respect to the deduction or calculation of costs for Complimentary Services.

The Grantor shall have the right to have all or a portion of the Complimentary Services provided by the Grantee discontinued, directly billed to the recipient, or offset against franchise fee payments, in the event Grantee elects to impose a charge against the Grantor for the Complimentary Services as set forth in the preceding paragraph.

## **SECTION 14. STANDBY POWER AND STATUS MONITORING**

(A) Grantee shall provide standby power generating capacity at the Cable System Headend capable of providing at least twelve (12) hours of emergency operation. Grantee shall maintain standby power system supplies, rated for at least four (4) hours duration, throughout the trunk and distribution networks. In addition, throughout the term of this Agreement, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours.

(B) Grantee shall continue to utilize status monitoring of the cable system which can continually monitor the system for signal quality on the forward and return spectrums of the system. In addition, the Grantee shall maintain status monitoring for all power supplies in its headend(s) and hub(s) as well as the distribution system.

Status monitoring shall be capable of notifying the Grantee, 24/7 of system problems including utility power outages that will negatively affect its customers.

## **SECTION 15. FRANCHISE VIOLATIONS; REVOCATION OF FRANCHISE**

### **15.1 Procedure for Remediating Franchise Violations**

(A) If Grantor believes that Grantee has failed to perform any obligation under this Agreement or has failed to perform in a timely manner, Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged violation. Grantee shall have thirty (30) days from the date of receipt of such notice to:

(1) Respond to Grantor, contesting Grantor's assertion that a violation has occurred, and request a hearing in accordance with subsection C below; or

(2) Cure the violation; or

(3) Notify Grantor that Grantee cannot cure the violation within the thirty (30) days, because of the nature of the violation and notify the Grantor in writing of what steps the Grantee shall take to cure the violation including the Grantee's projected completion date for

such cure. In such case, Grantor shall set a hearing date within thirty (30) days of receipt of such response in accordance with subsection (B) below.

(B) In the event that the Grantee notifies the Grantor that it cannot cure the violation within the thirty (30) day cure period, Grantor or its designee may set a public hearing within thirty (30) days of Grantor's receipt of such notice to review and determine whether the Grantee has taken reasonable steps to cure the violation and whether the Grantee's proposed plan and completion date for cure are reasonable. In the event such plan and completion date are found to be reasonable, the same shall be approved by the Grantor, who may waive all or part of the liquidated damages for such extended cure period in accordance with the criteria set forth in subsection (E) of this section.

(C) In the event that the Grantee fails to cure the violation within the thirty (30) day basic cure period, or within an extended cure period approved by the Grantor or designee pursuant to subsection (B), the Grantor or designee shall set a public hearing to determine what sanctions shall be applied. In the event that the Grantee contests the Grantor's assertion that a violation has occurred, and requests a hearing in accordance with subsection (A)(1) above, the Grantor or designee shall set a public hearing within sixty (60) days of the Grantor's receipt of the hearing request to determine whether the violation has occurred, and if a violation is found, what sanctions shall be applied.

(D) In the case of any hearing pursuant to this Section, Grantor shall notify Grantee of the hearing in writing and at the hearing, Grantee shall be provided an opportunity to be heard and to present evidence in its defense. The Grantor shall also hear any other Person interested therein.

(E) The liquidated damages set forth in Section 15.3 of this Agreement may be reduced at the discretion of the Grantor or designee, taking into consideration the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:

- (1) Whether the violation was unintentional;
- (2) Whether substantial harm resulted;
- (3) Whether there is a history of prior violations of the same or other requirements;
- (4) Whether there is a history of overall compliance; and/or
- (5) Whether the violation was voluntarily disclosed, admitted or cured.

(F) If, after the public hearing, Grantor or designee determines that a violation exists, Grantor or designee may utilize one or more of the following remedies:

(1) Order Grantee to correct or remedy the violation within a reasonable timeframe as Grantor or designee shall determine;

(2) Establish the amount of liquidated damages set forth in Section 15.3, taking into consideration the criteria provided for in subsection (E) of this Section; provided that amounts in excess of fifty thousand dollars (\$50,000) shall be subject to Subsection (G) of this Section;

(3) Revoke this Agreement, subject to subsection (G) of this Section; and/or

(4) Pursue any other legal or equitable remedy available under this Franchise or any applicable law.

(G) This Agreement shall not be revoked nor shall liquidated damages in an amount in excess of fifty thousand dollars (\$50,000) be imposed except by the Vancouver City Council after notice and hearing as set forth in this Section.

(H) The determination as to whether a violation of this Agreement has occurred shall be within the sole discretion of the Grantor or its designee, provided that any such final determination shall be subject to review by a court of competent jurisdiction under applicable law.

## **15.2 Revocation**

(A) In addition to all other rights and powers retained by the Grantor under this Franchise or otherwise, the Grantor reserves the right to revoke this Franchise and all rights and privileges of the Grantee hereunder, in whole or in part, in the event of a material violation of its terms and conditions. A material violation by the Grantee shall include, but shall not be limited to, the following:

(1) Violation of any material provision of this Franchise, or any material rule, order, regulation or determination of the Grantor or authorized agent made pursuant to this Franchise;

(2) Attempt to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or its Subscribers;

(3) Failure to restore service after forty-eight (48) consecutive hours of interrupted service system-wide, except when approval of such interruption is obtained from the Grantor or designee or;

(4) Material misrepresentation of fact in the application for or negotiation of this Franchise.

## **15.3 Liquidated Damages**

(A) Amounts. Because the Grantee's failure to comply with provisions of the Agreement will result in injury to the Grantor, and because it will be difficult to estimate the extent of such injury in certain instances, the Grantor and the Grantee agree to the following liquidated damages for the following violations. These damages represent both parties' best estimate of the damages resulting from the specified injury.

(1) For failure to extend Cable Service within the Franchise Area as required in this Franchise: two-hundred fifty dollars (\$250) per incident per day.

(2) For failure to provide for Public, Educational, and Governmental Access Channels required in this Franchise: five-hundred dollars (\$500) per incident per day.

(3) For violation of applicable customer service standards: two hundred fifty dollars (\$250) per incident per day.

(4) For all other material violations of this Franchise, other than those specified in this section, for which actual damages may not be ascertainable: one-hundred fifty dollars (\$150) per incident per day for such material provision of this Franchise that is violated.

(B) Date of Violation, Notice and Opportunity to Cure. The date of violation will be the date of the event and not the date the Grantee receives notice of the violation, provided, if Grantor has actual knowledge of the violation and fails to give the Grantee the notice called for herein, then the date of the violation shall be no earlier than ten (10) business days before the Grantor gives Grantee the notice of the violation. The Grantor must provide written notice of a violation. Upon receipt of notice, the Grantee will have a period of thirty (30) days to cure the violation or thirty (30) days to present to the Grantor a reasonable remedial plan. The Grantor shall decide whether to accept or reject the remedial plan presented by the Grantee. Liquidated damages occur only in the event that either a cure has not occurred within thirty (30) days or the Grantor rejects the remedial plan. The procedures provided in Section 15, shall be utilized to impose any liquidated damages.

(C) Collection of Liquidated Damages. The collection of liquidated damages by the Grantor shall in no respect affect:

(1) Compensation owed to Subscribers; or

(2) The Grantee's obligation to comply with all of the provisions of this Agreement or applicable law; or

(3) Equitable remedies available to the Grantor, provided that collection of liquidated damages shall be the exclusive monetary remedy for the particular incident for which it is imposed other than reasonable attorney fees and costs if applicable.

## **15.4 Removal**

(A) In the event of revocation of this Franchise, pursuant to Section 15.2 of this Franchise, or expiration, following the renewal process pursuant to Section 17.1 of this Franchise, Grantor may order the removal of the above-ground Cable System facilities and such underground facilities as required by Grantor in order to achieve reasonable engineering or Public Right-of-Way-use purposes, from the Franchise Area at Grantee's sole expense within a reasonable period of time as determined by Grantor. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Public Rights-of-Way, public places and private property in as good a condition as that prevailing prior to Grantee's removal of its equipment.

(B) If Grantee fails to complete any required removal to the satisfaction of Grantor, Grantor may cause the work to be done and Grantee shall reimburse Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs or Grantor may recover the costs through the Performance Bond provided by Grantee.

## **15.5 Receivership and Foreclosure**

(A) At the option of Grantor, subject to applicable law, this Agreement may be revoked one-hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless:

(1) The receivership or trusteeship is vacated within one-hundred twenty (120) days of appointment; or

(2) The receiver(s) or trustee(s) have, within one-hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all violations under the Agreement. Additionally, the receiver(s) or trustee(s) shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver(s) or trustee(s) assume and agree to be bound by each and every term and provision of this Agreement.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Agreement shall be revoked sixty (60) days after service of such notice, unless:

(1) Grantor has approved the transfer of the Agreement, in accordance with the procedures set forth in this Agreement and as provided by law; and

(2) The purchaser has agreed with Grantor to assume and be bound by all of the terms and conditions of this Agreement.

## **15.6 No Recourse Against Grantor**

Grantee shall not have any monetary recourse against Grantor or its officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Agreement or the enforcement thereof, as provided by applicable federal, state and local law. The rights of the Grantor under this Agreement are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under federal, state or local law.

## **15.7 Nonenforcement by Grantor**

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement by reason of any failure of Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce any provision of this Agreement shall not serve as a basis to stop any subsequent enforcement. The failure of the Grantor on one or more occasions to exercise a right or to require compliance or performance under this Agreement or any applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Any waiver of a violation is not a waiver of any other violation, whether similar or different from that waived.

## **15.8 Relationship of Remedies**

The remedies provided for in this Agreement are cumulative and not exclusive except as provided in Section 15.3 hereof; the exercise of one remedy shall not prevent the exercise of another, or any rights of the Grantor at law or equity.

## **SECTION 16. ABANDONMENT**

### **16.1 Effect of Abandonment**

If the Grantee abandons its System during the Agreement term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor or until the Agreement is revoked and a new Franchisee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses and damages incurred.

### **16.2 What Constitutes Abandonment**

The Grantor shall be entitled to exercise its options and obtain any required injunctive relief if:



(A) The Grantee fails to provide Cable Service in accordance with this Agreement over a substantial portion of the Franchise Area for forty-eight (48) consecutive hours, unless the Grantor authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Agreement.

## **SECTION 17. FRANCHISE RENEWAL AND TRANSFER**

### **17.1 Renewal**

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of Grantee's Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Acts, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(B) In addition to the procedures set forth in said Section 626(a), the Grantor agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Agreement and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Acts.

### **17.2 Transfer of Ownership or Control**

(A) The Cable System and this Agreement shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation, nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity, without the prior written consent of the Grantor, which consent shall not be unreasonably withheld.

(B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise on the acquisition or accumulation by any Person or group of Persons of fifty-one percent (51%) of the shares or the general partnership interest in the Grantee. No consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to

secure indebtedness, or (ii) a transfer or change in control to an entity directly or indirectly owned or controlled by Comcast Corporation. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented thereto.

(C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by law and the Grantor.

(D) The Grantor shall render a final written decision on the request within one-hundred twenty (120) days of the request, provided it has received all requested information. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one-hundred twenty (120) days, such request shall be deemed granted unless the requesting party has failed to provide required documentation regarding the transferee's qualifications or the requesting party and the Grantor agree to an extension of time.

(E) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, Agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee.

(F) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, provided, however, any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Agreement by Grantee.

(G) The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of any rights of the Grantor, and any transfer shall, by its terms, be expressly subordinate to the terms and conditions of this Franchise.

(H) Notwithstanding anything to the contrary in this Section, the prior approval of the Grantor shall not be required for any sale, assignment or transfer of the Agreement or Cable System for cable television system usage to an entity controlling, controlled by or under the same common control as Grantee provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all provisions of the Agreement. No consent shall be required for a transfer in trust, by mortgage, by other hypothecation, by assignment of any rights, title, interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

## **SECTION 18. SEVERABILITY**

If any Section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement.

## **SECTION 19. MISCELLANEOUS PROVISIONS**

### **19.1 Preferential or Discriminatory Practices Prohibited**

Grantee shall not discriminate in hiring, employment or promotion on the basis of race, color, creed, ethnic or national origin, religion, age, sex, sexual orientation, marital status, or physical or mental disability. Throughout the term of this Agreement, Grantee shall fully comply with all equal employment or nondiscrimination provisions and requirements of federal, state and local law and, in particular, FCC rules and regulations relating thereto.

### **19.2 Notices**

Throughout the term of the Agreement, Grantee shall maintain and file with Grantor a designated legal or local address for the service of notices by mail. A copy of all notices from Grantor to Grantee shall be sent, postage prepaid, to such address and such notices shall be effective upon the date of mailing. General updates may be communicated electronically as appropriate, agreed to and acknowledged by both parties. At the effective date of this Agreement, such addresses shall be:

- (1) Comcast Cable  
Attn: Government Affairs  
11308 SW 68th Parkway  
Tigard, OR 97223

With copy to: Comcast Cable  
Attn: West Division/Government Affairs  
9401 E Panorama Cir.  
Centennial, CO 80122

All notices to be sent by Grantee to Grantor under this Agreement shall be sent, postage prepaid, and such notices shall be effective upon the date of mailing. At the effective date of this Agreement, such address shall be:

City of Vancouver  
Cable TV Office  
P.O. Box 1995  
Vancouver, WA 98668-1995

With copy to:  
Vancouver City Attorney  
P.O. Box 1995  
Vancouver, WA 98668-1995

### **19.3 Binding Effect**

This Agreement shall be binding upon the parties hereto, their permitted successors and assigns.

### **19.4 Authority to Amend**

This Agreement may be amended at any time by written agreement between the parties.

### **19.5 Governing Law**

This Agreement shall be governed in all respects by the laws of the State of Washington.

### **19.6 Captions**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of any provisions of this Agreement.

### **19.7 Construction of Agreement**

The provisions of this Agreement shall be liberally construed to promote the public interest.

### **19.8 Force Majeure**

(A) For purposes of this Franchise, the term “Force Majeure” shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, large-scale failure of utilities, documented work delays caused by waiting for utility providers to service or monitor utility poles to which Grantee’s facilities are attached and documented unavailability of materials and/or qualified labor to perform the work necessary; and other similar events which are not reasonably within the control of the distressed party.

(B) If either party is wholly or partially unable to carry out or perform its obligations under this Franchise as a result of Force Majeure, the distressed party shall not be deemed in violation or default during the duration of the Force Majeure. The distressed party shall take

immediate and diligent steps to comply as soon as possible under the circumstances, and shall take all necessary corrective steps to remedy as expeditiously as possible the non-compliant responsibilities and duties affected by the Force Majeure. The distressed party shall give prompt notice of such Force Majeure, describing the same in reasonable detail. The distressed party's obligations under this Franchise shall not be deemed in violation or default for the duration of the Force Majeure.

**19.9 Attorneys' Fees**

In the event of litigation between the parties, the prevailing party in such action shall be entitled to recover, in addition to damages, injunctive relief, reasonable costs and expenses, including, but not limited to, reasonable attorney fees, court costs and expert witness fees subject to court approval. Such costs such shall include reasonable attorney fees, costs and expenses incurred at trial and appeal.

**19.10 Survival**

The provisions of Sections 3.12 - Payment on Termination, 5.3 - Indemnification, 7.2 - Confidentiality, 10.3 - Relocation, 10.8 - Discontinuing Use of Facilities, 15.3 - Liquidated Damages, Section 15.4 - Removal, and 16 - Abandonment and of any other indemnity provisions elsewhere contained in this Agreement shall survive the expiration or earlier revocation of this Agreement.

AGREED TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024

CITY OF VANCOUVER

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_

City Attorney

**EXHIBIT "A"**

**ORINATION SITES and ACCESS CENTERS  
VANCOUVER/CLARK COUNTY CABLE TELEVISION SYSTEM**

**Origination Points and Access Centers**

City/County Cable TV Office – CVTV Studio\*  
415 W. 6<sup>th</sup> Street  
Vancouver, WA 98668

Vancouver City Hall, Council Chambers  
415 W. 6<sup>th</sup> Street  
Vancouver, WA 98668

Vancouver Community Library  
901 C. Street  
Vancouver, WA 98660

Clark County Public Service Center  
1300 Franklin Street  
Vancouver, WA 98660

City of Vancouver Water Resource Education Center  
4600 S.E. Columbia Way  
Vancouver, WA 98661

Port of Vancouver, USA  
3103 Lower River Road  
Vancouver, WA 98660

Clark County Emergency Communications Center  
710 W. 13<sup>th</sup> Street  
Vancouver, WA 98663

Gaiser Hall, Clark College  
1800 E. McLoughlin Blvd.  
Vancouver, WA 98663

Firstenburg Community Center  
700 N.E. 136<sup>th</sup> Ave.  
Vancouver, WA 98684

Vancouver Hilton  
301 W. 6<sup>th</sup> Street  
Vancouver, WA 98660

Educational Service District 112\*  
2500 N.E. 65<sup>th</sup> Ave.  
Vancouver, WA 98661

Fire District 5 Regional Training Center  
11606 N.E. 66<sup>th</sup> St. Bldg. B  
Vancouver, WA

\*Denotes Access Centers

LETTER AGREEMENT

By and Between City of Vancouver, WA and Comcast Cable Communications Management, LLC

Access Program Listings in Subscriber Guides.

(1) For purposes of this letter, “Electronic Program Guide” or “EPG” means the program guide, navigation system and search functions accessible on Comcast’s digital Cable Services through the Subscriber set-top unit and remote control, or their successor technology.

(2) Comcast shall include the Access Channels and programming information in all EPG menus that are available to Subscribers. Access Channels and programming shall be listed in a substantially similar manner and placement as the local broadcast channels, including individual program descriptions, in a non-discriminatory manner.

(3) The City and its designated access providers shall be responsible for providing the Access Channel programming information through an RSS feed or equivalent format and within the appropriate timeframe for insertion into program guides to the third party guide providers.

(4) The City’s designated access providers shall be responsible for all capital, implementation and operating costs for any additional Access Channel programming information to be provided in the EPG available to Subscribers.

(5) The parties agree to continue discussions toward a goal of permitting the City or its designated access providers to engage with and pay third party guide providers directly.

Acknowledged and agreed to this \_\_\_ day of \_\_\_\_\_, 2024.

**Comcast Cable Communications Management, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**City of Vancouver, WA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**Priority Issues of the Vancouver/Clark County Franchise Renewal Process  
April 22, 2024**

**1. Customer Service – Technical Requirements**

**Proposed Franchise: Section 6 Customer Service, pgs. 21 - 26**

**Outcome:** Based off feedback received in the “Report on the Cable Television-Related Needs and Interest Ascertainment for Vancouver/Clark County, WA” (“Ascertainment Report”) the Vancouver/Clark County Telecommunications Commission (“Commission”) recommended an expansion of the customer service provisions in the renewed cable franchise. The current cable television franchise deferred to the customer service standards of the Federal Communications Commission, (“FCC).”

The proposed cable franchise greatly expands the number of customer service provisions. Based largely from the 2021 cable franchise with Comcast and Clackamas County, OR, the proposed franchise provides guidelines for complaint handling, service response and outage credits. In addition, the system testing requirements were expanded to allow for reporting and additional testing for areas where there are noted customer service issues.

**2. Buildout Requirements**

**Proposed Franchise: Section 13, pgs. 44-46**

**Outcome:** The Ascertainment Report was completed in late 2021 at the height of the pandemic. At that time, residents in rural Clark County wanted Comcast cable in their neighborhoods to provide both cable and Internet connectivity for remote schooling and work. The current Clark County franchise buildout requirements included a diagram that was unclear. In the proposed franchise language, mainly taken from the Clackamas County, OR, franchise, the number of residences needed in an area where expansion is requested moves from 30 residences per cable mile in aerial neighborhoods to 25 residences. The city franchise will require 20 homes per cable mile. Aerial neighborhoods means those areas where there are telephone poles and overhead cables. In areas with undergrounding requirements, it moves to 40 residences per cable mile for both the city and county.

**3. Public, Educational and Government (“PEG”) Channels**

**Proposed Franchise: Section 9, pgs. 30-36**

**Outcome:** Negotiators had to deal with the competing needs of more PEG channel viewing options, vs. the desire for Comcast to capture more bandwidth for other services. The proposed cable franchise provides two additional High-Definition (“HD”) channel simulcasts for the educational access provider, TV ETC, so all three of their channels will be simulcast in HD, for an overall total of five HD channels, including two for Clark/Vancouver Television,

the governmental access provider. In exchange, Comcast requested to discontinue the Video-on-Demand provisions of the existing franchise. Currently, only TV ETC utilizes the video-on-demand options and have indicated they are willing to go without if they get the additional HD channels.

In addition, CVTV loses a discreet cable channel that was used mainly for training firefighters and paramedics. Prior to the pandemic, CVTV would televise live monthly trainings. Once the pandemic hit, the trainings went virtual, which proved to be a better service than CVTV coverage. The Vancouver Fire Chief was alerted about this issue several months ago.

As you may know, there has not been a local public access provider for several years. Currently on public access channel 11, Comcast is airing the Community Area Network, ("CAN"). This group is made up of public access facilities in the Portland-Metro area. The access stations each share time on CAN for airing their programming. Local Clark County/Vancouver access producers can submit programming to CAN and it airs in Clark County. In the proposed franchise, Comcast has only agreed to keep cable channel 11 in Standard Definition as long as CAN is still operating. If CAN stops operating, local cable viewers will lose cable channel 11.

#### 4. PEG Fee

##### **Proposed Franchise: Section 9.8 pgs. 33 - 35**

**Outcome:** The current PEG fee is a capital fund that collects \$1/month from residential cable subscribers. The \$1 fee hasn't changed since the fee was established in 1998. PEG fees pay for capital equipment needed to produce programming by CVTV and TV ETC. We also set currently aside approximately \$226,000 per year for offsetting a portion of the cost of Comcast Business Services for local non-profits, including the City, County and Library District.

The Ascertainment Study identified approximately \$10 million in capital needs over the next 10 years for CVTV and TV ETC. From 2020 to 2023, the PEG fee lost approximately 32%, \$732,000 collected in 2020 to \$552,000 collected in 2023. Staff compared the rate of decline with the franchise fee, which is 5% of gross revenue, over the same period and found it only decreased 5.51%.

To better stabilize the PEG fund, the proposed cable franchise moves the PEG fee from \$1/month to 1% of Gross Revenue. In 2022 the PEG fee collected \$552,455 in the \$1/month model. By moving to 1% Gross Revenue, the PEG fee would have collected \$750,181. This would decrease the amount Limited Basic subscribers pay from \$1 to \$0.60/month; the fee for Popular TV subscribers would increase to \$1.06/month; and Ultimate TV subscribers

would see an increase to \$1.28/month. Gross Revenues are only for cable services. Revenue from broadband or other services are not included.

5. **PEG Fee – Unmet Needs**

**Proposed Franchise: No I-Net/Comcast Business Services section in franchise, Side-Letter Agreement**

**Outcome:** Under the current cable franchises PEG fees can help offset the transport costs for public agencies utilizing Comcast Business Services. Currently staff reimburses a total of \$226,000 from the PEG fund annually, split between the City of Vancouver, Clark County, Fire District 5 and the Ft. Vancouver Regional Library District. Unfortunately, though all parties spent several months trying to find a creative solution, staff and Comcast were unable to navigate through the impacts of the FCC 621 Order which further restricts the use of PEG funds. Staff have notified all impacted agencies of this possibility over the past few years. The entire I-NET section has been removed from the proposed franchise. There are adequate PEG fund reserves collected under the current franchise, so staff is proposing one final reimbursement payment in December of this year from existing PEG funds. This will help the agencies better prepare their upcoming budgets. The Commission will be forwarding elected officials a recommendation for this one last reimbursement later this spring.

The current franchise requires Comcast to purchase the channel listing guides for two PEG channels. Currently this is for CTV channels 21 and 23. Comcast is no longer willing to continue paying for this service. TV ETC has long wanted to start using the guide service as well. The channel guide service is managed by an outside company, Gracenotes Content Solutions. The cost for a channel listing, both SD and HD would be \$600/month or \$7,200/year which totals \$36,000 for all five PEG channels. As with Comcast Business Services, we could not overcome the tightened capital restrictions from the FCC 621 to pay for this service from the PEG Fund. CTV and TV ETC will need to cover these costs if they chose from their operational budgets.



Item #5.

**TO:** Mayor and City Council

**FROM:** Eric Holmes, City Manager

**DATE:** 4/22/2024

**SUBJECT** Approval of Claim Vouchers

**Action Requested**

Approve claim vouchers for April 22, 2024.

**ATTACHMENTS:**

- Claim Vouchers for April 22, 2024

**VOUCHER APPROVAL**

We, the undersigned council members of the City of Vancouver, Clark County, Washington, do hereby certify that the merchandise or services hereinafter specified have been received and that the vouchers listed below are approved for payment in the amount of:

**\$ 12,669,521.84** this 22nd day of April 2024.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
COUNCILMEMBER

\_\_\_\_\_  
AUDITING OFFICER

\_\_\_\_\_  
COUNCILMEMBER

DATE	INCLUSIVE CHECK NUMBERS	CHECK TOTAL
April 08, 2024 - April 14, 2024	Accounts Payable Checks (see attached)	\$ 8,430,055.57
April 08, 2024 - April 14, 2024	Hansen City Payments (see attached)	\$ 17,990.03
April 08, 2024 - April 14, 2024	Visa Refunds (see attached)	\$ 3,398.50
April 08, 2024 - April 14, 2024	Payroll Checks (see attached)	\$ 4,218,077.74
<b>TOTAL</b>		<b>\$ 12,669,521.84</b>

**INVOICE PAYMENTS REPORT**

Payment Category	Payment Type	Transaction Reference	Payment Date	Payment Amount	Payment Payee	Memo
Supplier Payment	Check	17978	4/10/2024	6,261.77	Aflac	
Supplier Payment	Check	17979	4/10/2024	5,864.41	AFSCME Local #307	
Supplier Payment	Check	17980	4/10/2024	334.00	California State Disbursement Unit	
Supplier Payment	Check	17981	4/10/2024	1,033.50	Chapter 13 - Trustee	
Supplier Payment	Check	17982	4/10/2024	491.00	Hawaii SDU	
Supplier Payment	Check	17983	4/10/2024	774.90	IAM Local #1374	
Supplier Payment	Check	17984	4/10/2024	8,758.53	Life Insurance Company of North America	
Supplier Payment	Check	17985	4/10/2024	1,000.00	MFS Service Center Inc	
Supplier Payment	Check	17986	4/10/2024	4,332.03	OPEIU Local #11	
Supplier Payment	Check	17987	4/10/2024	724.50	Teamsters Local #58	
Supplier Payment	Check	17988	4/10/2024	280.00	UA Local #290	
Supplier Payment	Check	17989	4/10/2024	3,219.90	Western Conference of Teamsters	
Supplier Payment	Check	17990	4/10/2024	1,391.04	Western Metal Industry Pension Plan	
Ad Hoc Payment	Check	17991	4/10/2024	300.00	Beleiciks,George or Mary Jo	Utility Refunds: 0085098317-02
Ad Hoc Payment	Check	17992	4/10/2024	529.40	Carver,Don H	Utility Refunds: 0164001834-03 Consolidated refund created from multiple refunds
Ad Hoc Payment	Check	17993	4/10/2024	118.76	Davis,Andrew or Rachael	Utility Refunds: 0028031525-04
Ad Hoc Payment	Check	17994	4/10/2024	2,383.53	DST 150 LLC	Utility Refunds: 0002000111-02
Ad Hoc Payment	Check	17995	4/10/2024	157.48	Escoe,Susan	Utility Refunds: 0061060000-05
Ad Hoc Payment	Check	17996	4/10/2024	98.08	Hobson,Holly	Utility Refunds: 0114008000-16
Ad Hoc Payment	Check	17997	4/10/2024	177.00	Juan Martinez Alvez or Hilda Mariza Rodriguez	Utility Refunds: 0050037600-03
Ad Hoc Payment	Check	17998	4/10/2024	186.89	Lunar Properties LLC	Utility Refunds: 0000003458-04
Ad Hoc Payment	Check	17999	4/10/2024	99.08	Nagawo Tulu or Kanane Bedaso	Utility Refunds: 0116031031-04
Ad Hoc Payment	Check	18000	4/10/2024	69.62	OD Labs Property	Utility Refunds: 0123002915-04
Ad Hoc Payment	Check	18001	4/10/2024	60.53	OD Labs Property	Utility Refunds: 0106015255-22
Ad Hoc Payment	Check	18002	4/10/2024	188.85	OD Labs Property	Utility Refunds: 0112093096-05
Ad Hoc Payment	Check	18003	4/10/2024	141.88	OD Labs Property	Utility Refunds: 0056008350-04 Consolidated refund created from multiple refunds
Ad Hoc Payment	Check	18004	4/10/2024	117.33	OD Labs Property	Utility Refunds: 0045000100-15 Consolidated refund created from multiple refunds
Ad Hoc Payment	Check	18005	4/10/2024	33.26	Plieth,Andrew W or Angela R	Utility Refunds: 0126002290-04
Ad Hoc Payment	Check	18006	4/10/2024	76.83	The Albert and Patsy Hagmann Family,2003 Living Trust	Utility Refunds: 0057027700-26
Ad Hoc Payment	Check	18007	4/10/2024	179.91	The Stanley K Fishman Revocable Living Trust	Utility Refunds: 0012034820-02
Ad Hoc Payment	Check	18008	4/10/2024	478.40	Touchmark	Utility Refunds: 0002000111-02 Consolidated refund created from multiple refunds
Ad Hoc Payment	Check	18009	4/10/2024	46.01	White,Susan D	Utility Refunds: 0073002982-02
Miscellaneous Payment	Check	18010	4/10/2024	1,537.00	Aleksandr Medvedev	LUP-84095 (Parcel ID 37300955)
Miscellaneous Payment	Check	18011	4/10/2024	1,546.44	Cosco Fire Protection Inc	FRI-346848 (jobsite: 4111 NE 112th Ave)
Miscellaneous Payment	Check	18012	4/10/2024	92.74	Georgia Ketchmark	Refund of parking permit COV12633 no longer needed.
Miscellaneous Payment	Check	18013	4/10/2024	161.77	Hannah Cohen	Refund of parking permit COV13602 no longer needed.
Miscellaneous Payment	Check	18014	4/10/2024	32.00	Lawrence Fahle	01.30.24 CPL Refund
Miscellaneous Payment	Check	18015	4/10/2024	32.00	Ronald Hagbom	03.28.24 CPL Refund
Miscellaneous Payment	Check	18016	4/10/2024	91.00	SAFEWAY #1704	Refund of duplicate payment to INV# 77059531
Miscellaneous Payment	Check	18017	4/10/2024	91.00	SAFEWAY #1704	Refund of duplicate payment to INV# 77059531
Miscellaneous Payment	Check	18018	4/10/2024	91.00	SUPPRESSION SYSTEMS INC.	Refund of duplicate payment to INV#77062176
Miscellaneous Payment	Check	18019	4/10/2024	1,072.80	VERIZON WIRELESS	Refund INV#77061740, INV#77061741, INV#77061743 and INV#77061744
Supplier Payment	Check	18020	4/10/2024	429.00	Accurate Corporate Services Inc	
Supplier Payment	Check	18021	4/10/2024	12,554.60	Action Technology Systems	
Supplier Payment	Check	18022	4/10/2024	1,649.07	A-Line Asphalt Maintenance Inc	

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**INVOICE PAYMENTS REPORT**

<u>Payment Category</u>	<u>Payment Type</u>	<u>Transaction Reference</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Payee</u>	<u>Memo</u>
Supplier Payment	Check	18023	4/10/2024	1,680.00	Allegis Group Holdings Inc - Remit-To: TekSystems Inc - Atlanta	
Supplier Payment	Check	18024	4/10/2024	136.00	American Sani-Can	
Supplier Payment	Check	18025	4/10/2024	148.28	Aramark Uniform & Career Apparel LLC - Remit-To: Aramark - Pasadena	
Supplier Payment	Check	18026	4/10/2024	53,457.95	Arborscape Ltd Inc	
Supplier Payment	Check	18027	4/10/2024	4,317.00	BSK Associates - Remit-To: Supplier BSK Associates	
Supplier Payment	Check	18028	4/10/2024	5,082.99	Carahsoft Technology	
Supplier Payment	Check	18029	4/10/2024	12,675.57	CECO Inc	
Supplier Payment	Check	18030	4/10/2024	1,651.87	Chicago Title Company of WA	
Supplier Payment	Check	18031	4/10/2024	10,000.00	City of Gresham	
Supplier Payment	Check	18032	4/10/2024	703,869.01	Clark County - Remit-To: Clark County - Treasurer Vancouver	
Supplier Payment	Check	18033	4/10/2024	1,725.65	Clark Public Utility District No. 1	
Supplier Payment	Check	18034	4/10/2024	7,795.08	Clark Public Utility District No. 1	
Supplier Payment	Check	18035	4/10/2024	9,913.13	Clark Public Utility District No. 1	
Supplier Payment	Check	18036	4/10/2024	33,494.52	Clary Longview LLC	
Supplier Payment	Check	18037	4/10/2024	292.50	CODAs Plus	
Supplier Payment	Check	18038	4/10/2024	32,643.00	Columbia Resource Company	
Supplier Payment	Check	18039	4/10/2024	7,149.14	Columbia Resource Company	
Supplier Payment	Check	18040	4/10/2024	5,000.00	Columbia River Economic Development Council Inc	
Supplier Payment	Check	18041	4/10/2024	6,882.88	Consor North America Inc	
Supplier Payment	Check	18042	4/10/2024	399.89	Core and Main LP - Remit-To: Core and Main LP	
Supplier Payment	Check	18043	4/10/2024	1,661.64	CUES Inc - Remit-To: CUES Inc - Cincinnati	
Supplier Payment	Check	18044	4/10/2024	5,313.84	Echo Electric LLC	
Supplier Payment	Check	18045	4/10/2024	2,564.22	Emerald Services Inc - Remit-To: Emerald - Pittsburgh	
Supplier Payment	Check	18046	4/10/2024	2,489.00	Erickson Structural Consulting Engineers	
Supplier Payment	Check	18047	4/10/2024	79,789.45	Friends of Trees	
Supplier Payment	Check	18048	4/10/2024	127,535.98	Gordon Truck Centers	
Supplier Payment	Check	18049	4/10/2024	823.30	Harper Houf Peterson Righellis Inc	
Supplier Payment	Check	18050	4/10/2024	5,000.00	Healthcare Actuaries	
Supplier Payment	Check	18051	4/10/2024	8.00	HM Pacific Northwest, Inc - Remit-To: Cadman - Chicago	
Supplier Payment	Check	18052	4/10/2024	10,987.23	Kar-Gor Inc	
Supplier Payment	Check	18053	4/10/2024	34,808.94	KBT Distributing LLC	
Supplier Payment	Check	18054	4/10/2024	1,173.98	Kurita America Inc - Remit-To: US Water - Minneapolis	
Supplier Payment	Check	18055	4/10/2024	1,341.55	L.N. Curtis & Sons - Remit-To: Supplier L.N. Curtis & Sons	
Supplier Payment	Check	18056	4/10/2024	2,271.72	Lakeside Industries Inc - Remit-To: Lakeside - LB Seattle	
Supplier Payment	Check	18057	4/10/2024	4,924.12	Level 3 Financing, Inc	
Supplier Payment	Check	18058	4/10/2024	371.76	National Safety Inc	
Supplier Payment	Check	18059	4/10/2024	9,669.00	Parkeon	
Supplier Payment	Check	18060	4/10/2024	155.00	Portland Adventist Medical Center	
Supplier Payment	Check	18061	4/10/2024	32,921.33	PPC Solutions Inc	
Supplier Payment	Check	18062	4/10/2024	28,496.50	Public Safety Testing Inc	
Supplier Payment	Check	18063	4/10/2024	15.95	Qwest Corporation - Remit-To: CenturyLink - Phoenix	
Supplier Payment	Check	18064	4/10/2024	6,320.00	Rapid Response Bio Clean Inc.	
Supplier Payment	Check	18065	4/10/2024	468.35	Resolute Documentation Services	
Supplier Payment	Check	18066	4/10/2024	8,400.62	Retail Lockbox Inc	
Supplier Payment	Check	18067	4/10/2024	959.00	Riverview Community Bank	
Supplier Payment	Check	18068	4/10/2024	5,491.63	Safeware Inc.	
Supplier Payment	Check	18069	4/10/2024	13,170.94	SeaWestern Inc	
Supplier Payment	Check	18070	4/10/2024	419.59	Security Contractors Services	
Supplier Payment	Check	18071	4/10/2024	35,578.34	Software House International SHI - Remit-To: SHI - Dallas	
Supplier Payment	Check	18072	4/10/2024	7.20	State of Oregon Department of Transportation - Remit-To: OR DMV - Salem	
Supplier Payment	Check	18073	4/10/2024	499.28	State of Washington Department of Transportation	
Supplier Payment	Check	18074	4/10/2024	20.72	Stericycle Inc - Remit-To: Shred-It	
Supplier Payment	Check	18075	4/10/2024	3,391.44	Sunbelt Controls Inc - Remit-To: Sunbelt Controls - Pasadena	

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**INVOICE PAYMENTS REPORT**

Payment Category	Payment Type	Transaction Reference	Payment Date	Payment Amount	Payment Payee	Memo
Supplier Payment	Check	18076	4/10/2024	1,000.00	Taix UCM Services Inc	
Supplier Payment	Check	18077	4/10/2024	28,413.80	Tapani Electric, LLC	
Supplier Payment	Check	18078	4/10/2024	1,431.72	Teresa D Johnson CPA Inc	
Supplier Payment	Check	18079	4/10/2024	1,800.00	Thomas Garvey	
Supplier Payment	Check	18080	4/10/2024	804.39	Towing & Recovering Services Inc	
Supplier Payment	Check	18081	4/10/2024	71,847.44	Toyota Tsusho Material Handling America Inc - Remit-To: Toyota Lift Northwest - Seattle	
Supplier Payment	Check	18082	4/10/2024	10,519.03	Triple J Enterprises	
Supplier Payment	Check	18083	4/10/2024	516.13	United States Dosimetry Technology Inc	
Supplier Payment	Check	18084	4/10/2024	264.00	Vancouver Aire LLC	
Supplier Payment	Check	18085	4/10/2024	469.80	Veritext LLC - Remit-To: Veritext LLC	
Supplier Payment	Check	18086	4/10/2024	115,581.19	Versalift Northwest, LLC	
Supplier Payment	Check	18087	4/10/2024	25,474.60	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	18088	4/10/2024	10,181.67	Waste Connections of Washington - Remit-To: Waste Connections - Vancouver	
Supplier Payment	Check	18089	4/10/2024	3,989.26	Wex Bank	
Supplier Payment	Check	18090	4/10/2024	45,000.00	Willis Towers Watson Insurance Services West inc	
Supplier Payment	Check	18091	4/10/2024	513.74	WVP OF Washington PC	
Supplier Payment	Check	18092	4/10/2024	48.19	XPO Logistics Enterprise Services, Inc - Remit-To: XPO - Portland	
Supplier Payment	Check	18093	4/10/2024	1,083.68	Yakima County	
			<b>Check</b>	<b>1,703,591.56</b>		
Expense Payment	Direct Deposit	EFT-00241767	4/11/2024	102.00	Jerry Johnson	Employee Reimbursement
Cash Advance Payment	Direct Deposit	EFT-00241768	4/11/2024	241.50	Jake Carlow	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241769	4/11/2024	241.50	Julie Ballou	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241770	4/11/2024	90.00	Sean Dumas	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241771	4/11/2024	310.50	Shane LaBeck	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241772	4/11/2024	90.00	Blaise Geddry	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241773	4/11/2024	324.50	Tim Martin	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241774	4/11/2024	340.50	Jason Nicholson	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241775	4/11/2024	197.50	Zachary Ripp	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241776	4/11/2024	192.63	Andrew Nevue	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241777	4/11/2024	271.50	James Dewey	Travel Advance
Cash Advance Payment	Direct Deposit	EFT-00241778	4/11/2024	649.00	Colin Smith	Travel Advance
Expense Payment	Direct Deposit	EFT-00241779	4/11/2024	140.04	Steve Salgado	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241780	4/11/2024	111.00	Katherine Larkin	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241781	4/11/2024	130.62	Neil Martin	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241782	4/11/2024	17.25	Eric Jennings	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241783	4/11/2024	78.86	Tommy Razo	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241784	4/11/2024	214.40	Cody Uskoski	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241785	4/11/2024	111.00	Andrea Bauman	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241786	4/11/2024	19.69	Eric Holmes	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241787	4/11/2024	207.00	Nathan Schmierer	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241788	4/11/2024	71.69	Stefania Hicban	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241789	4/11/2024	262.56	Sreekanth Thirunagari	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241790	4/11/2024	305.00	Zachary Prine	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241791	4/11/2024	305.00	Kevin Peterson	Employee Reimbursement
Expense Payment	Direct Deposit	EFT-00241792	4/11/2024	305.00	Tyler Brawand	Employee Reimbursement
			<b>Direct Deposit</b>	<b>5,330.24</b>		
Supplier Payment	EFT	EFT-00241666	4/10/2024	12,158.77	Vancouver Police Officer Guild	
Supplier Payment	EFT	EFT-00241667	4/10/2024	1,259.64	Vancouver Command Guild	
Supplier Payment	EFT	EFT-00241668	4/10/2024	153.91	Legal Shield	
Supplier Payment	EFT	EFT-00241669	4/10/2024	17,060.14	Allegiance Benefit Plan Management Inc	
Supplier Payment	EFT	EFT-00241670	4/10/2024	30,383.12	IAFF Local #452	
Supplier Payment	EFT	EFT-00241793	4/11/2024	6,393.00	Sustainability Solutions Group USA, Inc. - Remit-To: Sustainability Solutions Group USA, Inc	
Supplier Payment	EFT	EFT-00241794	4/11/2024	918.75	Allegiance Benefit Plan Management Inc - Remit-To: Pensioners	
Supplier Payment	EFT	EFT-00241795	4/11/2024	19,635.47	Hermanson Company, LLC - Remit-To: Hermanson Company, LLC	
Supplier Payment	EFT	EFT-00241796	4/11/2024	1,644.63	RELX Inc. - Remit-To: LexisNexis - Chicago	
Supplier Payment	EFT	EFT-00241797	4/11/2024	105,226.06	Del Sol Inc	
Supplier Payment	EFT	EFT-00241798	4/11/2024	33,764.80	North Fork Landscape	
Supplier Payment	EFT	EFT-00241799	4/11/2024	8,401.66	Halme Excavating Inc	
Supplier Payment	EFT	EFT-00241800	4/11/2024	23,113.00	Keen Independent Research LLC	
Supplier Payment	EFT	EFT-00241801	4/11/2024	64,802.56	Halbert Construction Services LLC	
Supplier Payment	EFT	EFT-00241802	4/11/2024	729,954.80	Tapani Inc	
Supplier Payment	EFT	EFT-00241803	4/11/2024	2,297.36	Canopy Wellbeing	
Supplier Payment	EFT	EFT-00241804	4/11/2024	661,899.53	Operations Management International Inc	
Supplier Payment	EFT	EFT-00241805	4/11/2024	29,898.81	Council for the Homeless	
Supplier Payment	EFT	EFT-00241806	4/11/2024	2,608.88	ConvergeOne Inc	
Supplier Payment	EFT	EFT-00241807	4/11/2024	40.81	Ziply Fiber	

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