



Anacortes City Council
Municipal Building Council Chambers
904 Sixth Street

December 19, 2016
6:00 p.m.

***REVISED* PRELIMINARY AGENDA**

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Dakota Creek Recognition
 - b. Public Works Committee
4. **Public Comment**
5. **Consent Agenda (Action)**
 - a. Minutes of December 12, 2016
 - b. Approval of Claims in the amount of: \$160,047.69
 - c. Contract Award: Emissions Control Testing for WWTP Scrubber Installation
 - d. Interlocal Agreement with Skagit County for Technology Services, 2017-2019
 - e. Contract Award: 2017 Prosecutor Services
 - f. Interlocal Cooperation Agreement for a Countywide Public Safety Communications Center
6. **Public Hearings**
 - a. * Ordinance 2992: Title 19, Land Use Permit Procedures (Discussion/Possible Action)
7. **Other Business**
 - a. Swinomish Indian Tribal Community Presentation (Discussion)
 - b. * Finance Update (Discussion)
 - c. * Ordinance 2996: Amending the 2016 Budget (Year End) (Action)
 - d. * Ordinance 2990: Amending 2016 Budget for Equipment Rental & Replacement Transfer (Discussion/Possible Action)
 - e. * Contract Revision: Navia Benefit Solutions (Discussion/Possible Action)
 - f. * Resolution 1979: Adopting New Travel and Business Meals Policies and Procedures for the City of Anacortes / Ordinance 3000 Repealing Ordinance 2825 Adopted June 21, 2010 (Discussion/Possible Action)
8. **Adjournment**

Per Resolution 1949, citizens wishing to comment on items not on the agenda may do so under the Public Comment portion of the agenda. Citizens wishing to comment on agenda items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting. Citizens wishing to speak will please sign in at the back of the Council Chambers prior to the start of the meeting. The Mayor may limit comments to those who have signed in, and may limit the time allotted to each speaker to facilitate the orderly progress of the meeting.*

The City of Anacortes encourages people with disabilities to participate in public meetings.
For assistance with special needs, please contact Cherri Kahns at 360-299-1950 at least 48 hours prior to this meeting.



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning December 27, 2016

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes, vouchers and consent agenda items is not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

December 27, 2016

Special Meeting: MEETING MAY BE CANCELLED

January 3, 2017

January 9, 2017

- Resolution ____: Establishing Fees for the Storm Water Utility and Ordinance 2979 Removing Storm Rates from AMC (Discussion/Possible Action)
- Resolution ____: Establishing Fees for the Water Utility (Discussion/Possible Action)

January 17, 2017

January 23, 2017

February 6, 2017

- Closed Record Public Hearing, Conditional Use Permit to Permit Construction of Private Parking Lot in the R4 Zoning District, CUP-2016-1003

February 13, 2017

February 21, 2017

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Public Works, Monday, Dec 19, 2016, 4:30 PM, Mayor's Office, City Hall
- Planning, Tuesday, Dec 27, 2016, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Dec 28, 2016, 5:00 PM, Johnny Picasso's, 501 Commercial Avenue
- Public Works, Tuesday, Jan 3, 2017, 4:30 PM, Mayor's Office, City Hall
- Planning, Monday, Jan 9, 2017, 3:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Jan 11, 2017, 5:00 PM, Johnny Picasso's, 501 Commercial Avenue
- Personnel Committee, Wednesday, Jan 25, 2017, 4:00 PM, Main Conference Room, City Hall



Anacortes City Council

**Municipal Building Council Chambers
904 Sixth Street**

**Monday, December 19, 2016
5:30 p.m.**

SPECIAL MEETING

1

Executive Session (1/2 Hour) per RCW 42.30.110 (1)(i)

a

Potential Litigation

If reasonable accommodation of a disability is needed please contact Cherri Kahns at 299-1950
at least 48 hours prior to this meeting.

Dakota Creek Industries

**A Tradition of Excellence,
Innovation for the Future**



Dakota Creek Industries Inc.

Shipyard History



Construction Facilities

Big House



Construction Facilities

Syncrolift



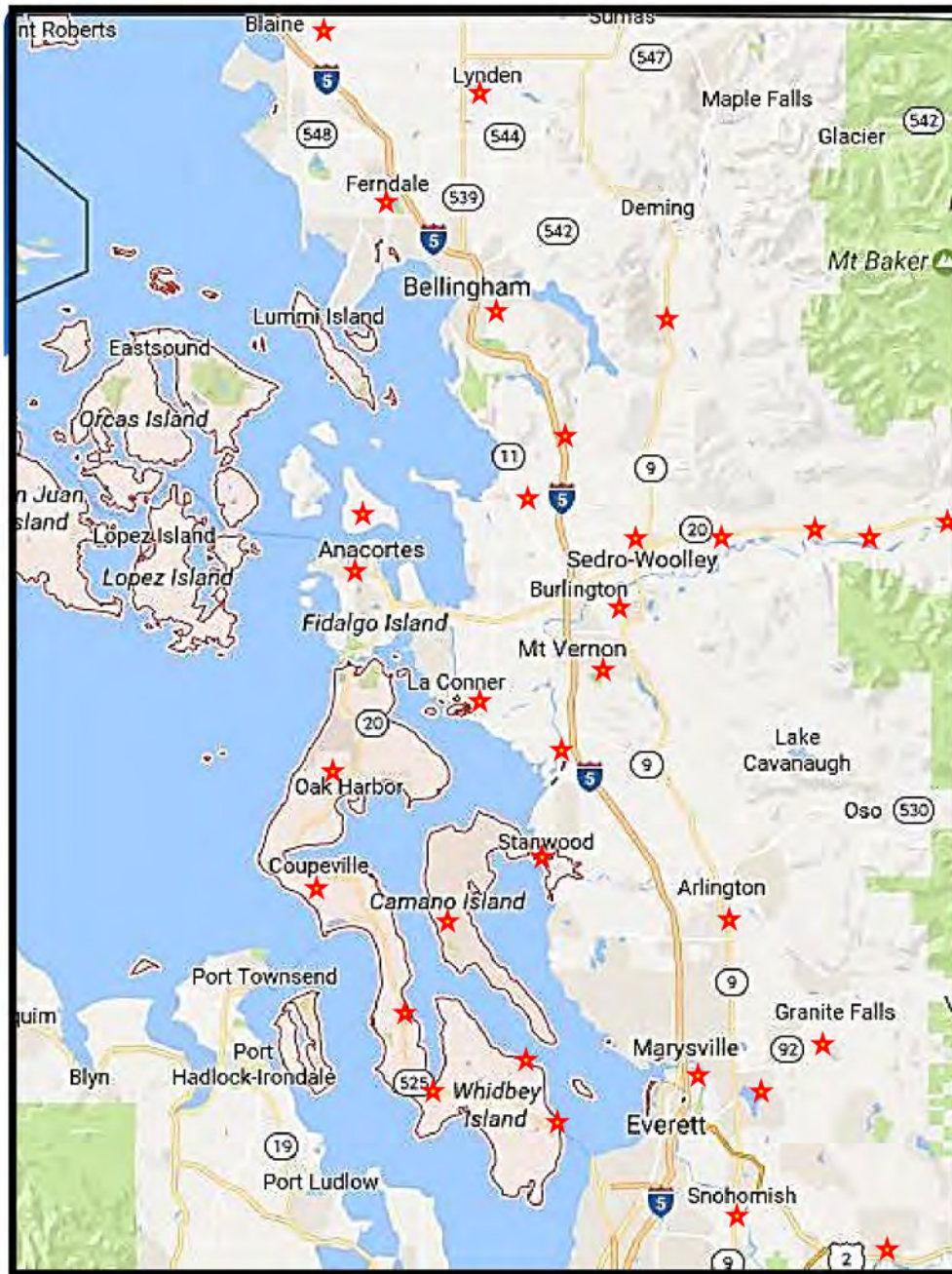
Construction Facilities

Dry Dock



Who We Are





Where We Come From

Skagit County – 234

- (95) Anacortes
- (27) Burlington
- (56) Mount Vernon
- (42) Sedro-Woolley

Island County – 41

- (31) Oak Harbor
- (4) Coupeville

Whatcom County - 24

- (13) Bellingham
- (6) Ferndale

Snohomish County – 21

- (7) Stanwood
- (6) Marysville

Noteworthy Accomplishments



Dakota Creek Industries Inc.

Ship of the Year – 2010

IMR *Ross Candies*



Articulated Tug M/V *Legacy*



Best Ship of 2015

AGOR 27 – R/V *Neil Armstrong*



Best Ship of 2016

F/V Blue North



New & Recent Projects



Dakota Creek Industries Inc.

New Construction San Francisco Bay Fast Ferries



M/V Solano

AGOR 27 R/V *Neil Armstrong*

- Delivered August 2015 – 238' x 50'
- Designed by Guido Perla & Associates (GPA) of Seattle
- Owned by the United States Navy
- Operated by Woods Hole Oceanographic Institute (WHOI)



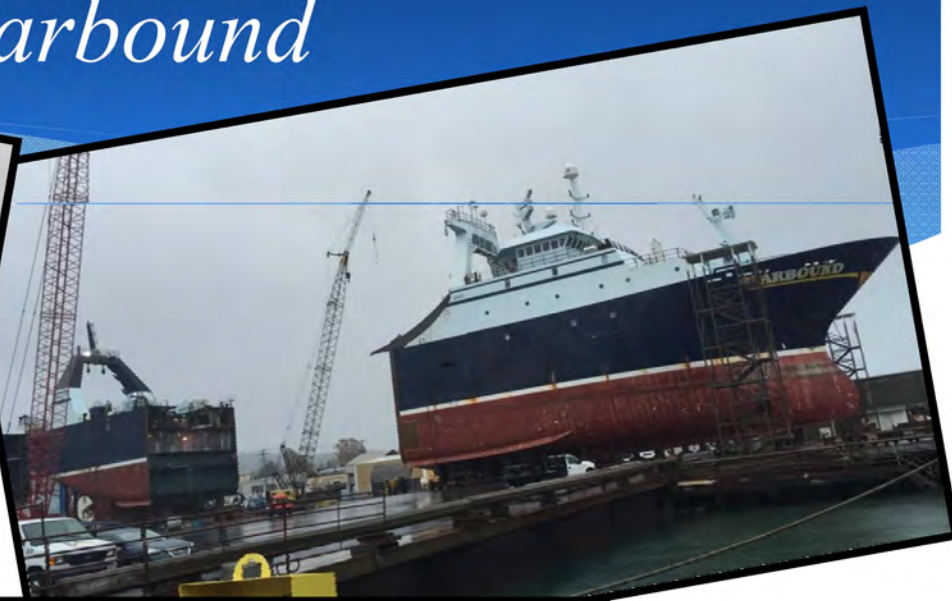
AGOR 28 R/V *Sally Ride*



- Delivered July 2016 – 238' x 50'
- Designed by Guido Perla & Associates (GPA) of Seattle
- Owned by United States Navy
- Operated by Scripps Institute of Oceanography (SIO)

Major Refit

F/V Starbound



City Council Minutes – December 12, 2016

Mayor Pro Tem Ryan Walters called to order the regular Anacortes City Council meeting of December 12, 2016 at 6:00 p.m. Councilmembers Eric Johnson, Ryan Walters, Erica Pickett, Brad Adams, Liz Lovelett and John Archibald were present. Councilmember Matt Miller was absent. Mr. Walters reported that Mayor Gere was absent due to illness. The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Planning Committee: Mr. Walters announced that the committee meeting scheduled for earlier in the evening had been cancelled due to illnesses.

Nicole Johnston, Recreation Coordinator, reported on the very well attended 5th annual Wonderland Walk held at Washington Park over the weekend. Ms. Johnston thanked all the vendors, performers, volunteers and the entire Parks Department staff for making the popular event possible.

Ms. Johnston updated Council on the Storvik Park spray pad project. She reported that Tesoro had recently donated \$50K to the Anacortes Parks Foundation in support of the project which brought total donations for the spray pad to \$160K towards the \$180K goal. Ms. Johnston said construction was approximately 50% complete.

Mr. Johnson reported that due to below freezing night temperatures in the forecast the Salvation Army cold weather shelter would be open. He encouraged volunteers to contact the Salvation Army.

Mr. Walters reported that the audit exit conference had been rescheduled to Thursday, December 22, 2016 at 11:00 a.m.

Public Comment

No one present wished to address the Council on any topic not already on the agenda.

Consent Agenda

Mr. Johnson moved, seconded by Mr. Archibald, to approve the following Consent Agenda items. The motion passed unanimously by voice vote.

- a. Minutes of December 5, 2016
- b. Approval of Claims in the amount of: \$462,852.87
- c. Resolution 1978: Authorizing Public Works Director to Accept Projects as Complete & Act as Authorized Signator of WSDOT HQLP Documents
- d. Puget Sound Energy Schedule 139 Voluntary Long Term Renewable Energy Service Agreement
- e. Contract Modification: Engineer Design Storvik Park Spray Pad (Schemmer Consulting)
- f. Accept as Complete: Re-Roofing Operations Building (16-065-IDS-001) - Hytech Roofing, Inc.

The following vouchers/checks were approved for payment:
Check numbers: 83089 through 83148, total \$508,931.93
EFT numbers: 83035 through 83088, total \$234,250.77
Wire transfer numbers: 210484 through 211058, total \$10,750.93

OTHER BUSINESS

Ordinance 2988: Amendments to AMC Title 2, Title 9, Title 18, and Creating a New Title 20 to Provide for a Fair and Efficient System of Civil Code Enforcement

Planning Director Don Measamer recalled that at its December 5, 2016 meeting Council considered a revised draft of proposed Ordinance 2988 and a summary of public comments received up to that point. He advised that those comments and councilmember feedback from that meeting had been incorporated

in the revised draft ordinance included in the packet materials for the present meeting. Mr. Measamer said that no additional comments had been received since December 5, 2016. He responded to councilmember questions from the previous meeting regarding the number of code enforcement activities typically undertaken in a year and said the proposed revised code would provide a means to achieve more rapid resolution of complaints. In response to a previous councilmember query about the anticipated annual cost of engaging a hearing examiner for code enforcement appeals, Mr. Measamer estimated 4-6 cases per year averaging four hours each at approximately \$150 per hour. He reminded that the public hearing on the ordinance had been closed on October 24, 2016 and invited Council consideration of the proposed ordinance. Mr. Measamer addressed councilmember questions about removing "legalese" from proposed AMC 2.30.050, timing of the annual report called for in proposed AMC 20.30.090, and establishment of appeal fees as part of the future unified fee schedule. Ms. Lovelett expressed concern about mandating the appearance of residential yards and supported allowing for a variety of neighborhood and personal styles.

Mr. Archibald moved, seconded by Ms. Pickett, to adopt **Ordinance 2988** amending AMC Title 2, Title 9, and Title 18, and creating a new Title 20 to provide for a fair and efficient system of civil code enforcement. Vote: Ayes – Pickett, Walters, Adams, Archibald, and Johnson. Nays – Lovelett. Motion carried.

Ordinance 2992: Title 19, Land Use Permit Procedures

Mr. Measamer summarized the history of this ordinance including a public hearing before the Planning Commission on November 23, 2016 and November 30, 2016, Planning Commission recommendation of approval with specific changes, and incorporation of the Planning Commission recommendation and public and councilmember comments into the revised version of Title 19 that was presented in the packet materials for the current meeting. Mr. Measamer advised that copies of additional public comments received after packet preparation had been distributed to councilmembers and the public at the beginning of the meeting. He welcomed additional public and councilmember discussion and comment in preparation for the scheduled public hearing on December 19.

Mr. Walters invited members of the audience to comment on this agenda item. No one present wished to address the Council.

Councilmembers discussed at some length parking requirements for ADUs and whether to address those explicitly in Title 19 or rather as part of the development regulation update in 2017. Mr. Measamer reviewed proposed Table 19.20.030-1 in detail and discussed with councilmembers a number of possible revisions to that table. Councilmembers debated conditional use permits at some length in relation to the table. Mr. Walters explained that conditional uses would be addressed during the zoning code rewrite and would be specifically identified by type according to Table 19.20.030-1. He emphasized that Title 19 was intended to specify procedures and that substantive decisions about development regulations and zoning code would be part of the longer development regulation process during 2017 and possibly beyond. Ms. Lovelett asked how much funding was included in the 2017/2018 biennial budget for hearing examiner services and how much additional funding would be required if more types of decisions were assigned to a hearing examiner. Mr. Measamer said staff would bring more information back to the next meeting on that topic and noted that outside of code enforcement appeals, most hearing examiner fees would be paid by the applicant. Ms. Lovelett reiterated the need to strike a balance between preventing taxpayers from subsidizing appeals and not making appeal fees prohibitive for appellants.

Mr. Walters again invited members of the audience to comment on this agenda item. No one present wished to address the Council.

Mr. Walters concluded from the discussion that no revisions to draft Ordinance 2992 were requested for the public hearing on December 19, 2016. Mr. Measamer confirmed that public comment would be accepted through the conclusion of the public hearing. Mr. Walters reminded his colleagues that Council needed to adopt a final version of Title 19 by the end of the year because the new stormwater code effective in January 2017 depended upon Title 19.

Resolution 1979: Adopting New Travel and Business Meals Policies and Procedures for the City

Finance Director Steve Hoglund presented draft Resolution 1979 updating the 2010 travel and business meals policy. Mr. Hoglund reviewed the four substantive changes to the policy as described in the agenda bill for this item. Councilmembers were generally supportive of the changes but questioned the proposed policy for reimbursing staff for local business meals. After considerable discussion, Mr. Walters said the language of that section was overly broad and asked that the policy be redrafted to require all local business meals to comply with the constraints listed on page 6 of the draft document. Mr. Archibald disagreed and supported the policy as drafted.

Mr. Archibald moved, seconded by Mr. Johnson, to authorize Resolution 1979 adopting a new travel policy for the City of Anacortes.

Mr. Adams moved, seconded by Ms. Pickett, to table the motion pending additional information from staff. Mr. Walters considered this a motion to postpone consideration to the next regular City Council meeting. No one objected. Mr. Walters asked that Ordinance 2825 adopting the current travel policy be repealed before adopting the new policy by resolution.

Vote on motion to postpone consideration to the next regular meeting of the City Council carried by voice vote.

Resolution 1976: Lodging Tax Contracts

Mr. Measamer reported that the Lodging Tax Advisory Committee met on November 17 and November 29, reviewed the 23 applications submitted for lodging tax funding totaling \$463,748, and recommended awarding funds totaling \$291,000 for eighteen projects and setting aside \$97K (25%) of the projected \$388K in 2017 lodging tax revenue consistent with the Tourism Promotion Strategic Plan recently adopted by Council. Mr. Measamer noted that the LTAC recommended awarding the Anacortes Chamber of Commerce more than it had requested for the International Ferry and Anacortes Marketing Program and less than it had requested for the Visitor Information Center. He advised that the Chamber had subsequently requested that the VIC contract be removed from consideration as part of Resolution 1976 to provide the Chamber an opportunity to present more information to Council. In the absence of LTAC Chair Matt Miller, Mr. Measamer invited committee member Mark Lione to answer questions from councilmembers.

Mr. Lione explained that in 2016 the Chamber had requested approximately \$73K for the VIC and the LTAC had awarded an increased amount of approximately \$84K but that when considering 2017 applications the LTAC felt the marketing program needed an additional \$25K over what had been requested which necessitated lowering the VIC award. Mr. Johnson asked if the additional 2016 funding for the VIC had successfully provided more exposure to businesses that were not Chamber members. Chamber Executive Director Stephanie Hamilton reported on the process established in 2016 to display promotional materials from non-member businesses at the VIC, said that only three such businesses had applied, and described how the additional funding had been used to enhance the visitor experience at the VIC including purchasing additional white lights downtown, a flat screen TV, an iPad and docking station for visitor use, and exterior improvements to the building. Mr. Archibald said IRS guidelines call for chambers of commerce to promote the common economic interest of all the commercial enterprises in a given community. He asked that both Chamber contracts be removed from consideration as part of Resolution 1976 until Council could determine that the VIC funding complied with IRS regulations. Mr. Walters inquired if the LTAC would like to reconsider those two applications. Mr. Lione reported that the LTAC recommendation had been unanimous. Mr. Measamer said that staff supported awarding the majority of the contracts so applicants could proceed with their projects early in the new year but that the awards could be postponed a couple of weeks if Council wished to hear more from the Chamber about the VIC.

Ms. Pickett spoke in support of the Chamber's efforts welcoming visitors and presenting Anacortes to the public. She moved to adopt Resolution 1976 as presented. The motion died for lack of a second.

Mr. Archibald moved to pull the two Chamber of Commerce applications and approve the rest of the applications. The motion died for lack of a second.

In response to a question from Mr. Adams, Mr. Measamer explained that if Council wished to allocate funding differently than recommended by the LTAC, it could remand some or all of the applications to the LTAC for a mandatory 45-day period of reconsideration. Mr. Walters, immediate past Chair of the LTAC, observed that sending a single contract back to the LTAC for reconsideration would not allow for any modification to its recommendation since all funding had already been allocated. He advised against pressuring the LTAC to change its recommendation.

Mr. Johnson moved, second by Ms. Pickett, to adopt **Resolution 1976** authorizing execution of tourism promotion fund contracts.

Councilmembers continued discussion of the VIC funding. Mr. Lione commented on the Chamber's extremely specific and well supported proposal for destination marketing which convinced the LTAC that that contract deserved more funding and that the \$59K of available funds remaining would be adequate to fund the functioning of the VIC.

Ms. Pickett called for the question.

Mr. Walters invited members of the audience to comment on this agenda item.

Josh Baldwin, 4309 Blue Heron Circle, spoke on behalf of the Chamber and its far reaching efforts to bring visitors to Anacortes. He said the Chamber promotes Anacortes as a destination, not just member businesses. Mr. Baldwin said the VIC serves a good purpose for visitors and that volunteer recommendations do benefit the community as a whole. He recommended approving the Chamber contracts.

Stephanie Hamilton thanked the LTAC for looking at the international marketing and tourism promotion contract. She said that lodging tax collected in the city has increased by 62% since 2008 largely due to the work of the Chamber's destination marketing. She noted the importance of advertising placed in annual publications and thanked Council for the timely funding for that work. She said the marketing division was already working on determining the best use for the additional funds, informed by the Tourism Strategic Plan. She mentioned the successful 2016 program to invite travel writers to town which the Chamber hoped to expand.

No one else present wished to address the Council on this topic.

Mr. Archibald moved to amend the motion to remove both Chamber of Commerce contracts from Resolution 1976. The motion died for lack of a second.

Vote on motion to approve **Resolution 1976** as presented: Ayes –Walters, Adams, Lovelett, Johnson and Pickett. Nays – Archibald. Motion carried.

Updating Water, Sewer GFC and Other Miscellaneous Fees

Mr. Measamer introduced a first look at projected increases in general facilities charges for 2017 and 2018 which would be effective January 1, 2017. The rate table he displayed was added to the packet materials for the meeting. He explained that staff were still working on developing a new fire impact fee, which would require a public hearing and adoption by ordinance. Mr. Measamer said staff were also researching in increase in the traffic impact fee, over the longstanding \$900 fee, as recommended by the transportation consultant to support the level of service adopted by the 2016 Comprehensive Plan. He advised that staff would bring those rate proposals before Council for consideration and action early in the new year. He said revised Title 3 language would also address the possibility of waivers for impact fees for affordable housing. Council discussed making all fees subject to an annual CPI adjustment. Ms. Lovelett reiterated her prior suggestion that fire impact fees possibly be based on risk factors rather than strictly on square footage and that they be structured to incentivize sprinkler systems.

Mr. Walters invited members of the audience to comment on this agenda item.

Wilhelmus Houppermans, 3412 K Avenue, recalled recent suggestions of establishing a city ombudsman position to assist the public relating to appeals. Mr. Houppermans said that most problems start with a building being built so he suggested a \$5,000 per building fee to fund an ombudsman position.

No one else present wished to address the Council on this topic.

There being no further business, at approximately 8:15 p.m. the Anacortes City Council meeting of December 12, 2016 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the December 19, 2016 City Council meeting:

[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
211263	8/5/2016	10930	09277	BENCHMARK DOCUMENT SOLUTIONS	INKJET CARTRIDGES FOR POSTAGE MACHINE	\$529.48
207090	8/15/2016	JULY 20 2016	00797	DIMENSIONAL COMMUNICATIONS INC	COURT ROOM FACILITY MICROPHONE UPGRADES	\$2,732.55
211178	10/11/2016	LTAC Chamber VIC	00148	ANACORTES CHAMBER OF COMMERCE	LTAC VIC TOWN CRIER REIMBURSE	\$1,392.67
211153	11/10/2016	16116536	05523	PACIFIC POWER BATTERIES	BATTERIES 5.94 X 2.56 X 3.70	\$107.22
210946	11/21/2016	1203481461	08590	NEWEGG BUSINESS INC	POWER SUPPLIES TO REPAIR PCS	\$165.52
211155	11/23/2016	198890024	06718	ARAMARK	STA 3 MAT SERVICE: 11/23	\$21.70
211261	11/28/2016	045-176118	00847	TYLER TECHNOLOGIES INC	ADD ON ACCOUNT TO UB BILL EXPORT	\$750.00
211233	11/29/2016	#8APD	01369	ISLAND FARM AND PET	K9 T-BONE FOOD	\$69.54
211039	11/29/2016	108-6077027-8517859	08811	AMAZON.COM	ZAGG RUGGED CASE FOR IPAD AIR 2, GLASS	\$121.36
211203	11/29/2016	1518638	09961	CARDINAL HEALTH 411, INC.	PHARMACEUTICALS	\$44.58
210677	11/29/2016	6659 HR	02342	SAFEWAY INC	30-YEAR PRIDE IN SERVICE AWARD - CAROL YATES	\$150.00
211227	11/30/2016	0000500623	01958	OCLC, INC	CATALOGING, ILL, FIRSTSEARCH/WORLDCAT DISCOVERY	\$334.47
211201	11/30/2016	010976	00930	SKIDMORE PHARMACY INC.	NOVEMBER LEOFF1 PHARMACY COPAYS	\$117.72
211196	11/30/2016	0173	02468	SKAGIT COUNTY SOLID WASTE FUND	NOVEMBER TONNAGE HAULED	\$69,073.47
211144	11/30/2016	2016-30-11	00424	BUBBA SUDZ CAR WASH, INC.	NOVEMBER CAR WASHES- 3	\$24.00
211190	11/30/2016	386000156	08528	US BANK NA - CUSTODY TREAS DIV	INVESTMENT FEES 11/1/16-11/30/16	\$61.00
211185	11/30/2016	43799	02478	SKAGIT RIVER STEEL & RECYCLING	APPLIANCE DISPOSAL	\$201.25
211143	11/30/2016	6110104	02855	UTILITIES UNDERGROUND LOCATION	NOVEMBER- UTILITY LOCATE TICKETS	\$192.50
210947	11/30/2016	8294B	10434	WONDERSHARE SOFTWARE CO	DATA RECOVERY SOFTWARE	\$69.95
211257	12/1/2016	12/1/2016	00103	AMERICAN ASSN FOR STATE &	MEMBERSHIP - AASLH	\$115.00
210986	12/1/2016	1203420411	08590	NEWEGG BUSINESS INC	COURT KEYBOARD & MOUSE	\$47.98
211166	12/1/2016	5045831296	01351	RICOH USA, INC	APD FRONT OFFICE COPIER/PRINTER; NOV 2016	\$36.13
211168	12/1/2016	5045831527	01351	RICOH USA, INC	APD HALLWAY COPIER/PRINTER; NOV 2016	\$44.26
211253	12/1/2016	5045831600	01351	RICOH USA, INC	PHOTOCOPIES - CARNEGIE	\$140.37
211256	12/1/2016	696404	05284	GUARDIAN SECURITY SYSTEMS INC	SECURITY - W.T. PRESTON	\$165.00

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
211171	12/1/2016	696405	05284	GUARDIAN SECURITY SYSTEMS INC	APD ALARM MONITORING; 1/1/2017-3/31/2017	\$165.00
211255	12/1/2016	696406	05284	GUARDIAN SECURITY SYSTEMS INC	SECURITY - MARITIME HERITAGE CENTER	\$165.00
211254	12/1/2016	696409	05284	GUARDIAN SECURITY SYSTEMS INC	SECURITY - CARNEGIE	\$165.00
211152	12/1/2016	76708	02677	SUPERIOR SYSTEMS INC	SUPPLY MATERIALS FOR ELECTRICAL PANEL	\$378.40
210834	12/1/2016	Quote NO. S139148-3	02856	OLDCASTLE PRECAST INC	TRAFFIC-RATED VAULTS	\$15,363.60
211141	12/2/2016	1019525	02519	SKAGIT PUBLISHING	SVH-1553717 INTENT TO REQUEST FUNDS BLUE HERON 3MG	\$197.50
210440	12/2/2016	10808	07844	NW COMMUNICATIONS, INC	REPAIR AND REPLACE THE 2 WAY RADIO	\$2,653.58
211182	12/2/2016	1532876	09961	CARDINAL HEALTH 411, INC.	PHARMACEUTICALS	\$75.11
211173	12/2/2016	34-41	09949	SPOT	SPOT; APD CASE #16-A08529	\$75.00
210876	12/2/2016	54001462135	02342	SAFEWAY INC	COOKIES, NAPKINS, PLATES FOR ARTWALK	\$38.19
211262	12/2/2016	8498 30 017 0319913	04412	COMCAST	LIBRARY INTERNET ACCESS 12/9/16-01/08/17	\$170.70
211066	12/4/2016	137120	09946	CASH & CARRY	CUPS & MARSHMALLOWS - WONDERLAND WALK	\$161.19
211204	12/4/2016	9115411	00778	DEPT OF NATURAL RESOURCES	FORESTLAND ASSESSMENT 2016	\$915.10
210951	12/5/2016	0164988-IN	06422	NURNBERG SCIENTIFIC GROUP	PETRI DISH WITH PADS	\$179.79
211154	12/5/2016	0199882-IN	02260	REISNER DISTRIBUTOR INC	OIL AND GREASE FOR THE WWTP	\$336.58
211150	12/5/2016	68093	00154	ANACORTES DIVING & SUPPLY, INC	AIR FILL 11/5	\$329.57
211224	12/5/2016	75449475	02243	RECORDED BOOKS LLC	CDS	\$120.84
211232	12/5/2016	776289	01588	LIFE ASSIST INC	EXAM GLOVES	\$234.58
210913	12/5/2016	Quote S5864117	10433	CODALE ELECTRIC SUPPLY, INC.	NON-TRAFFIC VALVE VAULTS	\$14,137.55
211082	12/5/2016	WAANA87515	00939	FASTENAL CO	UNISTRUT CHANNEL, NUT AND SPRING	\$467.13
211162	12/5/2016	xxxxx2	10346	IMPORTED P CARD TRANSACTION	Inf:GROCERY STORES,SUPERMARK-WM SUPERCENTER #2596	\$5.74
211210	12/6/2016	1517173	00632	MILES SAND & GRAVEL CO.	ECOLOGY BLOCKS FOR PROPANE STATION	\$214.83
211271	12/6/2016	220009664396	02192	PUGET SOUND ENERGY	HEART OF ANACORTES PSE	\$102.64
211080	12/6/2016	26095100	01050	GAYLORD BROTHERS INC	CURATORIAL SUPPLIES	\$449.38
211200	12/6/2016	S20167946	02677	SUPERIOR SYSTEMS INC	MECHANIC LABOR & MATERIALS TO REPAIR	\$1,205.42
211202	12/7/2016	17003208	02930	WASHINGTON STATE PATROL	MUSEUM BACKGROUND CHECKS, CABA & CRISWELL	\$24.00
211142	12/7/2016	001-355301	02109	PISTON SERVICE OF ANACORTES	PARTS FOR VEH #171	\$41.97
211147	12/7/2016	0188-477652	03816	CONSOLIDATED ELECTRICAL DIST	PART FOR VEH #512	\$19.49
211198	12/7/2016	1020208	02519	SKAGIT PUBLISHING	PUBLISH NOTICES AA-1551858 AA-1552113 AA-1552117 AA-1552124	\$318.40
211208	12/7/2016	1467	08956	WA STATE FIRE FIGHTERS JATC	SUMMER QTR: LAMP (6/16 - 8/16/16	\$73.75

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
211238	12/7/2016	16117381	05523	PACIFIC POWER BATTERIES	BATTERIES FOR NEW SCBA PACKS	\$131.24
211174	12/7/2016	16A09350	00180	ANACORTES TOWING LLC	TOWING; APD CASE 16-A09350	\$162.75
211167	12/7/2016	3-95627	01614	LOUIS AUTO GLASS III INC.	SERVICE ON VEH #207	\$302.72
211156	12/7/2016	792109886	06718	ARAMARK	STA 3 MAT SERVICE: 12/7	\$21.70
211119	12/7/2016	A1179252	02405	SEBO'S DO-IT CENTER	PART FOR WATER DEPT	\$20.41
211139	12/7/2016	A1179321	02405	SEBO'S DO-IT CENTER	PART FOR VEH #171	\$18.63
211138	12/7/2016	A1179337	02405	SEBO'S DO-IT CENTER	PART FOR VEH #171	\$21.29
211216	12/7/2016	B351808	02405	SEBO'S DO-IT CENTER	SUPPLIES FOR THE WONDERLAND WALK AT	\$105.61
211194	12/7/2016	S16-120704	00890	ENVIRO CLEAN EQUIPMENT INC	PART FOR VEH #303	\$444.85
211192	12/8/2016	0209004-IN	03844	SIRENNET.COM	PART FOR VEH #204A	\$175.76
211209	12/8/2016	1988923757	06718	ARAMARK	STA 2 MAT SERVICE: 12/08	\$21.70
211157	12/8/2016	1988923758	06718	ARAMARK	STA 1 MAT SERVICE: 12/8	\$21.70
211170	12/8/2016	1988923763	06718	ARAMARK	NYLON MATS CLEANED	\$16.28
211169	12/8/2016	1988923768	06718	ARAMARK	NYLON MAT CLEANING FOR OPS/SHOP	\$23.07
211165	12/8/2016	300-10017157	05987	ALL BATTERY SALES & SERVICE	SUPPLIES FOR SHOP	\$199.64
211164	12/8/2016	3595	05021	EAGER BEAVER TREE SERVICE	TOOK DOWN 5 ALDER TREES BEHIND 4214	\$1,464.75
211148	12/8/2016	777	02470	SKAGIT CONSERVATION DISTRICT	NPDES PHASE II OUTREACH & EDUCATION	\$2,253.85
211191	12/8/2016	A1179660	02405	SEBO'S DO-IT CENTER	PARTS FOR VEH #512	\$37.60
211252	12/8/2016	B351927	02405	SEBO'S DO-IT CENTER	OFFICE SUPPLIES - CARNEGIE	\$4.33
211175	12/8/2016	I17003820	02930	WASHINGTON STATE PATROL	BACKGROUND CHECKS; NOV 2016	\$300.00
211179	12/8/2016	LTAC Chamber 2%	00148	ANACORTES CHAMBER OF COMMERCE	LTAC CHAMBER 2% REIMBURSEMENT	\$10,377.84
211193	12/8/2016	MV153452	01801	MOTOR TRUCKS INC	PART FOR VEH #514	\$52.01
211205	12/8/2016	Z111	00160	ANACORTES FAMILY MEDICINE	7 TB TESTS: JK, GW, RD, CBY, JB, RF, BR	\$196.00
211197	12/9/2016	001-355562	02109	PISTON SERVICE OF ANACORTES	WIPERS FOR #606	\$9.48
211199	12/9/2016	001-355563	02109	PISTON SERVICE OF ANACORTES	ALTERNATOR FOR #410	\$185.93
211176	12/9/2016	10235282	02552	PAPE' MACHINERY ACCT 4437	PARTS FOR VEH #410	\$267.55
211228	12/9/2016	120816	00180	ANACORTES TOWING LLC	TOWING; APD CASE #16-A09396	\$162.75
211264	12/9/2016	704390	00306	BAYSHORE OFFICE PRODUCTS INC	3 RUBBER STAMPS FOR BLDG, FIRE	\$208.21
211207	12/9/2016	December 9, 2016	08270	SARA JOY	REPLACE/ADD NAMETAGS PATCHES TO UNIFORMS	\$62.93
211177	12/9/2016	LTAC Arts in Bloom	06335	ANACORTES ARTS FESTIVAL	LTAC ARTS FEST ARTS IN BLOOM REIMBURSE	\$327.13
211231	12/10/2016	00005W5A83506	02817	UNITED PARCEL SERVICE	UPS SHIPPING CHARGES WEEK ENDING 12-10-16	\$15.77
211213	12/11/2016	1312708	08539	O'REILLY AUTO PARTS	HEADLIGHTS M18	\$26.35
211212	12/12/2016	001-355759	02109	PISTON SERVICE OF ANACORTES	PARTS FOR VEH #215	\$124.50
211211	12/12/2016	001-355766	02109	PISTON SERVICE OF ANACORTES	PART FOR VEH #021	\$96.58

Invoice Doc #	Transaction Date	Invoice #	Vendor #	Vendor Full Name	Description	Total Amount
211195	12/12/2016	16-056-SEW-001	02616	SRV CONSTRUCTION INC	RETAINAGE RELEASE	\$10,992.14
211206	12/12/2016	COA1216	09183	SYSTEMS DESIGN WEST, LLC	AMBULANCE SERVICE BILLING NOVEMBER	\$3,321.42
211219	12/13/2016	010208700	02856	OLDCASTLE PRECAST INC	WATERLINE BOTTOMLESS VAULTS	\$4,550.49
211214	12/13/2016	0188-477729	03816	CONSOLIDATED ELECTRICAL DIST	SINGLE BUNDLE OF SCHEDULE 40 2" CONDUIT (1400 FT)	\$944.06
211241	12/13/2016	054-0330-02	10441	KIRBY, GRANT & VIVIAN	Overpayment on closed account	\$81.07
211250	12/13/2016	10924	02193	FERRELLGAS	PROPANE FOR OPERATIONS	\$135.48
211225	12/13/2016	121616	00955	FIDALGO CLEANING	CLEANING & SUPPLIES; 12/16-12/31	\$576.00
211242	12/13/2016	141-1141-00	10442	SMOLSNIK, MIKE	Overpayment on closed account	\$92.31
211243	12/13/2016	143-0930-03	10443	HULSCHER, CORNELIA	OVERPAYMENT ON CLOSED ACCOUNT	\$5.61
211215	12/13/2016	17003208	09927	WSPCA	BACKGROUND CHECK-HANNAH PLUMMER	\$12.00
211267	12/13/2016	2446165	02342	SAFEWAY INC	FEMA TRAINING; FOOD FOR GUESTS AND TRAINERS	\$83.86
211226	12/13/2016	291670	02549	SMILEY'S INC	EXCAVATOR BRIDLE FOR HEAVY LOADS	\$259.10
211222	12/13/2016	3319957	00717	DAILY JOURNAL OF COMMERCE	2017 WATERLINE REPLACEMENT PROJECT	\$286.00
211220	12/13/2016	5526-1	02412	SEMRAU ENGINEERING & SURVEYING	DESIGN PS #14 PROTOCOL & HYDRAULIC ANALYSIS MODEL	\$5,000.00
211235	12/13/2016	A1179263	02405	SEBO'S DO-IT CENTER	SUPPLIES FOR EXCAVATOR BRIDLE	\$70.98
211237	12/13/2016	A1179294	02405	SEBO'S DO-IT CENTER	SUPPLIES FOR EXCAVATOR BRIDLE	\$9.11
211230	12/13/2016	A1180961	02405	SEBO'S DO-IT CENTER	BACKUP FUEL SUPPLY FOR FIELD WORK	\$180.35
211229	12/13/2016	B351954	02405	SEBO'S DO-IT CENTER	FASTNERS FOR EXCAVATOR BRIDLE	\$16.10
211249	12/13/2016	LL.MEAD	01364	ISLAND HOSPITAL	NOVEMBER, LIFELINE SERVICE FEE, DAVID MEAD, LEOFF1 RETIREE	\$64.95
211221	12/13/2016	Refund	10436	WILSON, NICK	REFUND FOR FOUND AND RETURNED LOST BOOK	\$13.00

Total **\$160,047.69**



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 5c

Subject: Consent to Award Contract for Emissions Testing and CEMS Diagnostics & Cleaning Services at the WWTP

Staff Contact: Fred Buckenmeyer

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
X	Contract
	Public Hearing
	Staff Report

Summary Statement: City staff seeks City Council consent to award a contract to Elemental Air in the amount of \$40,902 to conduct emissions testing and Continuous Emissions Monitoring (CEMS) diagnostics and cleaning services at the Wastewater Treatment Plant (WWTP).

Background: On November 30, 2016, the City requested proposals for emissions testing and the results were as follows:

Consultant	Amount
Clean Air Engineering	\$61,918.00
Montrose Engineering	\$56,390.00
TRC Environmental	\$64,275.00
Elemental Air	\$32,924.50

WWTP staff has contracted services in the past using Elemental Air and was very satisfied with their performance. Their work was professional and met the terms of the contract. The CEMS diagnostics and cleaning was solicited from Elemental Air separately as the chosen consultant. The subject contract is used as a single instrument to contract for the competed services in addition to the CEMS work.

Budget Impact	
Amount Budgeted	\$40,902
Budget Account (BARS)	440.750.535.89.41
Proposed Expenditure	\$40,902
Budget Amendment Required?	No
Revenue Source	City Funds

Proposed Contract	
Contractor	Elemental Air
Amount	\$40,902
Start Date	January 1, 2017
End Date	April 17, 2017

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move that City Council provide consent to award a contract in the amount of \$40,902 to Elemental Air to conduct emissions testing and CEMS Diagnostics and Cleaning Services at the WWTP.

Alternative Actions: N/A

Attachments (listed in order presented): Contract



Contract Number 15-032-SEW-003

Between

THE CITY OF ANACORTES

AND

ELEMENTAL AIR

For

Emissions Testing and CEMS Diagnostic and Cleaning Services

This Contract, hereinafter referred to as "Contract", made and entered into between the City of Anacortes, hereinafter referred to as the "City", and Elemental Air, hereinafter referred to as the "Consultant";

WHEREAS, the City requires non A&E professional services of the Consultant;

NOW, THEREFORE, in consideration of mutual benefits accruing, it is agreed by and between the parties hereto as follows:

1. **Scope of Work**. Under this Contract, the Consultant shall conduct the following services at the City's Wastewater Treatment Plant in Anacortes, WA:

(1) conduct Environmental Protection Agency (EPA) and Northwest Clean Air Agency (NWCAA) approved testing methodologies regarding SO₂ and HCl Operation Optimization, Compliance Emissions Performance Test, RATA and Fugitive Ash Emissions Tests, and

(2) provide Continuous Emissions Monitoring (CEMS) diagnostic and system cleaning services aiming to improve low end accuracy and reduce scrubbing if present.

To hereby incorporate attached Exhibits A and B into the Contract, the scope of work included in Consultant Proposals E16078P and E17008P, dated September 27, 2016 and November 30, 2016 respectively, are included to detail the activities to be performed by the Consultant. As stated therein, the following shall be City-provided:

Safe access to the sample location.

Operation records during each test run.

1 220V power at the sample location for the test trailer.

2 120V power outlets at the sample location.

Coordination between the test crew and Operations to achieve the correct test parameters during Emissions Testing.

Coordination between the test crew and Operations during engineering CEMS testing

Standard work hours 8:00 a.m. to 5:00 p.m., Monday through Friday, local time. Work performed outside of these hours must be approved in advance by the Project Manager and onsite work shall be coordinated with Project Manager, Mr. Bob Hendrix, who may be reached at (360) 661-7890 or email bobh@cityofanacortes.org.

2. **Price**. The price under this Contract is based upon a Lump Sum payments for completion of the Work described in Exhibits A and B under Article 1. The Lump Sum payments equal Thirty-Five Thousand Nine Hundred Two Dollars (\$35,902.00).

Should an event occur at the plant to delay the Consultant's Work or cause additional effort not priced in the Lump Sum effort, labor and other direct costs that may occur shall be reimbursed under Line Item 3 on a time-and-materials (T&M) basis not-to-exceed Five Thousand Dollars (\$5,000.00). Thereby, the total Contract Price is **Forty Thousand Nine Hundred Two Dollars (\$40,902.00)**. Payment terms are provided below under Article 4.

3. **Period of Performance.** The period of performance is from January 1, 2017 through April 17, 2017.

4. **Payment Terms.**

Performance work identified by the Consultant as reimbursable under Line Item 3 shall be subject to authorization by the City's Project Manager up to the not-to-exceed limit of \$5,000.00.

WWTP Emissions Testing and CEMS Diagnostic & System Cleaning Services Billing Schedule				
Item No	Description	Qty	U/M	Amount
1	Complete Exhibit A Scope of Work Emissions Testing	1	Lump Sum	\$32,924.50
2	Complete Exhibit B Scope of Work CEMS Diagnostics & Cleaning	1	Lump Sum	\$ 2,977.50
3	Authorized Work Not Included in Exhibits A or B	1	T&M	\$ 5,000.00
Total Contract Price				\$40,902.00

To comply with EPA regulations as codified under Code of Federal Regulations, Title 40, Part 60, there are set times that testing and reporting must be filed to EPA to avoid violation. The installation of the Incinerator Scrubber at the WWTP scheduled for January 2017 is a key factor to this schedule. Line Item 2 is established to facilitate this project and meet reporting deadlines. The following rates shall apply to Line Item 3:

- a) Hourly Delays: Number of personnel at the site x \$75/hour
- b) Daily Delays: Number of personnel at the site x \$75 x 8 hours/day + daily per diem @ \$170/person + \$1,000 equipment fee
- c) Additional Test Days will be calculated the same as a delay plus the cost of analysis and supplies. Time and Materials for Additional Test Day:

Description	Rates
Principal	\$100/hour
Project Manager	\$90/hour
Testing Supervisor	\$75/hour
Engineering	\$75/hour
Technician III	\$65/hour
Technician II	\$60/hour
Technician I	\$55/hour
Information Systems	\$60/hour
Administration	\$65/hour
Printed Copy of Report	\$100/report
Per Diem	Cost Plus 10%
Supplies or Equipment Supplied by Consultant	Cost Plus 15%
Mileage	Washington Internal Revenue Rate \$.54/mile

Hours worked outside standard work hours are calculated at 1.5 times the hourly rate. Hours worked during holidays are calculated at 2.0 times the hourly rate. Overtime premiums shall be paid against Line Item 3.

5. **Subcontracts.** The Consultant shall give notice reasonably in advance of placing any subcontract; preferably the Consultant shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subconsultant to furnish supplies or services for performance of the prime Consultant or a subconsultant. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

The following information shall be included (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subconsultant, (iv) proposed subcontract price.

Maxxam Analytics, 500-1919 Minnesota Court, Mississauga, Ontario L5N 0C9, is authorized to conduct laboratory analysis of compliance samples.

Unless consent or approval specifically provides otherwise, consent by the City shall not constitute a determination –

- (1) of the acceptability of any subcontract terms or conditions;
- (2) Of the allowability of any cost under this contract; or
- (3) To relieve the Consultant of any responsibility for performing this Contract.

The Consultant shall give immediate written notice, reference Clause 30 Notices, of any action or suit filed and prompt notice of any claim made against the Consultant by any subconsultant or vendor that, in the opinion of the Consultant, may result in litigation related in any way to this contract, with respect to which the Consultant may be entitled to reimbursement from the City.

6. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Project Manager Name, City of Anacortes Contract Number, City of Anacortes Project Manager, and Current Contract Price.

Payment terms for completed work is thirty (30) days from receipt of invoice.

The City shall notify the Consultant within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Consultant shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

7. **Non-exclusive Contract.** Nothing in this Contract shall preclude the City from performing or obtaining the services covered by this Contract through sources other than the Consultant.

8. **Ownership and Use of Documents.** All finished and unfinished documents and material prepared by the Consultant with funds paid by the City pursuant to the terms of this Contract shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to plans, specifications, reports, electronic and non-electronic data, and other design documents prepared by the Consultant. Pursuant to RCW 42.56.70, all information and documents produced under this Contract may be subject to public disclosure.

9. **Indemnification/Hold Harmless.** The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, or omissions of the Consultant in performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract 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 Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that

the indemnification provided herein constitutes the Consultant's waiver expiration or termination of this Contract of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Clause shall survive the.

10. **Insurance.** The Consultant shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representative or employees.

Limitation of Liability. Consultant's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. **Minimum Scope of Insurance.** The Consultant shall obtain insurance of the types described below:

Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Commercial General Liability insurance shall be written on ISO occurrence from CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.

Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Professional Liability insurance shall be appropriate to the Consultant's profession.

B. **Minimum Amounts of Insurance.** The Consultant shall maintain the following insurance limits:

Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence and \$2,000,000 general aggregate.

Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. **Other Insurance Provisions**

The Consultant's Automobile Liability, Professional Liability and Commercial Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsement, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. Notice of Cancellation

The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. Failure to Maintain Insurance

Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business day notice to the Consultant to correct the breach, immediately terminate the contract.

11. Registered or Licensed Consultant. The City is prohibited by RCW 39.06.010 from executing a Contract with a Consultant who is not registered or licensed as required by the laws of the state. In addition, the City will require persons doing business with the City to possess a business license.

12. Inspection.

A. Of the Work

All services furnished including deliverables and other materials shall be subject to inspection. The Project Manager shall have access to the work wherever it is in progress or being performed, and the Consultant shall provide proper facilities for such access and inspection.

B. Project Manager's Authority

The Project Manager shall have power to reject instruments of services which fail to comply with the requirements of this Contract, but in case of dispute the Consultant may appeal according to the Disputes clause. The Consultant shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained shall be taken to relieve the Consultant of his/her obligations or responsibilities under the Contract. However, the Consultant shall be responsible for its own methods and conduct during the period of performance.

If the Consultant is required to correct or re-perform, it shall be at no cost to the City, and any services corrected or re-performed by the Consultant shall be subject to this clause to the same extent as work initially performed. If the Consultant fails or refuses to correct or re-perform, the City may, by Contract or otherwise, correct or replace with similar services and charge to the Consultant the cost occasioned to the City thereby, or make an equitable adjustment to the Contract.

13. Discrimination Prohibited. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin or physical handicap.

14. Consultant is an Independent Consultant. The parties intend that an independent Consultant relationship will be created by this Contract. No agent, employee or representative of the Consultant shall be deemed to be an agent, employee or representative of the City for any

purpose. Consultant shall be solely responsible for all acts of its agents, employees, representatives and subConsultants during the performance of this Contract.

15. **City Approval.** Notwithstanding the Consultant's status as an independent Consultant, results of the work performed pursuant to this Contract must meet the approval of the City.

16. **The City's Right to Terminate Contract.**

A. Termination for Default

If the Consultant defaults by failing to perform any of the obligations of the Contract 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 Consultant in the U.S. mail, postage prepaid, terminate the Contract, and at the City's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Consultant shall not be entitled to receive any further payments under the Contract 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 Consultant. The Consultant shall bear any extra expenses incurred by the City in completing the work, including all increased costs for 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 Consultant 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 hereof.

B. Termination for Public Convenience

The City may terminate the Contract in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Contract is terminated in accordance with this paragraph, the Consultant shall be entitled to payment for actual work performed at unit Contract prices for completed items of work. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the City.

17. **Changes/Additional Work.** The City may engage Consultant to perform services in addition to those listed in this Contract, and Consultant will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Contract. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Consultant to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Contract is approved in writing by both parties.

18. **Standard of Care.** Consultant represents that Consultant has the necessary knowledge, skill and experience to perform services required by this Contract. Consultant and any persons employed by Consultant shall perform in a professional manner consistent with sound engineering practices.

19. **Non-waiver.** Waiver by the City of any provision of this Contract or any time limitation provided for in this Contract shall not constitute a waiver of any other provision.

20. **Non-assignable.** The services to be provided by the Consultant shall not be assigned or subcontracted without the express written consent of the City.

21. **Covenant Against Contingent Fees.** The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

22. **Disputes**

A. General

Differences between the Consultant and the City, arising under and by virtue of this Contract shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Contract.

B. Notice of Potential Claims

The Consultant shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Agent or the City, or (2) the happening of any event or occurrence, unless the Consultant has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Consultant believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Consultant shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. Detailed Claim

The Consultant shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Consultant has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

C. Dispute Resolution

In the event of a dispute between the City and the Consultant arising of this Contract, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Consultant to have oversight over the administration of this Contract. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute.

In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties.

If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

23. **Force Majeure.** Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots,

strikes, fire, floods, epidemics, or other similar occurrences. Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract. Rights Reserved: The City reserves the right to cancel the Contract and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Consultant shall have no recourse against the City.

24. **Compliance with Laws.** The Consultant in the performance of this Contract shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Contract to assure quality of services.

The Consultant specifically agrees to pay any applicable business and occupation (B&O) taxes, which may be due on account of this Contract.

25. **Venue and Choice of Law.** In the event that any litigation should arise concerning the services under this Contract, interpretation of any of the terms of this Contract, the venue of such action of litigation shall be in the Courts of the State of Washington in and for the County of Skagit. This Contract shall be governed by the law of the State of Washington.

26. **Severability.** If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

27. **Survival of Contract Termination.** The articles relating to Indemnification, Data Rights, Proprietary Information, Governing Law, and Venue and Choice of Law shall survive completion of the services, payment in full of the compensation and termination of this Contract.

28. **Governing Law.** This Contract shall be governed by and construed under the laws of the State of Washington. Any action brought under the Contract or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

29. **Notices.** Notices to the City of Anacortes shall be sent to the following address:

City of Anacortes
Attention: Bob Hendrix
904 6th Street
PO BOX 547
Anacortes, WA 98221

Notices to the Consultant shall be sent to the following address:

Elemental Air
Sebastian Wolfendale, QSTI (I-IV)
Northwest Regional Manager
11116 117th Place NE
Kirkland, WA 98033

Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mails, with proper postage and properly addressed.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Contract and agree to be bound accordingly.

CITY OF ANACORTES

ELEMENTAL AIR LLC

By _____
Laurie Gere, Mayor

By _____

Title _____

Date _____

Date _____



ELEMENTAL AIR



Innovative Technology for Air Quality Management

November 30, 2016

City of Anacortes
Wastewater Treatment Plant
500 T Avenue
Anacortes, WA 98221

Proposal #: E17008P
Rev. 1.1

Regarding:

SO₂ and HCl Operation Optimization, Compliance Emissions Performance Test, RATA & Fugitive Ash Emissions Test Quote

Elemental Air is pleased to submit the following proposal to provide air emission testing services located at the City of Anacortes Wastewater Treatment Plant in Anacortes, WA. Elemental Air will conduct Environmental Protection Agency (EPA) and Northwest Clean Air Agency (NWCAA) approved testing methodologies. This proposal defines the tasks to be performed, procedures to be utilized, and relevant capabilities and experience for this project.

1.0 Summary of Key Features

The proposed schedule for this project incorporates setup and all testing required on the fluidized bed incinerator. No deviations from required EPA methods are required.

On the initial and subsequent operation optimization days, Elemental Air will provide real-time SO₂ and up to six HCl grab samples from the incinerator with City approval. HCl samples will be analyzed on-site by ion selective electrode. Once preliminary testing is satisfactory, Elemental Air will conduct the required compliance and fugitive emission testing over three days. The RATA will also be performed on the third day of compliance testing.

We will work constantly with City personnel to ensure a smooth testing operation as well as to determine approved fugitive emission testing periods for the ash removal system.

2.0 Proposal Response

Testing Methodology

The methods are incorporated by reference in the Code of Federal Regulations, Title 40, Part 60 testing methodologies. The test methods to be utilized during this project are defined as follows:

Fluidized Bed Incinerator

Method #	Method Description	Abbreviation
1	Determination of Sample Points	Points
2	Determination of Velocity and Volumetric Flow	Flow
3A	Determination of Oxygen and Carbon Dioxide	CO ₂
4	Determination of Moisture Content	H ₂ O
5	Determination of Total Particulate Matter	TSP
6C	Determination of Sulfuric Acid	SO ₂
7E	Determination of Nitrogen Oxides	NO _x
10	Determination of Carbon Monoxide	CO
22	Determination of Fugitive Emissions	FE

CONTRACT 15-032-SEW-003
EXHIBIT A

23	Determination of Dioxin/Furans	Dioxin
26A	Determination of Hydrogen Chloride	HCl
29	Determination of Metals Emissions	Metals
30B	Determination of Mercury	Mercury

Method 29 metals testing and Method 5 PM testing will be combined.

Scope of Work

The goal of this project is to conduct operation optimization, compliance testing and fugitive emissions, and a RATA on the fluidized bed incinerator.

Elemental Air will provide all the necessary equipment and personnel to conduct the proposed testing. The following items are included in the proposed costs.

- Field data reduction and preparation of optimization, compliance, and RATA test reports.
- All necessary equipment, chemicals, gases, etc to complete this project.
- Safety equipment (hard hats, safety glasses, steel toed boots).
- Initial test plan, notification, and submittal
- Electronic Copy of the test report.
- Four Printed Copies of the test report.

Elemental Air requests the following be provided by City of Anacortes during each mobilization in order to complete this project.

- Safe access to the sample location (harnesses and lifeline provided by Elemental Air).
- Operation records during each test run.
- 1 – 220V power at the sample location for the test trailer
- 2-120V power outlets at the sample location.
- Coordination between test crew and operations to achieve the correct test parameters

Bid Basis and Assumptions

- Each bid provided is based on a proposed test schedule outlined in the following section. There may be on-site facility caused factors that require longer test schedules, changes to the test schedule, or delays and additional mobilizations which may incur additional charges upon approval of the client.
- The proposed cost includes all Operation Optimization, Compliance, Fugitive Emission and RATA testing, lab analyses, audit sample analyses, labor, and reports.
- Audit samples will be analyzed for HCl, Metals, and Mercury.
- Compliance dioxin/furan lab results have taken up to three weeks to process in the past. Elemental Air can guarantee the 30 day report with a possibility that the 21 day draft may not have dioxin/furan results available.

Fluidized Bed Incinerator

Total Cost \$32,924.50

Optimization Testing:

Test Parameters:		Reporting Parameters:...
HCl		ppm@7%O2
SO2		ppm@7%O2
Length of Runs:	HCl	60 minutes
	SO2	Continuous
Number of Runs:	HCl	6
	SO2	Continuous

Laboratory Analysis

Elemental Air will be contracting the analysis of compliance samples collected for Metals, Dioxins/Furans, and Hydrogen Chloride to Maxxam Analytics in Mississauga, Ontario which we have used historically. Particulate matter and Mercury analyses will be conducted in our Medina, MN lab.

CONTRACT 15-032-SEW-003
EXHIBIT A

Compliance Testing:

Test Parameters:

TSP

Dioxin

HCl

Metals

Mercury

H₂O, O₂, CO₂

NO_x, CO, SO₂

FE

Reporting Parameters:

gr/kg dry sludge@7%O₂

mg/dscm@7%O₂

gr/dscf@7%O₂

lb/dry ton @7%O₂

ng/dscm

ppm@7%O₂

μg/dscm, mg/dscm

mg/min, %removal

gr/24hr period

%

ppm@7%O₂

%

Length of Runs:

Mercury

90 minutes

HCl

90 minutes

Metals & TSP

120 minutes

Dioxin

180 minutes

NO_x, CO, SO₂

60 minutes

O₂, CO₂

60 minutes

FE

60 minutes

Number of Runs:

Mercury

3

HCl

3

Metals & TSP

3

Dioxin

3

NO_x, CO, SO₂

3

O₂, CO₂

3

FE

3

RATA Testing:

Test Parameters:

O₂

Reporting Parameters:

%

CO

ppm

Length of Runs:

CO

21 minutes

O₂

21 minutes

Number of Runs:

CO

9-12

O₂

9-12

Combined Schedule:

Number of Mobilizations:

1

Number of Personnel:

3

Number of Test Days:

5

Proposal Schedule:

Day 1

Setup & Optimization

Day 2

Optimization

Day 3

Compliance Testing

Day 4

Compliance Testing

Day 5

Compliance & RATA Testing

Appendix B - Test Method Procedures

1.0 Determination of Sample Point Locations

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Method 1

Stack Dimensions Units 1 and 2

To be determined and verified on site.

2.0 Determination of Velocity and Volumetric Flow

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Method 2

Measurement System

A combination Stausscheibe (Type S) pitot tube and type K thermocouple will be used to measure duct velocity head and temperature. The pitot tube is connected via flexible tubing to an inclined manometer. The thermocouple is connected to a digital potentiometer.

Measurement Procedure

Subsequent to sampling, traverse points are selected based on Method 1 requirements. The locations of the traverse points will be presented in Section 1.0 and the reduced field data sheets. A traverse of the stack is performed to determine stack velocity head, temperature distributions, cyclonic flow, and stack static pressure.

Calculations

Method 2 - Stack Absolute Pressure

$$P_s = P_{\text{Barometric}} + \left(\frac{P_{sg}}{13.6} \right)$$

P_s = Stack absolute pressure, inHg

P_{bar} = Barometric pressure, inHg

P_{sg} = Stack static pressure, IWG

Method 2 - Stack Velocity

$$v_s = K_p C_p (\sqrt{\Delta P})_{avg} \sqrt{\frac{T_{s(avg)}}{P_s M_s}}$$

v_s = Stack velocity, ft/sec

ΔP = Average velocity head, in H₂O

- C_p = Pitot tube coefficient, dimensionless
 T_s = Stack absolute temperature, °R
 P_s = Stack absolute pressure, inHg
 M_s = Molecular weight of stack gas, wet basis, lb/lb-mole
 K_p = Pitot tube constant, 85.49

Method 2 - Stack Volumetric Flow Rate (actual)

$$Q = v_s * A_s * 60$$

- Q = Wet stack gas flow rate at actual conditions, WACFM
 v_s = Stack velocity, ft/sec
 A_s = Stack area, ft²

Method 2 - Stack Volumetric Flow Rate (wet - Std)

$$Q_{ws} = Q * \frac{T_{std}}{T_s} * \frac{P_s}{P_{std}}$$

- Q_{ws} = Wet stack gas flow rate at standard conditions, WSCFM
 T_{std} = Standard absolute temperature, 528 °R
 T_s = Stack absolute temperature, °R
 P_s = Stack absolute pressure, inHg
 P_{std} = Standard absolute pressure, 29.92 inHg

Method 2 - Stack Volumetric Flow Rate (dry - Std)

$$Q_{sd} = Q * (1 - B_{ws}) * \frac{T_{std}}{T_s} * \frac{P_s}{P_{std}}$$

- Q_{sd} = Dry stack gas flow rate at standard conditions, DSCFM
 Q = Wet stack gas flow rate at actual conditions, WACFM
 B_{ws} = Flue gas moisture content, proportion by volume, dimensionless
 T_{std} = Standard absolute temperature, 528 °R
 T_s = Stack absolute temperature, °R
 P_s = Stack absolute pressure, inHg
 P_{std} = Standard absolute pressure, 29.92 inHg

3.0 Determination of Molecular Weight and Moisture Content

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Methods 3 and 4

Sampling System

A stainless steel probe is connected to the Impinger train, which consists of a set of pre-weighed impingers connected in series and immersed in an ice bath. The impinger train is followed in series by a carbon vane pump, a dry test meter, and a calibrated orifice connected to an inclined manometer. A Tedlar bag may be used to collect an integrated Method 3 sample.

Measurement Procedure

Prior to sampling, a leak check is performed and the leak rate, time, and vacuum is recorded on the stack test data sheet. Following the leak check, the sample probe is inserted into the stack and the pump turned on. The sample time is calculated based on a minimum sample volume of 21 cubic feet and a sample rate of 0.75 cubic feet per minute. At the conclusion of sampling, a final leak check is performed and recorded on the data sheet.

Calculations

Method 3 - Flue Gas Molecular Weight (dry)

$$M_d = (.44 \% CO_2 + .32 \% O_2 + .28 (\% N_2 + \% CO))$$

M_d = Molecular weight of flue gas (dry), lb/lb-mole

Method 3 - Flue Gas Molecular Weight (wet)

$$M_w = (.44 \% CO_2 + .32 \% O_2 + .28 (\% N_2 + \% CO)) \left(1 - \frac{\% H_2O}{100} \right) + .18 \% H_2O$$

M_w = Molecular weight of flue gas (wet), lb/lb-mole

Method 3 - Flue Gas Molecular Weight (wet)

$$M_w = M_d (1 - B_{ws}) + 18.0 B_{ws}$$

M_w = Molecular weight of flue gas (wet), lb/lb-mole
 M_d = Molecular weight of flue gas (dry), lb/lb-mole
 B_{ws} = Flue gas moisture content, proportion by volume, dimensionless

Method 4 - Flue Gas Moisture Content

$$B_{ws} = \frac{V_{wc (std)}}{(V_{m (std)} + V_{wc (std)})}$$

B_{ws} = Flue gas moisture content, proportion by volume, dimensionless
 $V_{wc (std)}$ = Volume of water vapor at standard conditions, SCF
 $V_{m (std)}$ = Dry meter volume at standard conditions, DSCF

Method 4 - Volume of Water Vapor (Std)

$$V_{wc (std)} = 0.04715 V_{lc}$$

$V_{wc (std)}$ = Volume of water vapor at standard conditions, SCF
 V_{lc} = Volume of liquid collected in the impingers, mL

4.0 Determination of Particulate Matter

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Methods 1-5

Sampling System

A curved sample nozzle is connected via a "Swage-Lok" fitting to a heated probe liner. The probe liner is attached to a heated glass filter holder containing a glass fiber filter. The exit to the filter holder is connected to the impinger train, which consists of a set of pre-weighed impingers connected in series and immersed in an ice bath. The impinger train is followed in series by a carbon vane pump, a dry test meter, and a calibrated orifice connected to an inclined manometer. A Tedlar bag may be used to collect an integrated Method 3 sample. Type K thermocouples are used to measure the following temperatures: probe heater, filter heater, impinger outlet, and dry test meter inlet and outlet.

A combination Stausscheibe (Type S) pitot tube and type K thermocouple are used to measure duct velocity head and temperature. The pitot tube is connected via flexible tubing to an inclined manometer. The thermocouple is connected to a digital potentiometer.

Sampling Procedure

Prior to sampling, traverse points are selected based on Method 1 requirements. The locations of the traverse points are presented in the reduced field data sheets. A preliminary traverse of the stack is performed to determine stack velocity head, temperature distributions, cyclonic flow, and stack static pressure. If necessary, preliminary runs by Methods 3 and 4 are performed to determine duct moisture and fixed gas content. Based on this information, a sample nozzle of appropriate inside diameter is selected, and the impinger train charged. Sample time per traverse point is estimated in order that a minimum of 60 dscf of sample will be collected.

The apparatus is assembled as completely as possible in the staging area and transported to the sample site. By sealing all openings with aluminum foil, potential contamination of the sample train is prevented. Once in the sampling area, the probe and filter heaters are brought to temperatures of $248 \pm 25^{\circ}\text{F}$, and the apparatus is leak checked. Upon successful completion of the leak check, the initial dry test meter reading is recorded, and the probe inserted at the first traverse point.

The stack temperature, dry test meter temperature, and the velocity head across the pitot is measured and recorded on the data sheet. The isokinetic sampling rate in terms of pressure drop across the calibrated orifice is calculated and recorded on the data sheet. The pump and timer are turned on, and the sample rate adjusted to correspond to the calculated isokinetic rate. Once the sample rate is set, the following data is recorded:

- Dry Gas Meter Volume
- Dry test meter outlet temperature
- Sample vacuum
- Probe heater temperature
- Filter heater temperature
- Impinger outlet temperature

At the end of the sample time for the first point, the probe is moved to the next point, and the measurements, calculations and recording of data is repeated. Upon completion of sampling from a port, the pump is turned off and the dry test meter reading recorded. The probe is removed from the stack, and placed in the next sample port. The previously described procedure is repeated for each sample port.

When the sample run is completed, the final dry test meter reading is recorded and the probe removed from the port. A post-test leak check is performed at a vacuum higher than the highest sample vacuum measured during the sample run. The final leak rate is recorded on the data sheet. The sample train is sealed from contamination and transported to the staging area for recovery.

Sample Recovery

Sample is recovered in two fractions: front half and back half. The front half fraction consists of the filter itself, as well as, acetone rinses and brushings of: the nozzle, the probe liner; and the front half of the filter holder. The filter is recovered to a labeled petri dish made of glass or plastic. Acetone rinses are recovered to a labeled, clean polyethylene bottle. The liquid level in the polyethylene bottle is marked upon completion of recovery.

Prior to recovery of the back half fraction, the exterior of each impinger is cleaned and dried, and the net weight gain of each is determined to the nearest 0.1 gram. The back half fraction consists of the liquid impinger catch and rinses of the impingers and all connecting glassware. Glassware rinses are recovered to a clean, labeled polyethylene or glass bottle. The liquid level of the bottle is marked upon completion of recovery.

At the conclusion of each day of sampling, reagent and recovery solvent blanks are collected into the same types of containers as are used for sample recovery. The blank containers are clearly labeled, and the liquid levels marked.

Analytical Procedure

Prior to analysis, back half fraction and blanks are checked for liquid loss, and the liquid volume of each sample bottle determined. The back half fraction is extracted with methylene chloride or chloroform/ether and analyzed gravimetrically. Each sample is extracted three times with 125 ml of methylene chloride in a separatory funnel. After each extraction, the organic (solvent) fraction is decanted. The organic (solvent) and aqueous (water) fractions are placed in individual tared beakers. The organic fraction is evaporated at ambient temperature and pressure, while the aqueous fraction is evaporated at just below the boiling point. After evaporation, the beakers are desiccated for 24 hours, and weighed until consecutive weightings agree to within 0.5 mg.

Calculations

Method 5 - Area Nozzle

$$A_n = \pi r^2$$

A_n = Area of the sample nozzle, ft^2

r = Radius of the nozzle, ft

V_{lc} = Volume of liquid collected in the impingers, mL

Method 5 - Volume of Sample Collected (Std)

$$V_{m(std)} = 17.64 V_m Y \left(\frac{P_{barometric} + \frac{\Delta H}{13.6}}{T_m} \right)$$

- $V_{m(std)}$ = Dry meter volume at standard conditions, DSCF
 V_m = Dry meter volume uncorrected, DCF
 Y = Meter calibration coefficient
 P_{bar} = Barometric pressure, inHg
 ΔH = Orifice pressure differential, IWG
 T_m = Meter temperature, °R
 17.64 = °R/inHg

Method 5 - Percent of Isokinetic Sampling

$$I = \frac{100 T_s [K_3 V_{lc} + (V_m Y / T_m)(P_{barometric} + \Delta H / 13.6)]}{60 \theta v_s P_s A_n}$$

- I = % Isokinetics
 T_s = Absolute average stack gas temperature, °R
 K_3 = 0.002669 inHg-ft₃/mL-°R
 V_m = Volume of gas sample as measured by the dry gas meter, DCF
 Y = Dry gas meter calibration factor
 V_{lc} = Volume of liquid collected in the impingers, mL
 θ = Sample time, minutes
 P_{bar} = Barometric pressure at the sampling site, inHg
 ΔH = Average pressure differential across the orifice meter, in H₂O
 v_s = Stack velocity, ft/sec
 P_s = Stack absolute pressure, inHg
 A_n = Cross sectional area of nozzle, ft²
 T_m = Absolute average dry gas meter temperature, °R

Method 5 - Particulate Emission Rate (grains)

$$C_s = 0.01543 \left(\frac{M_n}{V_{m(std)}} \right)$$

- C_s = Grains per dry standard cubic foot
 M_n = Mass of collected particulate, mg
 $V_{m(std)}$ = Dry meter volume at standard conditions, DSCF

Method 5 - Particulate Emission Rate (lbs)

$$E = C_s * Q_{sd} * \frac{60 \text{ min/hr}}{7000 \text{ gr/lb}}$$

E = Pounds per hour, particulates

C_s = Particulate grain loading, gr/DSCF

Q_{sd} = Dry stack gas flow rate at standard conditions, DSCFM

5.0 Determination of Multiple Metals

REF: Code of Federal Regulations, Title 40, Part 60, Method 29

Sampling System

A curved sample nozzle is connected via a "Swage-Lok" fitting to a heated glass probe liner. The probe liner is attached to a heated glass filter holder containing a glass fiber filter. The exit to the filter holder is connected to the impinger train which consists of a set of pre-weighed impingers connected in series and immersed in an ice bath. The impinger train is followed in series by a carbon vane pump, a dry test meter, and a calibrated orifice connected to an inclined manometer. A Tedlar bag may be used to collect an integrated Method 3 or 3A sample. Type K thermocouples are used to measure the following temperatures: probe heater, filter heater, impinger outlet, and dry test meter inlet and outlet.

A combination Stausscheibe (Type S) pitot tube and type K thermocouple are used to measure duct velocity head and temperature. The pitot tube is connected via flexible tubing to an inclined manometer. The thermocouple is connected to a digital potentiometer.

Sampling Procedure

Prior to sampling, traverse points are selected based on Method 1 requirements. The locations of the traverse points are presented in the reduced field data sheets. A preliminary traverse of the stack is performed to determine stack velocity head, temperature distributions, cyclonic flow, and stack static pressure. If necessary, preliminary runs by Methods 3 and 4 are performed to determine duct moisture and fixed gas content. Based on this information, a sample nozzle of appropriate inside diameter is selected, and the impinger train charged. Sample time per traverse point is estimated in order to collect the minimum dscf of sample.

The apparatus is assembled as completely as possible in the staging area and transported to the sample site. Potential contamination of the sample train was prevented by sealing all openings. Once in the sampling area, the probe and filter

heaters were brought to temperatures of $248 \pm 25^{\circ}\text{F}$, and the apparatus is leak checked. Upon successful completion of the leak check, the initial dry test meter reading is recorded, and the probe inserted at the first traverse point.

The stack temperature, dry test meter temperature, and the velocity head across the pitot is measured and recorded on the data sheet. The isokinetic sampling rate in terms of pressure drop across the calibrated orifice is calculated and recorded on the data sheet. The pump and timer are turned on, and the sample rate adjusted to correspond to the calculated isokinetic rate. Once the sample rate is set, the following data is recorded:

- Dry Gas Meter Volume
- Dry test meter outlet temperature
- Sample vacuum
- Probe heater temperature
- Filter heater temperature
- Impinger outlet temperature

At the end of the sample time for the first point, the probe is moved to the next point, and the measurements, calculations and recording of data was repeated. Upon completion of sampling from a port, the pump is turned off and the dry test meter reading recorded. The probe is removed from the stack, and placed in the next sample port. The previously described procedure is repeated for each sample port.

When the sample run is completed, the final dry test meter reading is recorded and the probe removed from the port. A post-test leak check is performed at a vacuum higher than the highest sample vacuum measured during the sample run. The final leak rate is recorded on the data sheet. The sample train is sealed from contamination and transported to the staging area for recovery.

Sample Recovery

Sample is recovered as follows:. The filter is recovered to a petri dish labeled container number 1. The nozzle, probe, and front half of the filter holder are rinsed 3 times with 0.1N HNO₃ and added to container number 2. The back half of the filter holder and impingers 1 and 2 are recovered and rinsed with 0.1N HNO₃ into container 3. Impinger 3 is rinsed with 0.1N HNO₃ and added to container number 4. Impingers 4 and 5 are rinsed with 10% H₂SO₄ / 4%KMNO₄ followed by rinses with 0.1N HNO₃ and added to container number 5. All samples are recovered to a labeled, clean bottle. The liquid level in the bottle is marked upon completion of recovery. All samples are shipped to the laboratory for analysis in a cooler containing ice.

Prior to recovery of the impinger fractions, the exterior of each impinger is cleaned and dried, and the net weight gain of each is determined to the nearest 0.1 gram for the moisture calculation.

Method field blanks are prepared using the same reagents and using the same recovery for the test samples. The blank containers are clearly labeled, and the liquid levels marked.

Analytical Procedure

The results of this analysis will be presented both in the calculated field data and on the field data sheets. Prior to analysis, the samples are checked for liquid loss. The procedures used to perform the analysis follow EPA Method 29 requirements. The laboratory results and quality control will be provided in Appendix D of the report.

Methods 29 - Metals Concentration

$$C_{ug/dscm} = Hg / V_{m(std)}$$

$C_{ug/dscm}$ = Concentration of metal, ug/dscm

Hg = Total metal in sample, ug

$V_{m(std)}$ = Volume of gas sample collected and corrected to standard conditions, dscm

Methods 29 - Metals Concentration

$$C_{ug/dscm@7\%O_2} = C_{ug/dscm} * (13.9 / (20.9 - O_2))$$

C = Concentration of metal, ug/dscm @ 7% O_2

$C_{ug/dscm}$ = Concentration of metal, ug/dscm

O_2 = Oxygen percent measure in duct, %

6.0 Determination of Dioxin/Furans

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Methods 2-4, 23

Sampling System

A curved sample nozzle is connected via a "Swage-Lok" fitting to a heated probe liner. The probe liner is attached to a heated glass filter holder containing a pre-screened glass fiber filter. The exit to the filter holder is connected to the condenser followed by the XAD-2 resin trap. The XAD-2 resin trap is connecting directly to the

impinger train, which consists of a set of pre-weighed impingers connected in series and immersed in an ice bath. The impinger train is followed in series by a carbon vane pump, a dry test meter, and a calibrated orifice connected to an inclined manometer. A Tedlar bag is used to collect an integrated Method 3 sample, in addition, a portable O₂ monitor was used to measure the oxygen content at each point for the 7% O₂ correction. Type K thermocouples are used to measure the following temperatures: probe heater, filter heater, impinger outlet, and dry test meter inlet and outlet.

A combination Stausscheibe (Type S) pitot tube and type K thermocouple are used to measure duct velocity head and temperature. The pitot tube is connected via flexible tubing to an inclined manometer. The thermocouple is connected to a digital potentiometer.

Sampling Procedure

Prior to sampling, traverse points are selected based on Method 1 requirements. The locations of the traverse points are presented in the reduced field data sheets. A preliminary traverse of the stack is performed to determine stack velocity head, temperature distributions, cyclonic flow, and stack static pressure. If necessary, preliminary runs by Methods 3 and 4 are performed to determine duct moisture and fixed gas content. Based on this information, a sample nozzle of appropriate inside diameter is selected, and the impinger train charged. Sample time per traverse point is estimated in order to collect the minimum dscf of sample.

The apparatus is assembled as completely as possible in the staging area and transported to the sample site. Sealing all openings with hexane rinsed aluminum foil prevent potential contamination of the sample train. Once in the sampling area, the probe and filter heaters are brought to temperatures of $248 \pm 25^{\circ}\text{F}$, and the apparatus is leak checked. Upon successful completion of the leak check, the initial dry test meter reading is recorded, and the probe inserted at the first traverse point.

The stack temperature, dry test meter temperature, and the velocity head across the pitot is measured and recorded on the data sheet. The isokinetic sampling rate in terms of pressure drop across the calibrated orifice is calculated and recorded on the data sheet. The pump and timer are turned on, and the sample rate adjusted to correspond to the calculated isokinetic rate. Once the sample rate is set, the following data is recorded:

- Dry Gas Meter Volume
- Dry test meter outlet temperature
- Sample vacuum
- Probe heater temperature
- Filter heater temperature
- Impinger outlet temperature

At the end of the sample time for the first point, the probe is moved to the next point, and the measurements, calculations and recording of data are repeated. Upon completion of sampling from a port, the pump is turned off and the dry test meter reading recorded. The probe is removed from the stack, and placed in the next sample port. The previously described procedure is repeated for each sample port.

When the sample run is completed, the final dry test meter reading is recorded and the probe removed from the port. A post-test leak check is performed at a vacuum higher than the highest sample vacuum measured during the sample run. The final leak rate is recorded on the data sheet. The sample train is sealed from contamination and transported to the staging area for recovery.

Sample Recovery

Sample is recovered as follows: The filter is recovered to a labeled petri dish made of glass and labeled container number 1. The nozzle, probe, front half and back half of the filter holder, and the condenser are rinsed 3 times with acetone and methylene chloride and added to container number 2. The same procedure for container number 2 is followed using toluene as the rinse solvent and added to container number 3. All samples are recovered to a labeled, clean amber glass bottle. The liquid level in the bottle is marked upon completion of recovery. The XAD-2 resin trap is sealed and labeled container number 4. All samples are shipped to the laboratory for analysis in a cooler containing ice.

Prior to recovery of the impinger fraction, the exterior of each impinger is cleaned and dried, and the net weight gain of each is determined to the nearest 0.1 gram. The impinger fraction consists of the liquid impinger catch and rinses of the impingers. The impinger catch is recovered and stored for later analysis in the event that break-through is discovered from the trap. The liquid level of the bottle is marked upon completion of recovery.

A field blank is prepared using the same reagents and using the same recovery for the test samples. The blank containers are clearly labeled, and the liquid levels marked.

Analytical Procedure

Prior to analysis, the samples are checked for liquid loss. The procedures used to perform the analysis followed EPA Method 23 requirements. The laboratory results and Quality Control are provided in Appendix D of the report.

7.0 Determination of Hydrogen Chloride

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Methods 26A

Sampling System

A heated glass probe liner is attached to a heated glass filter holder containing a teflon mat filter. The exit to the filter holder is connected to the impinger train, which consists of a set of impingers containing 0.1 N H₂SO₄ connected in series and immersed in an ice bath. The impinger train is followed in series by a pump and dry test meter. A Tedlar bag may be used to collect an integrated Method 3 sample. Type K thermocouples are used to measure the following temperatures: probe heater, filter heater, impinger outlet, and dry test meter inlet and outlet. The thermocouple is connected to a digital potentiometer.

Sampling Procedure

The sample time of 60 minutes at approximately 0.75 acf per minute is selected. The apparatus is assembled as completely as possible in the staging area and transported to the sample site. Sealing all openings with aluminum foil prevents potential contamination of the sample train. Once in the sampling area, the probe and filter heaters are brought to temperatures of 248 ±25°F, and the apparatus is leak checked. Upon successful completion of the leak check the probe is inserted at the sample point. The sample probe and filter are then conditioned for 5 minutes prior to sampling by drawing flue gas through the probe and filter bypassing the impingers. Upon completion of the purge, the initial dry test meter reading is recorded.

The pump and timer are turned on and the sample rate adjusted to 0.75 acf per minute. Once the sample rate was set, the following data is recorded:

- Dry Gas Meter Volume
- Dry Gas Meter inlet temperature
- Dry Gas Meter outlet temperature
- Probe heater temperature
- Filter heater temperature
- Impinger outlet temperature

When the sample run is completed, the final dry test meter reading is recorded and the probe removed from the port. A post-test leak check is performed at a vacuum higher than the highest sample vacuum measured during the sample run. The final leak rate is recorded on the data sheet. The sample train is then recovered.

Sample Recovery

Each impinger's content and rinses are recovered into a clean sample bottle and clearly labeled and liquid levels marked. Reagents blanks are collected into the same types of

sample containers as were used for the sample recovery. The blank containers are clearly labeled, and the liquid levels marked.

Analytical Procedure

The Method 3A sample is analyzed in the field with the CEMS. The results of this analysis are presented in the calculated field data.

Prior to analysis, the samples are checked for liquid loss. The procedures used to perform the analysis followed EPA Method 26 requirements. The laboratory results and quality control are provided in Appendix D of the report.

Calculations

Methods 26 - Volume of Sample Collected (Std)

$$V_{m(sta)} = 17.64 V_m Y \left(\frac{P_{barometric} + \frac{\Delta H}{13.6}}{T_m} \right)$$

$V_{m(sta)}$ = Dry meter volume at standard conditions, DSCF

V_m = Dry meter volume uncorrected, DCF

Y = Meter calibration coefficient

P_{bar} = Barometric pressure, inHg

ΔH = Orifice pressure differential, IWG

T_m = Meter temperature, °R

17.64 = °R/inHg

Method 26 - Hydrogen Chloride Per Sample

$$C_{ug/sample} = V_s * (C_s - C_b)$$

$C_{ug/sample}$ = Concentration of Hydrogen Chloride, ug/sample

V_s = Volume of sample, ml

C_s = Concentration of sample, ug/ml

C_b = Concentration of blank, ug/ml

Method 26 - Hydrogen Chloride Concentration

$$C_{ppm} = ((C_{ug/sample} * E10^{-6} * 0.0022 / 36.46 * 10.91048) / V_m) * E10^6$$

C_{ppm} = Hydrogen Chloride Concentration, ppm

$C_{ug/sample}$ = Total Hydrogen Chloride per sample, ug/sample

V_m = Dry meter volume, dscm

8.0 Determination of Gaseous Emissions

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Methods 3A, 6C, 7E, 10

Sampling System

A sintered metal filter is connected via a "Swage-Lok" fitting to a heated stainless steel probe. The probe is attached to a heated Teflon sample line maintained at 250 °F followed by a sample conditioning system to remove moisture. The dry conditioned sample is transported under pressure via a Teflon sample line to the sample manifold by a Teflon lined diaphragm pump. The sample manifold maintains the proper sample pressure to each analyzer

Calibration Procedure

Once the analyzer has a sufficient warm up period and after all adjustments to the analyzer are complete, a local calibration error check is completed. The local calibration error check consists of introducing calibration gas directly into the analyzer. These calibrations are performed using three calibration gases: a zero gas (nitrogen); a mid range gas (40% to 60% of the analyzer range); and a high range gas (100% of the analyzer range). All upscale calibration gases are NIST Traceable to 1% (Protocol 1). The analyzer response must be within 2% of the analyzer range or the calibration procedure is repeated. This procedure is completed at the beginning and at the end of the sampling day or when adjustments to the analyzers are necessary.

Following the local calibration error procedures, the system bias check is completed. The system bias consists of introducing an upscale and zero gas into the sample probe tip allowing the entire system to be evaluated. The upscale gas is selected based on the value that is closest to the expected concentration. The system bias check must be within 5% of the analyzer range or the entire calibration procedure is repeated and the test run thrown out. The system calibration procedure is completed before and after each test period.

The pre and post system bias is used to calculate the analyzer drift over the test period. If the difference exceeded 3% of the analyzer range the calibration procedure is repeated.

Sampling Procedure

Prior to sampling, a leak check of the sample system is conducted by plugging the probe opening. An acceptable leak check is achieved when the sample flow reaches zero. Sampling begins by adjusting the system pressure to 5 psi and the individual analyzer flow rates to 2 SCFH. The test results are continuously recorded on a strip chart and an ASCII text file for data manipulation.

Calculations

$$C_{gas} = (C - C_o) \frac{C_{ma}}{C_m - C_o}$$

- C_{gas} = Effluent gas concentration, dry basis, ppm
 C = Average gas concentration indicated by gas analyzer, dry basis, ppm
 C_o = Average initial and final system cal. bias check response for the zero gas, ppm
 C_{ma} = Actual concentration of upscale calibration gas, ppm
 C_m = Average initial & final system cal bias check responses for upscale cal gas, ppm

$$C_b = \frac{(C_s - C_l)}{S} * 100$$

- C_b = System calibration bias check, % of span
 C_s = System analyzer calibration response, ppm
 C_l = Local analyzer calibration response, ppm
 S = Analyzer span range

$$C_e = \frac{(C_l - C_a)}{S} * 100$$

- C_e = Analyzer calibration error check, % of span
 C_l = Local analyzer calibration response, ppm
 C_a = Actual concentration of calibration gas cylinder, ppm

$$D = \frac{(C_{ef} - C_{st})}{S} * 100$$

- D = Analyzer drift, % of span

C_{sf} = Final system analyzer calibration response, ppm
 C_{sl} = Initial system analyzer calibration response, ppm
 S = Analyzer span range

$$E = \frac{C_{gas} Q_{sd} 60 MW}{10^6 V_1}$$

E = Pounds per hour of gaseous pollutant, lb/hr
 C_{gas} = Effluent gas concentration, dry basis, ppm
 Q_{sd} = Dry stack gas flow rate at standard conditions, DSCFM
 MW = Molecular weight of pollutant, lb/lb-mole

9.0 Determination of Total Vapor Phase Mercury

REF: Code of Federal Regulations, Title 40, Part 60, Appendix A, Method 30B

Sampling System

The carbon traps are attached directly to the probe tip followed by Teflon sample lines and sample conditioning systems to remove moisture. The dry conditioned sample is transported under vacuum through a Teflon sample line. The sampling rate is regulated and the sample volume is measured using a calibrated dry gas meter, which is integral to the fully digital sampling console. Relative accuracy determination for Hg CEMS requires paired trains, therefore two systems are operated simultaneously and controlled by the same software for synchronous measurement.

Sampling Procedure

Prior to sampling, traverse points are selected based on EPA recommendations for tests conducted before January 1, 2009. The target sample volume, rate, and run times are calculated based on estimated Hg concentrations.

At the sampling area, the carbon tubes are attached to the probe and the apparatus is leak checked. Upon successful completion of the leak check, the initial dry test meter reading is recorded, and the probe is inserted at the first traverse point.

The stack temperature and dry test meter temperature is logged by the computer based data acquisition and control system. The sampling rate, in terms of liters per minute, is measured and maintained using the computer control interface. The pump and timer are turned on, and the sample rate is adjusted to correspond to the calculated rate. Once the sample rate is set, the following data is recorded:

- Dry Gas Meter Volume
- Dry test meter outlet temperature
- Sample vacuum

- Liters per Minute

Sampling time is equally distributed over the series of sampling points. At the end of the sample time for the first point, the probe is repositioned at the next point. Measurements, calculations, and data acquisition are performed by the computer control system on a continuous basis.

When the sample run is completed, the final dry test meter reading is recorded and the probe removed from the port. A post-test leak check is performed at a vacuum higher than the highest sample vacuum measured during the sample run. The final leak rate is recorded on the data sheet. The carbon tubes are sealed from contamination and transported to the onsite mobile laboratory analysis.

Analytical Procedure

The paired carbon tubes for each run are analyzed via an on-site or lab thermal desorption Hg analyzer per the requirements outlined in EPA Method 30B.

Report Delivery Schedule:

Turnaround time for the test report drafts is 21 days upon completion of the testing portion of the project. Faster turnaround times may be available upon request. If an expedited report is requested, all necessary expedited charges to include lab rush fee will be agreed upon in the project cost. Process data for inclusion in the report is required within 16 days of the testing portion of the project. Failure to provide the required process data may delay the report beyond the 21 days and void any obligation to meet state required deadlines. All efforts will be made to meet all applicable deadlines in any event and may require additional fees if incomplete submissions of the report are made to meet the required deadlines. ERT Reporting will be submitted on behalf of City of Anacortes with approval, within 60 days.



ELEMENTAL AIR



Innovative Technology for Air Quality Management

September 27, 2016

Ms. Rebecca Fox
City of Anacortes
500 T Avenue
Anacortes, WA 98221

PROPOSAL # E16078P

Dear Ms. Fox,

Elemental Air is pleased to submit the following proposal to provide CEMS diagnostic and system cleaning services located at the City of Anacortes Wastewater Treatment Plant. Elemental Air will conduct an evaluation of the full CEMS system aiming to improve low end accuracy and reduce scrubbing if present. This proposal defines the tasks to be performed and the procedures to be utilized for this project.

1.0 Testing Methodology

The methods are incorporated by reference in the Code of Federal Regulations, Title 40, Part 60 testing methodologies. The test methods to be utilized for any engineering testing during this project are defined as follows:

Test Methodology

Method #	Method Description	Abbreviation
3A	Determination of Oxygen Concentration	O2
10	Determination of Carbon Monoxide	CO

2.0 Scope of Work

The goal of this project is to conduct a pre and post system performance evaluation on one O2/CO CEMS system sampling stack gas from one fluidized bed incinerator. In order to improve accuracy and reduce scrubbing, Elemental Air will employ the following services:

- Audit of plant EPA Protocol 1 gases
- Direct and system baseline testing
- Hotline, chiller, and pump evaluation and cleaning if necessary
- Filter and impinger sonication or replacement if necessary (replacement parts not included)
- CEMS analyzer evaluation, linearity check, and system calibration if necessary
- Engineering testing between reference analyzers and CEMS
- Pre and post service system performance report

Elemental Air will provide all the necessary equipment and personnel to conduct the proposed testing. The following items are included in the proposed costs.

- Field data reduction and preparation of a CEMS pre and post service performance report.
- All necessary equipment, chemicals, gases, etc to complete this project.
- Safety equipment (hard hats, safety glasses, steel toed boots).
- Electronic Copy of the test report.
- Two printed copies of the test report upon request.

Elemental Air requests the following be provided during each mobilization to complete this project.

Safe access to the sample location.
Operation records during engineering testing if necessary.
2-120V power outlets at the sample location.
Coordination between test crew and operations during engineering testing.
Replacement Parts

3.0 Bid Basis and Assumptions

1. Each bid provided is based on a proposed test schedule outlined in the following section. There may be on-site facility caused factors that require longer test schedules, changes to the test schedule, or delays and additional mobilizations which may incur additional charges upon approval of the client.
2. Elemental Air will provide all necessary equipment, personnel, and gases to complete the services, but will not be providing any recommended replacement parts to the CEMS system.

Incinerator CEMS Pre and Post Service Performance Evaluation

Cost \$2,977.50

Test Parameters:	Reporting Parameters:
CO	ppm
O2	%
Number of Runs:	As Needed
Number of Mobilizations:	1
Number of Personnel:	2
Number of Test Days:	2
Proposed Schedule:	Day 1 CEMS System Diagnostics
	Day 2 CEMS System Diagnostics

Report Delivery Schedule:

Normal turnaround time for test reports is 35 days upon completion of the testing portion of the project. Faster turnaround times may be available upon request. If an expedited report is requested, all necessary expedited charges to include lab rush fee will be agreed upon in the project cost. Process data for inclusion in the report is required within 25 days of the testing portion of the project. Failure to provide the required process data may delay the report beyond the 35 days and void any obligation to meet state required deadlines. All efforts will be made to meet all applicable deadlines in any event and may require additional fees if incomplete submissions of the report are made to meet the required deadlines.



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 5d

Subject: Spillman RMS System

Staff Contact: Chief Bowers

Approved for Submittal to Council by	
	Laurie Gere, Mayor
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: Skagit County Information Services administers the Spillman Records Management System for law enforcement, Fire, EMS, and Skagit 911. Skagit County Information Services provides technical assistance, system maintenance, pays licensing fees, and ensures CJIS compliance for mobile data terminal software as well as the reporting software. The 2017-2019 Interlocal Agreement is an update on previous agreements for service dating back to 2008. The 2014-2016 agreement expires on December 31. APD budgets between \$65,000 and \$70,000 a year for the licensing fees and service.

Budget Impact	
Amount Budgeted	0
Budget Account (BARS)	0
Proposed Expenditure	0
Budget Amendment Required?	0
Revenue Source	0

Proposed Contract	
Contractor	Skagit County
Amount	
Start Date	
End Date	

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move we accept the updated interlocal agreement with Skagit County for administering the Spillman RMS for police and fire.

Alternative Actions: N/A

Attachments (listed in order presented): Interlocal Agreement

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN

Skagit County
AND
City of Anacortes

THIS AGREEMENT is made and entered into by and between City of Anacortes ("Agency") and Skagit County, Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

Agency agrees to the terms of each service as set forth in this agreement, including:

General Conditions for Service; Exhibit A
Technology Services; Exhibit B

Copies of which are attached hereto and incorporated herein by this reference as if set forth herein.

1. PURPOSE:

This agreement shall address services provided by the County to Agency. Each service is attached as an exhibit to this agreement as stated above.

2. TERM OF AGREEMENT: The term of this Agreement shall be from January 1, 2017 through December 31, 2019.

4. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

5.1 The County's representative shall be the Information Services Manager.

5.2 Agency's representative shall be the City of Anacortes Police Chief.

5. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

6. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend,

and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

7. **TERMINATION:** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

7.1 Termination of Agreement – Events of Default

This Agreement may be immediately terminated without notice upon an event of default, which events of default include but are not limited to the following:

- a) The Agency wrongfully uses the data provided by the County per terms of this agreement including all attachments.
- b) The Agency sells, gives, leases, or loans access to the screens or the data contained therein to any person or in any way, directly or indirectly, allows copies to be made by any person without the express written approval of the County.
- c) The Agency uses a service to process information whose rated security classification is higher than the rated security classification of the service. Classification levels are described in Exhibit A. Each service described in Exhibit B will have a classification level assigned to it.
- d) The Agency intentionally performs an action that will result in damage to data, software or hardware used to perform services as described in this agreement including all attachments.
- e) The Agency provides access to confidential or proprietary information to unauthorized individuals, third parties, software programs or interfaces, without prior written permission of the County.
- f) The Agency intentionally or unintentionally bypasses, security controls, policies, processes, or policies which would allow or create the possibility of allowing unauthorized access to confidential or proprietary information.

8. **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** The Agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

9. **PUBLIC DISCLOSURE:** As a public agency, the County is bound by the Public Disclosure and Criminal Records laws as declared in Chapter 42.56 RCW, the Washington State Criminal Records Act, Chapter 10.97 RCW and other applicable state and federal laws..

Dissemination of data or information is the responsibility of the agency recording the data or information in accordance with this Agreement and Public Disclosure Act,

Chapter 42.56 RCW, the Washington State Criminal Records Act, Chapter 10.97 RCW and other applicable state and federal laws. Other entities will not disclose data except through specific contracts, court orders or agreements with application and data owners.

Agency and the County agree that all records are owned by the Agency and maintained by the County for the exclusive benefit of the Agency. Nothing in this agreement is intended to create a situation where the County has Agency records in its possession or control for purposes other than maintenance and operation of this agreement. Agency agrees that it is solely responsible for responding to public records requests the County receives for Agency records held by the County pursuant to the Services subject to this agreement.

In the event County receives a public records request for Agency information or records covered under this agreement, County will immediately forward such request to Agency. Agency will assume all responsibility for the handling and response to the forwarded request and agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees, costs and penalties by reason of any and all claims and demands upon the County, its elected or appointed officials or employees related to any requests for Agency records covered under this agreement.

10. SEVERABILITY: In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

11. ENTIRE AGREEMENT: This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

GOVERNMENT AGENCY:
City of Anacortes

Laurie Gere, Mayor

ATTEST:

Clerk, City of Anacortes

APPROVED AS TO FORM:

Attorney, City of Anacortes

DATED this _____ day of _____, 2016.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Lisa Janicki, Chair

Ron Wesen, Commissioner

Attest:

Kenneth A. Dahlstedt, Commissioner

Clerk of the Board

For contracts under \$5,000:
Authorization per Resolution R20030146

Recommended:

County Administrator

Department Head

Will Reichardt, Sheriff

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director

Exhibit A

General Terms and Conditions – Technology Services

1 DEFINITIONS

1.1 DIRECT TECHNICAL SERVICE

A Direct Technical Service is a service used by and billed directly to agencies. An example of a direct technical service would be a service such as electronic messaging. This service is billed based on the number of accounts and each agency that uses the service can expect to see a bill based on total cost of delivering the service. All services below will identify if they are a direct technical service.

1.2 INDIRECT TECHNICAL SERVICE

An indirect technical service is a service that other services utilize in order to accomplish their scope of work. The Skagit County Data Center is a good example of an indirect technical service. Many services rely on the Skagit County Data Center for facilities, physical security and redundant power, however there is no direct billing to any agency for its use.

1.3 REGIONAL INTER-GOVERNMENTAL NETWORK (RIGN)

The Regional Inter-Governmental Network is a shared inter-connecting network between the municipalities of Skagit County. The network resides fully within the boundaries of Skagit County and is administered by the partner members of the network.

2 SERVICE AVAILABILITY

County will strive to provide service available twenty-four (24) hours per day, seven (7) days a week unless stated otherwise in Technology Services, Exhibit "B". The following items are exceptions to Service Availability.

2.1 SCHEDULED MAINTENANCE

The County reserves the right to schedule preventative maintenance on all systems. When possible, preventative maintenance will be scheduled a minimum two weeks in advance and attempt to minimize impacts to each user agency. The Agency will have three (3) business days after getting notification of scheduled maintenance to inform the County if the scheduled maintenance will cause an undue burden on the Agency. County and Agency will discuss the issue and work to resolve a mutually agreeable time to conduct the maintenance if the maintenance can be delayed.

Scheduled maintenance may result in loss of service for a period of time.

2.2 SOFTWARE AND HARDWARE UPGRADES

Software and Hardware upgrades differ from normally scheduled maintenance, in that systems

Exhibit A

General Terms and Conditions – Technology Services

will be unavailable for the duration of the upgrade. It is conceivable that an upgrade may take a couple of days. When possible, the Agency will be informed a month prior to the scheduled upgrade time. Skagit County will make every reasonable attempt to schedule the upgrade to minimize impacts to each Agency; however, both parties agree that due to the wide use of this system and the minimal amount of support personnel, there will be Agency impacts.

2.3 EMERGENCY MAINTENANCE

Emergency maintenance will be coordinated with the Agency when possible.

2.4 SYSTEM FAILURE

It is possible that the system may fail due to unforeseen hardware, software, security or network failure. In the event of a failure, County will work to restore services as soon as practical. County reserves the right to move services to backup systems if needed, but is not required to do so.

3 AUTHORIZED USE

This agreement is intended for use by the Agency's authorized agents only. All accounts must be approved by the County.

4 SERVICE CHARGES

Charges for products and services provided by the County will be based on actual costs incurred by County. All billing will be on a quarterly basis based on the actual expenditures for the previous quarter.

4.1 CALCULATIONS FOR TECHNOLOGY SERVICES

For each service there is a metric that is defined that is used to determine the allocation of costs to the Agency. Some examples of metrics, include, but are not limited to number of accounts, workstations, disk space used, and physical space used. Each service has a unique metric defined and can be found in the exhibit attached describing the service.

The formula for determining the cost per agency for Services Billing shall be:

$$(TC - S) * (AM/TA)$$

Where;

TC = Total cost of support for systems required to support the service inclusive of Help Desk Expenditure within a fiscal quarter.

S = Other external revenues (including grants)

AM = Number of items used to calculate the Metric for an Agency

TA = Total number of Metric items of all Agencies.

4.2 TECHNICAL AND ADMINISTRATIVE SERVICE COSTS

Many services offered by County utilize other technology services in order to accomplish the scope of work. Each service described in Technical Services, Exhibit B, shall identify other

Exhibit A

General Terms and Conditions – Technology Services

technology services required for use. These currently consist of, but are not limited to;

- **Administrative Services** – Those expenses and labor that support all services provided by Skagit County Information Services.
- **Data Center Service** – The expenses and labor required to operate and maintain Skagit County's data centers. Cost is allocated by amount of space used per service.
- **File Transfer Services** – The expenses and labor required to support secure Internet file transfer of data to other agencies or companies.
- **Regional Inter-Governmental Network (RIGN) Services** – The expenses and labor required to support the RIGN, which connects Spillman Services to Agency systems over private networks.

Each of these technical services use the same cost allocations model as described previously.

4.3 PROFESSIONAL SERVICES

Professional Services shall be incorporated into this agreement as an amendment. Each service shall address scope and compensation of the work to be performed.

Professional Services shall not be initiated under any circumstance unless approved by the Skagit County Board of Commissioners..

4.4 COUNTY PAYMENT OF TAXES

If the County is required to pay sales or use tax in order to provide service under this Agreement to Agency, such taxes will be added to the total cost of the service being provided.

4.5 INVOICES AND LATE PAYMENT

The County will invoice Agency quarterly detailing charges for services rendered during the preceding quarter. Payment is due upon receipt of invoice by Agency and becomes delinquent 30 days thereafter.

A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated under the TERMINATION FOR CAUSE provision of this Agreement, and services discontinued.

5 SOFTWARE

Computer applications programs and other software systems furnished to Agency by the County at no charge to Agency are furnished on an "as is" basis with no representations or warranties regarding use or results.

Exhibit A

General Terms and Conditions – Technology Services

5.1 OWNERSHIP OF SOFTWARE

All software required to operate services as defined in exhibit "B", shall be provided by County and shall not be jointly or cooperatively, acquired, held, or disposed of.

In the event that software can be separately licensed by Agency and such license allows use with County's service offering, Agency shall have responsibility to acquire and dispose of this form of licensed software. Software of this type shall be identified in the services section in Exhibit "B".

6 AGENCY FIELD OFFICE ENVIRONMENT AND COMPUTING DEVICES

Agency is responsible to provide computing devices, for its authorized agents that comply with Vendor's published standards as applicable for each technology service utilized.

6.1 AGENCY MAINTENANCE DEMARCATION POINT

County will repair, configure and maintain the services provided and defined in Exhibit B and specifically owned by County.

County shall have no responsibility to repair, configure or maintain Agency own equipment or software, including but not inclusive of, workstations, network equipment, network transmission lines, printing devices, smart devices, or any other equipment or software application resident on Agency's network.

Skagit County shall have no responsibility or incur any liability in regards to the delivery of telecommunications by third parties unless elsewhere specified in this agreement.

6.2 AGENCY EQUIPMENT COSTS AND MANAGEMENT

The Agency shall be totally responsible and liable for all costs incurred in the acquisition of its own equipment, including telephone lines and other supplemental equipment and the costs of connecting that equipment with the County's equipment, if necessary. The Agency will be responsible for trouble shooting, maintaining and managing their equipment and network to the County demarcation point.

Agency equipment that is located in County facilities shall be tagged with an inventory tag identifying that equipment as Agency owned.

7 CONFIGURATION MANAGEMENT

All configuration changes to County provided services will be made by Skagit County Information or Geographic Information Services or system support vendors in coordination with the County. The Agency will provide County with a primary and alternate contact name of authorized personnel who can coordinate/request changes to the system.

8 DISASTER RECOVERY

Where applicable, County shall implement a disaster recovery capability consisting of creating a

Exhibit A

General Terms and Conditions – Technology Services

secondary copy of systems used in support of County provided services. Disaster recovery is intended to restore data in the case of a catastrophic event. The secondary copy is only maintained for a short period of time and then refreshed and is intended only to restore County provided services and data.

9 GRANTS

County has no obligation to support any grant award received by Agency unless specifically agreed to be the County as part of the service scope of work, as described in Exhibit "B".

10 SECURITY AND INTEGRITY

The Skagit County network is protected from the Internet with firewall security to prevent unauthorized access from the Internet. The Agency is responsible for securing their organization's computer resources against all unauthorized access.

If the service utilized by the Agency requires an RIGN connection and the Agency determines to disconnect from (RIGN), Agency agrees to notify County immediately. This action will terminate delivery of the affected service to agency.

The County, in conjunction with the Agency shall work to comply with Federal, State and Local security requirements. Each Technical Service may have specific security requirements that are defined in the Technical Services, Exhibit B.

11 SUPPORT COVERAGE

11.1 SKAGIT COUNTY SERVICE DESK COVERAGE

The Skagit County service desk is staffed approximately 8 hours per day, five days a week, excluding holidays and County closure days. Support hours are generally from 8:00 AM - 4:30 PM. The phone number is:

(360) 416 - 1111

Guaranteed availability of the Service Desk personnel is not possible due to staffing constraints. The Service desk will log computer and network problems and dispatch problems to the responsible engineer. If the service desk technician is away from the phone for any reason, the caller will be asked to leave a voice mail message. The service desk will return the call as soon as possible.

The Agency may also send electronic mail to us regarding problems at **HELPDESK@CO.SKAGIT.WA.US**.

The Agency is responsible for providing a current contact list of employees who are authorized to request services from Skagit County.

11.2 AFTER HOURS COVERAGE

Exhibit A

General Terms and Conditions – Technology Services

After hours support is not part of this agreement. There is no support offered outside of service desk hours.

12 LIMITATION OF LIABILITY

12.1 NON-CONFORMING SERVICES

For any services which fail to conform to the specification(s) detailed in this Agreement and such failure is caused solely caused by the negligence of Skagit County, the County's liability shall be limited to reimbursement of the quarterly charges in which the service(s) failed to conform.

If both parties are negligent, they agree to apportion between them the damage attributable to the actions of each. Agency is solely responsible for any damage caused in whole or in part by inaccurate or inadequate data, programs, or software furnished to the Agency by County.

Neither party will be liable for any failure to comply with or delay in performance of this Agreement where failure or delay is caused by or results from any events beyond its control, including but not limited to, fire, flood, earthquake, accident, civil disturbances, acts of any governmental entity, war, shortages, embargoes, strikes (other than those occurring in the workforce of the party claiming relief, or the workforces of its subcontractors), transportation delays, or acts of God.

County is not liable for system failure, power loss, loss of Internet, loss of network connectivity, software system failure, security breach/failure or other unforeseeable conditions that result in the unavailability of service to Agency.

12.2 LOSS OR DAMAGE TO AGENCY SUPPLIED DATA

For any loss or damage to Agency supplied data or programs due to negligence of the County, Agencies liability shall be limited to reasonable attempts by County to replacement or regenerate lost or damaged data from the County's supporting material. County shall limit reasonable attempts to restore information to 40 hours of staff time per incident per service.

12.3 DAMAGES

Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

12.4 THIRD PARTY CLAIMS

In the event that either party is found liable for damages to third parties as a result of the performance of services under this Agreement, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Agreement.

Exhibit A

General Terms and Conditions – Technology Services

13 OWNERSHIP OF ITEMS PRODUCED

All writings, programs, data, public records or other materials prepared by the County and/or its consultants or subcontractors, in connection with performance of this Agreement shall be the sole and absolute property of the County.

All writings, programs, data, public records or other materials prepared by the Agency and/or its consultants or subcontractors, in connection with performance of this Agreement shall be the sole and absolute property of the Agency

Vendors providing software, hardware or services shall retain all intellectual property rights for programs, documentation or other optional materials to County or Agency.

14 CONFIDENTIALITY

Proprietary or confidential information disclosed by either party to the other for the purposes of this Agreement, which is clearly so identified in writing as proprietary, shall be protected by the recipient in the same manner and to the same degree that the recipient protects its own proprietary information. Such information will be disclosed only to those employees of the recipient requiring access thereto in order to perform this Agreement. All information or data on the County network shall be treated as proprietary regardless of ownership.

The County has the right to refuse acceptance of proprietary or confidential information supplied by the Agency.

15 DATA CLASSIFICATION

Each service described will have a security rating associated with it that specifies the type of information that the system is rated to process. Data is classified as follows:

Category 1 – Public Information

Public information is information that can be or currently is released to the public. It does not need protection from unauthorized disclosure, but does need integrity and availability protection controls.

Category 2 – Sensitive Information

Sensitive information may not be specifically protected from disclosure by law and is for official user only. Sensitive information is generally not released to the public unless specifically requested.

Category 3 – Confidential Information

Confidential information is information that is specifically protected from public disclosure by

Exhibit A

General Terms and Conditions – Technology Services

law. It may include but is not limited to:

- a. Personal information about individuals, regardless of how that information is obtained.
- b. Information concerning employee personnel records.
- c. Information regarding Information Technology infrastructure and security of computer and telecommunications systems.

Category 4 – Confidential Information Requiring Special Handling

Confidential information requiring special handling is information that is specifically protected from disclosure by law and for which:

- a. Especially strict handling requirements are dictated, such as by statutes, regulations, or agreements.
- b. Serious consequences could arise from unauthorized disclosure, such as threats to health and safety, or legal sanctions.

Each service will have a data classification rating. Agency's shall interpret the rating to mean that the service is authorized to process the level of data category specified and below. A system rated at Category 3 is also rated to process Category 1 and 2 data classifications.

15.1 FEDERALLY PROTECTED INFORMATION

Federally Protected Information shall be considered Category 4. In the cases where a service is rated to process Category 4 information it shall also state what federally protected data it has been certified to process as well.

16 CRIMINAL JUSTICE INFORMATION SYSTEM MANAGEMENT CONTROL AGREEMENT

For the purposes of compliance with section 5.1.1.4 of the Criminal Justice Information System Security Policy Version 5.4, Interagency and Management Control Agreements, Agency agrees that the Skagit County Sheriff shall be the Criminal Justice Agency (CJA) that will have management control of all systems, software, hardware, network equipment that is owned and operated by Skagit County Government and used to provide access to CJIS information for Agency.

The Skagit County Sheriff shall maintain a Management Control Agreement (MCA) with Skagit County Information Services that meets the requirements of section 5.1.1.4 of the CJIS Security Policy.

The Skagit County Sheriff shall have no control over equipment, software, hardware, network equipment owned by agency and used to interconnect to the County for the purposes of sharing CJIS information as provided in Exhibit B, Technology Services of this agreement.

Agency shall be responsible for any Management Control Agreements that may be required for technical support of systems, software, hardware, or network equipment owned and operated by Agency per CJIS Security Policy.

Exhibit B

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Exhibit B

Specific Terms and Conditions – Technical Services

1 Geographic Information Service [2]

This service is an ***indirect technical service*** that supports the Geographic Information Services Department.

1.1 Service Scope

This service pays for hardware, software, consumables and professional services to support the Geographic Information Services department.

1.2 Service Compensation

Compensation shall be the total cost of all software, hardware, consumable items and professional services within a billing period. This cost shall be distributed by the number of hours for each service that is provided by the Geographic Information Services Department.

1.3 Service Specific Terms and Conditions

There are no specific terms and conditions for this service.

1.4 Indirect Technical Services

This service relies on the following indirect technical services in order to support the scope of the Geographic Information Service

- Storage Area Network Service
- Remote Access CITRIX Service
- Secure File Transport Service

An allocation of the cost of these services will be incorporated as part of the service cost.

Security Level of this Service

This services is rated to process up to Category 3 information.

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2 Storage Area Network Service [4]

This service is primarily an *indirect technical service* that supports the virtual server hosting environment.

2.1 Service Scope

This service pays for hardware, software, consumables and professional services to support the Storage Area Network.

2.2 Service Compensation

Compensation shall be the total cost of all software, hardware, consumable items and professional services within a billing period. This cost shall be distributed by disk space allocated for each type of disk system.

2.3 Service Classification

This service is rated to process Category 3 information. Category 4 processing will require a separate service offering.

2.4 Service Specific Terms and Conditions

There are no specific terms and conditions for this service.

2.5 Indirect Technical Services

This service relies on the following indirect technical services in order to support the scope of the Geographic Information Service

- Data Center Service

An allocation of the cost of these services will be incorporated as part of the service cost.

2.6 Security Level of this Service

This services is rated to process up to Category 3 information.

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3 Disaster Recovery Service [5]

This service is primarily an ***indirect technical service*** that supports all services that create information.

3.1 Service Scope

This service pays for hardware, software, consumables and professional services to support the Disaster Recovery system.

3.2 Service Compensation

Compensation shall be the total cost of all software, hardware, consumable items and professional services within a billing period. This cost shall be distributed by the total amount of Storage Area Network utilized by the direct service.

3.3 Service Specific Terms and Conditions

There are no specific terms and conditions for this service.

3.4 Indirect Technical Services

This service relies on the following indirect technical services in order to support the scope of the Disaster Recovery Service

- Data Center Service

An allocation of the cost of these services will be incorporated as part of the service cost.

3.5 Security Level of this Service

This services is rated to process up to Category 3 information.

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4 Secure File Transport Service (SFTS) [9]

4.1 Service Scope

The Secure File Transport Service is a **direct technical service**. It is also used by other services as an Indirect Technical Service with costs being apportioned between all uses. Secure Internet File Transfer Services are intended to provide the capability to encrypt transmission of files across the Internet to the intended receiver of the file.

This service shall:

- Provided a password protected account for the agency to upload/download files for transfer across networks.
- Provide a password protected account for the user of the service for which the agency wishes to share files.
- Instruction to Agency and file sharing partners on how to correctly use this service.
- Management, troubleshooting and support of the hardware and software used to operate this service.

4.2 Service Compensation

The metric for the Secure Internet File Transfer Service will be the number of County and/or Agency employees or Contractors provided accounts to utilize this service.

For agencies providing electronic discovery to the Skagit County Prosecutor's office, Skagit County will pay for one seat of this service for this purpose.

4.3 Service Specific Terms and Conditions

Provision of SFTS Accounts

Each account provisioned will need to meet the security needs of the agency. As such, there are cases where many accounts may be needed by an agency in order to meet their security needs. Agency shall discuss security options with County prior to provisioning of any SFTS accounts.

Agency Responsible for Data Preservation

All files that are transferred by this service are considered transitory. As such there is no backup or disaster recovery processes that run on this system. In the event of a disaster, Information

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Services will rebuild the system to its initial state. All data will be lost. The Agency is responsible to ensure it has a copy of the primary record that will be transferred through this service.

Agency Responsibilities

The agency shall be responsible to:

- 1) Provide all hardware and software to connect to the SFTS service.
- 2) Provide high speed Internet access or an RIGN connection to employees that will utilize this service
- 3) Provide all desktop support and client software support for Agency employees.
- 4) Provide staff or support contracts with knowledge of File Transport Protocol, desktop computers and the Internet to configure and support their systems that will access County's service.

4.4 Indirect Technical Services

This service does not utilize any indirect technical services.

4.5 Security Level of this Service

This services is rated to process up to Category 3 information.

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5 Spillman Digital Electronic Content Service [12]

5.1 Scope

This service provides the Spillman Imaging module for the purpose of adding digital attachments to electronic records resident in the Spillman Public Safety System (SPSS).

This support shall include:

- Configuration of SPSS to provide the capability to attach digital files to Spillman records.
- Train the trainer support for the Agency
- Capacity management to insure adequate storage exists for this service
- Backup and disaster recovery support of this service
- On-going normal support of this service

5.2 Compensation

The metric for this service shall be ratio of used disk space versus the total allocated production disk space for the Spillman Public Safety System (SPSS).

5.3 Service Classification

This service is rated to process Category 4 information. This service is rated to support Criminal Justice Information. This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA)

5.4 Specific Terms and Conditions

Agency Responsibilities

The Agency shall be responsible for:

- The installation and maintenance of all equipment owned by the agency to use this service, this may include photographic devices, video devices, audio devices, computer and/or network equipment.
- Ensuring all hardware is compliant with published Spillman and County standards.
- Ensure files attached are compliant with published Spillman standards.
- Access to the Regional Inter-Governmental Network or Skagit County Private's network.
- To protect the confidentiality, integrity and accessibility of the SPSS, the Agency shall comply with section 5.10.4, System and Information Integrity Policy and Procedures of the Criminal Justice Information Systems (CJIS) Version 5.4 as follows:

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- 5.10.4.1 Patch Management
 - 5.10.4.2 Malicious Code Protection
 - 5.10.4.3 Spam and Spyware Protection
- Ensuring the file names are less than 128 characters for both the file path and file name.
- Ensuring that computer systems processing file attachments have the appropriate CODECs or software required to read, process or visualize attachments.
- The agency shall be a subscriber to the SPSS Basic Law Service

5.5 Indirect Technical Services

This service relies on the SPSS Shared and Basic Law services.

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6 Spillman Shared Services [13]

6.1 Service Scope

The Spillman Public Safety System (SPSS) Shared service is an ***indirect technical service*** used by all other Spillman services. The service consists of all expenses and labor associated with the operation, maintenance, design, procurement, capital recovery of hardware, software, technical services, contractual labor or employee labor in performance of support of hardware, software, or networking that is shared between all other SPSS services. The SPSS shared service includes, but is not limited to the following activities.

- Disaster Recovery and Backup Systems
- Training of Information Services Staff on Spillman software and systems
- Procurement, training, installation and management of hardware platforms used to operate the SPSS
- Encryption hardware and software service
- Procurement, training, installation and management of network equipment used to support SPSS shared service
- Support of software modules shared between all services
- Support and maintenance of Geographic Information System Information into the Spillman GEOBASE SENTRYX software
- SPSS Account Management

6.2 Compensation

Compensation for this service shall be as defined in the General Terms and Conditions.

Service Metric

The current metric utilized to determine cost per agency shall be the sum of the number of authorized accounts for Law Enforcement agencies and the number of Spillman licensed apparatus' with access to Spillman for fire and medical agencies.

6.3 Specific Service Terms and Conditions

Agency Responsibilities

The Agency shall be responsible for:

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- The installation and maintenance of all equipment owned by the agency to use this service, this may include photographic devices, video devices, audio devices, computer and/or network equipment.
- Ensuring all hardware is compliant with published Spillman and County standards.
- Ensure files attached are compliant with published Spillman standards.
- Access to the Regional Inter-Governmental Network or Skagit County Private's network.
- To protect the confidentiality, integrity and accessibility of the SPSS, the Agency shall comply with section 5.10.4, System and Information Integrity Policy and Procedures of the Criminal Justice Information Systems (CJIS) Version 5.4 as follows:
 - 5.10.4.1 Patch Management
 - 5.10.4.2 Malicious Code Protection
 - 5.10.4.3 Spam and Spyware Protection
- Ensuring the file names are less than 128 characters for both the file path and file name.
- Ensuring that computer systems processing file attachments have the appropriate CODECs or software required to read, process or visualize attachments. .

6.4 Indirect Technical Services

This service relies on the following indirect technical services in order to support the scope of work as defined within this section:

- Geographic Information Services
- Storage Area Network Services
- Disaster Recovery Services
- Data Center Services
- Regional Inter-Governmental Service

Each indirect technical service will be included in the total billing for this service.

6.5 System Policies

Agency agrees to adhere to the SPSS Policies and Procedures Manual which shall be used for policies and procedures that are specific to the operation and management of the SPSS system.

6.6 Security Level of this Service

This service is rated to process up to Category 4 information.

This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA).

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Specific Terms and Conditions – Technical Services

7 Spillman Basic Service [17]

7.1 Scope

The Basic Law Service shall consist of, but not limited to the following activities in support of Authorized Law Enforcement agencies utilizing the SPSS as follows;

- Spillman HUB
- Support of and access to the Imaging System
- Access to the Spillman Records Management Module
- Support of and access to the Imaging System
- State Link (State Returns)
- Spillman Summit
- Spillman Summit CAD Mapping
- Support of and access to Domestic Violence Protection Orders System
- USB Security device management, replacement and configuration
- Processing of Law Enforcement Reports
- Training as applicable
- On-going normal support of above services

7.2 Compensation

Compensation for this service shall be as defined in the General Terms and Conditions.

Service Metric

The current metric utilized to determine cost per agency is based on the type of access to the SPSS. This shall be the sum of agency accounts.

7.3 Specific Terms and Conditions

Agency Responsibilities

The Agency shall be responsible for:

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- The installation and maintenance of all equipment owned by the agency to use this service, this may include photographic devices, video devices, audio devices, computer and/or network equipment.
- Ensuring all hardware is compliant with published Spillman and County standards.
- Ensure files attached are compliant with published Spillman standards.
- Access to the Regional Inter-Governmental Network or Skagit County Private's network.
- To protect the confidentiality, integrity and accessibility of the SPSS, the Agency shall comply with section 5.10.4, System and Information Integrity Policy and Procedures of the Criminal Justice Information Systems (CJIS) Version 5.4 as follows:
 - 5.10.4.1 Patch Management
 - 5.10.4.2 Malicious Code Protection
 - 5.10.4.3 Spam and Spyware Protection
- Ensuring the file names are less than 128 characters for both the file path and file name.
- Ensuring that computer systems processing file attachments have the appropriate CODECs or software required to read, process or visualize attachments.

7.4 Indirect Technical Services

The following indirect technical services are utilized by this service

- a) Data Center Service
- b) Secure File Transfer Service
- c) Spillman Digital Electronic Content Service

As such an allocation of the cost of the service will be part of the billing.

7.5 Security Level of this Service

This service is rated to process up to Category 4 information.

This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA)

Exhibit B

Specific Terms and Conditions – Technical Services

8 SPSS Insight Service [23] – Skagit County Law Enforcement Agencies

8.1 Purpose

The parties of this agreement intend to share Law Enforcement information, inclusive of Criminal Justice Information (CJI) with Agency. This agreement provides guidance for the creation, viewing, modification, transmission, dissemination, storage and destruction of CJI data. This agreement applies to the Agency and its contractors with access to, or who operate in support of Agency.

8.2 Service Scope

This service provides the capability of doing law queries against participating agencies with Spillman Systems. The system is available to authorized Law Enforcement Agencies only. This support shall include:

- Configuration, management and operation of the Insight Query Module
- Network Security system support for secured encrypted access to participating agencies as required.
- Insight Broker Server support, repair and Management
- Security configuration for authorized law enforcement agencies within the boundaries of Skagit County, limited to two changes per year.

8.3 Administrative Responsibilities

Agency and Skagit County will develop mutually and separately appropriate procedures for transmission, dissemination, storage and destruction of CJI data.

1. Agency shall determine if its criminal justice information shall be made available to the Insight Service network by providing direction in a memorandum to the County that it wishes to provide its information. By default none of the Agencies data will be shared with other Insight partners.
2. Agency has formalized written procedures for the following, if applicable:
 - a. Handling and storage of information to protect that information from unauthorized disclosure, alteration or misuse.
 - b. Password Management

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- c. Storage of CJI data
 - d. Destruction of CJI data
3. Agency shall apply appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity.
 4. Agency is responsible for compliance to technical standards as set forth in the CJIS Security Policy.
 5. Agency will conduct periodic self-audits to ensure compliance with CJIS Security Policy.
 6. Agency will ensure all appropriate staff members are trained according to state and federal requirements.

8.4 Technical Roles and Responsibilities

Agency must comply with and enforce system security. Agency shall have someone designated as the security point of contact (POC). Security POC's shall be responsible for the following:

1. Identifying the user of the hardware/software and ensuring that no unauthorized users have access to the same.
2. Identifying and documenting how the equipment is connected to the Insight Service.
3. Ensuring that personnel security screening procedures are being followed as stated in the CJIS Security Policy.
4. Ensuring that appropriate hardware security measures are in place.
5. Supporting policy compliance and keeping County informed of security incidents.
6. Notifying County of a change in the technical POC at your Agency.

Physical Security

A physically secured location that is subject to criminal justice agency management control security addendum and which contain hardware, software, and/or firmware (e.g., information system servers, controlled interface equipment, associated peripherals or communications equipment, wire closets, patch panels, etc.) that provide access to the CJIS sensitive facilities and restricted/controlled areas shall be prominently posted and separated from non-sensitive facilities and non-restricted/controlled areas by physical barriers that restrict unauthorized access.

All personnel with access to computer centers, CJI, or areas where CJI information is housed shall either be escorted by authorized personnel at all times or receive a fingerprint-based background check. All personnel must review security awareness training within six months of their appointment or assignment.

Personnel Security

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To verify identification, state of residency and national fingerprint-based record checks shall be conducted within 30 days of initial employment or assignment for all personnel who have authorized access to FBI CJIS information and those who have direct responsibility to configure and maintain computer systems and networks with access to FBI CJIS information.

Agency shall use the data supplied by the Insight service only for the authorized purpose intended. Agency shall not use this data for any other purpose and shall not disseminate this data with any other parties unless required by law.

Security Incident Reporting

Agency shall report security incidents that result or may result in the unauthorized disclosure of CJI data to the County and Washington State Patrol.

8.5 Compensation

For law enforcement agencies using this service who reside within Skagit County's boundaries, the metric shall be the number of Spillman accounts in use by that agency.

8.6 Data Limitations

The County makes no warranty, expressed or implied, concerning the integrity of information provided or obtained through the SPSS Insight Service including the content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. The SPSS Insight Service is provided "as is" and with all faults. The County makes no warranty of fitness for a particular purpose, and no representation as to the quality of any products supplied to the Agency. No employee or agent of the County or the Agency is authorized nor may waive or modify this paragraph.

8.7 Agency Responsibilities

The Agency shall be a Criminal Justice Agency as defined by the Criminal Justice Information Services (CJIS) Security Policy Version 5.2, Section 3.2.4 or subsequent released versions of this policy.

No information shall be released to a non-Criminal Justice Agency that is derived from the Insight Broker service without specific permission of the agency from which the information was derived.

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8.8 Service Classification

This service is rated to process Category 4 information. This service is rated to support Criminal Justice Information as defined in the CJIS Security Policy Version 5.2 or subsequent versions of that policy. This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA)

8.9 Indirect Technical Services

The following indirect technical services are utilized by this service

- a) Data Center Service

As such an allocation of the cost of the service will be part of the service costs.

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9 Law Mobile Service [25]

9.1 Scope

This service provides the Spillman Mobile Software to devices intended to be mobile and authorized to access Law Enforcement Information. This support shall include:

Configuration of Mobile device into Spillman system

- Spillman Voiceless CAD software
- Spillman Records Management System Query Module
- Spillman Automated Vehicle Location Module
- Driver's License Scanning Module
- Mobile State Query
- Keyfob management, replacement and configuration
- Training as applicable
- On-going normal support of above services

Agency shall provide all computers and network equipment or services required to utilize this service

9.2 Compensation

The metric for this service shall be the number of licensed apparatus.

9.3 Service Classification

This service is rated to process Category 4 information. This service is rated to support Criminal Justice Information. This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA)

9.4 Specific Terms and Conditions

Agency Responsibilities

The Agency shall be responsible for:

- The installation and maintenance of all equipment resident in Agency vehicles that access the Law Mobile Service
- All costs to access the Internet.
- Ensuring all hardware is compliant with published Spillman standards.
- Access to Netmotion operated by the City of Mount Vernon

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- Access to the Regional Inter-Governmental Network or Skagit County Private's network. The Agency shall be responsible for:

- Ensure files attached are compliant with published Spillman standards.
- To protect the confidentiality, integrity and accessibility of the SPSS, the Agency shall comply with section 5.10.4, System and Information Integrity Policy and Procedures of the Criminal Justice Information Systems (CJIS) Version 5.4 as follows:
 - 5.10.4.1 Patch Management
 - 5.10.4.2 Malicious Code Protection
 - 5.10.4.3 Spam and Spyware Protection
- Ensuring the file names are less than 128 characters for both the file path and file name.
- Ensuring that computer systems processing file attachments have the appropriate CODECs or software required to read, process or visualize attachments.

9.5 Indirect Technical Services

This service relies on the SPSS Shared Indirect Technical Service. As such an allocation of the cost of the service will be part of the billing.

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Specific Terms and Conditions – Technical Services

10 Regional Inter-Governmental Service [26]

This service is an **indirect technical service** that supports the Regional Inter-Governmental Network which connects many municipalities and the County together via a private and public networks.

10.1 Service Scope

This service pays for hardware, software, consumables and professional services to support the Regional Inter-Governmental Network. Labor includes:

- Configuration, installation and troubleshooting of network devices resident on the RIGN and owned by Skagit County
- Configuration of Skagit County Firewall(s) and Switches for the purposes of providing transport of data for services offered by the County that utilize the RIGN.

10.2 Service Compensation

Compensation shall be the total cost of all software, hardware, consumable items and professional services within a billing period. These costs shall be allocated to the services that utilize the RIGN service.

10.3 Service Specific Terms and Conditions

Agency Responsibilities

Agency shall

- a) Procure, configure, support and maintain any equipment it needs to access the RIGN.
- b) Take proper actions to ensure the integrity and security if it's private network.

10.4 Security Level of this Service

This service is rated to process up to Category 2 information. For greater security requirements other controls may need to be incorporated. Please contact Skagit County Information Services for questions related to network security.

Exhibit B

Specific Terms and Conditions – Technical Services

11 Administrative Service [29]

This service is primarily an *indirect technical service* that supports all other services.

11.1 Service Scope

This service pays for costs that are used by all services.

11.2 Service Compensation

Compensation shall be the percentage of the cost for an agency in a quarter divided by the total cost incurred by Skagit County Information Services. This is multiplied by the expense incurred for administrative costs.

11.3 Service Classification

This service has no data classification rating.

11.4 Service Specific Terms and Conditions

There are no specific terms and conditions for this service.

Exhibit B

Specific Terms and Conditions – Technical Services

12 Data Center Service [36]

This service is primarily an *indirect technical service* that supports other services.

12.1 Service Scope

This service pays for all expense that support the operation of Skagit County's data centers.

12.2 Service Compensation

Compensation shall be the total cost of incurred in the operation of the data center multiplied by the ratio of the space in the data center used by the service divided by the total available space utilized by all services.

12.3 Service Classification

The security rating for data stored at the Data Center is based on the controls placed to protect the information. The data center can store and process Category 4 information as long as the appropriate controls are in place. The data center currently has controls in place to process Health Insurance and Portability Accountability Act (HIPAA) protected and Criminal Justice information.

12.4 Service Specific Terms and Conditions

This service relies on the following Indirect Technical Services:

- Security Camera Service
- Access Control Service

Exhibit B

Specific Terms and Conditions – Technical Services

13 Spillman Enhanced Law Service [49]

13.1 Scope

The Enhanced Law Service shall consist of, but not limited to the following activities in support of Authorized Law Enforcement agencies utilizing the SPSS as follows;

- Civil Process
- Fleet Management
- Licenses/Permits
- Premises Information
- Personnel Management
- Traffic Information
- Support of the NIBRS (WIBRS) module
- Support of the Sector Electronic Citations Interface
- XML Accident Interface
- XML Citation Interface
- On-going normal support of above services

13.2 Compensation

Compensation for this service shall be based on the modules used by each agency. For each item in the Scope, an agency will be charged based on the ratio of accounts with access to the SPSS for that agency.

For labor and other incidental costs, the ratio shall be determined by the total number of modules uses by an agency divided by the total number in use by all agencies.

Service Metric

The current metric utilized to determine cost per agency is based on the type of access to the SPSS. This shall be the sum of agency accounts.

13.3 Specific Terms and Conditions

Agency Responsibilities

The Agency shall be responsible for:

Exhibit B

Specific Terms and Conditions – Technical Services

- The installation and maintenance of all equipment owned by the agency to use this service, this may include photographic devices, video devices, audio devices, computer and/or network equipment.
- Ensuring all hardware is compliant with published Spillman and County standards.
- Ensure files attached are compliant with published Spillman standards.
- Access to the Regional Inter-Governmental Network or Skagit County Private's network.
- To protect the confidentiality, integrity and accessibility of the SPSS, the Agency shall comply with section 5.10.4, System and Information Integrity Policy and Procedures of the Criminal Justice Information Systems (CJIS) Version 5.4 as follows:
 - 5.10.4.1 Patch Management
 - 5.10.4.2 Malicious Code Protection
 - 5.10.4.3 Spam and Spyware Protection
- Ensuring the file names are less than 128 characters for both the file path and file name.
- Ensuring that computer systems processing file attachments have the appropriate CODECs or software required to read, process or visualize attachments.

13.4 Indirect Technical Services

The following indirect technical services are utilized by this service

- a) Data Center Service
- b) SPSS Shared Service
- c) Spillman ECM Service for Sector Citations

As such an allocation of the cost of the service will be part of the billing.

13.5 Security Level of this Service

This service is rated to process up to Category 4 information.

This services is not rated to support federally protected Medical Information covered under the Health Insurance Portability and Accountability Act (HIPAA)



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 5(e)

Subject: Prosecutor Contract

Staff Contact: Darcy Swetnam

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hoglund, Finance Director
x	Emily Schuh

Action Type	
	Ordinance
	Resolution
x	Contract
	Public Hearing
	Staff Report

Summary Statement: The contract with City of Anacortes Prosecutor, Craig Cammock, expires on December 31, 2016. A new contract needs to be executed for services in 2017.

Recommended Motion: I move to authorize Mayor Gere to execute the contract between the City and Craig Cammock to provide Prosecutor services to the City for 2017.

Background: Craig Cammock has provided excellent service to the City as the City Prosecutor on a contract basis since 2010. The attached contract has substantially similar terms to the 2016 contract. The contract authorizes Pat Eason, the prosecutor for the City of Mount Vernon, to fill in for Mr. Cammock in cases of conflict of interest or unavailability.

Budget Impact	
Amount Budgeted	\$72,000
Budget Account (BARS)	001.250.515.30.41
Proposed Expenditure	\$72,000
Budget Amendment Required	No
Revenue Source	General Fund

Previous Council/Committee Action: City Council approved the 2016 contract on November 2, 2015.

Alternative Actions: Re-evaluate prosecutorial services.

Attachments: Proposed 2017 Contract for Prosecutor Services

**2017 CONTRACT FOR
CITY OF ANACORTES PROSECUTOR SERVICES**

THIS AGREEMENT is made and entered into as of this ____ day of December, 2016, by and between the CITY OF ANACORTES, acting by and through its City Attorney, hereinafter referred to as the "City," and Craig Cammock hereinafter referred to as the "Prosecutor."

WHEREAS the City has need of legal services for the provision of a competent attorney to effectively prosecute those people charged by the City with misdemeanors in the Anacortes Municipal Court including appeals at all appellate levels; and

WHEREAS the Prosecutor has expertise in this area of practice, and is able to provide advice and representation;

NOW, THEREFORE, it is hereby agreed as follows:

1. Legal Services: The Prosecutor agrees to provide legal services to prosecute persons charged with misdemeanors and contested civil infractions filed in the Anacortes Municipal Court using the lawyer's best professional judgment. The Prosecutor agrees to provide consultation services legal matters related to criminal justice on a limited basis. Services will be provided in a professional, skilled manner consistent with the standards set forth in the Washington Rules of Professional Conduct, ABA standards for prosecutors, case law, and applicable court rules defining the duties of counsel and special obligations of prosecutors in criminal cases. The Prosecutor shall represent the City through all levels of appeals in criminal matters.
2. Service: The Prosecutor will make every effort to expedite such legal matters promptly and efficiently according to the highest legal and ethical standards.
3. Term: Services to be provided pursuant to this agreement shall commence on January 1, 2017 and terminate on December 31, 2017; PROVIDED, HOWEVER, that the term of this agreement may be extended upon the mutual agreement of the parties.

A. The City may terminate its contract with a Prosecutor for convenience on sixty (60) days' notice or on thirty (30) days' notice only for violation of the terms of the contract, violation of the Rules of Professional Conduct (including initiation of disciplinary proceedings by the Washington State Bar Association), or for failure to comply with the City's Standards for Prosecution Services. A termination for cause shall be effective immediately only where the nature of the cause for termination presents an immediate threat of harm or liability to the City or a Defendant.

B. The Prosecutor will not terminate its contract with the City unless the Prosecutor is unable to carry out the terms of the contract. If the Prosecutor determines that it is

not able to carry out the terms of the contract, it shall provide the City with not less than ninety (90) days' written notice so that the City may obtain another Prosecutor.

C. The Prosecutor shall have the right to renegotiate or terminate this contract, which termination shall be subject to the 90 days' notice provided in Section 3(B) above, in the event that the Anacortes Municipal Court adds an additional docket(s) to the current practice of two dockets per month and/or in the event that the Prosecutor's workload increases materially due directly or indirectly to the implementation of public defender caseload standards.

4. Fees: The City shall pay the Prosecutor as sole compensation for the services performed under this agreement the sum of \$6000.00 per month. The maximum compensation associated with this agreement shall not exceed \$6000.00 per month without further prior written authorization by the City.
5. Services are Personal: The legal services described herein shall be provided by Craig Cammock. The City has entered into this agreement based upon the skills and qualifications of the attorney named above, who will provide the services described herein.
6. Substitute Counsel: It is the intent that the Prosecutor shall contract with other attorneys as substitute counsel to provide services when the Prosecutor is precluded from doing so as a result of a conflict of interest, or other disability. The Prosecutor's contract with substitute counsel should include all of the terms included in the contract between the City and the Prosecutor, excluding only payment terms. The Prosecutor shall compensate substitute counsel out of the Prosecutor's own funds. Substitute counsel shall be subject to the City's consent as to individuals assigned. Due to the increased filings, lengthening dockets and possible addition of an additional monthly docket, Craig Cammock shall have the right, at Craig Cammock's sole expense, to contract with Pat Eason, currently the prosecutor for the City of Mount Vernon, to handle a portion of the workload. Craig Cammock shall remain primarily responsible for all obligations herein.
7. Insurance: The Prosecutor shall have and maintain a professional liability policy with limits of \$1,000,000 per claim and \$1,000,000 aggregate, and which shall protect the City from liability for counsel's legal malpractice or other negligence.

The deductible for such insurance policy shall not exceed \$2,000 if such insurance policy is written so that defense costs are inside the policy limits.

The insurance policy must be maintained in full force and effect, uninterrupted, and at no expense to the City, throughout the entire term of the contract and three years following the termination of the contract. It is the intent of the City that prior acts coverage not be lost through the term of the agreement with the City, including any additional contract terms. The carrier shall be subject to the approval of the City.

8. Management: The City will provide the Prosecutor staff for case-reporting and management. The City will also provide the Prosecutor with office space, telecommunications, and a computer to facilitate prosecution.
9. Billing Procedures: Billings should be submitted on a monthly basis by the 20th day of the month. Each billing statement should set forth for each date services were performed and a brief summary of the services provided including the amount of time spent working in the capacity of Prosecutor.

Payment shall be made through the City's ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. In no event shall the total of the City's payment pursuant to this Agreement exceed the amount set forth hereinabove.

10. Interaction with City:

A. The City Attorney's Office shall be responsible for managing this contract on behalf of the City.

B. The Prosecutor will keep City well informed of all prosecution activities pursuant to this Agreement. The Prosecutor, at such times and in such form as the City may require, shall furnish the City with periodic reports pertaining to the work and services undertaken pursuant to this agreement.

11. Independent Contractor Status: The Prosecutor shall at all times perform its duties and responsibilities and carry out all services as an independent contractor.

The Prosecutor, at its sole expense, shall obtain and keep in force any and all necessary licenses, permits, and tax certificates. The Prosecutor shall maintain a professional liability policy with policy limits as set forth in section 7 to protect the Prosecutor and the City from losses and claims which may arise out of or result from performance of duties related to this Agreement, including Worker's Compensation and professional liability insurance.

The Prosecutor shall obtain a business license under the Anacortes Municipal Code.

12. Indemnification: The Prosecutor shall indemnify and hold harmless the City, its officials, officers, agents, employees, volunteers, and representatives from, and shall process and defend at its sole expense, any and all claims, demands, damages, suits at law or at equity, liabilities, losses, judgments, liens, expenses, and cost arising out of or occasioned by the grossly negligent performance, grossly negligent acts, and/or omissions by the Prosecutor and its employees relative to any activity

and/or services covered hereunder. In the event of recovery due to the aforementioned circumstances, the Prosecutor shall pay any judgment or lien arising therefrom, including any and all costs as part thereof.

The City hereby shall defend, indemnify, and hold the Prosecutor harmless from any and all claims, demands, damages, lawsuits, liabilities, and losses, arising out of the good faith prosecution of defendants, except to the extent that such claims arise out of intentional, malicious or grossly negligent acts of Prosecutor. It is the intent of the parties that this clause shall extend to the indemnification of claims brought under 42 U.S.C. 1983.

13. Non-discrimination: The Prosecutor agrees to take all necessary and affirmative steps to ensure compliance with all federal, state and City laws and policies regarding non-discrimination and equal employment opportunities. The Prosecutor shall not discriminate in any employment action or in the representation of any client because of race, creed, color, national origin, marital status, sex, age, or the presence of any sensory, mental or physical handicap.

In the event of non-compliance by the Prosecutor with any of the non-discrimination provisions of this agreement, the City will have the right, at its option, to cancel the agreement in whole or in part by written notice. If the agreement is canceled after partial performance, the City will be obligated to pay only for that portion of the total work authorized under this agreement that is satisfactorily completed.

14. Conflict of Interest: In addition to Rule of Professional Conduct 1.7, the Prosecutor shall comply with all federal and state conflict of interest laws, statutes and regulations as they shall apply to all parties and beneficiaries under this agreement.

15. Complete Agreement: This agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.

16. Modification of Agreement: This agreement may be modified by a writing explicitly identified as a modification or amendment of this agreement that is signed by authorized representatives of the City and the Prosecutor.

17. Notices:

A. Notices to the City of Anacortes shall be sent to the following address:

City of Anacortes
Attn. City Clerk
PO Box 547
904 6th Street
Anacortes, WA 98221

B. Notices to the Prosecutor shall be sent to the following address:

Craig Cammock
Skagit Law Group, PLLC
PO Box 336
227 Freeway Dr., Suite B
Mount Vernon, WA 98273

18. Venue. It is agreed that venue for any lawsuit arising out of this agreement shall be Skagit County.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first written above.

CITY OF ANACORTES

PROSECUTOR

By _____
Laurie M. Gere
Mayor

By _____
Craig Cammock

Approved as to Form:

Attest:

Darcy James Swetnam, WSBA 40530
Assistant City Attorney

Steve Hoglund, Finance Director



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 5f

Subject: Skagit 911 Interlocal Agreement

Staff Contact: Chief Bowers

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Bonnie Bowers, Police Chief
	Jack Kennedy, Fire Division Chief
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
x	Contract
	Public Hearing
	Staff Report

Summary Statement: New agreement changes structure of governing board and limits liability of member agencies.

Background: Skagit 911 has provided dispatching services since 1998 to all Skagit County Police, Fire, and EMS agencies. The Interlocal Agreement has been modified several times as the agency has grown and evolved. Work on this version started over 18 months ago. It has been approved by the Emergency Management Committee, the Fire and Police Chiefs, and was presented to you last month by the 911 Director.

Budget Impact	
Amount Budgeted	0
Budget Account (BARS)	0
Proposed Expenditure	0
Budget Amendment Required?	0
Revenue Source	0

Proposed Contract	
Contractor	Skagit County
Amount	
Start Date	1/1/17
End Date	indeterminate

Previous Council/Committee Action: N/A

Competing Viewpoints Considered: N/A

Recommended Motion: I move to authorize the Mayor to enter into the 2017 Interlocal Cooperation Agreement for a Countywide Public Safety Communications Center.

Alternative Actions: N/A

Attachments (listed in order presented): Interlocal Agreement

INTERLOCAL COOPERATION AGREEMENT
FOR A COUNTYWIDE PUBLIC SAFETY
COMMUNICATIONS CENTER

THIS INTERLOCAL AGREEMENT (this "Agreement") is entered into by and between the participating municipal entities that are signatory hereto and this Agreement shall be effective as stated in Section 32 below.

RECITALS

WHEREAS, state law has granted to participating entities authority to enter into this Agreement including but not limited to Chapter 39.34, RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other agencies on a basis of mutual advantage and thereby to provide services and facilities in a more efficient and effective manner; and

WHEREAS, Skagit County, the Cities of Anacortes, Burlington, Mount Vernon, and Sedro-Woolley, the Towns of Concrete, Hamilton, La Conner and Lyman, have been providing consolidated emergency and public safety communications and records services in order to maximize immediate availability and effectiveness of emergency services to the public at minimum costs since 1998; and

WHEREAS, Skagit County, the Cities of Anacortes, Burlington, Mount Vernon, and Sedro-Woolley, the Towns of Concrete, Hamilton, La Conner and Lyman are parties to an Interlocal Agreement dated July 1, 2004 and recorded under Auditor's File Number 200508100029 which amends an original Interlocal Agreement dated April 13, 1998 and recorded under Auditor's File Number 9901040106; and

WHEREAS, the above listed municipal agencies, hereafter referenced as "Members", wish to strengthen and modify the governance and corporate structure of Skagit 911 and to update other provisions of 2004 Interlocal Agreement while ensuring Skagit 911 maintains all its current rights and responsibilities except as modified herein; and

WHEREAS, the Members, by executing this Agreement hereby consent to transferring all assets, liabilities and rights currently existing through the 2004 Interlocal Agreement shall be assigned to the newly organized Skagit 911 Non-profit Corporation; and

WHEREAS, this Agreement is authorized by state law including but not limited to the Interlocal Corporation Act and Nonprofit Corporations Act set forth in chapters 39.34 and 24.06, respectively of the Revised Code of Washington; and

AGREEMENT

NOW, THEREFORE, upon ratification of this Agreement by the minimum number of required parties, pursuant to state law including RCW 39.34.030 and RCW 24.06 parties to this Agreement agree as follows:

1. Establishment of SKAGIT 911: SKAGIT 911 is hereby reorganized as a nonprofit corporation under Chapter 24.06 RCW as authorized by the Interlocal Corporation Act (Ch. 39.34 RCW), and as so reorganized Skagit 911 shall have all the rights, responsibilities, liabilities and assets assigned by the Members including but not limited to creating, owning and operating a county-wide public safety communication center, called "Skagit 911", hereinafter referred to as "SKAGIT 911", is hereby established in order to provide consolidated answering of enhanced 911 telephone calls as outlined in Skagit County's E-911 plan, as amended. SKAGIT 911 is established within Skagit County for the purpose of rendering countywide enhanced 911 call answering and 911 call transfers and associated dispatch functions, as deemed appropriate by its governing board.
2. Purpose: SKAGIT 911 is organized on behalf of and as an instrumentality of its Members to carry out the purposes of the SKAGIT 911 Interlocal Agreement (the "Interlocal Agreement") pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW. These purposes include but are not limited to providing law enforcement, fire and emergency medical services communication support to the Members of the Skagit 911 Interlocal agreement and to other contracted agencies and to exercise essential governmental functions within the meaning of Section 115 of the Internal Revenue Code (the "Code"). SKAGIT 911 shall provide services by telephone, radio, or other communication technologies. Nothing in this Agreement shall relieve the units, entities, or agencies from their responsibilities to provide their own equipment for receiving communications from SKAGIT 911 and their own equipment for communications between their own personnel. SKAGIT 911 will also maintain records and reports as necessary. These reports shall include financial, statistical, and operational information and shall be provided to all Members on a bi-monthly basis.
3. SKAGIT 911 POWERS. Through its Governing Board of Directors ("Board"), as set forth in Section 5 of this Agreement, SKAGIT 911 shall have all the powers allowed by law including powers provided for interlocal agencies created under RCW 39.34.030, as authorized, amended, or removed by the Board, including but not limited to the following:
 - a. Any and all lawful acts necessary to further SKAGIT 911's purposes;
 - b. Review and approve budget expenditures for SKAGIT 911;
 - c. Establish policies for expenditures of budget items for SKAGIT 911;
 - d. Review and adopt a personnel policies for SKAGIT 911;
 - e. Review and approve operating and financial policies for SKAGIT 911;

- f. Establish a fund or special fund or funds as authorized by RCW 39.34.030 for the operation of SKAGIT 911;
 - g. Conduct regular and special meetings as may be designated by the Board consistent with the state Open Public Meetings Act (Ch. 42.30 RCW);
 - h. Maintain and manage records in accordance with the state Public Records Act (Ch. 42.56 RCW) and other applicable state and federal laws and regulations;
 - i. Determine what services shall be offered and under what terms they shall be offered
 - j. Retain and terminate a Director;
 - k. Create committees to review and make recommendations;
 - l. Approve strategic plans;
 - m. Enter into agreements with Contracted Agencies, defined as users of SKAGIT 911 services who are not Members, for the provisioning of 911 dispatch services including rates for said service;
 - n. Enter into agreements with third parties for goods and services necessary to fully implement the purposes of this Agreement;
 - o. Establish charges for services provided to Members, Contracted Agencies or other parties;
 - p. Direct and supervise the activities of SKAGIT 911 Committees, and the Director;
 - q. Make purchases or contract for services and/or public works necessary to fully implement the purposes of this Agreement;
 - r. Enter into agreements with, and receive and distribute funds, from any federal, state or local agencies;
 - s. Receive all funds allocated to SKAGIT 911 by Members and Contracted Agencies;
 - t. Purchase, take, receive, lease, take by gift, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, in the name of SKAGIT 911;
 - u. Sell, convey, lease, exchange, transfer, and otherwise dispose of all of its property and assets;
 - v. Sue and be sued, complain and defend, in all courts of competent jurisdiction in Skagit 911's name;
 - w. Make and alter bylaws for the administration and regulation of its affairs; and
 - x. Hold radio frequency licenses to enable SKAGIT 911 to operate and maintain the System.
4. Duration/Withdrawal Dissolution: The effective date of this Agreement shall be upon the later of January 1, 2017 or upon Ratification, as that term is defined hereinafter in this Agreement. Any Member may withdraw from Skagit 911 by giving written notice by July 1 in any year of its intention to terminate its agreement on December 31 of the same year. Skagit 911 may dissolve following a 60% supermajority vote of all Board members to dissolve Skagit 911, provided, that prior to such a vote, a transition plan to ensure the continuity of

emergency dispatch services was approved. Any dissolution requires a minimum of eighteen (18) months' notice to the Members.

5. SKAGIT 911 to be Managed by the SKAGIT 911 Board: SKAGIT 911 shall be governed by the Skagit 911 Governing Board, that is composed of the following elected officials, provided, that the entities they represent have approved and executed this Agreement:

- Mayor of Anacortes
- Mayor of Burlington
- Mayor of one of the towns of Concrete, Hamilton, La Conner, or Lyman selected annually at the first meeting of the SKAGIT 911 Board by the mayors of the towns of Concrete, Hamilton, La Conner and Lyman who are in attendance at that meeting
- Mayor of one of the towns of Concrete, Hamilton, La Conner, or Lyman, selected annually at the first meeting of the SKAGIT 911 Board by the mayors of the towns of Concrete, Hamilton, La Conner and Lyman who are in attendance at that meeting
- Mayor of Mount Vernon
- Mayor of Sedro-Woolley
- County Commissioner, District 1
- County Commissioner, District 2
- County Commissioner, District 3
- Two ex officio (non-voting) members:
 - One law enforcement executive officer to be selected by the Communication Advisory Board from its members
 - One fire chief to be selected by the Communication Advisory Board from its members

The Board shall appoint a Chair and Vice-Chair. The Chair and Vice-Chair shall have such duties and responsibilities as defined in the SKAGIT 911 Bylaws. The Board shall meet as legally required and as described in the SKAGIT 911 Bylaws.

In the event a Board member is unable to attend he/she may designate an elected or non-elected representative in his/her absence by providing a written designation to the Board Chair

- A. EXECUTIVE COMMITTEE: The Board's chair & vice chair along with the chair of the Communications Advisory Board shall comprise the Executive Committee which shall have such authority as may be delegated to it by the SKAGIT 911 Board by resolution. The Executive Committee will also perform the annual evaluation of the Director. The Board's chair shall lead the Executive Committee.

6. SKAGIT 911 Director: The SKAGIT 911 Director shall report to the elected Board Chair, who shall have line authority over the Director or such other designee as determined by the Board. The Director shall be responsible to the Board; shall administer the programs and operations consistent with policies adopted by the Board; shall be the Board's financial officer for SKAGIT 911, with all disbursements to be approved by the Board, and shall be appointed on the basis of his/her technical and administrative competence.
7. Personnel Policies: The Board shall establish the personnel policies of SKAGIT 911. The Board, by a simple majority vote (51% or more of the Board members in attendance at a meeting with a quorum), shall approve the selection and appointment of the SKAGIT 911 Director and by simple majority vote shall also have the power to terminate the Director.
8. Budget: The SKAGIT 911 Director will recommend a preliminary budget to the Board. The Board shall approve the budget by September 30th of each year by a simple majority vote. Included in the budget will be the apportionment of financial participation of those participating agencies for the following year. The allocation of financial responsibility between Members for the SKAGIT 911 operational budget and SKAGIT 911 capital expenditures, which are used by all Members, shall be determined by the formula in Appendix A attached hereto. Appendix A may be modified by a supermajority vote of 60% of the Board members in attendance at a meeting with a quorum, provided that a minimum of 60 days' notice is provided to Members prior to the effective date of any modification of Appendix A.

The allocation of financial responsibility between Members for service specific capital expenditures shall be funded by the Members that receive the benefit; Contracted Agencies shall pay their proportionate share of costs as determined by the Board.

All taxes authorized and collected in accordance with RCW 82.14B.030 and the 1/10 of one percent sales tax shall be distributed to Skagit 911 to help defray the operational costs of Skagit 911.

9. Operations Contracting: The Board may contract for the use of space for its operations and for staff and auxiliary services including but not limited to legal, records, payroll, accounting, purchasing, data processing, facilities, equipment and insurance.
10. Technical Committees and Advisory Boards. The Board may form Committees and Advisory Boards as adopted in its Bylaws to the extent that so Committees and Advisory Boards do not conflict with any of the requirements set forth in this Interlocal.

11. Additional Services: The Board shall evaluate and determine the appropriateness of the inclusion of additional communications and dispatching services for Members and Contracted Agencies when so requested, and shall determine whether and how such services should be provided and the appropriate fees. Approved services shall not include those which detract from the effectiveness of the operations which are primarily intended for the emergency and public safety response objectives of Skagit 911.
12. Equipment: Equipment and furnishings, as needed, and in conformance with the approved budget, shall be acquired by, and title shall rest with Skagit 911. The Skagit 911 Director, at the time of his/her preparation of the proposed budget for the ensuing year, shall provide the Board with a current and complete inventory, with valuations of equipment and furnishings owned by or assigned to Skagit 911. The Director shall ensure this includes all emergency communications equipment and infrastructure.
13. Withdrawal/Dissolution: Upon dissolution, the Board shall disburse all funds held by SKAGIT 911, as well as any funds derived from the sale of any property, to the then participating members of SKAGIT 911 in proportion to the member's percentage of contribution during the year of dissolution. The E911 equipment and facilities purchased through the State E911 grant would become the property of Skagit County upon dissolution, in as much as the County is held responsible under state law to continue to provide E911 answering services, and the equipment and facilities purchased through the grant are subject to recovery by the state should the county fail to do so. Any party to this Agreement who withdraws as provided in Section 4 shall have no rights to any portion of the SKAGIT 911 assets by virtue of participation in this Interlocal Agreement.
14. Amendment of Interlocal. This Agreement may be amended by a supermajority vote of 60% of all the Board members in attendance at a meeting with a quorum, provided that Appendix A may be amended as described in Section 8.
15. Operational Interconnects: Each local government shall retain the responsibility and authority for its operational departments, and for such equipment and services as are required at its place of operation to interconnect to the SKAGIT 911 operations. Interconnecting equipment and services may be provided for in the SKAGIT 911 budget and operational program. This equipment and its ownership and maintenance responsibility shall be identified in the inventory listed in Section 12 of this Agreement.
16. Records Access: SKAGIT 911 shall bear full responsibility for ensuring that the law enforcement data communications network and any criminal history records information received by means of such network shall be used solely for the purposes of the due administration of the criminal laws or for the purposes enumerated in RCW 43.43, as now or hereafter amended. SKAGIT 911 shall establish rules and regulations governing access to, and security for, any

criminal justice records information received by means of such network consistent with RCW 43.43. SKAGIT 911 shall bear full responsibility and liability for compliance for the retention and disclosure of SKAGIT 911 public records including but not limited to compliance with the Washington State Public Records Act Chapter 42.56 RCW.

17. Filing: As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force or otherwise made publicly available pursuant to RCW 39.34.040.
18. Validity: If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudged.
19. Authority: This Agreement shall be executed on behalf of each party by its authorized representative, and pursuant to appropriate legislative action of each participating agency.
20. Insurance: SKAGIT 911, through its annual budget, shall maintain liability and casualty insurance policies or similar coverage, as the Board shall determine appropriate, as legally required, and consistent with the Skagit 911 Articles of Incorporation and Bylaws.
21. Indemnification: SKAGIT 911 shall be an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by SKAGIT 911 shall be satisfied exclusively from the assets and credits of Skagit 911. No creditor or other person shall have any recourse to the assets, credits, or services of Members on account of any debts, obligations, liabilities, acts, or omissions of SKAGIT 911.
22. Waiver: Nothing herein shall be deemed to waive the immunities established pursuant to RCW 38.52.180 et seq. not to create third party right of liability.
23. Survival. The provisions of Sections 13, 21, 22, 24, and 25 shall survive the termination or expiry of this Agreement.
24. Venue and Dispute Resolution. This Section establishes the sole and exclusive remedy for disputes arising under this Agreement, except as otherwise set forth herein. In the event of any dispute arising under this Agreement, the parties shall, as a material condition precedent to any suit under this Agreement, provide formal written notice of the dispute to the other party, and engage in formal mediation using a mutually agreed upon mediator. If the parties are unable to agree on a mediator within fifteen (15) days of written notice, either party may bring suit in Snohomish County Superior Court for the sole purpose of seeking appointment of a mediator. If the parties are unable to resolve their differences within thirty (30) days after mediation, venue and jurisdiction for any action arising under this Agreement shall lie in the Courts of Snohomish County, Washington. In the event of any dispute arising under this

Agreement, the Court shall award attorney fees, costs, expert witness fees, mediation costs, and all other costs related to the dispute to the prevailing party.

25. No Third Party Beneficiaries. This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but limited to, any agent, contractor, subcontractor, consultant, volunteer, or other representative of either party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the parties hereto shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other party hereto.
26. Severability. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition or application. To this extent and end the terms and conditions of this Agreement are declared severable.
27. Compliance with Laws. The parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement. The parties shall obtain and comply with any and all necessary permits, approvals, consents and notice from or to all applicable jurisdictions prior to commencing any work or action related to this Agreement.
28. Captions and Counterparts. The captions in this Agreement are for convenience and reference only, and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute one Agreement.
29. Integrated Agreement. This is an integrated agreement. No party has relied on any representation other than those expressly set forth herein in entering this Agreement.
30. Neutral Authorship. Each of the terms and conditions of this Agreement have been reviewed and negotiated with resort to legal counsel, and represents the combined work product of the parties hereto, and this Agreement shall not interpreted for or against party hereto. The parties represent that they have had a full and fair opportunity to seek legal advice with respect to the terms of this Agreement, and have either done so or have voluntarily chosen not to do so. The parties represent and warrant that they and their authorized representatives

executing this Agreement have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms.

31. Further Acts. The parties agree to take such further actions and to execute documents as in their reasonable judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this Agreement.

32. Adoption & Effective Date: The effective date of this Agreement shall be upon the ratification of this Agreement by the County and at least three cities and one town ("Ratification"). This Agreement shall be binding upon the Members who have executed this Agreement and that upon Ratification, all prior agreements and bylaws between the parties shall be deemed terminated and replaced herewith. Thereafter, no city or town shall be a member of SKAGIT 911 until its governing body shall have approved this Agreement.

DATE: _____

BOARD OF COMMISSIONERS, SKAGIT COUNTY, WASHINGTON

ATTEST:

CLERK OF THE BOARD

KENNETH A. DAHLSTEDT, COMMISSIONER

APPROVED AS TO FORM ONLY:

DEPUTY PROSECUTING ATTORNEY

LISA JANICKI, COMMISSIONER

REVIEWED:

RISK MANAGER

RON WESEN, COMMISSIONER

CITY OF ANACORTES

ATTEST:

STEVE HOGLUND, FINANCE DIRECTOR

LAURIE GERE, MAYOR

APPROVED AS TO FORM ONLY:

DARCY SWETNAM, CITY ATTORNEY

DATE

CITY OF BURLINGTON

ATTEST:

FINANCE DIRECTOR

STEVE SEXTON, MAYOR

APPROVED AS TO FORM ONLY:

LEIF JOHNSON, CITY ATTORNEY

DATE

TOWN OF CONCRETE

ATTEST:

CLERK-TREASURER

MAYOR

APPROVED AS TO FORM ONLY:

TOWN ATTORNEY

DATE

TOWN OF HAMILTON

ATTEST:

CLERK-TREASURER

MAYOR

APPROVED AS TO FORM ONLY:

TOWN ATTORNEY

DATE

TOWN OF LA CONNER

ATTEST:

CLERK-TREASURER

MAYOR

APPROVED AS TO FORM ONLY:

TOWN ATTORNEY

DATE

TOWN OF LYMAN

ATTEST:

CLERK-TREASURER

MAYOR

APPROVED AS TO FORM ONLY:

TOWN ATTORNEY

DATE

CITY OF MOUNT VERNON

ATTEST:

ALICIA HUSCHKA, FINANCE DIRECTOR

JILL BOUDREAU, MAYOR

APPROVED AS TO FORM ONLY:

KEVIN ROGERSON, CITY ATTORNEY

DATE

CITY OF SEDRO-WOOLLEY

ATTEST:

PATSY NELSON, FINANCE DIRECTOR

KEITH WAGONER, MAYOR

APPROVED AS TO FORM ONLY:

ERON BERG, CITY ATTORNEY

DATE

APPENDIX "A"

FORMULA FOR ALLOCATION OF SKAGIT 911 FINANCIAL RESPONSIBILITY

Financial allocation of the SKAGIT 911 Annual Operating Budget shall be determined as set forth below:

1. A draft/preliminary Annual Operating Budget shall be calculated no later than August each year for presentation and recommendation in September to the SKAGIT 911 Board.
2. External revenues will be estimated and will include sales tax, phone tax and State E911 funding.
3. The SKAGIT 911 Board will approve a pre-determined percentage of the External revenues to be set aside and reserved for investment in the Operational Reserve, Equipment Reserve & Replacement and Capital Outlay funds.
4. All costs will be allocated via costing modules for Administrative, Law and Fire/EMS costs.
 - a. The administrative costing module will consist of all overhead, facility maintenance costs, administrative and supervisory staff, technological needs and maintenance.
 - b. The Law costing module will consist of the wages and salaries of all Law Dispatchers and support services.
 - c. The Fire/EMS costing module will consist of the wages and salaries of all Fire Dispatchers and support services.
5. Once all costs have been allocated to the cost centers, the remaining External revenues will be applied to the budget. The remaining costs will be allocated to the Law and Fire/EMS Agencies using the below allocations:
 - a. Law Agency costs will be prorated at 50% previous full year call volume and 50% previous year commissioned officers, with each agency prorated the appropriate percentage of the costing module and the Administrative costs, based on a percentage of resources used
 - b. Fire/EMS Agency costs will be prorated at 50% previous full year call volume and 50% previous year assessed value, with each agency allocated the appropriate percentage of the costing module and the Administrative costs, based on a percentage of resources used.
 - c. A pre-determined percentage of the Fire Agency calls will be paid directly to Skagit 911 by the EMS office, with the balance being billed to each Fire agency.



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 6a

Subject: Title 19 Update

Staff Contact: Darcy Swetnam, Don Measamer

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
	Steve Hoglund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
x	Ordinance No. 2992
x	Code Revision?
	Resolution No.
	Contract
x	Public Hearing
	Staff Report

Summary Statement: This item is an advertised public hearing on proposed Ordinance 2992, which creates new Title 19 relating to Land Use Permit Procedures. Staff has updated the Ordinance to fill in various dates and revised Section 2 regarding processing of complete permit applications received prior the amendments taking effect.

Background: The Planning Commission considered proposed Ordinance 2992 at their November 30, 2016 meeting, which was a continuation of a public hearing called on November 23, 2016. The Planning Commission recommended approval of the Ordinance with certain changes. City staff incorporated their comments and recommended changes into the 12/7/16 draft, which was reviewed by Council at their 12/12/16 meeting.

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: Council has seen the proposed land use procedures at several previous meetings. The Planning Commission recommended approval of the Ordinance at the November 30, 2016 meeting, with certain conditions.

Competing Viewpoints Considered: All written public comments received can be viewed on the City's website: http://www.cityofanacortes.org/public_comments-LU.php.

Alternative Actions: N/A

Attachments (listed in order presented):

Proposed Ordinance 2992 (revised)

Draft Title 19 – V10, dated 12/7/16

Public comments received at or subsequent to 12/19 CC meeting

Ordinance No. 2992

An Ordinance Amending Various Provisions of the Anacortes Municipal Code and Adopting a New Title 19, Unified Development Code

Whereas, the Anacortes Municipal Code currently includes development regulations and permit processing procedures in Titles 15, 16, 17, and 18;

Whereas, the City Council desires to clarify and consolidate its development regulations and permit processing procedures in a single title to provide effective and efficient rules for the public and city staff;

Whereas, on November 28, 2016, the City Council adopted Ordinance 2991 relating to new standards for stormwater management to comply with the National Pollutant Discharge Elimination System permit issued by the Washington State Department of Ecology;

Whereas, through subsequent amendments the City plans to update its development regulations to implement the Comprehensive Plan and to move Titles 15, 16, and 17 into Title 19, Unified Development Code;

Whereas, on October 19, 2016, the City provided 60-day notice of intent to adopt these development regulations to the Department of Commerce;

Whereas, on November 23 and November 30, 2016, the Planning Commission held a public hearing on the proposal;

Whereas, on December 19, 2016, the City Council held a public hearing and deliberated on the proposal;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

- Section 1. The Anacortes Municipal Code is amended as shown in Attachment A.
- Section 2. Development permit applications submitted and deemed complete prior to the effective date of this ordinance are to be processed under the procedures in effect prior to these amendments. Where a procedure in effect prior to these amendments references the Board of Adjustment, the Hearing Examiner will be utilized in its place.
- Section 3. This ordinance takes effect five days after publication or on January 1, 2017, whichever is later.

PASSED and APPROVED this ____ day of _____, 2016.

CITY OF ANACORTES:

Laurie Gere, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

Ordinance No. 2992

An Ordinance Amending Various Provisions of the Anacortes Municipal Code and Adopting a New Title 19, Unified Development Code

Whereas the Anacortes Municipal Code currently includes development regulations in Titles 15, 16, 17, and 18;

Whereas the City Council desires to clarify and consolidate its development regulations in a single title to provide effective and efficient rules for the public and city staff;

Whereas, on _____, the City provided 60-day notice of intent to adopt these development regulations to the Department of Commerce;

Whereas, on _____, the Planning Commission held a public hearing on the proposal;

Whereas, on _____, the City Council deliberated on the proposal;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

- Section 1. The Anacortes Municipal Code is amended as shown in Attachment A.
- Section 2. Conditional use permit, special use permit, and land division applications submitted and deemed complete prior to the effective date of this ordinance are to be processed under the procedures in effect prior to these amendments.
- Section 3. This ordinance takes effect five days after publication or on January 1, 2017, whichever is later.

PASSED and APPROVED this ____ day of _____, 2016.

CITY OF ANACORTES:

Laurie Gere, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

Chapter 1.04 General Provisions

AMC Section 1.04.010 is amended as follows:

1.04.010 Definitions.

The following words and phrases, whenever used in the ordinances of the city of Anacortes, Washington, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words and phrases:

- A. – F. *No change.*
- G. "Must" and "shall" are each mandatory ~~except as to agents and employees of the city of Anacortes and any board authorized by city ordinances where discretion is involved, in which case "shall" and "must" are a direction and authorization to act in the exercise of sound discretion and in good faith.~~
- H. – T. *No change.*

AMC Section 1.04.070 is amended as follows:

1.04.070 Computation of time.

~~Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is Sunday or a holiday, in which case it shall also be excluded.~~

- I. Except when otherwise provided, in computing any time period prescribed or allowed by this code, the day of the act, event, or default from which the designated time period begins to run is excluded. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the time period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.
- J. The legal holidays identified in RCW 1.16.050 are legal holidays for the purpose of this section.

Chapter 2.42 Planning Commission

2.42.010 Created.

There is created a planning commission of the city per RCW Chapter 35.63.

2.42.020 Membership.

There will be seven members of the commission, to be appointed by the mayor, by and with the consent of the city council. Members must be selected without respect to political affiliations and serve without compensation.

~~2.42.030—Membership—City officer.~~

~~One of the members may be an officer of the city, and his membership shall correspond with his tenure of office.~~

Commented [RW2]: Multiple statutes allow for the creation of planning commissions, so it is important to identify which we are relying on.

2.42.040 Terms of office.

The terms of members ~~not city officers~~ will, after the expiration of the term of those first appointed, be for six years. The members first appointed will hold office as follows: two for two years; two for four years; and two for six years. Vacancies other than through expiration of terms must be filled for the unexpired terms. Members may be removed, after public hearing, by the mayor with the approval of the council for inefficiency, neglect of duty, or malfeasance in office.

2.42.050 Powers and duties.

The planning commission of the city will have all of the powers and perform each and all of the duties specified by ~~Chapter 44 of the Sessions Laws of 1935, together with any other duties or authority which may hereafter be conferred upon them by the laws of the state, the performance of such duties and the exercise of such authority to be subject to each and all the limitations expressed in such legislative enactment or enactments~~ AMC Title 19.

2.42.060 Organization.

The commission will elect its own chairman and create and fill such other offices as it may deem necessary, and will hold at least one regular meeting in each month for not less than nine months of the year. It will adopt rules for the transaction of its business and will keep a written record of all of its proceedings, which record will be a public record.

2.42.070 ~~Service without compensation~~—Quorum.

~~The members of the commission will act without compensation.~~ Four members present and voting constitute a quorum.

Commented [RW3]: References RCW 35.63.060, which is somewhat meaningless.

Commented [RW4]: Moved to 2.42.020.

15.20 Building Permits

AMC Chapter 15.20, Building Permits, is repealed.

15.32 Underground Utilities

AMC section 15.32.120, Variance procedure, is repealed.

16.04 General Provisions, Definitions, and Exemptions

AMC 16.04.104, Variances, exceptions and waiver of conditions, is repealed.

AMC 16.04.106, Complete application, is repealed.

16.08 Short Subdivisions and Short Plats

AMC 16.08.040, Appeals, is repealed.

Commented [GL5]: Added 12/7; appeals are addressed in 19.20.030 & .210

16.10 Binding Site Plans

AMC 16.10.090, Approval Procedure, is repealed.

AMC 16.10.300, Appeals to the board of adjustment, is repealed.

16.12 Preliminary Plats for Standard Subdivision

16.12.020 Review Procedure, subsections A through D and subsections F through I are repealed, and the section is retitled "Approval Criteria."

16.16 Final Plats

16.16.030 Review Procedure is amended as follows:

16.16.030 ~~Review Procedure~~Approval Criteria

- ~~A. When a final plat application meeting the requirements of this title has been submitted, the administrator shall transmit the original final plat application first to the planning commission and then to the city council for consideration within thirty days from the date of its submission unless the applicant consents to an extension of the time period for such review.~~
- ~~B. A. The planning commission and city council shall at their public meetings consider the final plat application. If the city council finds that the final plat meets the requirements as set out in the preliminary plat approval conditions, the final plat will be approved.~~
- ~~C. The city council shall act on the final plat within thirty days from submission of a complete application, unless the applicant consents to an extension of such time period.~~

16.24 Modifications and Exceptions

AMC 16.24.020 Procedure, is repealed.

16.28 Recreational Vehicle Parks

AMC 16.28.040, Grading and drainage, and AMC 16.28.100, Application procedure, is repealed. The remainder of this chapter is recodified as AMC 19.60.070, Recreational Vehicle Parks, with the modification below to AMC 16.28.090.

16.28.090 - ~~Commercial use~~Retail sales.

No retail sales uses ~~should be~~ allowed within the park ~~unless a specific site for such use, limited to park users, is approved by the city council.~~

16.40 Planned Unit Developments

AMC Chapter 16.40, Planned Unit Developments, is repealed.

17.04 General Provisions

AMC 17.04.010, Introduction, is repealed.

AMC 17.04.030, Enacting clause, is repealed.

AMC 17.04.070, Application submission and review procedures, is repealed.

AMC 17.04.080, Severability and savings provision, is repealed.

Commented [RW6]: Subsection B is incorporated into Title 19. The rest of this section is surplusage.

Commented [RW7]: This section says not much, but then again restates Superior Court appeal provisions.

AMC 17.04.090, Consistency, is repealed.

Commented [RW8]: This section either restates 36.708.030 or says nothing.

17.06 Definitions

AMC 17.06.395, Home occupation, is repealed.

AMC 17.06.400, Home occupation signs, is repealed.

17.08 Administration

AMC Chapter 17.08, Administration, is repealed.

Commented [RW9]: 17.08.100, garage sales, will be reconstituted somewhere else in a future code package.

17.10 Board of Adjustment, Planning Commission, and Conditional Uses

AMC Chapter 17.10 is retitled "Restaurant Sidewalk Uses and Adult Concessions."

AMC 17.10.010-.060, regarding the Board of Adjustment, are repealed.

AMC 17.10.070-.090, regarding the Planning Commission, are repealed.

AMC 17.10.100-.130, regarding conditional uses, are repealed.

AMC 17.10.170, Accessory dwelling units, is repealed.

AMC 17.10.180, Procedure for accessory dwelling unit permits, is repealed.

17.14 Amendments and Rezones

AMC Chapter 17.14, Amendments and Rezones, is repealed.

17.44 Planned Unit Development and Cottage Housing

AMC Chapter 17.44, Planned Unit Development and Cottage Housing, is repealed.

Commented [GL10]: Added to correspond with repeal of AMC 16.40, Planned Unit Developments (12/7)

17.46.020 Parking

AMC 17.46.010.D is amended as follows:

~~In-For~~ uses not specifically mentioned herein, ~~the decision maker must determine the~~ off-street parking requirement ~~shall be fixed by the planning commission~~ based generally on the requirements for similar uses.

AMC 17.46.020 is amended as follows:

The minimum number of off-street parking shall be determined in accordance with the following table, ~~except where the minimum number of off-street parking spaces is varied by the planning commission (appealable to city council) with a documented finding that the overall parking situation in the project vicinity will not be adversely affected.~~ One bicycle rack space shall be provided for every five parking spaces.

[No changes to table or remainder of the section.]

17.60 Nonconforming Uses

AMC Chapter 17.60, Nonconforming Uses, is repealed.

17.62 Public Hearings

AMC Chapter 17.62, Public Hearings, is repealed.

17.70 Critical Area Regulations

AMC 17.70.050.D(1) is revised to read:

1. ~~Appeal Board. Variances to this chapter must be processed according to the procedures in Title 19.~~

AMC 17.70.050(D)(a) – (f) relating to the board of adjustment is repealed.

17.75 Essential Public Facilities

AMC 17.75.04, Procedure, is repealed.

AMC 17.75.060.B.2 is revised to read:

Type Two Facilities. Type Two essential public facilities shall be required to provide a notice of application ~~as required by AMC [Section] 17.04.070.~~

AMC 17.75.060.C.2 is repealed.

AMC 17.75.060.F.2 is revised to read:

The proposal complies with applicable requirements of ~~Chapter 17.10.100~~ AMC Chapter 19.36 Conditional Uses and all other applicable provisions of the City Code;

18.04 State Environmental Policy Act

Modify only the following section:

18.04.250 Appeals

~~D.B. The city elects not to have an agency administrative appeal. Appeals of SEPA threshold determinations are processed per AMC Title 19.~~

~~E.C.~~ The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal.

18.16 Shoreline Master Plan

The following sections of AMC Chapter 18.16 are amended as follows:

18.16.050 - Table of permits and procedures.

Table 1 below classifies shoreline development permits by procedure type, decision maker, and type of public notice.

Table 1

Permit Application	Decision maker	Public Notice	Notes
Shoreline Substantial Development Permits	Planning Commission or City Council As provided in Section 18.16.100(B)(2)	a. Mailed to property owners w/in 300 ft. b. Posted on-site c. Published notice	See Section 18.16.040 for definition and approval criteria.
Conditional Use Permits	Planning Commission or City Council As provided in Section 18.16.100(B)(2) Department of Ecology	a. Mailed to property owners w/in 300 ft. b. Posted on-site c. Published notice	See Section 9.1 of the Shoreline Master Program for definition and approval criteria. After local government approval, the permit is submitted to the Department of Ecology for the department's approval, approval with conditions, or denial WAC 173-27-110.
Variances	Planning Commission or City Council As provided in Section 18.16.100(B)(2) Department of Ecology	a. Mailed to property owners w/in 300 ft. b. Posted on-site c. Published notice	See Section 9.2 of the Shoreline Master Program for definition and approval criteria. After local government approval, the permit is submitted to the Department of Ecology for the department's approval, approval with conditions, or denial WAC 173-27-110.

18.16.100 - Administrative authority and responsibility.

~~F.D.~~ Shoreline Administrator. The shoreline administrator is vested with the following authority and responsibility:

1. Overall administrative responsibility for this master program.
2. Authority to grant written permit exemptions from shoreline substantial development permit requirements of this master program.
3. Authority to approve or recommend ~~to the planning commission~~ approval, approval with conditions, or denial of applications for shoreline ~~substantial development~~ permits and permit revisions in accordance with the policies and regulations of this master program consistent with AMC Chapter 19.20 Application Procedures. Chapter 19.20 Application Procedures.
4. Advising interested citizens and project proponents of the goals, policies, regulations and procedures of this master program.
5. If a nonconforming use is discontinued for a period of twelve months in any consecutive two-year period, it shall lose its nonconforming status, and the continued use of the property shall be required to conform to the provisions of this master program and the Act.

~~G.E. The decision maker per AMC 19.20.030 Types of Review is authorized to approve, approve with conditions, or deny shoreline permits consistent with the procedures in AMC Chapter 19.20 Application Procedures is authorized to approve, approve with conditions, or deny shoreline permits consistent with the procedures in AMC Planning Commission/City Council. The planning commission/city council Chapter is vested with the following authority: 19.20 Application Procedures.~~

- ~~1. Authority to approve, approve with conditions, or deny shoreline substantial development permits, variance permits, and conditional use permits after considering the findings and recommendations of the shoreline administrator at an open record public hearing.~~

~~For each shoreline substantial development/conditional use/variance permit application an open record public hearing shall be held before the planning commission. For project improvements valued at less than one million dollars on project sites less than three acres in size, the planning commission may approve, approve with conditions, or deny the permit unless an appeal of the planning commission's action is filed. Any aggrieved party shall have five working days from the date of the action to appeal the action of the planning commission to the city council. The appeal shall be in writing and is to be filed with the city clerk. After considering the record and any appeal, the city council shall decide whether to grant, deny, or grant the permit with conditions, and shall issue a written decision. If an appeal is filed by an aggrieved party, this appeal shall be a closed record appeal to the city council who shall decide the matter. For project improvements valued at one million dollars or more or for project sites three acres or more in size, the city council shall decide in a closed record appeal format upon recommendation of the planning commission. The planning commission shall record their recommendations, their reasons for recommendation, and any conditions recommended to be placed on the application. This record is to be sent to the city council.~~

Commented [RW11]: The substance of this section is encapsulated in the new AMC Title 19 procedures section.

New Title 19 Unified Development Code

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Division 1 General and Legislative Provisions

Chapter 19.10 General Provisions

19.10.010 Purpose.

The purpose of this Title is to implement the Comprehensive Plan and state laws related to land use and development in a manner that is clear, concise, and understandable. It is also intended to comply with state rules for combining and expediting development review and integrating environmental review and land use development plans.

19.10.020 Applicability

This Title is applicable to all land and land uses within the corporate limits of the City of Anacortes, and the City's urban growth area, except as pre-empted by law or interlocal agreement. All city departments, and the City itself, are subject to this Title.

19.10.030 Administration

The Director has the duty to administer and enforce AMC Titles 16, 17, 18, and 19.

19.10.040 Fees and costs.

- A. The City Council may, by resolution, adopt a schedule of fees for permit applications and appeals. Per RCW 82.02.060, impact fees must be adopted by ordinance.
- B. The cost of postings, mailings, and publications must be paid for by the applicant.

19.10.070 No special duty created.

- A. It is the purpose of this title to provide for the health, welfare, and safety of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this title.
- B. Nothing contained in this title is intended to be nor may be construed to create or form the basis for any liability on the part of the city or its officers, agents, and employees for any injury or damage resulting from the failure of any premises to abate a nuisance or to comply with the provisions of this title or be a reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this title, or by reason or a consequence of any inspection, notice or order, in connection with the implementation or enforcement of this title, or by reason of any action of the city related in any manner to enforcement of this title by its officers, agents or employees.

19.10.080 Savings.

Nothing contained in this title may be construed as abating any action now pending under or by virtue of any ordinance of the city herein repealed, or as discontinuing, abating, modifying, or altering any penalty accrued or to accrue, or as affecting liability of any person, firm or corporation, or as waiving any

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Commented [RW14]: Title 15 will no longer exist by the effective date of this Title.

right of the city under any ordinance or provision thereof in force at the time of passage of the ordinance codified in this title.

19.10.090 Severability.

If any provision of this title is declared unconstitutional or invalid by any court of competent jurisdiction, it must be conclusively presumed that this title would have been enacted without the provision so held unconstitutional or invalid, and the remainder of this title must not be affected as a result of any part being held unconstitutional or invalid.

Chapter 19.12 Definitions and Interpretation

19.12.020 Definitions.

The following definitions are added to this section:

The following definitions apply to this title; other definitions may be found in individual chapters:

"Accessory dwelling unit (ADU)" means a second dwelling unit, that has separate kitchen, sleeping, and bathroom facilities, and is attached or detached from the primary residential unit on a lot.

"Appellant" means a person who files a complete and timely appeal of a city decision.

"Appellate body" means that officer or body prescribed by this Title as having the authority to hear the appeal of a development permit.

"Applicant" means a person seeking development or permit approval from the City.

"AMC" means the Anacortes Municipal Code.

"Boundary line adjustment" means the adjustment of a boundary line between existing lots.

"Burden of proof" means a party's duty to prove an assertion or charge.

"Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.

"Comprehensive Plan" means the City's Comprehensive Plan adopted pursuant to RCW Chapter 36.70A.

"Comprehensive Plan amendment" means an amendment or change to the text or maps of the Comprehensive Plan.

"Conditional use" or "CUP" means a use that may be restricted as a condition of approval.

"Day" means calendar day, not business day, unless otherwise specified. But see AMC 1.04.070, Computation of time.

"Decision" means the written report of findings and conclusions issued by the decision-maker.

"Decision-maker" means that officer or body prescribed by this Title as having the authority to approve, approve with conditions, or deny a development permit or hear an appeal and issue a revised decision.

"Department" means the City of Anacortes Department of Planning, Community, and Economic Development.

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"Development" means any land use, activity, or project regulated by AMC Titles 13, 16, 17, and 18, including but not limited to building permits, subdivisions, binding site plans, rezones, conditional use permits, shoreline permits, short plats, or variances.

"Development permit" means a permit or approval for a development, and includes project permits per RCW 36.70B.020.

"Director" means the Director of the Department or the Director's designee.

"Effective date" means the date a final decision becomes effective.

"Family" means:

- A. One person or two or more related persons living together.
- B. No more than five unrelated persons living together as a single nonprofit housekeeping unit.
- C. Unrelated persons living together in a state licensed adult family home pursuant to RCW 70.127.010, with the provider's family counting as up to six persons not related to the providers living with them as one housekeeping unit for profit.
- D. In a single-family dwelling, one roomer or boarder is permitted in addition to the family.

"Final decision" means the final City action, in writing, to approve, approve with conditions, or deny a permit application.

"Home Occupation" means any activity undertaken for financial gain or profit and carried on in a dwelling, or building accessory to a dwelling.

"Lot of record" means a lot which is described by a final plat, short plat, or metes and bounds, and is established consistent with applicable local and state regulations at the date a legal instrument creating the lot is recorded at the Skagit County auditor's office.

"Nonconforming" or "pre-existing nonconforming" means a use or structure that was legally established when it was commenced or constructed but does not conform to laws or rules that were subsequently adopted.

"Open record hearing" means a hearing conducted by a single hearing body or officer authorized by the city to conduct such hearings, that creates the city's record through testimony and submission of evidence and information, under procedures prescribed by the city by ordinance or resolution.

"Open record predecision hearing" means an open record hearing held prior to the City's decision on a project permit.

"Open record appeal hearing" means an open record hearing held on an appeal if no predecision hearing has been held on the project permit.

"Party of record" means a person who has testified at a public hearing, or submitted a written statement related to an application within the allowed timeframe, and who provides the City with a complete mailing address.

"Plat" means a scale drawing of a subdivision showing lots, blocks, streets, or tracts, or other division or dedications of land to be subdivided.

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Commented [GL20]: Added 12/7.

Commented [GL21]: Added 12/7.

Commented [GL22]: Added 12/7.- From RCW 36.70B.020(3)

Commented [GL23]: Added 12/7. From RCW 36.70B.020(3)

Commented [GL24]: Added 12/7. From RCW 36.70B.020(3)

"Plat, final" means a precise scale drawing of a subdivision and dedications which conforms to the approved preliminary plat, meets all the conditions of approval, and meets the requirements of the Skagit County Auditor for recording.

"Plat, final short" means a precise scale drawing of a short subdivision and dedications which conforms to the approved preliminary short plat, meets all conditions of approval, and meets the requirements of the Skagit County Auditor for recording.

"Plat, preliminary" means a neat and approximate scale drawing of a proposed subdivision, showing the existing conditions and the proposed layout of streets, lots, blocks, and other information needed to properly review the proposal.

"Plat, preliminary short" means a neat and approximate scale drawing of a proposed short subdivision, showing the existing conditions and the proposed layout of streets, lots, blocks, encumbrances, encroachments, and other information needed to properly review the proposal.

"Plat, short" means the plat of a short subdivision.

"Public meeting" means a quorum of city council or other decision-making body gathering with the collective intent of transacting city business. A public meeting does not include an open record hearing.

"Rezone" means an amendment which changes the use classifications and/or boundaries upon the official zoning map.

"Shoreline permit" means a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance issued pursuant to the City's Shoreline Master Program.

"Site plan" means a map or representation of a site showing thereon the location of various features of a particular proposal, such as setbacks, buildings, parking areas, and other items.

"Site plan, binding" means a site plan reviewed and approved pursuant to AMC Titles 16 and 17 and AMC Chapter 16.10, containing the inscriptions or attachments setting forth the limitations and conditions of use for a specific parcel of property and meeting the requirements of the Skagit County Auditor for recording.

"Standard of review" means the amount of deference given by an appellate body in reviewing a decision of a lower decision-maker.

"Subdivision, short" means the division or redivision of land into nine or fewer lots for the purpose of sale, lease, or transfer of ownership.

"Subdivision" means the division or redivision of land into ten or more lots for the purpose of sale, lease, or transfer of ownership.

"Substandard lot" means a lot that does not meet current city standards for area, width, street frontage, or other dimensional characteristics for the zone in which it is located.

"Variance" means an adjustment from a dimensional or numeric standard of Title 17 or 19 issued per AMC Chapter 19.38 Variances.

19.12.040 Rules of interpretation.

- A. Within this title, all words used have their normal and customary meanings, unless specifically defined otherwise in this title.

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Commented [GL27]: Added 12/7.

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1. Words used in the present tense include the future.
 2. The plural includes the singular and vice versa.
- B. Distances are measured horizontally unless otherwise specified.
 - C. Interpretations of this code must be consistent with the Comprehensive Plan.
 - D. Interpretations related to uses in each zone should be based on the "purpose" section of each zone.
 - E. Where two applicable rules conflict within this title, the most restrictive controls.

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19.12.060 Supremacy.

In the event of a conflict between provisions of this title and AMC Title 13, 16, or 17, the provisions of this title control. In the event of a conflict between provisions of this title and AMC Chapter 18.16, Shoreline Master Plan, the provisions of AMC Chapter 18.16 control.

19.12.080 Administrative Interpretation.

Commented [GL30]: Section added 12/7.

- A. Consistent with RCW 36.70B.110(11), any person may submit a written request for an interpretation of this title. Any such request must:
 1. specify each code section for which an interpretation is requested;
 2. describe why an interpretation of each section is necessary;
 3. include any reasons or material in support of a proposed interpretation;
 4. include any fee established by the City Council for such requests.
- B. If the interpretation request is associated with a pending application for a development permit, the Director may consolidate the request with the process for review of the application. If the Director does not consolidate the request with an application, the Director must issue an interpretation within 60 days of receipt of the request and publish it to the City website.
- C. In making an interpretation, the Director must consider all of the following:
 1. the applicable provisions of the code including their purpose and context;
 2. the applicable provisions of the Comprehensive Plan and other relevant codes and policies;
 3. the impact of the interpretation on other provisions of the AMC;
 4. the implications of the interpretation for development within the City as a whole.
- D. The Director may respond to inquiries regarding the applicability and interpretation of various code provisions prior to or outside the context of a formal request for an administrative interpretation.
- E. An administrative interpretation is not binding on the Director or City, nor appealable, but the decision-maker on a relevant development permit application may treat an interpretation as persuasive authority.

Chapter 19.14 International Codes

AMC Chapter 15.05, Building Code, is recodified as AMC Chapter 19.14, International Codes.

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Chapter 19.16 Legislative Actions

19.16.010 Purpose.

This Chapter establishes a program and process for early and continuous public participation for land use legislation consistent with RCW Chapter 36.70A, the Growth Management Act.

19.16.020 Applicability.

- A. This Chapter applies to adoption and amendment of any of the following legislative matters:
 - 1. the Comprehensive Plan;
 - 2. the Comprehensive Plan land use map;
 - 3. implementing development regulations.
- B. This Chapter does not apply to any of the following quasi-judicial matters:
 - 1. development permit applications;
 - 2. rezones permitted by an existing Comprehensive Plan designation that do not require a simultaneous amendment to the Comprehensive Plan.
- C. This Chapter does not apply to any of the following legislative matters:
 - 1. adoption and amendment of international and uniform codes such as the International Building Code, International Fire Code, or other codes required by the State of Washington;
 - 2. adoption of regulations governing impact fees, development agreements, and amendment of this Chapter;
 - 3. adoption of technical appendices to the Comprehensive Plan that do not contain Comprehensive Plan goals or policies, such as the six-year capital facilities financing plan.

19.16.030 General requirements.

- A. All amendments to the Comprehensive Plan policies, Comprehensive Plan land use map, or development regulations require:
 - 1. a public hearing;
 - 2. review and recommendation by the Planning Commission; and
 - 3. final approval by ordinance.
- B. For amendments to the Comprehensive Plan policies or land use map, the City must:
 - 1. docket amendments per AMC 19.16.050; and
 - 2. adopt all amendments simultaneously each year; and
 - 3. may not adopt amendments more frequently than once per year except for amendments that qualify for one of the exceptions in RCW 36.70A.130(2)(a).
- C. For amendments to the development regulations, the City may:
 - 1. accept petitions for development regulation amendments as part of the annual docketing process; or

2. itself initiate the process of adopting or amending development regulations at any time.

19.16.040 Petitions.

- A. Types of petitions. A petition is one or more of the following types:
 1. an amendment to the Comprehensive Plan policies;
 2. an amendment to the Comprehensive Plan land use map (which requires a simultaneous rezone);
 3. an amendment to the development regulations.
- B. When to file.
 1. A petition must be submitted on or before the last business day of March, except that a City-initiated petition is not subject to this deadline.
 2. A petition for a rezone or map amendment may be considered only once between each Comprehensive Plan Periodic Update unless the applicant demonstrates a substantial change in circumstances. A petition for the same property may not be considered in consecutive years.
- C. How to file.
 1. A petition must be filed with the Department on forms provided by the Department.
 2. A petition must be filed with all fees required by the adopted fee schedule.
 3. A City-initiated petition does not require a written petition or fees.
- D. Contents of petition. A petition for amendment of the Comprehensive Plan or the development regulations must include the following:
 1. a detailed statement of what is proposed to be changed and why;
 2. a statement of anticipated impacts to be caused by the change, including geographic area affected and issues presented;
 3. a demonstration of why the proposal is needed;
 4. a statement of how the amendment is consistent with the Comprehensive Plan's vision and goals.
- E. A petition for a rezone or amendment of the Comprehensive Plan map must also include a detailed description of how the map amendment complies with:
 1. the land use designation criteria in the Comprehensive Plan; and
 2. approval criteria for map amendments and rezones.

19.16.050 Docketing.

- A. The Department must review all new petitions and any petitions deferred from the previous year's docket, and forward a recommendation to the City Council as to which petitions should be included in the next year's docket.
- B. In making its docket recommendation, the Department must consider whether:

1. the petition complies with the filing requirements;
 2. the petition, in light of all proposed amendments being considered for inclusion in the year's docket, can be reasonably reviewed within the staffing and operational budget allocated to the Department by the City Council;
 3. the proposed amendment, to be adopted, would not require additional amendments to the Comprehensive Plan or development regulations not addressed in the application, and is consistent with other goals, objectives and policies adopted by the City Council;
 4. the proposed amendment raises policy, land use, or scheduling issues that would more appropriately be addressed as part of an ongoing or planned work program, or as part of the periodic review cycle;
 5. some legal or procedural flaw in the petition would prevent its legal implementation; or
 6. the petition lacks sufficient information or adequate detail to review and assess whether or not the proposal meets the applicable approval criteria. A determination that the proposal contains sufficient information and adequate detail for the purpose of docketing does not preclude the Department from requesting additional information at any later time.
- C. Following receipt of the Department's docket recommendation, the City Council must hold a public hearing to allow applicants and the public to comment on the Department's recommendation. The City Council must subsequently consider the Department's recommendation and the public comment and decide which petitions to include as part of the annual docket.
- D. The City Council must include, exclude, or defer each petition.
1. Include. The City Council's decision to include a petition in the docket is procedural only and does not constitute a decision by the City Council as to whether the amendment will ultimately be approved.
 2. Exclude. The City Council's decision to exclude a petition from the docket terminates the petition.
 3. Defer. The City Council's decision to defer a petition means the City Council will consider the petition for docketing in the next annual amendment cycle.
- E. The petitions included in the docket must be processed according to the remaining sections of this Chapter, including public review and comment and Planning Commission recommendation, and final City Council action to approve, approve with modifications, defer to a subsequent amendment cycle, or deny each petition.

19.16.060 Environmental review of docket.

- A. After the Council establishes the year's docket of Comprehensive Plan amendments, the City must complete environmental review of all of the proposed amendments, consistent with the requirements of RCW Chapter 43.21C and AMC Chapter 18.04. For a site-specific Comprehensive Plan amendment, the applicant must submit a complete environmental checklist, required fees, and any other supporting information required by the Department.

- B. After receipt and review of the environmental checklist(s) for each of the docketed Comprehensive Plan amendments, the Department must issue threshold determination(s) on the docket of amendments.
- C. Any environmental review must consolidate, as much as practical, site-specific SEPA review with review of the entire docket of proposed Comprehensive Plan amendments to ensure adequate consideration of cumulative effects of the proposed amendments.
- D. A petition that is carried over from a previous year's docket to the next docket does not require a new SEPA checklist and fee, and is not required to be considered in the same environmental document as other proposals in the same docket. However, the Department may require additional SEPA analysis to assess the cumulative impacts of the various proposals constituting a docket.

19.16.070 Public notices.

- A. All public hearings and written comment periods that appear in this Chapter require public notice.
- B. Consistent with RCW 36.70A.035(1), "public notice" whenever it appears in this Chapter includes all of the following:
 - 1. publishing a native electronic copy of the document on the proposal's webpage on the Department's website;
 - 2. sending notice to the Department's e-mail list, including general lists or relevant lists for specific proposals or subject areas;
 - 3. publishing a paid notice in the City's official newspaper.
- C. For site-specific proposals (e.g. site-specific Comprehensive Plan map amendments), the initial "public notice" of a proposal also includes all of the following:
 - 1. posting notice on the property;
 - 2. mailing notice directly to the owners of the subject property and to all property owners within 300 feet of the subject property.
- D. Notices must include all of the following:
 - 1. a concise description of the proposal in plain English;
 - 2. information on how to provide comment on the proposal;
 - 3. deadlines for public comment;
 - 4. address of the project webpage.

19.16.080 Review by Planning Commission.

- A. Public Hearing.
 - 1. After environmental review, the Planning Commission must hold at least one public hearing before issuing a recommendation on each proposal.
 - 2. If necessary due to the number of people present to comment, the Planning Commission may continue the public hearing to another date, time, or location.

B. Deliberations.

1. Required consideration. The Planning Commission must consider the following in making its recommendation:
 - a. public hearing testimony and written comment received during any public comment period;
 - b. recommendations and analysis from relevant City advisory groups;
 - c. staff recommendations and analysis;
 - d. legal advice;
 - e. consistency of the proposal with the Comprehensive Plan;
 - f. for proposed Comprehensive Plan map changes, whether the proposal is justified by changed or changing conditions, whether the proposal would create an isolated land use designation unrelated to adjacent designations (a spot zone), and whether the proposal will be compatible with neighboring properties and not adversely affect the value of those properties.
2. Ability to ask follow-up questions. The Planning Commission may ask specific follow-up questions of those that testify or submit written comments in order to clarify their testimony or request specific further information.
3. Ability to continue deliberations. The Planning Commission may continue their deliberations to a subsequent meeting if it needs additional information or additional time to deliberate.

C. Recommendation to City Council.

1. Timing. At the conclusion of its deliberations, the Planning Commission must vote on the proposal.
2. Vote. The Planning Commission may vote to recommend approval, approval with modifications, or rejection of the proposal. The Planning Commission may recommend general modifications to the proposal and need not provide explicit textual edits.
3. Content. The Planning Commission's recommendation on a proposal must be by recorded motion, which must contain the following components:
 - a. Findings of fact: a list of facts that the Planning Commission believes to be true and that are relevant to its recommendation on the proposal.
 - b. Reasons for action: an explanation of the Planning Commission's rationale in making its recommendation.
 - c. Recommendation: the recommendation resulting from the vote.
 - d. Vote: a record of the roll call vote on the entire recorded motion.
 - e. Additional comments: other relevant comments, suggestions, or recommendations, not strictly related to the recommendation, that the Planning Commission desires to include.
 - f. Signature of the chair attesting that the recorded motion reflects the Planning Commission's decision.

19.16.090 Review by City Council.

- A. Upon receipt of the Planning Commission's recommendation, the City Council must consider and take action on the recommendation.
- B. The City Council may take final action with no further process in any of the following situations:
 - 1. when the plan, plan amendment, or development regulation to be adopted by the City Council conforms substantially to the proposal as made available for public comment;
 - 2. pursuant to RCW 36.70A.035, when any of the following are true:
 - a. An environmental impact statement (EIS) has been prepared under RCW Chapter 43.21C for the pending resolution or ordinance and the proposed change is within the range of alternatives considered in the environmental impact statement;
 - b. The proposed change is within the scope of the alternatives available for public comment;
 - c. The proposed change only corrects typographical errors, corrects cross-references, makes address or name changes, or clarifies language of a proposed ordinance or resolution without changing its effect;
 - d. The proposed change is to a resolution or ordinance making a capital budget decision as provided in RCW 36.70A.120; or
 - e. The proposed change is to a resolution or ordinance enacting a moratorium or interim control adopted under RCW 36.70A.390.
 - 3. when the action is to preserve the status quo and reject any and all changes in their entirety.
- C. Except as provided in subsection B, the City Council must allow additional public comment opportunity prior to final action. The City Council must choose one or more of the following options to provide such opportunity:
 - 1. an additional written public comment period;
 - 2. one or more public hearings before the City Council;
 - 3. remand of issue(s) to the Planning Commission for further recommendations after an additional written public comment period, or an additional public hearing, or both.
- D. If the City Council adopts a substantial change from the original proposal without remand, it must adopt its own findings of fact and reasons for action, setting forth the factors considered in the public comment or at the hearing and its own analysis of findings considered by it to be controlling.

19.16.100 Final Disposition of Annual Docket.

- A. The City Council must take action (approve, deny, or defer) on the current year's docket before establishing a subsequent docket.
- B. The City Council may defer action on any specific plan or plan amendment to a future docket if:
 - 1. Additional time is needed to analyze the impacts of the proposal;

2. Retaining the proposal on the docket would unfairly delay action on other proposals that are otherwise ready for a decision;
3. Approval of the proposal depends on the implementation of other rules, standards or policies that either do not exist or are not official by the time the City Council is ready to make its decision on the annual docket; or
4. The City Council determines that the proposed plan or plan amendment is more appropriately considered during a subsequent amendment process.

19.16.110 Emergency or interim regulations.

The provisions of RCW 36.70A.390 for emergency or interim maps or regulations or moratoria, if applicable, supersede the requirements of this Chapter.

Division 2 Procedures

Chapter 19.20 Application Procedures

19.20.010 Policy

This Chapter establishes standard procedures for review of development permit applications and appeals. These procedures are designed to promote timely and informed public participation, eliminate redundancy in the process, minimize delay and expense, and result in approvals that further the goals and policies of the Comprehensive Plan. These procedures are intended to be consistent with the provisions of RCW Chapter 36.70B and integrate the land use permit process with the environmental review process.

19.20.020 Applicability

- A. This Chapter applies to all applications and all development permits issued per AMC Titles 16, 17, and 19.
- B. Exemptions. Consistent with RCW 36.70B.140, the following permits are exempt from the procedural requirements of this chapter:
 1. sidewalk use permits;
 2. development agreements;
 3. final approval of short subdivisions and subdivisions.
 4. landmark designations and street vacations.

Commented [RW32]: RCW 36.70B.140 allows exemptions, but we may not find any others that should be included.

19.20.030 Types of Review

- A. Decisions on applications are governed by several types of review processes, described and distinguished in this section. The types of review are generally organized in ascending order of significance, amount of public process, and level of discretion exercised by the decision maker.

- B. The Director must determine the proper review type for all permit applications. If there is a question as to the appropriate type of process, the Director must resolve it in favor of the higher type number. A Type 3-PC review is considered a higher level than a Type 3-HE review.
- C. Table 19.20.030-1 identifies the types of review for all applications, and describes the process for each type of review.
 - 1. The types of applications that are subject to each type of review are listed in the column immediately beneath the heading for each type.
 - 2. The processes required for each type of review is further described by the remainder of the column beneath the heading for each type.
 - 3. The remainder of this Chapter describes the required processes for each type of review.

Table 19.20.030-1. Review Classification and Process Matrix

Types of Review	Type 1 Administrative Ministerial Actions	Type 2 Administrative Decisions	Type 3-HE Hearing Examiner Decisions	Type 3-PC Planning Commission Decisions	Type 4 City Council Decisions
Types of Applications	▪ Accessory dwelling units ▪ Building, mechanical, and plumbing permits ▪ Clearing and grading permits ▪ Extension of time for approval ▪ Shoreline exemptions ▪ Minor permit revisions ▪ Wireless Telecommunication uses in AMC 17.63.060	▪ Administrative conditional use permits, including home occupation permits ▪ Binding site plans ▪ Boundary line adjustments ▪ Level 1 variances ▪ Preliminary short subdivisions ▪ SEPA threshold determinations ▪ Stormwater Management Manual adjustments and exceptions	▪ Special use permits for towers or antennas ▪ Level 2 variances	▪ Shoreline Substantial Development Permits (SSDP) for projects valued less than \$1 million on site less than 3 acres ▪ Shoreline Conditional Use and Variance Permits ▪ Special use and reasonable use permits per AMC Chapter 17.70 ▪ Any other applications identified as "conditional uses" in AMC Title 17	▪ Conditional use permits, except administrative CUPs ▪ Essential Public Facilities, type 1 and 2 ▪ Manufactured home subdivisions ▪ Preliminary long subdivisions ▪ Modifications & exceptions per AMC Chapter 16.24 ▪ Site-specific rezones authorized by the comprehensive plan ▪ Shoreline Substantial Development Permits (SSDP) for projects valued at \$1 million or more or on site of 3 acres or more
Pre-Application Conference	At discretion of Director	At discretion of Director	Yes	Yes	Yes
Pre-Application Neighborhood Meeting	No	No, except for short plats at discretion of Director	Yes	Yes	Yes
Notice of Application	No	Yes	Yes	Yes	Yes
Comment Period	None	14 days	21 days	21 days (30 for shoreline permits)	21 days (30 for shoreline permits)
Recommendation By	None	None	Director	Director	Planning Commission
Pre-Decision Open-Record Public Hearing	No	No	Yes, before Hearing Examiner	Yes, before Planning Commission	Yes, before Planning Commission
Decision By	Director	Director	Hearing Examiner	Planning Commission	City Council
Notice of Decision	No	Yes	Yes	Yes	Yes
Local Appeal Available To	Hearing Examiner	Hearing Examiner	City Council	City Council	None
Appeal Hearing Type	Open-record	Open-record	Closed-record	Closed-record	N/A

Commented [GL34]: -Moved from Type 1 to Type 2 per PC recommendation. (12/7)

Commented [GL35]: Moved from Type 1 to Type 2 per PC recommendation. (12/7)

Commented [GL36]: Added 12/7.

Commented [GL33]: Language modified for consistency with 17.63.060. (12/7)

Commented [GL37]: Added 12/7.

Commented [GL38]: Added 12/7.

19.20.040 Consolidated review.

- A. Optional consolidated application processing. All projects that involve two or more application processes may, at the applicant's written request, be processed collectively under the highest numbered type procedure required for any part of the application or may be processed individually under each of the review procedures. If the application is processed under the individual procedures option, the highest numbered type procedure must be processed prior to the subsequent lower numbered procedure.
- B. Integration of environmental review. An application for a development permit that is subject to the State Environmental Policy Act (SEPA) must be reviewed per AMC Chapter 18.04 concurrently with review of the development permit application except where exempted by that chapter.
- C. Per RCW 36.70B.050, review of an application is allowed only one open record hearing and one closed record appeal hearing.
- D. The appeal of a SEPA procedural determination is not subject to this section.

19.20.050 Eligibility for permits.

- A. All development permits require a lot of record as described in AMC 19.20.060.
- B. The Department may not issue any development permit for a lot created through a division, conveyance, or segregation that was illegal or contrary to city subdivision laws or RCW Chapter 58.17.

19.20.060 Lots of record.

- A. In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this title, a single-family dwelling and customary accessory buildings may be erected on any single substandard lot of record at the effective date of adoption of the 1978 zoning ordinance. Such lot must have been in separate ownership and not of continuous frontage with other lots in the same ownership continuously since April 19, 1978. This provision applies even when such lot fails to meet the requirements for area or width, or both, that are generally applicable in the zone, provided that yard dimensions and other requirements not involving area or width, or both, of the lot conform to the current regulations for the zone in which such lot is located.
- B. If two or more contiguous substandard lots, or combination of contiguous substandard lots and portions of lots, were in single ownership of record as of April 19, 1978, or at any time since that date, they must be aggregated and considered a single parcel for purposes of meeting current area and dimensional standards for lots in the zone in which they are located. If all such contiguous land under single ownership still constitutes a substandard lot once aggregated, a single-family dwelling and customary accessory buildings may be erected thereon (or other uses generally permitted in the zone), provided setback, lot coverage, and other requirements are met. No portion of land or lots thus aggregated may be used or sold in a manner which creates or leaves remaining a substandard lot.
- C. Any residential lot or lots, which were used as residential prior to April 19, 1978, and have been in continual residential use since April 19, 1978, in a zone that is now zoned light manufacturing

Commented [RW39]: Added 12/7 to carry over provisions of repealed AMC 17.60.020.

must be considered a conforming, permitted residential use within the nonresidential designation. Other requirements of the nonresidential designation, such as lot size, setbacks, density, land coverage, building height, and parking apply to such residential lots.

19.20.070 Vesting.

- A. An application for a building permit or land division vests at the time a complete application is filed with the Department and all application fees are paid, consistent with RCW 19.27.095(1) and RCW 58.17.033(1).
 - 1. An application is complete on the date a complete application is filed, as subsequently determined in the letter of completeness.
 - 2. An application vested under this section is not subject to laws or regulations that become effective after the date of vesting, except as provided below.
- B. This section may not be construed to restrict the City from imposing conditions on development permits pursuant to the State Environmental Policy Act, RCW Chapter 43.21C, WAC Chapter 197-11, as long as such conditions do not change any of the requirements of the underlying code section pertinent to the particular development permit.
- C. This section may not be construed to prevent the City from imposing new regulations necessary to protect the public health and safety, including, but not limited to, the requirements of the building, health, and fire codes, as now adopted or as subsequently amended.

19.20.090 Requirements for public notices.

- A. Applicability. This section applies whenever one of the following is required by this Chapter:
 - 1. Notice of Application;
 - 2. Notice of Public Hearing;
 - 3. Notice of Decision, including any revised Notice of Decision.
- B. Distribution. The Department must timely distribute the notice by:
 - 1. Publication in the City's official newspaper.
 - 2. Electronic mail or first class mail to:
 - a. The applicant;
 - b. Any appellant;
 - c. Any parties of record;
 - d. Any person who, prior to rendering the decision, has requested a copy of the Notice of Decision;
 - e. Any agencies with jurisdiction over the application or any agencies that commented on the application;
 - f. Washington State Department of Transportation if the project is located adjacent to the right-of-way of a state highway;
 - g. Skagit County if the project is located adjacent to a city boundary.

3. For a Notice of Application, via first class mail to owners of property within 300 feet of the subject property.
 4. For a Notice of Decision, to the County Assessor.
 5. Posting on at least two notice boards on or near the subject property, and on the notice board at City Hall and public library. The Director may establish standards for size, color, layout, design, wording, and placement of the signs and notice boards.
- C. Errors in precise compliance with the rules contained in this section do not require repeating the public notice if the notice was reasonable and adequate.

Commented [RW40]: Added 12/7. Per RCW 36.70B.130.

19.20.110 Pre-application conference.

- A. Purpose. The pre-application conference is intended to:
 1. provide the City and other agency staff with information about the proposed development;
 2. enable staff to advise the applicant of applicable approvals and requirements;
 3. acquaint the applicant with the applicable requirements of the AMC and other laws; and
 4. identify issues and concerns in advance of a formal application.
- B. When required.
 1. Generally. A pre-application conference is required when shown in AMC 19.20.030 Types of Review.
 2. Exception. The Director may waive the pre-application conference if the proposal has few development-related issues, involves subsequent phases of an approved development, or is substantially similar to a prior proposal affecting substantially the same property.
- C. To schedule a pre-application conference, the applicant must submit a request on forms provided by the Department and pay any applicable fees.
- D. The advice the City provides at pre-application meetings is not binding upon the City and does not prevent the City from enforcing all applicable regulations.

19.20.120 Pre-application neighborhood meeting.

- A. Purpose. The purpose of the neighborhood meeting is to:
 1. Inform citizens about the potential project at an early stage; and
 2. Foster communication between the applicant and the public regarding potential issues and opportunities for solutions related to the project.
- B. When required.
 1. A pre-application neighborhood meeting is required when shown in AMC 19.20.030 Types of Review.
 2. The applicant must hold a neighborhood meeting before submitting an application and after any required pre-application conference.
 3. The Director may require the applicant to hold another neighborhood meeting if the applicant's plans change significantly from those described at the neighborhood meeting.

C. Meeting.

1. The meeting must be held in a public meeting place, such as the Public Library meeting room, Depot Arts Center, or City Hall.
2. The meeting must be facilitated by a third-party facilitator approved by the Director.
3. The meeting must be held Tuesday, Wednesday, or Thursday at 6 or 7 p.m. and may not overlap with any other City meeting or City holidays.

D. Notices.

1. The Director may provide standard notice formats and guidelines for conducting the meeting.
2. The notice must include:
 - a. a brief description of the project;
 - b. date, time, and location of the neighborhood meeting;
 - c. name and phone number of the applicant or their representative.
3. The notice must be mailed at least 10 days prior to the meeting to all of the following:
 - a. The Department;
 - b. The list of property owners that must receive the notice of application.
4. The notice must be published in the local newspaper at least 10 days prior to the meeting.
5. The applicant must also post the notice on the project site at least 10 days prior to the meeting.

- E. The applicant is responsible for all fees and costs associated with the pre-application neighborhood meeting.

19.20.130 Application—contents and completeness—revisions

A. Contents of applications.

1. An application must:
 - a. be submitted on forms provided by the Department;
 - b. be signed by the owners of the property subject to the application, or include the owner's notarized authorization for the applicant to submit the application;
 - c. include fees, as calculated by the Director following the adopted fee schedule.
 - d. include all the information specified in any applicable code section as well as the application checklist provided by the Department.
2. The applicant must apply for all permits identified in the pre-application meeting and required by law.

B. Complete applications.

1. A permit application is complete for the purposes of this section when it meets the requirements of section A.

2. When the Director makes a determination on completeness of an application, the Director must provide to the applicant either:
 - a. a written determination that the application is complete; or
 - b. a written determination that the application is incomplete, a request for information necessary to make the application complete, and a notice that the requested information must be submitted within 90 days.
 3. A determination of completeness is not required if the Director issues the permit prior to the deadlines in subsection C, Timing.
 4. A determination of completeness does not preclude the Director from requesting additional information or studies either at the time of the determination of completeness or later, if the information is required to complete review of the application or substantial changes in the permit application are proposed.
- C. Timing.
1. Initial receipt of application. Upon initial receipt of an application, the Director must provide the applicant a determination of completeness within 28 days. If the Director does not provide a written determination within 28 days, the application is deemed complete at the end of the 28th day.
 2. Receipt of additional information. When the applicant submits the requested information, the Director must evaluate the application for completeness within 14 days. If the Director does not provide a written determination within 14 days, the application is deemed complete at the end of the 14th day.
 3. Incomplete applications.
 - a. The applicant may submit a written request for extension of the deadline to submit the requested information for an additional 90 days. The Director may grant up to two such extensions.
 - b. If the applicant has not provided the requested information by the deadline, the Director must reject and return the application along with any unspent application fees.
- D. Revisions to applications.
1. The applicant may make minor revisions to the application after the determination of completeness and before the closure of an open public hearing.
 2. A "minor revision" to an application is one that does not:
 - a. Involve more than 10% increase in area or intensity of the use;
 - b. Increase the number of lots, dwelling units, or density;
 - c. Decrease the quality or amount of open space;
 - d. Result in any significant environmental impact not adequately reviewed or mitigated by previous documents;
 - e. Expand onto property not included in the original proposal.
 3. Any revision other than a minor revision requires a new application.

Commented [RW41]: Renumbered. (12/7)

Commented [GL42]: Updated 12/7.

19.20.140 Application—notice.

- A. When required. A Notice of Application is required when shown in AMC 19.20.030 Types of Review.
- B. Contents. The Notice of Application must include:
 - 1. the application number;
 - 2. the name of the applicant;
 - 3. the date of application, the date of the notice of completion for the application, and the date of the notice of application;
 - 4. identification of the location of the project, by address if available;
 - 5. a description of the proposed application, a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070;
 - 6. the identification of other permits not included in the application, to the extent known by the City;
 - 7. the identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
 - 8. a statement of the public comment period, which lasts the number of days specified for the application type in AMC 19.20.030 Types of Review; except all shoreline permits subject to the comment period as outlined in WAC 173-27-110(2)(e), which allows for a 30-day comment period.
 - 9. a statement of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights;
 - 10. the date, time, place and type of hearing, if applicable and scheduled at the date of notice of the application;
 - 11. a statement of the preliminary determination of consistency, if one has been made at the time of notice, and of those development regulations that will be used for project mitigation and consistency;
 - 12. if the City is using the optional DNS process (WAC 197-11-355), additional information will be added to the notice as required by WAC 197-11-355(2);
 - 13. any other information determined appropriate by the City, such as the City's likely threshold determination, if complete at the time of issuance of the notice of application.
- C. Timing.
 - 1. The Department must distribute a Notice of Application within 14 days of determination that an application is complete and at least 15 days prior to any open record hearing.
 - 2. Within seven days after the end of the public comment period, the Department must transmit the applicant a copy of public comments timely received in response to the Notice of Application together with a statement that the applicant may submit a written response to these comments within seven days from the date the comments are transmitted.

19.20.150 Application—department review.

- A. The Department has a duty to review each application for compliance with applicable city codes and to deny, or recommend denial of, or approve, or recommend approval of, an application based on its compliance with applicable city codes.
- B. If the Department is required to provide a recommendation to the decision maker or body making a recommendation on an application, the Department's recommendation must include all of the following:
 1. the date of determination of completeness;
 2. identification of city codes relevant to evaluation of the application;
 3. a statement of facts necessary for the decision maker to evaluate the application's compliance with applicable city codes;
 4. the Department's evaluation of whether the application complies with applicable city codes;
 5. a description of the public process the application is subject to;
 6. a description of any environmental review related to the application;
 7. draft findings of fact for the decision maker;
 8. any other information that is necessary to make a decision regarding the application.
- C. Requirement to consider comments:
 1. In making its recommendation or decision, the Department must consider written comments, and applicant's responses, that are timely received.
 2. Except for a determination of significance, the Department may not issue its SEPA threshold determination or issue a decision or recommendation on the application until the expiration of the public comment period on the notice of application.

Commented [GL43]: Revised 12/7.

Commented [RW44]: Added 12/7.

Commented [GL45]: Added 12/7.

19.20.160 Public hearings and meetings

- A. All hearings and meetings conducted as part of processing a permit application must be conducted consistent with this section.

Table 19.20.160-1. Types of hearings and meetings

	Open-record Pre-decision	Closed-record Decision	Open-record Appeal	Closed-record Appeal
Participation	Any interested party	Applicant and any party of record	The applicant, any appellant, and any party of record	The applicant, any appellant
Facts allowed outside the record	Yes	No	Yes	No
Standard of review	Compliance with AMC Titles 16, 17, 18, 19	De novo	Clearly erroneous	Clearly erroneous
Burden of proof	Applicant	Applicant	Appellant	Appellant

- B. Swearing-in required. Before testifying, any witness, including city staff, must be required to declare that he or she will testify truthfully, by oath or affirmation.
- C. Continuances. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a specified date and no further notice under this section is required.

Commented [GL46]: Updated language to match Title 20. (12/7)

19.20.170 Public hearing—notice.

- A. When required. A notice of public hearing is required for any public hearing held on a permit application pursuant to this chapter.
- B. Contents. The public notice must include:
 - 1. The application number;
 - 2. Project summary/description of each project permit application;
 - 3. The designation of the hearing body;
 - 4. The date, time, and place of the hearing and a statement that the hearing will be conducted in accordance with the rules of procedure adopted by the hearing body;
 - 5. General project location, vicinity, address, and parcel number(s), if applicable;
 - 6. The name of the applicant or applicant's authorized representative and the name, address and telephone number of a contact person for the applicant, if any;
 - 7. The SEPA threshold determination, or description thereof, will be contained in the notice, along with any appropriate statement regarding any shared or divided lead agency status and phased review and stating the end of any final comment period;
 - 8. A statement regarding the appeal process; and
 - 9. The date when the staff report will be available and the place and times where it can be reviewed.
- C. Timing.
 - 1. The Department must distribute, including by publishing in the City's official newspaper, a notice of public hearing at least 15 days prior to the date of public hearing.

Commented [RW47]: Consistent with WAC 173-27-110(3) for shoreline permits.

19.20.180 Decision—timing.

- A. Time limits.
 - 1. The decision-maker may not issue its decision on an application until the expiration of the public comment period on the notice of application.
 - 2. The final decision on an application for a development permit must be made within the time limits from determination of completeness listed in Table 19.10.200-1.

Commented [RW48]: Added 12/7, consistent with 36.708.110(6)

Table 19.20.180-1.

Type of Application	Time Limit
Preliminary subdivisions and binding site plans (RCW 58.17.140)	90 days
Final subdivisions (RCW 58.17.140)	30 days
All other development permits (RCW 36.70B.080)	120 days

3. The following time periods are excluded from the calculation of the time limits:
 - a. Any time required to correct plans, perform studies, or provide additional information.
 - b. Any time during which substantial project revisions are made or requested by an applicant, in which case the 120 days will be calculated from the time that the City determines the revised application to be complete.
 - c. Any time required for the preparation and review of an environmental impact statement.
 - d. Any time required to complete the process for the siting of an essential public facility.
 - e. Any time required to obtain any necessary variance.
 - f. Any time required for any administrative appeals.
 - g. Any time required for any administrative appeal of SEPA threshold determination, if applicable.
 - h. Any time required for any remand to the hearing body.
 - i. Any extension of time mutually agreed upon by the City and the applicant.
 - j. Any specific amount of additional time that the City determines is necessary for the processing of a specific complete project permit application.
4. Extension of Time. If the City is unable to issue its final decision on an application within the time limits provided for in this section, it must provide written notice to the applicant. The notice must include a statement of the reasons why the time limits cannot be met and an estimated date for issuance of the Notice of Decision.
- B. Effective Date. The decision is effective on the date stated in the decision, resolution, or ordinance. The date from which appeal periods may be calculated is the date of issuance of the decision.

19.20.190 Decision—notice.

- A. When required. When a final decision is made that requires a Notice of Decision per AMC 19.20.030 Types of Review or a decision is made on appeal, the Department must issue a Notice of Decision.
- B. Contents. The Notice of Decision must include:
 1. the application number;
 2. the name of the applicant;
 3. the name of the project;

4. the street address of the project site;
5. a description of the application;
6. the date of final decision on the application;
7. the date the Notice of Decision was issued;
8. the decision on the application;
9. any threshold determination made pursuant to RCW Chapter 43.21C;
10. a notice that affected property owners may request a change in valuation from the County Assessor for property tax purposes notwithstanding any program of revaluation;
11. the procedure for appeal and the deadline for filing an appeal.

Commented [RW49]: Added 12/7. Per RCW 36.708.130.

19.20.210 Appeals.

- A. Standing. The following parties have standing to appeal final decisions:
 1. The Director;
 2. The applicant;
 3. Any owner of the property subject to the application;
 4. Any party of record.
- B. Necessary parties. The following are parties to any appeal:
 1. The Director;
 2. The applicant;
 3. Any owner of the property subject to the application.
- C. Permissive joinder. The hearing body may add a party with standing to the appeal, after the appeal deadline has passed, upon the request of the party.
- D. Time to file. An appeal is timely only if it is:
 1. Filed with the City Clerk within 14 calendar days after written notice of the decision is mailed; and
 2. Accompanied by the appropriate appeal fee.
- E. Method of service. Appeals must be delivered to the City Clerk by mail or personal delivery before 5:00 p.m. on the last business day of the appeal period. Appeals received by mail after 5:00 p.m. on the last day of the appeal period will not be accepted, regardless when such appeals were mailed or postmarked.
- F. Contents. Appeals must be submitted on forms provided by the Department and contain the following:
 1. appellant's name, address, and phone number;
 2. a description of the appellant's standing to appeal;
 3. identification of the application or decision that is the subject of the appeal;

Commented [GL50]: Changed 12/7 per PC rec.

4. appellant's statement of grounds for appeal and the facts upon which the appeal is based, with specific references to the facts in the record;
 5. the specific relief sought;
 6. a statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature or the signature of the appellant's agent, provided such agent's authorization is in writing and accompanies the appeal.
- G. Automatic stay. Except for administrative appeals of SEPA threshold determinations, the timely filing of an appeal will stay the decision until such time as the appeal is concluded or withdrawn.
 - H. Procedures. The appellate body may provide in its procedures for a decision on the appeal after a hearing where the parties present argument, or new evidence when allowed by this Chapter; or after the parties submit written arguments.
 - I. Decision on appeal. The appellate body must issue a written decision on the appeal supported by written findings and conclusions, and the Department must distribute a revised Notice of Decision incorporating the decision on appeal.

19.20.220 Remand.

- A. In the event that the appellate body determines that the public hearing record is insufficient or otherwise flawed, the appellate body may remand the matter back to the original decision-maker to correct the deficiencies.
 1. The appellate body must specify the items or issues to be considered and the time frame for the additional work.
 2. The original public hearing may be re-opened if necessary for the limited purpose of addressing specific questions articulated by the appellate body.
 3. Only the parties of record to the open-record hearing, or in the case of an appeal, the parties to the appeal, may participate in the remand.
- B. The original decision-maker must affirm, modify, or reverse its original action based on the revised public record.

19.20.230 Reconsideration.

- A. A party to the underlying decision may seek reconsideration only of a final decision by filing a written request alleging specific errors on a form provided by the Department within 10 days of the date of decision.
- B. The decision-maker must consider the request without public comment or argument by the party filing the request. Reconsideration may be granted only when a material legal error has occurred or a material factual issue has been overlooked that would change the previous decision.
 1. If the request is denied, the previous action will become final.
 2. If the request is granted, the decision-maker may revise and reissue its decision or may call for argument in accordance with the procedures for closed-record appeals. If the decision is

revised and the decision requires a Notice of Decision, the Department must distribute the revised notice.

19.20.240 Exhaustion of administrative remedies.

- A. No further administrative appeals are available when the final appeal shown in AMC 19.20.030 Types of Review has been heard.
- B. A request for reconsideration is not required to exhaust administrative remedies.

Chapter 19.22 Concurrency

Reserved.

Chapter 19.24 Public Improvements

19.24.100 Public Improvements—Design Standards.

- A. Public improvements, private roads, private sewer connections, and private stormwater facilities must be constructed consistent with the most recent version of the Development and Engineering Standards promulgated by the City's Public Works Director.
- B. All public improvements must be extended as necessary to provide a smooth transition to existing improvements both laterally across the street and longitudinally up and down the street for drainage and vehicular and pedestrian traffic.

19.24.120 Public Improvements—Requirement.

- A. Applicability. This section applies to a building permit for construction of any new building or structure; or for the addition to or repair of an existing structure, the cost of which within a 12-month period exceeds 50% of the existing structure's current assessed value.
- B. A building permit must be conditioned to require public improvements as described below:
 - 1. Where the street, road, or alley providing access to a building site is developed in accordance with City's Development and Engineering Standards but only on the side of the street not abutting the building site, the public street for the undeveloped portion of the street immediately adjacent to the building site must be developed to match the improvements on the portion of the street which is developed.
 - 2. Where the building site abuts an existing arterial street as defined by the city functional classification system map, the public streets, alleys, and the storm sewer system abutting the property must be improved in accordance with City's Development and Engineering Standards.
- C. For a building permit to construct a single-family or duplex residential structure, the Director of Public Works may waive all or a portion of the construction of improvements required in this chapter if the applicant records a covenant not to oppose establishment of a local improvement district to construct such improvements required. The covenant must be on forms approved by the city attorney, executed by all persons having an interest in the property for which application for a building permit is being made, and run with the land and be binding on future owners of such land.

- D. No driveway access is permitted onto Anaco Beach Road where the driveway access can be constructed on property owned by the applicant to a local access street.

Chapter 19.28 Permit Revision and Expiration

19.28.010 Permit Revision.

- A. Type of review. A major revision to an approved permit requires a new application. A minor revision to an approved permit may be approved by the Director. The Director may condition approval to ensure compliance with this section.
- B. Types of revisions.
1. A major revision is any revision other than a minor revision, or a revision that does not qualify as a minor revision when considered cumulatively with other minor revisions since initial issuance of the permit.
 2. A minor revision is a revision that does not:
 - a. Increase the area of the use by more than 10%;
 - b. Increase the intensity of the use in a way that significantly affects the surrounding area in terms of traffic, noise, hours of operation, parking, or other impacts;
 - c. Increase the number of lots, dwelling units, or density;
 - d. Decrease the quality or amount of open space;
 - e. Result in any significant environmental impact not adequately reviewed or mitigated by previous documents;
 - f. Expand onto property not included in the original proposal.
- C. A permit revision may not extend the time for expiration.

Commented [GL51]: Updated section numbering. (12/7)

Commented [GL52]: Updated 12/7.

Commented [GL53]: Added 12/7.

19.28.020 Permit Expiration.

- A. Expiration Schedule. Permits and approvals have the following initial terms until expiration, and may be extended the number of times indicated for the length of extension indicated.

Table 19.28.020-1. Permit Terms and Extensions

Type of Permit or Approval	Initial Term	Number of Allowed Extensions	Length of Each Extension
Boundary line adjustment	1 year to record	0	n/a
Clearing, grading, grubbing	1 year to complete work	1	6 months
Conditional Use Permit	5 years to establish use	1	1 year
Preliminary Plat, Short Plat, Binding Site Plan	Time to submit final plat is as set forth in RCW 58.17.140.	0	n/a
Shoreline Exemption	1 year per SMP	0	n/a

Commented [GL54]: Added 12/7.

Type of Permit or Approval	Initial Term	Number of Allowed Extensions	Length of Each Extension
Shoreline Permits	2 years to commence construction; 5 years maximum. See WAC 173-27-090(4)	1	1 year
Reasonable Use Exception	5 years to establish use	1	1 year
Special Use Permit	See applicable code section		
Variance	5 years to establish use	1	1 year
Wetland Delineation Verification	5 years from city approval	0	n/a

- B. Shortening Permit Term. The City may, when issuing a decision, require a shorter expiration period than that indicated in subsection A when the nature of the specific development is such that the normal expiration period is unreasonable or would adversely affect the health, safety, or general welfare of people working or residing in the area of the proposal. The decision-maker may adopt appropriate time limits as a part of action on shoreline permits, in accordance with WAC 173-27-090.
- C. Commencement of Permit Term. The term for a permit will commence on the date of the final decision; except that in the event the decision is appealed, the effective date will be the date of decision on appeal. The term for a shoreline permit will commence on the effective date of the permit as defined in WAC 173-27-090.
- D. When Permit Expires.
 - 1. A permit issued under this title will expire if, on the date the permit expires, the project sponsor has not performed the work indicated in Table 19.28.020-1 or fulfilled the requirements of the applicable permit.
 - 2. Exception. The initial permit term does not include the time during which a permit was not actually pursued by construction because of pending litigation related to the permit or because the applicant was diligently pursuing permits from other agencies necessary for construction.
- E. Extension of Land Use Applications. An extension may be granted by the Administrator for one year if the applicant has attempted in good faith to complete the proposed development activity necessary to meet the conditions of approval.
- F. Extension of Shoreline Permits. In accordance with Section 18.16.130.

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Division 3 Permits

Chapter 19.32 Land Divisions

Reserved.

Chapter 19.34 Boundary Line Adjustments

Reserved.

Chapter 19.36 Conditional Uses

19.36.010 Purpose.

Some uses in some zones are permitted subject to a conditional use permit because of their unusual characteristics, or special characteristics of the area in which they are to be located, so that they may be properly located with respect to the objectives of this title and their effect on surrounding properties.

19.36.020 Applicability.

The provisions of this chapter apply to all conditional uses.

19.36.030 Application requirements.

A conditional use requires a permit. An application must be submitted on forms provided by the Department, and must demonstrate compliance with the conditional use criteria described in this chapter.

19.36.040 Criteria.

- A. In order to grant a conditional use permit, the decision maker must find that the use would be consistent with the following criteria:
 - 1. the use would comply with any specific requirements for the conditional use specified elsewhere in this code;
 - 2. access to the site is appropriate considering the anticipated volume of traffic resulting from the use;
 - 3. off-street parking and loading facilities are adequate in terms of location, amount, and design to service the use;
 - 4. the amount and location of open space and the provision of screening is such that buffering of incompatible uses is achieved;
 - 5. the location and intensity of outdoor lighting is such that it does not cast light on adjacent, adjoining, or neighboring properties;
 - 6. hours and manner of operation of the proposed use, including anticipated noise generation, are not inconsistent with the adjacent or nearby uses;
 - 7. public facilities and utilities are capable of adequately serving the proposed use;
 - 8. the physical conditions of the site, including size, shape, topography, and drainage, are suitable for the proposed development;
 - 9. any other factors deemed relevant to the decision-maker.

19.36.050 Conditions authorized.

- A. In permitting a conditional use, the decision-maker may impose, in addition to regulations and standards expressly specified in this code, other conditions necessary to ensure compatibility with the conditional use criteria.
- B. These conditions may include, but are not limited to:
 - 1. Requirements increasing the required lot size or yard dimensions;
 - 2. Increasing street widths, controlling the location and number of vehicular access points to the property;
 - 3. Increasing the number of off-street parking or loading spaces required;
 - 4. Limiting the coverage or height of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character keeping with the surrounding area; and
 - 5. Requirements under which any future enlargement or alteration of the use must be reviewed by the city and new conditions imposed.

Chapter 19.38 Variances

19.38.010 Purpose.

The purpose of this chapter is to establish the criteria for a variance.

19.38.020 Applicability.

- A. Generally, variances are allowed to grant relief from dimensional or numeric standards, including:
 - 1. building size or height;
 - 2. landscaping;
 - 3. lot coverage;
 - 4. minimum density or maximum lot size;
 - 5. parking;
 - 6. setbacks.
- B. Variances are not allowed for any of the following:
 - 1. allowable, conditionally permitted, or prohibited uses in each zone;
 - 2. maximum density or minimum lot size;
 - 3. procedural or administrative provision of this Title;
 - 4. any provision of this code which, by the express terms of that provision, is not subject to a variance;
 - 5. any conditions of approval established during permit review;
 - 6. the provisions of AMC Chapter 17.70 Critical Areas.

19.38.030 Variance levels.

- A. Variances are categorized into two levels, as specified below or elsewhere in this Title.
 - 1. A Level 1 variance is any variance up to 25% of the numerical standard in question.
 - 2. A Level 2 variance is any variance that exceeds 25% of the numerical standard in question.
- B. A request for a variance must be reviewed as the highest level for which it qualifies.

Commented [GL56]: This section revised to reduce number of variance categories. (12/7)

19.38.040 Criteria.

- A. The City may approve or approve with modifications an application for a variance from the provisions of this code only if by preponderance of evidence, the applicant demonstrates that all of the following criteria are met:
 - 1. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone of the site;
 - 2. The variance is necessary because of the unique size, shape, topography, or location of the site;
 - 3. The site is deprived, by the provisions of this code, of rights and privileges enjoyed by other properties in the vicinity and same zone as the site;
 - 4. The variance is the minimum necessary to provide the site with those rights and privileges;
 - 5. The need for the variance is not the result of deliberate actions of the applicant or property owner;
 - 6. Granting of the variance will not be materially injurious to the property or improvements in the vicinity and zone in which the site is located;
 - 7. The variance is not inconsistent with the intent and purpose of the provision being varied.
- B. Conditions for granting. In authorizing the variance, the decision maker may attach any conditions that it deems to be necessary or desirable in order to carry out the intent and purposes of this chapter and in the public interest.
- C. Approval. If the variance application is approved, the applicant must record the variance against the property with the County Auditor on a form provided by the Department and provide the Department a copy of the recording.
- D. Transfer of ownership. A variance runs with the land. Compliance with the conditions of a variance is the responsibility of the current owner of the property, whether the applicant or a successor.

Division 4 Zoning & Land Uses

Chapter 19.40 Zoning

Reserved.

Chapter 19.42 Uses

19.42.010 Generally.

- A. Land uses within the City of Anacortes are allowed when identified in AMC Chapter 19.40 Zoning or AMC Title 17 as allowed in the zone as identified on the City's official zoning map.
- 1. "Permitted" uses are those that do not require discretionary land use approval permits, but may require building permits or other permits required by AMC Chapter 19.14 International Codes.
- 2. "Administrative Conditional Uses" are uses that require approval by the Director following the process in AMC 19.20.030 Types of Review.
- 3. "Conditional Uses" are uses that require a higher level of review following the process in AMC 19.20.030 Types of Review.
- B. A use that is specifically described as being prohibited in the applicable zone, or is listed in another zone but not in the applicable zone, is prohibited.
- C. If a proposed use is not listed, but is clearly similar to uses listed in the zone in which it is to be located, the decision-maker may determine it is substantially similar to a listed use and therefore allowed for the same level of review if:
 - 1. The proposed use substantially meets the intent of and is consistent with the goals, objectives, and policies of the Comprehensive Plan;
 - 2. The proposed use meets the stated purpose and general intent of the zone in which the use is proposed to be located;
 - 3. The proposed use shares characteristics common with and is not of greater intensity, density or generate more environmental impact than those uses listed in the zone in which it is to be located.

Commented [RW57]: Added 12/7/

Commented [RW58]: Added 12/7/

Chapter 19.44 Supplemental Use Criteria

19.44.010 Generally.

The requirements described in this chapter apply in addition to any other requirements of this code.

19.44.020 Accessory Dwelling Units

- A. Purpose. The purpose of an accessory dwelling unit is to:
 - 1. Add affordable units to existing housing and make housing units available to moderate-income people who might otherwise have difficulty finding homes within the city;
 - 2. Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages of their lives;
 - 3. Provide homeowners with a means of obtaining, through tenants in either the accessory dwelling unit or the principal residence, rental income, companionship, or security;
 - 4. Protect neighborhood stability, property values, and the character of the neighborhood.

- B. Applicability. This section applies to accessory dwelling units.
- C. Accessory dwelling units may be approved in the R1, R2, R3, R4, R4A, and R4B zones.
- D. Standards and criteria.
 - 1. An accessory dwelling unit may be established by any one or combination of the following methods:
 - a. Alteration of interior space of the residence; or
 - b. Conversion of an attic, basement, attached garage, or other portion of a residence; or
 - c. Addition of attached living area onto an existing residence;
 - d. Construction of a detached living area; or
 - e. New construction.
 - 2. Each single-family residence may have only one accessory dwelling unit and these two units may not be condominiumized.
 - 3. One of the dwelling units must be occupied by one or more owners of the property as the owner's permanent and principal residence. "Owners" include title holders and contract purchasers. The applicant must record a notice against the property title with the County Auditor, on forms provided by the Department, describing this requirement.
 - 4. The total number of persons who may occupy the principal and accessory dwelling units combined may not exceed the number of persons that are defined by this title as a "family."
 - 5. The habitable floor area of the accessory dwelling unit may not exceed 900 square feet.
 - 6. Any accessory dwelling unit included within a primary residence must have no interconnected interior spaces.
 - 7. A minimum of three off-street parking spaces must be provided for the principal and accessory dwelling units.
 - 8. The appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood. Only one entrance to the residential structure may be located on any street side of the structure; provided that this limitation shall not affect the eligibility of a residential structure which has more than one entrance on the front or street side on the effective date of the

Commented [GL59]: Changed to reflect current parking language per PC rec. (12/7)

Commented [GL60]: Added to reflect current language per PC rec. (12/7)

19.44.030 Adult Concessions

Reserved.

19.44.040 Bed and Breakfasts

- A. Purpose. This section is intended to ensure parking, impact on surrounding neighbors, health and safety, and other considerations limit any adverse impacts of bed and breakfasts on the surrounding neighborhood.
- B. Applicability. This section applies to all bed and breakfasts.

C. Requirements.

1. The owner must be the operator of the facility and must reside on the premises.
2. The owner's quarters and guest rooms must all be in the main building.
3. If located in a residential zone, the facility must be operated in such a manner as not to give the outward appearance of a business, in the ordinary meaning of the term, and may not infringe upon the right of the neighboring residents to enjoy a peaceful occupancy of their homes.
4. The use must provide off-street parking, including at least two spaces for the owner and one for each guest room.

19.44.050 Essential Public Facilities

Reserved.

19.44.055 Home Occupations

- A. Purpose. The purpose of a home occupation is to allow certain activities to be undertaken for gain or profit within a dwelling, or a building accessory to a dwelling, in any zone in which dwellings are present, while maintaining the residential character of the property and avoiding detrimental effects to the surrounding neighborhood.
- B. Applicability. This section applies to all home occupations except a home office or home telephone or internet sales, or similar use, with no customer or employee visits to the site.
- C. Requirements.
 1. The occupation must not create any noise, dust, glare, vibration, odor, hazardous waste, smoke, electrical interference, or other adverse impact to the surrounding residential area.
 2. The primary use of the premises must be residential and at no time may the home occupation exceed 25% of the floor area of the dwelling unit, not including the garage.
 3. There may be no exterior indication of the occupation, including no outdoor storage related to the occupation, nor exterior modification of the building(s) to accommodate the occupation, other than allowed signs.
 4. No person other than members of the family residing on the premises may be engaged in such occupation.
 5. If the occupation requires that customers or clients visit the premises, adequate off-street parking must be a condition of the permit, and traffic generated by the business may not exceed that which might reasonably be generated by residential use of the premises.
 6. A home occupation permit may not be transferred to another person.
 7. All regular business license requirements must be met.
- D. Any expansion or change of the nature of the home occupation that does not qualify for a minor permit revision requires a new permit.

19.44.060 Marijuana Producers, Processors, and Retailers

Reserved.

19.44.070 Recreational Vehicle Parks.

Reserved.

19.44.080 Schools

Reserved.

19.44.090 Telecommunications Facilities

Reserved.

Chapter 19.49 Nonconforming Uses and Structures

19.49.010 Intent.

The intent of this Chapter is:

- A. To permit nonconforming uses or structures to continue until they are removed, but not to encourage their survival, except as expressly provided in this Chapter; and
- B. That nonconforming uses or structures may not be used as grounds for adding other structures or uses prohibited elsewhere in the same zone; and
- C. That nonconforming uses or structures not be allowed to expand, be altered, or reconstructed except as otherwise outlined in this Chapter.

19.49.020 General rule.

- A. Any lot, building, structure, or use of land, legally permitted or established, must be permitted to continue consistent with this Chapter. A change in occupancy or ownership does not affect the right to continue such use, building, or structure.
- B. Any use for which a conditional use permit has been obtained is not a nonconforming use so long as the requirements of the conditional use permit are met.

Commented [RW61]: Because this is a rule, moved out of the intent section. (12/7)

Commented [RW62]: Added from AMC 17.60.070. (12/7)

19.49.030 Enlargement, Alteration, Expansion or Change of Nonconforming Uses.

- A. Nonconforming Uses. No nonconforming use may be permitted to be enlarged, altered, or expanded, except that a nonconforming use may be extended throughout any part of the building which was designed for its use prior to the time of the adoption of this Chapter. This extension is allowed; provided, that no structural alterations, except those required by law, are made therein, and that no expansion of the structure or parking requirements occurs.
- B. No nonconforming use may be allowed to be reestablished after abandonment. Thereafter, the use of the building, structure or site must be in conformity with the regulations for the district in which it is located.
- C. A nonconforming use may not hereafter be changed to any other nonconforming use, regardless of the conforming or nonconforming status of the building in which it is housed.

19.49.040 Enlargement, Alteration, Reconstruction of Nonconforming Buildings and Structures.

- A. Routine maintenance and repairs may be performed on a nonconforming structure or building.
- B. When a nonconforming building or structure is damaged by fire, natural disaster, or other calamity, and structural repairs needed to maintain a building or structure in a safe structural condition, the building or structure may be restored or replaced provided:
 - 1. A complete application for reconstruction or replacement is submitted within one year of the damage, and
 - 2. That the restoration or replacement must be made to conform to the regulations of the zoning district in which the building or structure is located, or if such regulations cannot physically be met without reducing the size of the building, the restoration may not extend any nonconformity that existed prior to the damage.
- C. Additions to nonconforming structures that meet all applicable zoning dimensional standards will not be considered an enlargement under this Subsection.

19.49.050 Abandonment.

- A. For the purposes of this section, abandonment will mean:
 - 1. An intention to abandon; and
 - 2. An overt act, which carries the implication that the owner does not claim or retain any interest in the right to the nonconforming use.
- B. Conformance after Abandonment. If any nonconforming use of land, building, or structure ceases for any reason whatsoever for a period of one year or more, any future use of such land, building or structure must thereafter be in conformity in the zoning district in which it is located. The mere presence of a structure, equipment, or material will not be deemed to constitute a continuance of a nonconforming use unless the structure, equipment, or material are actually being occupied or employed in maintaining such use.
- C. Procedure for Verifying Abandonment. When the Department obtains information indicating that a nonconforming use, building or structure has or may have been abandoned, the Department must send a letter by certified mail return receipt requested to the property owner requesting confirmation of either abandonment or non-abandonment. Documentation that the nonconforming use, structure, or building has been occupied, used, or maintained within the last year will be required. After notification, if the owner fails to respond to the request within 60 days, the building, structure, or use will be deemed abandoned. If the owner replies that the building, structure, or use is not abandoned, the Department may initiate a Level 2 review to determine if the abandonment has occurred.

Division 5 Community Design

Reserved.

Division 6 Project Design

Reserved.

Division 7 Environment

Chapter 19.70 Critical Areas

Reserved.

Chapter 19.72 Shorelines

Reserved.

Chapter 19.76 Stormwater

Adopted by ordinance 2991.

Chapter 19.78 Clearing and Grading

Adopted by ordinance 2991.

Division 8 Development Agreements

Chapter 19.80 Development Agreements

Reserved.

Chapter 19.82 Development Agreement with Port

AMC Chapter 17.74 is recodified as AMC Chapter 19.82. The code reviser is directed to include the date of adoption of the development agreement, March 29, 2005, in recodified AMC 17.17.250, and to update the cross-references in existing AMC 17.74.060.C to new AMC Chapter 19.38 Variances and new AMC Chapter 19.20 Application Procedures.

December 9, 2016

City of Anacortes

Mr. Don Measamer

PCED Director

Dear Mr. Measamer,



Response to Chapter 19 Draft 12/7/16

Insofar as there have been many changes to earlier drafts of Chapter 19 which have rendered much of my earlier comments invalid, please disregard my earlier comments. I have omitted points that have been addressed, and restated points that I think still bear consideration. Again, please note that any reference to a position (i.e. Director) is directed to the position and not to any past, present, or future holder of the position.

I think it important to remember that the "nuts and bolts" are still to be resolved. There is a process in place to begin the rewrite of the Subdivision and Zoning Codes. Until those are accomplished, I think it is important to err on the side of conservatism. While some of the proposed Code 19 may prove to be overly restrictive and addressed in the Subdivision and Zoning Codes, until such codes are in place and operational, it is important to provide a maximum of protection to the City and its Citizens. The beauty of the proposed Code 19 is, as stated, the ability to "fine tune" it without having to rewrite major sections of the code. The use of a Matrix allows the Council to move processes between levels with comparative ease as the Code and its associated Codes evolve. For this reason, I do not think it unduly burdensome to err on the side of conservative regulation until the entire structure has been developed. Not to do so risks allowing "precedent" to be created that may come back to haunt the City once the entire process has been completed.

Conversely, not addressing changes that have been made does not invalidate my earlier objections to the pre-change versions. As an example, the changes to "standing" are welcome and allow proper citizens input to take place. Should the "standing" language be changed from the 12/7/16 draft please consider my earlier objections.

19.20.030- There is still no mechanism for local appeal of the most complex and potentially intrusive developments, Standard Subdivisions, and Substantial Shoreline Permits. Admittedly there is no good way of working around the problem of an appeal body hearing both the appeal and ruling on the underlying application. While that is a major and desirable goal, the fact that it is difficult to achieve does not warrant forcing any appeal into Superior Court with its attendant costs. A mechanism for local appeal really needs to be in the code.

19.20.210.D.1 Time to file. "Filed with the City Clerk within 14 calendar days after written notice of the decision is mailed;" The intent of this is very good and removes an uncertainty about when an appeal

period starts. This also standardizes the appeal period as 14 days rather than having a variety of appeal periods scattered throughout the code.

19.38.030 Variance Levels- Requiring notice for all variances, and reducing the types of variances to two are both good changes. By requiring notice, a variance proposed for a ministerial use action would allow the neighbors to weigh in. This accomplishes notification without requiring notification for ministerial actions that do not propose special conditions. This is a good solution to allow public input without burdening either the City or the applicant for standard applications.

19.44.020 ADU's- There continues to be nothing but a "feel good" statement about ADU's providing affordable housing. That said, once again requiring offstreet parking is good. If a person desires an ADU and cannot provide adequate parking on site, they can apply for a variance. At that time, they can explain what compensating benefits will accrue to the neighborhood for imposing on street parking on their neighbors. This becomes especially important since ADU's continue to be proposed as type one ministerial actions which require no notice to the surrounding neighborhood. Additionally, the reinstitution of the requirement that an ADU fit with the existing look and feel of the residence and the neighborhood is very important. Again, if an ADU is allowed without notice to the neighborhood, it is very important that it not be intrusive to the existing neighborhood. Through the use of the variance procedure, some proposed architectural "oddity" will allow the neighborhood to weigh in. When the subdivision and zoning codes are rewritten, design standards for ADU's can be written to protect existing neighborhoods. It is essential to remember that many people purposefully moved into single family neighborhoods and to allow wholesale changes to existing neighborhoods without allowing residents to weigh in on those changes is not right, and is counter productive to creating a shared sense of community. Until the codes become a seamless whole, it is appropriate to err on the side of conservatism.

19.44.040 Bed and Breakfasts. Please consider adding the following to C.1 "The [property] owner must be the operator of the facility and must reside on the premises." The goal of the new Code 19 is clarity and this would make it clear that the property owner operates the B and B. Otherwise, it can be argued that a lessee of the property is the "owner" of the B and B and therefore meets the requirements.

Appeal fees- Are not addressed directly in this version. Staff has presented that hard costs should be recouped by appeal fees and has said such fees could be in the neighborhood of \$150 to \$200. An appeal fee in this range should not effectively limit the right of appeal. One clarification needs to be made. If there are multiple appellants the appeal fee should be prorated amongst all appellants rather than imposed individually on every appellant. It is important to remember that appeals are really infrequent and not the norm, even with the current lack of any appeal fee. The ability to appeal a decision is essential to provide a voice to all affected parties.

Transcripts- Paying for transcripts has also been dropped in this version. I would like to clarify my earlier comments about transcripts. I agree with staff that the cost of a transcript can be substantial and should not be borne by the City. My objection to the earlier language was that it appeared to require an appellant to pay for a transcript, whether or not the appellant wanted one. That would be a real barrier

to bringing an appeal. The City has a good video system and the public can easily extract relevant portions of a hearing without having to resort to a formal transcript. A simple solution is to require anyone who requests a transcript to bear the cost of producing the transcript. As staff pointed out, the city produces a transcript of a planning commission recommendation hearing to assist the council in making the actual decision. This is an instance where the transcript is for the benefit of the city and is properly paid for by the city. In an appeal situation, any party requesting a transcript should properly pay for said transcript.

Patrick M O'Hearn

11039 Post Drive

Anacortes, Wa 98221

Tom Allen
P.O. Box 817
Anacortes, WA 98221

December 11, 2016

To: Mayor Gere and Anacortes City Council Members

Re: Draft Title 19 Development Section of the AMC – Appeal Fees

Dear Mayor Gere and City Council Members,

The City is proposing appeal application fees. The amount of these fees as proposed from staff is \$150 - \$200. The burden on the applicant or landowner is far higher in cost including delays, engineering, peer review, attorney fees, etc.

I believe there should be a greater cost to the appellants and it should be in the range of \$1,500 to \$2,000. As a taxpayer that is paying for city staff and the cost(s) of meetings, this application fee should cover more than staff's estimate of "hard costs" of mails and notices. As Don Measamer pointed out in an earlier meeting there is a great range in fees between jurisdictions within a couple hundred miles of Anacortes. Why pick a price at the bottom of the range of other municipalities?

Additionally, transcript costs for the appellants should stay. This appellant cost for transcripts is in the code now and should be the burden of the appellant.

At 3:02 into the video minutes of the 12/5/16 City Council meeting, Cynthia Richardson spoke. I second and agree with the comments of Cynthia Richardson regarding building permits, etc. If there is a simple land use permit for a simple building, ADU or another permit. and you follow the code, you should be allowed the permit. No public notice should be required. The applicant should not need his/her neighbor's permission. You should only need neighborhood notification for an "exception request" as Cynthia Richardson pointed out.

Thank you for your review and consideration of my letter.

Regards,



Tom Allen



QUANTUM
CONSTRUCTION INC.

Rec'd 12/12/16
CC mtg

December 12, 2016

City of Anacortes *Affordable*
Re: Effects of Regulation on ~~Portable~~ Housing

Dear Mayor Gere, Anacortes City Council, and Anacortes Planning Commission,

Thank you for the opportunity to present this to you. I am here on behalf of local builders as the president of the Skagit/Island Counties Builders Association (SICBA), our local chapter of the National Home Builders Association (NAHB). I'm here on behalf of people who struggle to own a home, because SICBA was founded in 1979 to promote affordable home ownership for our friends and neighbors.

When reviewing video footage of the last Planning Commission meeting, I was caught off guard by someone's comment that minor regulation increases shouldn't impact construction of homes in Anacortes. I'd like to address the underlying myth of that statement.

NAHB conducted a study this year which found that the average cost of regulation on a new home is 24.3% of the cost of the home, or \$84,671 per home*. \$50,887 of this accrues during development, with the remaining \$33,784 during the actual construction process. In a different study in 2014, NAHB found that a \$1,000 increase in home price leads to a 206,269 home ownership decrease nationwide**.

Skagit County has about 45,841 households with a 66.8% home ownership rate***. Using these statistics on affordable housing, we can see that a \$1,000 increase in home construction cost keeps 76 families from being able to purchase a home, and an increase of \$10,000 would keep 760 families from owning a home****. To put this in perspective, a \$1,000 increase can easily be hit by less than a day of a project manager consulting with an architect and postage fees to adjacent neighbors. Essentially something as seemingly inconsequential as a public commentary requirement can have far reaching implications on affordable housing.

*Emrath, Paul, Ph.D, *Government Regulation in the Price of a New Home*, May 2, 2016

**Siniavskaia, Natalia S, Ph.D., *State and Metro Area House Prices: the "Priced Out" Effect*, August 1, 2014

***www.census.gov

****206,269 households divided by 124.6m households nationwide corresponds to a 0.166% change in home ownership per \$1,000 in home price change.



QUANTUM
CONSTRUCTION INC.

From the comments I've read and video I've watched on this issue in this room, affordable housing projects have not been cited by commentators as examples. Affordable home ownership is a constant struggle in our communities, identified by organizations ranging from the Skagit Community Foundation to Leadership Skagit. Changes to our building regulations equally affect affordable and not so affordable housing, so care needs to be taken that as codes are updated, we don't push the dream of home ownership further and further away from families.

In closing, let's loop back around to that cost of regulation statistic of \$84,671 per home. The impact of that on Skagit County is to keep 6,384 families from owning a home. Let's do our part to keep home ownership affordable for our friends and neighbors.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Josh Baldwin', with a long horizontal flourish extending to the right.

Josh Baldwin



HALINEN LAW

David L. Halinen, P.E., Attorney at Law

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December 12, 2016

VIA EMAIL (c/o don@cityofanacortes.org)

Mayor Laurie Gere and Anacortes City Council
PO Box 410
Anacortes, WA 98221

Re: MJB Properties LLC's comments on the portions of Proposed Ordinance 2992 dealing with currently proposed amendments to two sections of AMC Chapter 17.46 (PARKING) as set forth in regard to Agenda Item 7b of the City Council Agenda Bill for tonight's Council meeting

Dear Mayor Gere and Council Members:

I am writing on behalf of my client MJB Properties LLC ("MJB"), the owner of extensive properties in the City, to provide comments on the 12/7/2016 City-staff proposed revised version of Ordinance 2992 concerning the staff-proposed revisions to two sections of AMC Chapter 17.46 (PARKING). The staff-proposed revisions attached to the City Council Agenda Bill regarding those two sections are as follows:

17.46.020 Parking

AMC 17.46.010.D is amended as follows:

~~In-For~~ uses not specifically mentioned herein, the decision maker must determine the off-street parking requirement ~~shall be fixed by the planning commission~~-based generally on the requirements for similar uses.

AMC 17.46.020 is amended as follows;

The minimum number of off-street parking shall be determined in accordance with the following table, ~~except where the minimum number of off-street parking spaces is varied by the planning commission (appealable to city council) with a documented finding that the overall parking situation in the project vicinity will not be adversely affected.~~ One bicycle rack space shall be provided for every five parking spaces.

I have discussed by phone this afternoon with Planning Director Don Measamer a concept for further revisions to AMC 17.46.010.D and AMC 17.46.020 that would provide alternative minimum parking requirements for specific uses on specific development sites where the land use permit applicant demonstrates, through a parking study prepared by a qualified expert, that the alternative requirement will provide sufficient parking to serve the specific use without adversely impacting other uses and streets in the vicinity. Such an alternative approach is often appropriate in regard to mixed-use development projects.

As an example of a parking code provision from another city (the City of Redmond) that allows such an alternative parking requirements approach based on a parking study, I have attached to this letter a page out of Redmond Zoning Code Section 21.40.010 (Vehicle Parking) addressing this subject in subsection D (Required Off-Street Parking). Note the portion of the text that I have yellow-shaded and red-underlined.

In view of the above, MJB requests that AMC 17.46.010.D be further amended to read as follows:

~~In~~ For uses not specifically mentioned herein, the decision maker must determine the off-street parking requirement ~~shall be fixed by the planning commission~~ based generally on the requirements for similar uses or based on a parking study prepared by a qualified expert which demonstrates that an alternative requirement will provide sufficient parking to serve the specific use without adversely impacting other uses and streets in the vicinity.

For like reason, MJB requests that AMC 17.46.020 be further amended to read as follows:

The minimum number of off-street parking shall be determined in accordance with the following table, except that the decision maker may approve alternative minimum parking requirements for specific uses on specific development sites where the land use permit applicant demonstrates, through a parking study prepared by a qualified expert, that the alternative requirement will provide sufficient parking to serve the specific use without adversely impacting other uses and streets in the vicinity (in which case the decision maker may require the recording of a covenant or other instrument restricting the use of the property to the specific use for which the alternative minimum parking requirement was approved), ~~except where the minimum number of off-street parking spaces is varied by the planning commission (appealable to city council) with a documented finding that the overall parking situation in the project vicinity will not be adversely affected.~~ One bicycle rack space shall be provided for every five parking spaces.

Mayor Laurie Gere and Anacortes City Council
December 12, 2016
Page 3

Also, note that in the proposed ordinance "**17.46.020 Parking**" should be corrected to read "**17.46 Parking.**"

Thank you for your consideration of the requests set forth above.

Sincerely,

HALINEN LAW OFFICES, P.S.

David L. Halinen

David Halinen

Attachment

Cc: MJB Properties LLC
Attn: Jim Blais

Don Measamer, City of Anacortes Planning Director

Darcy J. Swetnam, Anacortes City Attorney

Grage, Libby

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:20 AM
To: Grage, Libby
Subject: Question

Hi, Libby. I am just trying to spread my questions around a little.

RE: 19.20.020 Applicability

B.2. are development agreements like a PUD or binding site plan? If not, what is a development agreement anyway?

Erica Pickett

Councilmember at Large, Position 7

293-6264

Grage, Libby

From: Measamer, Don
Sent: Monday, December 12, 2016 8:55 AM
To: Grage, Libby
Subject: FW: RV park language

FYI

Don Measamer, Director | Planning, Community & Economic Development Department
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1942 (work) don@cityofanacortes.org

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:04 AM
To: Measamer, Don <don@cityofanacortes.org>
Cc: Gere, Laurie <laurieg@cityofanacortes.org>
Subject: RV park language

Good morning, Don.

RE: 16.28 RV Parks

Suggest the following language:

Limited retail sales uses are allowed within the park.

RV park customers benefit from being able to buy things like snacks, drinks, hats and t-shirts at a small store in the park like the one at the Samish RV park.

Erica Pickett

Councilmember at Large, Position 7

293-6264

Grage, Libby

From: Measamer, Don
Sent: Monday, December 12, 2016 8:55 AM
To: Grage, Libby
Subject: FW: definition

FYI

Don Measamer, Director | Planning, Community & Economic Development Department
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1942 (work) don@cityofanacortes.org

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:12 AM
To: Swetnam, Darcy <darcys@cityofanacortes.org>
Cc: Measamer, Don <don@cityofanacortes.org>
Subject: definition

RE: 19.12

The public meeting definition is the definition of a city council meeting instead. There should be no decisions made at a public meeting, nor is the presence of the council mandatory at such a meeting. I am not sure what was intended with this definition, since a public meeting may include a neighborhood meeting held by a developer.

Maybe something like this:

A public meeting is a group of citizens coming together to gain information and exchange ideas. It must be held in a public place such as the library, depot, school or city hall and must be open to all who observe the rules of common courtesy.

Erica Pickett
Councilmember at Large, Position 7
293-6264

Grage, Libby

From: Measamer, Don
Sent: Monday, December 12, 2016 8:55 AM
To: Grage, Libby
Subject: FW: binding site plans

FYI

Don Measamer, Director | Planning, Community & Economic Development Department
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1942 (work) don@cityofanacortes.org

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:28 AM
To: Measamer, Don <don@cityofanacortes.org>
Subject: binding site plans

Hey, Don. Thanks for all your good work on the code. I do have a question about binding site plans, which are shown in the table to be administrative decisions. Do you think we might put an upper limit on the acreage here? I mean, at one point MJB was talking a binding site plan which ran to 20 acres. Do we think the community will hold still for an administrative decision on something like that?

Best,

Erica

Erica Pickett

Councilmember at Large, Position 7
293-6264

Grage, Libby

From: Measamer, Don
Sent: Monday, December 12, 2016 8:55 AM
To: Grage, Libby
Subject: FW: Remand 19.20.220

FYI

Don Measamer, Director | Planning, Community & Economic Development Department
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1942 (work) don@cityofanacortes.org

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:51 AM
To: Swetnam, Darcy <darcys@cityofanacortes.org>
Cc: Measamer, Don <don@cityofanacortes.org>
Subject: Remand 19.20.220

Would it be practical to remand to the hearing examiner for more information, etc.? He or she would be able to keep a lid on the testimony and would be a neutral party. That would be my choice if it is legal to do it that way.

Erica Pickett
Councilmember at Large, Position 7
293-6264

Grage, Libby

From: Measamer, Don
Sent: Monday, December 12, 2016 8:56 AM
To: Grage, Libby
Subject: FW: Home occupation (last one)

FYI

Don Measamer, Director | Planning, Community & Economic Development Department
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221
360.299.1942 (work) don@cityofanacortes.org

From: Pickett, Erica
Sent: Monday, December 12, 2016 7:58 AM
To: Measamer, Don <don@cityofanacortes.org>
Cc: Swetnam, Darcy <darcys@cityofanacortes.org>
Subject: Home occupation (last one)

Seeing as how the city would like to promote employment and business, why don't we strike 19.44.055 C.4. requiring that only family members be employed at the home occupation? We already require the home occ. to be essentially invisible to the neighborhood in C.1. I would think that would give us plenty of reason to shut one down should it become a nuisance. We really don't want to get into the business of figuring out who actually lives in a home, do we?

Thank you for your great patience.

Erica Pickett
Councilmember at Large, Position 7
293-6264

Tom Allen
P.O. Box 817
Anacortes, WA 98221

December 14, 2016

Re: Draft Title 19 Land Use Matrix

Dear Mayor Gere and City Council Members,

The City Council should review the Planning Commission decision to temporarily move Boundary Line Adjustments (BLAs) from the T-1 to T-2 column in the land use matrix. After prior public input there was confusion among planning commissioners about BLAs and at their direction the city staff temporarily moved the BLA to the T-2 column in the matrix until the City Council could have a look at BLAs.

Boundary Line Adjustments are excluded from subdivision land applications in RCW 58.17.040(6).

Vernon Lauridsen has testified (see Planning Commission video 11/30/16) that BLAs are not protected under RCW because of the use of underlying platted lots, streets and alleys. Instead, Lauridsen demanded that the City use parcel numbers for application of BLAs. This is wrong.

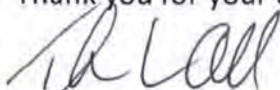
The Assessor's parcel number is a unique number assigned by the Assessor to each parcel of land. This number is used to represent your parcel for the County ownership records, to locate the property for assessed value, and to mail and collect tax bills. Although it describes the general location of your property, it is not a substitute for your legal description.

This is the key, "not a substitute for your legal description." It is ludicrous to assume, as Vernon Lauridsen suggests, that old plats in Anacortes should be ignored because they were done in the late 1800s, therefore BLAs should not be allowed without public input. As I have stated in a prior letter, Vernon Lauridsen is wrong in implying that the P # should prevail over the underlying lots, streets and alleys that have existed and had taxes paid on them before P #'s were used by the County.

I urge the City Council to adopt the Land Use Matrix with BLAs moved back to the T-1 column. No notices, no neighborhood meetings. A BLA should be handled by the Administrator.

BLAs are protected by Washington State law and exempt from normal land use application requirements such as subdivisions. We should continue to handle BLAs in the same customary manner that we always have in Anacortes. For more on BLAs see my attached letter, Exhibit A, to the City Council dated 12/5/16.

Thank you for your consideration,



Tom Allen

Tom Allen
P.O. Box 817
Anacortes, WA 98221

December 5, 2016

Re: Response to Public Comments COA Planning Commission Meeting of 11/30/16 - Draft Title 19 Development

Dear Mayor Gere and City Councilmembers,

Please find below my comments regarding Boundary Line Adjustments (BLAs). I am offering a rebuttal of Vernon Lauridsen's public comment testimony before the Planning Commission on November 30, 2016:

Boundary Line Adjustments (BLAs):

Vernon Lauridsen stated (at 28:40 minutes on the Planning Commission 11/30/16 video,) "Boundary Line Adjustments (BLAs) are used to substitute for basic subdivisions in Anacortes."

This is not true. With a Boundary Line Adjustment (BLA) the properties are already subdivided with platted lots, streets and alleys. The BLA is a means of defining the area of a lot that meets the underlying zoning requirements (R-2, R-3, etc.) This does not create lots. In fact, in most cases the combining of existing lots reduces the overall number of lots after the BLA is completed. This right of a BLA is protected under Washington State law.

RCW 58.17.040 (6)

Vernon Lauridsen stated (at 30:00 min on Planning Commission 11/30/16 video,) "BLA's are used to 'get around' subdivisions."

This is also simply not true. The applications that are put forth for BLAs are already on subdivided lots. This is a very important point.

RCW 58.17.033

This RCW lists application procedures for short plat or preliminary plat approval only. These are new subdivision applications. Existing plats are not shown in this RCW. Therefore, existing plats have been and can be handled by BLA(s) with the Administrator as they are protected under state law.

Vernon Lauridsen states (at 31:00 minutes on the Planning Commission 11/30/16 video) that, "The Administration isn't looking at the state of the lots as they exist at the time that the BLA is being applied for."

Again, this is not true. There are very complete BLA procedural requirements with the City of Anacortes. The older plats of Anacortes contain legal lots. Streets, alleys and lots were platted. Property taxes have been paid on these lots for over 100 years. To suggest that property subdivided in the past is less relevant or has less rights than lots platted subsequently is not a valid argument and subverts a property owner's rights that are protected by state law. I would assert that land that had taxes paid on it for 100 years has all the rights of any other lots regardless of the date of the plat.

Lauridsen is using the age of the original plat as his grounds for not accepting BLAs. If you look at Mr. Lauridsen's own home at 2219 32nd St., Anacortes, you will see that his house is sitting on a lot defined by the underlying lots. Lauridsen's (P#57764) home sits on Lot 1, Lot 2 and ½ of Lot 3 of an older existing plat on 32nd St. In fact, many homes in Anacortes are built on underlying plats where houses are built that conform to current R2 or R3 density. These houses reside on lots defined by BLAs on 2 or more lots of the underlying plat. Current Washington State law does not agree with Mr. Lauridsen and once again protects the legal private property rights of BLA applicants.

Vernon Lauridsen describes 3 separate cases (at 33:50 minutes on the Planning Commission 11/30/16 video.) Vernon Lauridsen stated, "No case is exactly on point" and "I can assure you that I don't think any court would go along with what's been happening here." (Referring to boundary line adjustments.)

In Vernon Lauridsen's own case examples, the courts have ruled for the applicant property owners. I am not an attorney, but as shown below I don't see where Vernon Lauridsen has provided examples of his statements, as quoted above, to corroborate where he asserts that the courts rule against BLA(s).

I could only find 2 of his 3 examples online. These were litigated as court cases and the court ruled for the applicant property owners.

- Seattle Vs Crispin No. 72515-2 June 19, 2003.

Supreme Court of Washington overturned the court of appeals and upheld for the BLA of the property owner under RCW 58.17.040(6).

- Island County Vs Dillingham, No 48133-1, March 31, 1983.

Supreme Court of Washington upheld for the property owner stating that the owners were diligent, complied with state statutes and county planning regulations.

Vernon Lauridsen (at 35:00 minutes on the Planning Commission 11/30/16 video,) brings up AMC 16.04.105 (a)(3), asserting that the city and applicants are violating our existing codes by describing properties in BLAs by meets and bounds. His statements are subverting the definition of the code.

Please note this code uses the word 'Subdivision'. It does not use the term 'Boundary Line Adjustments.' Once again, BLAs are protected under state law. Please do not be moved or influenced by this subverting or twisting of our laws and codes.

I could go on and on refuting Vernon Lauridsen's public statements, but I hope you get the point. He strongly encouraged the Planning Commission to "follow the law." I hope that you do just that.

Thank you for reading this letter.

Regards,

Tom Allen

December 19, 2016

Good Evening Mayor and Council,

My name is Marilyn Derig. I reside at 1302 K Avenue.

I think it is curious that we do not want neighbors to have NOTICE when something that may affect their neighborhood is going on. What harm could it do? Is the City (or builder) advocating that something should be done in the dark of night, so to speak, so that the neighbors won't know until it's built?

The Comp Plan is an instrument from which our codes should follow. One of the 2016 Comp plan's key recommendations was that the City urged "communities and stakeholders to work together to provide a wider variety of housing options for our urban and rural residents..." If the citizens in a neighborhood don't know about what is going on, where is their avenue for communication with the City?

The Comp Plan is done. In it is stated,

1. A Housing goal in the comp plan H-2 Neighborhood Character. "Promote the stability and vitality of residential ...neighborhoods." A policy connected with that goal is H2.1 "Encourage housing types and design that reinforce and enhance the character and scale of established neighborhood development patterns."

2. A Land Use Goal LU6 Residential Uses. "Preserve and enhance the quality, character and function of Anacortes' residential neighborhoods."

And included in policies to meet that Land Use goal are LU6.2 "Protect the character of single family neighborhoods by focusing higher intensity land uses close to commercial and community services and transit", and LU6.3 "Adopt design standards for small lot single family development to gracefully integrate these uses into existing neighborhoods in ways that maintain general neighborhood scale and character."

BLA's without notice and ADU's without notice are risks to both neighborhood character and integrity, something people pay a lot for here in Anacortes, because those of us who live here are owners of dream homes too. The Comp Plan supplies us with goals and policies to follow. After all the work you all have done on this Plan, shouldn't we be using it as we develop our land use regulations?

Thank you for your consideration,



Marilyn Wells Derig

mdrig@me.com

360-293-3928

The following comments on Title 19 are submitted by Cynthia Richardson 12/18/16

Only the portions of the code for which suggestions are made are copied herein.

2.42.040 Terms of office.

The terms of members ~~not city officers~~ will, ~~after the expiration of the term of those first appointed,~~ be for six years. ~~The members first appointed will hold office as follows: two for two years; two for four years; and two for six years.~~ Vacancies- A vacancy occurring other than through expiration of a terms must be filled for the remaining unexpired portion of the terms. Members may be removed, after public hearing, by the ~~m~~Mayor with the approval of the ~~council~~ City Council for inefficiency, neglect of duty, or malfeasance in office.

Commented [C1]: There is no need to refer to the first appointments, as that occurred many decades ago.

Commented [C2]: Clearer wording

"Director" means the Director of the Department of Planning, Community and Economic Development or the Director's designee.

Commented [C3]: The City has many Departments. Need to specify which one.

"Public meeting" means a quorum of city council or other decision-making body gathering with the collective intent of transacting city business. A public meeting does not may or may not include an open record hearing.

Commented [GL4]: Revised 12/7.

Commented [C5]: An open record hearing is conducted during a regular public meeting of the Planning Commission, but the public meeting does not in itself constitute an open record hearing unless advertised and conducted as such.

"Subdivision, short" means the division or re-division of land into nine or fewer lots ~~for the purpose of sale, lease, or transfer of ownership.~~

"Subdivision" means the division or re-division of land into ten or more lots ~~for the purpose of sale, lease, or transfer of ownership.~~

Commented [C6]: Why does this require sale, lease, or transfer ownership? Can't the owner just subdivide and record the new plat, but retain ownership? Should this say something about recording the new plat or "lots of record"?

19.12.040 Rules of interpretation.

E. Where two applicable rules conflict ~~within this title,~~ the most restrictive controls.

Commented [GL7]: Added 12/7.

Commented [C8]: There may be rules in other titles that conflict with this title, and the most restrictive should control in all cases, not just within this title.

19.12.080 Administrative Interpretation.

B. If the interpretation request is associated with a pending application for a development permit, the Director may consolidate the request with the process for review of the application. If the Director does not consolidate the request with an application, the Director must issue an interpretation within 60 days of receipt of the request and publish it to the City website.

Commented [C9]: I agree that it is useful for the Director to issue official interpretations of the code, but there should be some sort of index and cross-referencing so that people can find out whether there has been an interpretation of a topic and look it up.

E. An administrative interpretation is not binding on the Director or City, nor appealable.

Commented [C10]: What would a person do if they felt the interpretation was in error? Could they request that it be reconsidered and present facts to support their viewpoint? Could the Director issue a revised interpretation?

19.16.030 General requirements.

B. For amendments to the Comprehensive Plan policies or land use map, the City must:

1. docket proposed amendments per AMC 19.16.050; and

19.16.040 Petitions.

B. 2. A petition for a rezone or map amendment may be considered only once between ~~each~~ Comprehensive Plan Periodic Updates ...

19.16.050 Docketing.

A. The Department must review all new petitions and any petitions deferred from the previous year's docket, and forward a recommendation to the City Council as to which petitions should be included in the ~~next~~ current year's docket.

Commented [C11]: If proposed amendments are due in March, they are reviewed in subsequent months of that same year.

19.16.100 Final Disposition of Annual Docket.

A. The City Council must take action (approve, deny, or defer) on each proposed amendment on the current ~~a given~~ year's docket before establishing a subsequent docket.

Commented [C12]: Vote on each item, not action on the whole package at once.

Commented [C13]: If, for example, the 2019 docket isn't acted on until January of 2020, there would be confusion as to which is the "current" year.

Type 2

Pre-ap mtg. No, except for short ~~plats~~ subdivisions at discretion of Director

Commented [C14]: short plat is not defined, short subdivision is the term used above in this table

Commented [GL15]: Added 12/7.

Type 4

- ~~Manufactured home subdivisions~~
- Preliminary ~~long~~-subdivisions

Commented [C16]: By state law, manufactured homes are allowed wherever any homes are allowed, so there is really no such thing as a Manufactured home subdivision - it's just a subdivision like any other.

Commented [C17]: There is no such thing as a "long" subdivision - it's just a subdivision. Does the Council also approve the final plat? That's not in the table.

19.20.180 Decision—timing.

2. The final decision on an application for a development permit must be made within the time limits from determination of completeness listed in Table 19.10.200-1.

Commented [C18]: Could not find this table. Do you mean Table 19.20.180-1.?

19.24.120 Public Improvements

- D. No driveway access is permitted onto Anaco Beach Road or Oakes Avenue or 12th Street where the driveway access can be constructed on property owned by the applicant to a local access street or alley.

19.38.040 Criteria.

- A. 5. The need for the variance is not the result of ~~deliberate~~ actions of the applicant or property owner;

Commented [C19]: So, if the applicant says "It was an accident, I didn't do it deliberately" then it doesn't count?

19.44.020 Accessory Dwelling Units

- C. Accessory dwelling units may be approved in ~~the R1, R2, R3, R4, R4A, and R4B zones~~ any residential zone.

Commented [C20]: When the zoning code is revised, if the specific titles of some zones may be changed or others added they will be included.

- D. 8. The appearance and character of ~~the~~ a single-family dwelling shall be maintained when viewed from the surrounding neighborhood. Only one entrance to the residential structure may be located on any street side of the structure; provided that this limitation shall not affect the eligibility of a residential structure which has more than one entrance on the front or street side on the effective date of the application for the accessory dwelling unit.

Commented [C21]: If building a new structure, there is no existing character to maintain.

19.44.040 Bed and Breakfasts

~~C.2. The owner's quarters and guest rooms must all be in the main building.~~

Commented [C22]: There are 2 B&B's in my neighborhood which have the rental unit in a separate cottage on the same lot. If a detached unit is OK for an ADU, why not for a B&B (such as in a converted garage)?

General comment: Throughout this document, *specific* titles of individuals and commissions should be capitalized, such as Mayor or City Council. Where the text specifically refers to the City of Anacortes, City should be capitalized. Various sections of Title 19 seem to randomly capitalize or not, and this should be consistent. Please do a search-and-replace to correct these.

December 15, 2016

To Mayor Laurie Gere and Anacortes City Council,

In the writing of Title 19 you have made some improvements to the Application Process, but a few more changes are necessary. I would remind you that this code needs to ensure that we have balance between the rights of residents and the desire for developers to maximize profits. Taking the needed time to listen to concerns and review irregularities with code interpretation is in the best interest of our community. As our city is getting more densely developed, it is crucial that citizens and city officials do not feel pressured into making land use decisions.

Whatever you can do to improve citizen oversight is laudable. First of all, I am very much opposed to fees to appeal to our elected officials, our planning commission or a paid hearing examiner. People do not frivolously appeal, but only when they believe mistakes have been made. It takes a lot of time, effort and stress to go through an appeal process, so it is not a decision made lightly. The use of fees is merely a deterrent to public participation, and contrary to the intent of the Growth Management Act.

One improvement I suggest to the review matrix in 19.20.030, is to make the comment period at least 21 days for Type 2 applications. Only allowing two weeks means adjacent lot owners may not get informed and be able to comment in time.

It is correct to have Boundary Line Reviews in the level 2 section. Accessory Dwelling Units should also be in level 2, as there is more potential for these to not meet the code or be of concern to neighbors.

19.20.020 B lists Final approval of Short subdivisions as exempt from the Appeal Procedures. I have witnessed several Preliminary Short Plats getting approved when their plans did not meet the legal requirements. City staff said the developers were expected to fix them before Final Approval. This means that Final Approvals should be subject to public scrutiny and appeals like everything else.

19.20.240 Exhaustion of administrative remedies should include reference to the appeal process to Superior Court. This should also be included in the review matrix.

I also hope the city will move quickly to implement online review of all applications. It is being done in many cities.

Thank you for your consideration,
Sara Holahan



December 15, 2016

VIA EMAIL (c/o don@cityofanacortes.org)

Mayor Laurie Gere and Anacortes City Council
PO Box 410
Anacortes, WA 98221

Don Measamer, City of Anacortes Planning Director
PO Box 410
Anacortes, WA 98221

Re: MJB Properties LLC's comments on the portion of Proposed Ordinance 2992 dealing with the "Type of Review" that boundary line adjustments are to be classified under as part of New Title 19 (Unified Development Code)

Dear Mayor Gere, Council Members, and Mr. Measamer:

I am writing on behalf of my client MJB Properties LLC ("MJB"), the owner of extensive properties in the City, to provide comments on the portion of the 12/7/2016 City-staff proposed revised version of Ordinance 2992 that, in proposed Table 19.20.030-1 (Review Classification and Process Matrix), places Boundary Line Adjustments within the "Type 2 Administrative Decisions" classification. MJB requests that Boundary Line Adjustments be placed within the "Type 1 Administrative Ministerial Actions" classification. Here's why.

First, boundary line adjustments do not involve the creation of additional lots or parcels. Rather, they merely adjust the boundary lines between existing lots or parcels. That being the case, the Washington Legislature has made Washington's platting and subdivisions statute [Chapter 58.17 RCW (PLATS—SUBDIVISIONS—DEDICATIONS)] inapplicable to boundary line adjustments. The Legislature did so by virtue of the following portion of RCW 58.17.040:

58.17.040. Chapter inapplicable, when

The provisions of this chapter shall not apply to:

*
*
*

- (6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, *which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;*

(Italics added.) By creating no additional lots, boundary line adjustments do not need the amount of scrutiny that short subdivisions and standard subdivisions do.

Second, consistent with above-quoted subsection (6) of RCW 58.17.040, AMC 16.08.070 (Boundary line adjustment) states:

The adjustment of boundary lines may be approved by the administrator if an application is filed with the information required by the administrator and *where no new lot is created thereby and where no lot is reduced in size below the minimum square footage and frontage required by the applicable zoning control.* All adjustments of boundary lines shall be filed with the city and county.

(Italics added.) Determinations of whether a proposed boundary line adjustment would (1) create a new lot or (2) reduce a lot in size below the minimum square footage and frontage required by the applicable zoning control are obviously ministerial decisions because discretion is not involved in application of the criteria. (Either a new lot would or would not be created, and either at least one of the proposed adjusted lots would or would not be reduced in size below the square footage and frontage requirements of the applicable zoning control.) That being the case, boundary line adjustments should be classified as Type 1 Administrative Ministerial Actions, not Type 2 Administrative Decisions.

Third, note that in contrast to boundary line adjustments (which ***create no new lots***), within the City of Anacortes (1) *short subdivisions*¹ are divisions of land involving the ***creation of nine or fewer lots, tracts, parcels, sites, or subdivisions*** and (2) *standard subdivisions*² are divisions of land involving the ***creation of 10 or more lots, tracts, parcels, sites, or divisions***. As part of the statewide statutory law for divisions of land throughout Washington (Chapter 58.17 RCW), the Washington Legislature has (1) provided for *summary review* of short

¹ Part of AMC 16.04.080 (Definitions) states:

“Short subdivision” means a division of land into **nine or fewer** lots, tracts, parcels, sites, or subdivisions for the purpose of sale or lease.

(Emphasis added.)

² Part of AMC 16.04.080 (Definitions) states:

"Standard subdivision" means the division of land into **ten or more** lots, tracts, parcels, sites, or divisions for the purpose of sale or lease and shall include all resubdivisions of land. The word "resubdivision" as used in this definition means either: 1) a further "division of land" within a recorded plat or short plat into ten or more lots, tracts, parcels, sites, or divisions; or 2) any further "division of land" within a short plat made within a period of five years from the date of recording of the short plat.

(Emphasis added.)

Mayor Laurie Gere and Anacortes City Council
Don Measamer, City of Anacortes Planning Director
December 15, 2016
Page 3

subdivisions³ in view of the limited number of lots that RCW 58.17.020 allows to be created by short subdivisions (and, in keeping with that approach, the Legislature has not required that the legislative body of a municipality be the approval authority for short subdivisions) and (2) required a more extensive review process for standard subdivisions (including a mandate that the legislative body of the city, town, or county in which the proposed subdivision is situated serve as the approval body). In view of that statutory approach, proposed Table 19.20.030-1 appropriately places *preliminary short subdivisions* within the Type 2 Administrative Decisions classification and *preliminary long subdivisions*⁴ within the Type 4 City Council Decisions classification. However, in view of the legislature's exemption of boundary line adjustments (which create no new lots) from Chapter 58.17 RCW, placing boundary line adjustments in the same classification as *preliminary short subdivisions* is inconsistent and unjustified.

In view of the above, MJB respectfully requests that proposed Table 19.20.030-1 (Review Classification and Process Matrix) be revised to place boundary line adjustments within the Type 1 Administrative Ministerial Actions classification. That is where boundary line adjustments belong.

Sincerely,

HALINEN LAW OFFICES, P.S.



David Halinen

cc: MJB Properties LLC
Attn: Jim Blais (via email)

Darcy J. Swetnam, Anacortes City Attorney (via email)

³ The first sentence of RCW 58.17.060 (Short plats and short subdivisions—Summary approval—Regulations—Requirements) states:

(1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof.

(Emphasis added.)

⁴ The term “long subdivision” is not currently used in AMC Title 16 (SUBDIVISIONS). However, in proposed Table 19.20.030-1, that term presumably is intended to mean “standard subdivision.” (We suggest that proposed Table 19.20.030-1 be revised to change “long subdivision” to “standard subdivision.”)



15571-A Peterson Rd., Burlington, WA 98233 • Phone (360) 757-6916 • Fax (360) 757-0604

Mayor Gere and City Council,
City of Anacortes
PO Box 410
Anacortes, WA 98221

Mayor Gere and City Council,

On Monday, December 12th, we attended the Anacortes City Council meeting where Title 19 was discussed and a development matrix was introduced and explained to the council by Mr. Measamer.

The Skagit/Island Counties Builders Association (SICBA) has is concerned that Boundary Line Adjustment (BLA) Requests are being moved from the T1 to the T2 column in the matrix. Normally a BLA request is submitted to more clearly define a parcel's boundary that has had tax paid on it since its inception. If it happens to be between two parcels of land owned by two different property owners, an agreement between the two owners has already been made and the BLA only clarifies the boundary of both parcels of land. This should not require any public comment and therefore the comment period is not needed. Another example would be where platted lots dating back to the early Anacortes days do not meet current requirements for construction or major remodel and the structure in question could actually be built on two different parcels that was approved years ago. A BLA in this case would only aggregate the two underlying lots into one parcel number for the Assessor's records and for the city to use in the future. It would not require any public input and therefore the comment period should not be required.

In our experience at SICBA and in all the jurisdictions in Skagit County, we have not seen a need for any public comment on a BLA request. Those are handled between property owners and are completed within the confines of the jurisdiction's current code.

BLAs are not used to sub-divide lots – nor are they used for defining proposed plats or subdivisions. They are after the subdivision has been created and the need to possibly aggregate or clearly define a complex property line into something that is easily understood and recognized. Already the plat or subdivision has been approved so again, there is no need for public comment and any comment period. Whenever a citizen brings a BLA application to the administration, those in planning and community development have very specific procedures they must use in granting a BLA and those procedures should be easily applied and understood by all. BLAs are also protected under state law and are exempt from normal land use applications such as a subdivision. They are not included in the laws governing subdivisions or other land use applications.

We noted that Level 1 Variances are also being moved from T1 to T2. These are normally very minor variance requests that should be approved administratively in accordance with the city code. These should also be moved back to T1 because they are minor in nature and should not require any public input nor any delay required for this input. We're sure the Anacortes staff is fully capable in determining if something is a very minor variance requested or if it does need further scrutiny.

Moving both of these items back to T1 would certainly expedite the permitting process for items such as a BLA or Level 1 Variance and would more positively affect affordable housing projects within the city. Any time a project is delayed for public comment, there is a cost involved that normally is borne by the

Affiliated With



applicant. These costs contribute to an increase in the cost of the project and can keep affordable housing from being constructed as is required by the Washington State Growth Management Act.

We strongly encourage you to move both the Boundary Line Adjustment Requests and the Level 1 Variance Requests from the proposed T2 back to the T1 position in the matrix. There is no need to encumber staff time for something as simple as these and there is no reason to delay approval of something that is very simple because of a public comment period that truly is not needed. The way things are done now are the way it should stay. It has worked for years and has been very effective in defining those areas of question that come up periodically concerning where a property line really is, etc.

Thank you,



Josh Baldwin
President SICBA



Charles W. Crider
Executive Officer



Portalis Limited Liability Co.
4819 Portalis Way
Anacortes, WA 98221
(360) 202-6145
www.portalishomes.com

December 15, 2016

City of Anacortes

Dear Mayor Gere, Anacortes City Council, Anacortes Planning Commission and City Staff

Re: Title 19 - Land Use Matrix and Boundary Line Adjustments ("BLA's")

Tom Allen has recently submitted several letters regarding BLA's and their status under state law, etc. I am not an expert on the applicable RCW's and other jurisprudence regarding this matter, but I certainly concur with his logic regarding the underlying platted lots.

The purpose of this letter however is to cite two practical example of how Portalis has made use of the BLA process and related comments / recommendations.

Examples

1. As you may know, Portalis is an approved condominium community. For the 33 single family homes in the community (Portalis Island Homes Condominium) the lots are the condominium units and the homes built on the lots are "improvements" to the condominium unit (lot). Accordingly, when the site work (streets, utilities) were completed, the Portalis Island Homes Condominium Association (lot 1 of the 9 lot short plat) was complete and, rightfully so, boundary lines could not be changed without the consent of the unit owners. That however was not the case for the multifamily lots (3 to 9 of the short plat). Lot 2 is the retention pond site.

The Portalis multifamily units (townhomes, duplexes) are part of an **expandable** condominium whereby the "condominium unit" is comprised of each separate residence (from the interior wall paint inwards). The exterior is either common property (roof, exterior walls, etc.) or limited common property (decks, porches, etc.).

At the initial planning stage and during site development, lots are established via the aforementioned short plat process which reflects how the developer anticipates the site will be built out. As build-out progresses (in accordance with market demand, availability of bank financing, etc.) it is often necessary to expand or shrink the multifamily condominium. **Unless the unit is within the condominium and the condominium is complete, a purchaser is not be able to secure a mortgage on their condominium unit. Banks will not provide takeout financing for incomplete condominiums.**

Accordingly, a lot established in the original short plat, that accommodates, say, two triplexes, but which under current circumstances (financing, market absorption) will only allow the construction of one triplex, must then be reduced to comprise only the completed units. Therefore it is necessary to adjust the lot line to insure that only the completed triplex is added to the condominium and the additional vacant land is excluded. The BLA process has been an effective and easy method of adjusting the lot line and has benefited all concerned and will certainly be required to be done again as the remainder of the condominium units are built.

2. In another case, it was necessary to adjust a lot boundary to better accommodate the buildings previously planned and approved for the site.

To subject these BLA's to notices, appeal periods, etc. would be counterproductive for all concerned. Additional administrative time and effort (public and private), costs, etc. all would have the effect of piling on costs to developments that are already becoming unaffordable to many prospective homebuyers. Furthermore it could potentially frustrate a simple legitimate site management procedure by allowing, say, a disgruntled condo owner (yes, there is always one) or even some other non-affected party to appeal and delay the process.

Recommendation

We respectfully propose that City staff, if it hasn't already done so, conduct an analysis of all BLA's completed in the last, say five years, to determine exactly how those BLA's have impacted the City of Anacortes and the immediate neighborhoods (negatively and positively). Such a review should be made public prior to Council making any changes to the existing BLA process.

We suspect there may be other examples similar to those cited above that might be negatively impacted by any changes to the BLA process.

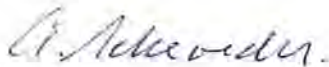
Conclusion

The BLA process, as far as we are aware, is not broken and should be classified in the Type 1 column of the Land Use Matrix.

While we do not profess to understand all of the complexities associated with BLA's, we hope that very careful consideration will be given to any modifications to the BLA process.

Thank you for your careful consideration of the comments above.

Sincerely,



Allan D. Schroeder
Managing Member



I'm Carol O'Hearn. I live at 11039 Post Dr.

Looking at the 12-7-2016 proposed revisions for Title 19, I'm seeing an evolution in thinking. The process matrix on page 28 is a good work in progress.

Some of the changes have brought checks to the discretionary powers of the position of Director, who is an appointed, not an elected official. However other areas still leave too much unchecked power in the positions of the director and now hearing examiner...but it is a work in progress.

One area of concern is in the matrix line Local Appeal Available To... For Type 4 City Council decisions you have "none." To say, categorically, there is no appeal, leaves your constituents, the citizens, without knowledge that an appeal can be made to Superior Court.

17.04.030 states that an appeal to Superior Court is allowed. But at no point in new Title 19 is that fact stated. RCW 36.70C makes it clear that City land use decisions may be appealed to Superior Court. To not acknowledge that fact does not make an appeal go away and it seems less than honest to not make a citizen aware that there are options beyond the City appeal process.

19.20.030 indicates there is no way to appeal standard subdivisions and large and expensive substantial shoreline permits..."none", nada, zilch, end of story. Two issues here: First, a mechanism for local appeal really needs to be in the code. It will be difficult to achieve, but it does not warrant forcing an appeal to Superior Court. Second, it can be stated that an appeal can be made to Superior Court.

Another point of concern is that for short subdivisions, Type 2 decisions, there would be no public hearing. The Director would make the decisions, but without a public hearing. Therefore, the only chance the citizens would have to be heard would be on an appeal. The only public meeting would be an appeal. Citizens would have no ability to speak out except by paying an appeal fee.

In summary, I'd like to readdress 19.10.040A on page 15 of version 12-7-2016. I'll reiterate: I'm opposed to city council setting a fee for appeals to the council when the council is acting as an appellant body. Citizens should not have to pay a fee to talk to or be heard by their elected officials. You are setting up a pay to play system.

19.10.070A seems to say this title is not meant to create a particular class of citizens or group of citizens who will be protected by or benefit from the title. However, if a fee is set you are doing just that, creating a class or group who can afford to pay a fee to talk to their elected officials.

It is part of the councilmembers service to listen to citizens. Yet, to file an appeal and to be heard by the council, an appellant will have to be able to afford to pay a fee. Those who cannot afford to pay, cannot play; therefore, will not be heard. The council is setting up two distinct groups of citizens: Those who can be heard and those who cannot be heard when the council is acting as an appellant body.

Does anyone really want to run a re-election or election campaign based on having set up pay-to-play system and creating two classes of citizens?

Therefore, fees for appeals to the council when the council is acting as an appellant body or hearing examiner should not be set.

Carol O'Hearn

12-15-2016

Comment: Proposed Title 19 update.

- P. 20 Section 19.16.020 C.

Subsection 3 makes a distinction between “technical appendices” and “goal or policies” as a basis for determining when the Comprehensive Plan amendment process must occur. The section uses the “the six year capital facilities financing plan” as an example of a “technical appendices.” But historically the six year capital facilities plan (CFP) contains its own “financing plan” so actually the financing plan and the six year capital facilities plan are one and the same.

RCW 36.70A.130(2)(a)(iv) allows the CFP to be adopted separately from the Comprehensive Plan amendment process only if it is ordinarily adopted as part of the annual budget process. I do not believe that historically this has been the case. At best, the budget has historically incorporated the CFP and often the CFP’s financing plan has been ignored. RCW 36.70A.130(2)(a)(iv) does not sanction the “technical appendices” v. “goal or policies” distinction for determining when the comprehensive plan amendment process is required. This distinction has the effect of avoiding the public participation mandates and purpose of the Growth management Act.

- P. 21 Section 19.16.040 D. 4. I suggest revising the section to read:comprehensive plan’s vision, values and goals.
- P. 34 Section 19.20.140B. 11 “consistency.” Revise the section to require the Director to make a preliminary determination of consistency at the time of notice.

a statement of the preliminary determination of consistency, ~~if one has been made at the time of notice~~, and of those development regulations that will be used for project mitigation and consistency

The phrase “if one has been made at the time of notice” is just a loophole inviting non-compliance which is the source of so much historic haphazard make-it-up as you go regulation. There is no reason that this determination cannot be made at the time of the notice of application. Also “consistency” should be defined in Chapter 19.12. I suggest the current language from AMC 17.04.090 A, or something similar.

Respectfully, Vernon Lauridsen 2219 32nd Street, Anacortes. 12/15/2016



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Anacortes WA 98221

Phone: (360) 293-6354

Fax: (360) 293-2979

Lic. # IRVINCC044KG

December 14, 2016

RE: Draft Title 19

Members of the Anacortes City Council:

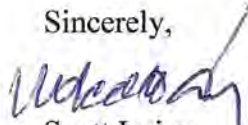
I am writing to urge you to adopt the proposed Land Use Ordinance #2992, or, Draft Title 19 as written with one important exception.

The "Review Classification and Process Matrix" has moved Boundary Line Adjustments from a Type I review to a Type II review. This revision adds the element of public comment to the list of City requirements necessary for a BLA application to be granted. I see no reason to make BLA's more costly and time consuming than they already are. A BLA is meant to be a relatively simple process to realign property boundaries for a variety of reasons and is protected under Washington State Law.

BLA's do **not** allow zoning changes. BLA's do **not** increase density nor change the requirements that exist under the current zoning. BLA's are **not** a mechanism for getting around the subdivision process. All properties that have boundary lines realigned must still maintain the required square footage, required street frontage and required building setbacks that exist under their current zoning classification. This is why Boundary Line Adjustment applications have been and should continue to be a Type I administrative processes.

Thank you for your consideration in this matter.

Sincerely,



Scott Irving



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 7b

Subject: 4th quarter Finance Update

Staff Contact: Steve Hogleund

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hogleund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
x	Staff Report

Summary Statement: The attached 4th quarter finance update does not include updated budget figures from the 4th quarter budget amendment, and uses actual data through November 30th, 2016. Property tax is coming in a little higher than budgeted, due to new construction added to the tax rolls exceeding the estimate included in revenue projections. Sales tax also continues to exceed projections, with new construction, hospitality, and the High School construction project providing a boost; likewise Real Estate Excise Tax is benefiting from the brisk real estate market. TBD fees have increased over expectations as well, and are projected to exceed \$300,000 after December receipts are posted. No funds, or revenue or expenditure streams appear problematic.

Attachments (listed in order presented):

2016 Tax Revenue Budget to Actual

2016 Sales Tax Budget to Actual

Real Estate Excise Tax (REET) Year to Date

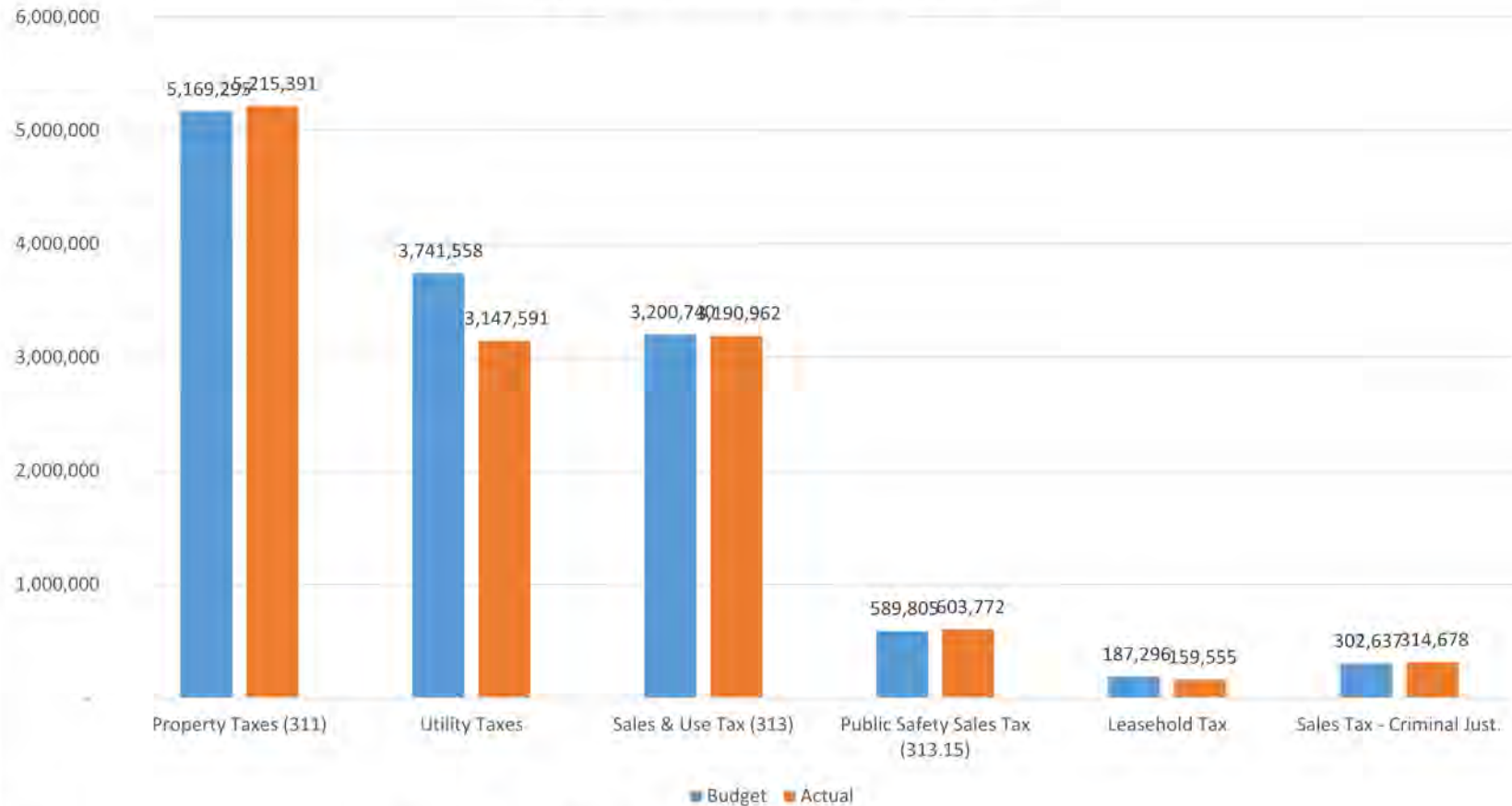
IMPACT FEES Year to Date

TBD Budget to Actual Revenues

Revenues/Expenditures in All Funds, January - November 2016

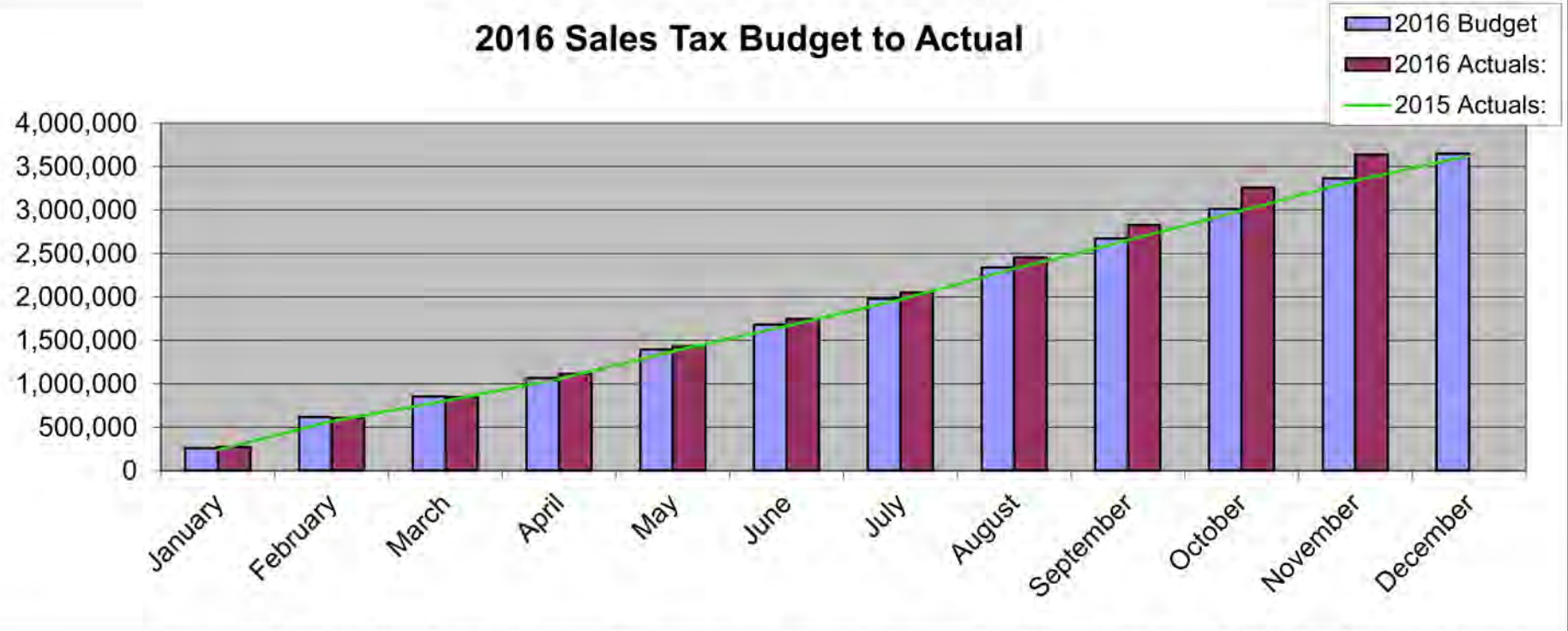
Cash Flow by Month

2016 Tax Revenue Budget to Actual



Taxes	Budget	Actual	Jan - Nov 92%
Property Taxes (311)	5,169,295	5,215,391	101%
Utility Taxes	3,741,558	3,147,591	84%
Sales & Use Tax (313)	3,200,740	3,190,962	100%
Public Safety Sales Tax (313.15)	589,805	603,772	102%
Leasehold Tax	187,296	159,555	85%
Sales Tax - Criminal Just.	302,637	314,678	104%
Totals Taxes:	13,191,330	12,631,949	96%
Total Governmental budget:	22,857,123		

2016 Sales Tax Budget to Actual



	January	February	March	April	May	June	July	August	September	October	November	December
2016 Budget	259,581	615,862	854,555	1,066,276	1,394,708	1,682,192	1,981,534	2,336,572	2,673,321	3,010,372	3,361,303	3,648,844
2016 Actuals:	270,996	607,357	847,117	1,112,232	1,430,188	1,744,885	2,050,785	2,454,555	2,827,248	3,256,627	3,637,666	
2015 Actuals:	237,766	567,915	802,184	1,055,710	1,373,158	1,665,523	1,967,649	2,323,246	2,649,836	2,994,400	3,337,621	3,623,463
Year to prior year:	14.0%	6.9%	5.6%	5.4%	4.2%	4.8%	4.2%	5.7%	6.7%	8.8%	9.0%	
Year to budget:	4.4%	-1.4%	-0.9%	4.3%	2.5%	3.7%	3.5%	5.0%	5.8%	8.2%	8.2%	
Actual Receipts:												
2016 Total:	270,996	336,361	239,760	265,116	317,956	314,697	305,900	403,770	372,694	429,378	381,040	
Month % change:	14.0%	1.9%	2.3%	4.6%	0.2%	7.6%	1.2%	13.5%	14.1%	24.6%	11.0%	
2015 Total:	237,766	330,149	234,269	253,526	317,448	292,365	302,126	355,597	326,590	344,564	343,221	285,842

Real Estate Excise Tax (REET)

	Total REET Revenues		
	2015	2016	% YTD Change
January	76,641	90,785	
February	58,467	41,788	
March	83,496	52,085	
April	84,647	100,310	
May	99,114	128,959	2.9%
June	107,656	132,996	7.2%
July	125,559	121,693	7.1%
August	131,356	157,115	7.7%
September	75,122	111,482	10.6%
October	107,324	142,738	13.8%
November	89,971	122,623	15.7%
December	55,861		
To date	1,095,214	1,202,574	
2016 Budget		630,000	
% Received		191%	

	Current	2016	Estimated
	Cash Balance	Budgeted Expense	Ending Cash
REET 1:	1,691,623	840,997	1,165,626
REET 2:	1,808,931	737,500	1,386,431

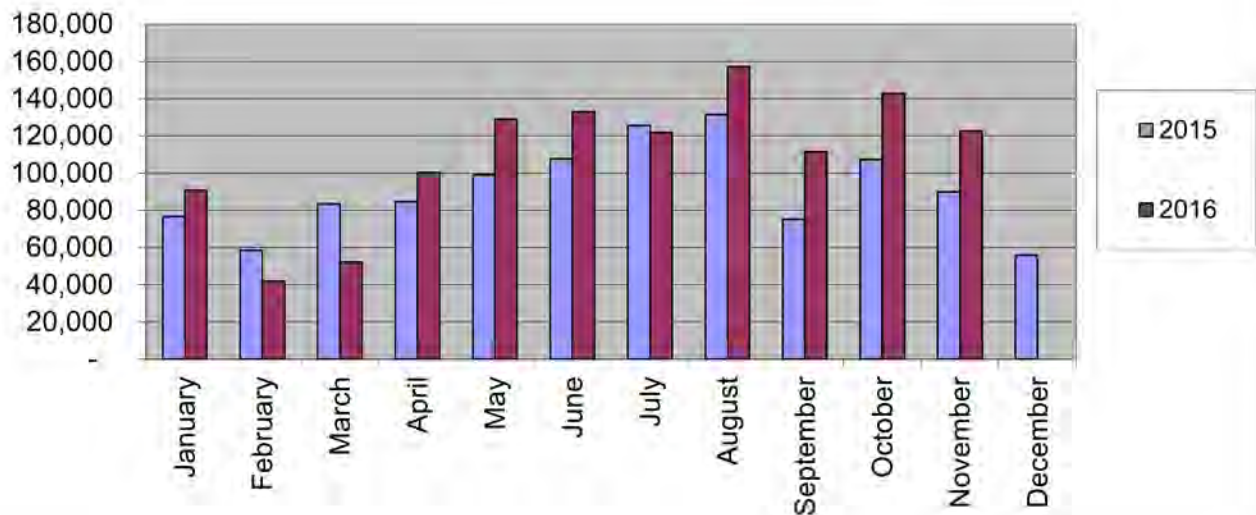
ALLOWABLE USE OF REET

REET 1: RCW 82.46.010: public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative facilities; judicial facilities

REET 2: RCW 82.46.035: public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks

Primary difference: REET 2 is more restrictive, cannot be used for Parks Acquisition, Trails, or Public Safety.

Cumulative REET



IMPACT FEES

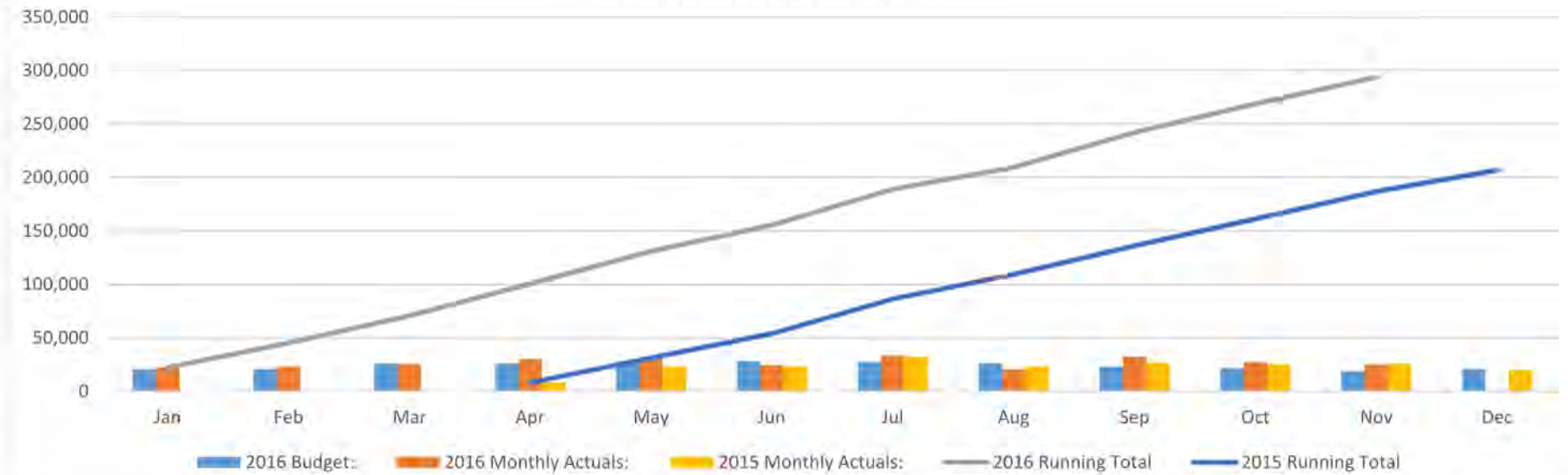
	Impact Fee Revenues		
	Street	Park	Fire
January	8,100	5,535	-
February	6,300	6,120	-
March	10,980	4,275	-
April	11,700	9,750	-
May	7,200	6,090	-
June	11,700	9,750	-
July	4,500	3,075	-
August	15,235	6,765	-
September	6,542	3,690	-
October	5,040	1,845	-
November	2,700	2,430	-
December			
To date	89,997	59,325	
July 2015	79,637	46,590	8,320
% change:	11.5%	21.5%	

	Current Cash Balance	2016 Budgeted Expense	Estimated Ending Cash
Street	543,906	0	608,189
Parks	256,100	0	298,475

Impact Fee Revenues



Transportation Benefit District Budget to Actual Revenues



Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Anticipated Collection *	7.20%	7.20%	9.00%	9.00%	9.70%	9.90%	9.60%	9.10%	8.00%	7.50%	6.60%	7.30%
2016 Budget:	20,531	20,531	25,664	25,664	27,660	28,231	27,375	25,950	22,813	21,387	18,821	20,817
2016 Monthly Actuals:	22,374	22,928	25,423	29,858	30,472	24,453	33,422	20,651	32,294	27,027	24,869	
2016 Running Total	22,374	45,302	70,726	100,584	131,056	155,509	188,932	209,583	241,877	268,904	293,773	
2015 Monthly Actuals:				8,257	22,968	22,968	32,076	23,126	26,611	25,186	25,720	19,899
2015 Running Total				8,257	31,225	54,193	86,269	109,395	136,006	161,192	186,912	206,811

* **Table 2: Average Percentage of Vehicles Renewing Each Month Statewide**
(5 years of renewal data was used to calculate average percent)

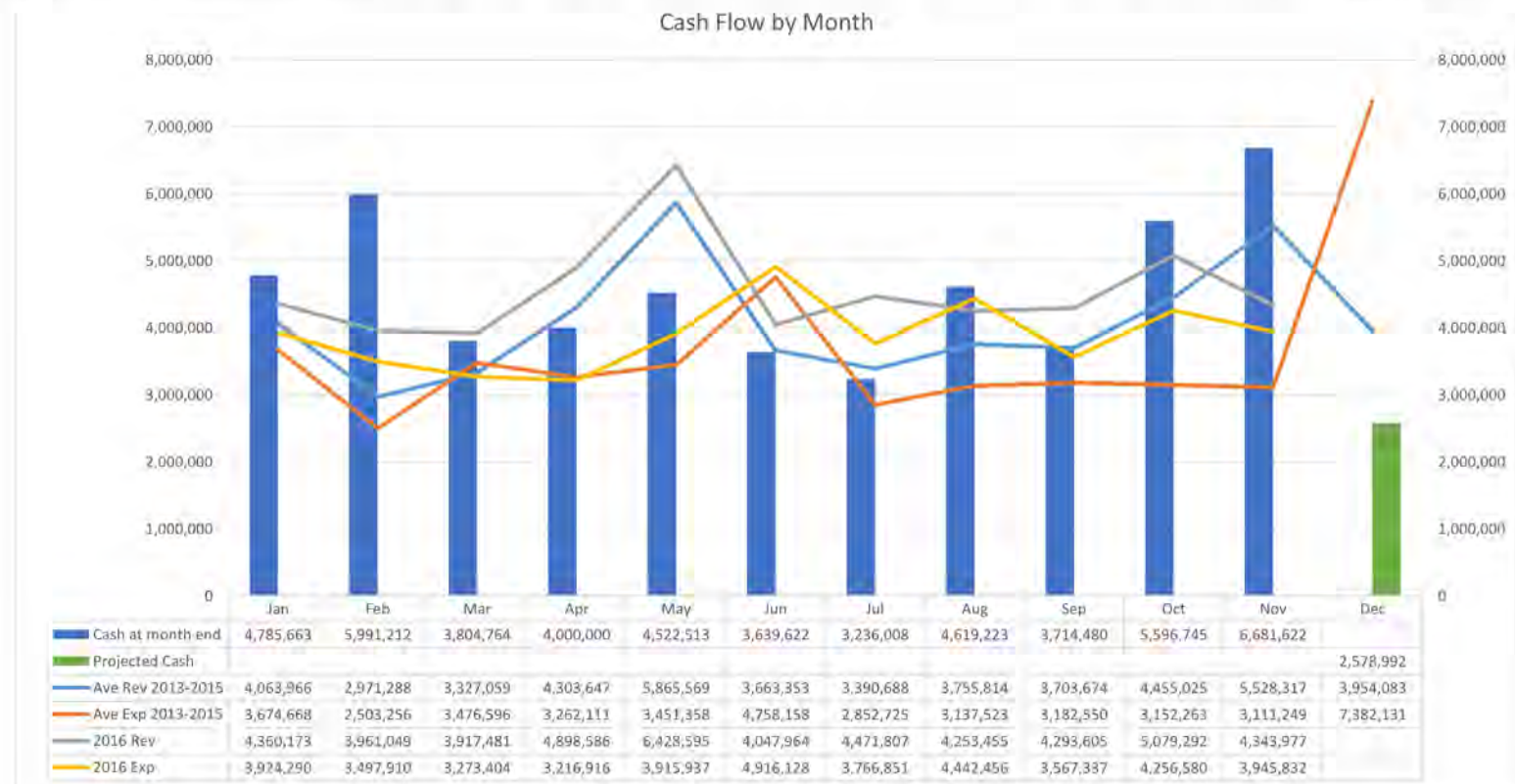
CITY OF ANACORTES
ALL FUNDS
Revenues/Expenditures
January - November 2016

		2016 Adj Budget	Year to date Actuals 92%	% of Total Budget
001	GENERAL FUND			
	Revenue	13,359,216	11,456,061	86%
	Expenditure	13,359,216	12,120,457.22	91%
	Difference	0	-664,396	
101	PARK & RECREATION			
	Revenue	1,495,272.49	1,532,194.42	102%
	Expenditure	1,495,272.49	1,392,841.96	93%
	Difference	0	139,352	
102	CEMETERY			
	Revenue	212,528.43	213,604.23	101%
	Expenditure	212,528.43	193,603.36	91%
	Difference	0	20,001	
103	LIBRARY			
	Revenue	1,341,912.74	1,368,903.80	102%
	Expenditure	1,341,912.75	1,208,949.84	90%
	Difference	0	159,954	
104	STREET MAINTENANCE			
	Revenue	2,133,702.46	1,403,993.13	66%
	Expenditure	2,133,702.46	2,666,791.11	125%
	Difference	0	-1,262,798	
105	ARTERIAL STREET			
	Revenue	1,013,586.76	188,476.22	19%
	Expenditure	1,013,586.76	402,189.56	40%
	Difference	0	-213,713	
106	Trans Bene Dist			
	Revenue	285,159.60	293,772.60	103%
	Expenditure	285,159.60	0.00	
	Difference	0	293,773	
107	WASHINGTON PARK			
	Revenue	246,721.01	260,323.26	106%
	Expenditure	246,721.01	247,571.39	100%
	Difference	0	12,752	
108	PARKS CAPITAL			
	Revenue	725,000.00	35,063.40	5%
	Expenditure	725,000.00	503,734.54	
	Difference	0	-468,671	
110	AMBULANCE FUND			
	Revenue	2,888,454.57	3,187,007.03	110%
	Expenditure	2,888,454.57	2,947,558.83	102%
	Difference	0	239,448	
112	DEVELOPMENT FEES			
	Revenue	0	124,784.18	
	Expenditure	0.00	0.00	
	Difference	0	124,784	
113	ACFL MANAGEMENT FUND			
	Revenue	38,768.25	39,794.98	103%
	Expenditure	38,768.25	95,711.22	247%
	Difference	0	-55,916	

CITY OF ANACORTES
ALL FUNDS
Revenues/Expenditures
January - November 2016

		2016 Adj Budget	Year to date Actuals 92%	% of Total Budget	
135	TOURISM				
	Revenue	250,000.00	369,901.80	148%	
	Expenditure	250,000.00	269,613.53	108%	
	Difference	0	100,288		
180	COMMUNITY DEVELOPMENT				
	Revenue	427,157.03	193,760.97	45%	
	Expenditure	427,157.03	343,460.76	80%	
	Difference	0	-149,700		
200	2000 GO BOND DEBT SERVICE				
	Revenue	477,787.47	476,372.17	100%	
	Expenditure	509,160.00	45,005.00	9%	
	Difference	-31,373	431,367		
209	2009 PUBLIC SAFETY REFUNDING				
	Revenue	295,572.53	151,450.53	51%	
	Expenditure	264,200.00	14,600.00	6%	
	Difference	31,373	136,851		
335	GROWTH MANAGEMENT CAPITAL IMPROVEMENT				
	Revenue	1,024,740.00	1,202,573.51	117%	
	Expenditure	1,024,740.00		0%	
	Difference	0	1,202,574		
401	WATER				
	Revenue	14,943,899.16	15,908,573.35	106%	Chgs budg 7,046,544.68
	Expenditure	14,943,899.16	8,675,397.62	58%	Actuals: 7,927,967.43
	Difference	0	7,233,176		% collected: 113%
					Cap Budg: 8,009,206.00
					Actuals: 7,253,053.90
					% collected: 91%
440	SEWER				
	Revenue	6,569,472.78	5,730,349.50	87%	Chgs budg 4,443,710.35
	Expenditure	6,569,472.78	5,478,300.22	83%	Actuals: 4,196,842.53
	Difference	0	252,049		% collected: 94%
445	STORM DRAIN				
	Revenue	1,227,671.58	791,769.33	64%	Chgs budg 723,645.96
	Expenditure	1,227,671.58	1,135,527.56	92%	Actuals: 661,469.90
	Difference	0	-343,758		% collected: 91%
450	SANITATION				
	Revenue	3,321,026.61	3,156,629.89	95%	
	Expenditure	3,321,026.61	2,964,500.69	89%	
	Difference	0	192,129		
501	EQUIPMENT RENTAL FUND				
	Revenue	2,300,573.85	1,608,837.98	70%	
	Expenditure	2,300,573.85	1,975,245.05	86%	
	Difference	0	-366,407		
611	FIREMEN'S PENSION FUND				
	Revenue	31,309.28	27,506.32	88%	
	Expenditure	31,309.28	37,414.98	120%	
	Difference	0	-9,909		

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2013 Resources	3,113,193	2,892,752	3,885,718	3,199,889	6,023,327	2,971,702	3,246,484	3,733,817	3,212,953	4,181,707	5,905,735	3,884,924
2013 Expenses	3,587,777	2,564,700	3,917,493	3,259,314	4,204,123	4,391,133	2,638,662	2,927,542	3,066,202	3,145,765	3,203,616	6,532,316
2014 Resources	5,433,998	2,689,975	3,686,798	4,964,043	5,001,594	3,483,247	3,450,194	3,528,256	3,346,785	5,389,834	4,806,449	3,351,172
2014 Expenses	3,874,963	2,019,875	3,039,668	3,185,037	3,086,968	5,236,098	3,042,733	2,710,590	3,458,100	2,767,032	2,926,567	6,885,292
2015 Resources	3,644,708	3,331,138	2,408,662	4,747,009	6,571,785	4,535,110	3,475,387	4,005,369	4,551,286	3,793,534	5,872,766	4,626,154
2015 Expenses	3,561,265	2,925,194	3,472,627	3,341,983	3,062,984	4,647,244	2,876,779	3,774,436	3,023,349	3,543,991	3,203,564	8,728,783
Average Net	83,443	405,944	-1,063,965	1,405,026	3,508,802	-112,133	598,607	230,933	1,527,937	249,543	2,669,202	-4,102,629
Ave Rev 2013-2015	4,063,966	2,971,288	3,327,059	4,303,647	5,865,569	3,663,353	3,390,688	3,755,814	3,703,674	4,455,025	5,528,317	3,954,083
Ave Exp 2013-2015	3,674,668	2,503,256	3,476,596	3,262,111	3,451,358	4,758,158	2,852,725	3,137,523	3,182,550	3,152,263	3,111,249	7,382,131
2016 Rev	4,360,173	3,961,049	3,917,481	4,898,586	6,428,595	4,047,964	4,471,807	4,253,455	4,293,605	5,079,292	4,343,977	
2016 Exp	3,924,290	3,497,910	3,273,404	3,216,916	3,915,937	4,916,128	3,766,851	4,442,456	3,567,337	4,256,580	3,945,832	
Month net:	435,883	463,139	644,077	1,681,670	2,512,657	-868,163	704,956	-189,001	726,268	822,713	398,145	
Cash at month end	4,785,663	5,991,212	3,804,764	4,000,000	4,522,513	3,639,622	3,236,008	4,619,223	3,714,480	5,596,745	6,681,622	
Projected Cash												2,578,992





City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 7c

Subject: 4th quarter 2016 budget amendment

Staff Contact: Steve Hoglund

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
x	Ordinance No. 2996
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
	Staff Report

Summary Statement: There are a number of budget lines that will experience an over budget condition for various reasons, either at the department level or the fund level, and a budget amendment is required to avoid that.

Background: Most of the items we are seeking an amendment for are familiar to Council, most of these items have either been talked about at Council, or approved by Council in prior meetings, and the amendment is now catching up to the rest of the action. The largest items are the VOIP system, the Police Department Radio purchase funded by a grant, the SCBA gear for the Fire department, funded by a grant, and the Road overlay program, which had a large carry over from last year. There are a number of housekeeping items to keep departments within budgets, but only two items require General Fund support that was not anticipated, and that is the \$8,000 in higher election costs from Skagit County, and a mod to the Ops Roof contract, impacting General Fund by \$4221. The other items requiring General Fund support have been known about (i.e. the grant match for Fire and PD, and the VOIP system). All other amendments will be covered by their own fund's excess revenues, or reserves.

Budget Impact	
Amount Budgeted	\$3,139,342
Budget Account (BARS)	Various
Proposed Expenditure	
Budget Amendment Required?	Yes
Revenue Source	Various

Proposed Contract	
Contractor	
Amount	
Start Date	
End Date	

Previous Council/Committee Action: Budget Ordinance 2963; 1st quarter budget amendment Ordinance 2972; 2nd quarter budget amendment Ordinance 2984

Competing Viewpoints Considered: Budget should not be amended.

Recommended Motion: I move to adopt Ordinance 2996 authorizing the 4th quarter budget amendment.

Alternative Actions: Do not adopt budget amendment.

Attachments (listed in order presented): Ordinance 2996

ORDINANCE 2996

AN ORDINANCE AMENDING ORDINANCE NO. 2963 ADOPTED ON DECEMBER 07, 2015, ENTITLED "AN ORDINANCE ADOPTING THE BUDGET FOR ALL MUNICIPAL PURPOSES AND USES FOR THE YEAR 2016"

WHEREAS, The election fees charged by Skagit County were higher than anticipated than when the 2016 budget was drafted, and

WHEREAS, The City desires to implement a city wide VOIP phone system that was not originally budgeted, and

WHEREAS, The Police Department received a grant to replace its radios which was not originally budgeted, and

WHEREAS, The public safety sales tax revenue that is passed through to the county is coming in higher than budgeted, and

WHEREAS, The Lodging Tax committee recommended and City Council authorized the use of LTAC monies to offset costs of overtime incurred by the Police Department during the Oyster Run, and

WHEREAS, The Fire Department received a grant to replace its SCBAs which was not originally budgeted, and

WHEREAS, The Parks department experienced a higher level of utility costs to run the department than were expected when the budget was developed, and more supplies were required to operate the Depot than anticipated during budget development, and

WHEREAS, The Library implemented a new ILS during the year, requiring additional costs that were not anticipated at the time of budget development, and

WHEREAS, The Street Maintenance fund received far more activity during the year than was anticipated at the time of budget development, due to the large number of overlay projects done this year, including a rollover of unspent funds from the prior year, and

WHEREAS, The Road Construction fund experienced a higher level of activity in replacing and repairing road lights, requiring a budget amendment to allow a REET transfer to pay for the additional costs, and

WHEREAS, The level of activity at Washington Park was higher than anticipated during budget development, requiring the purchase of additional supplies for the Park, and

WHEREAS, The Ambulance Service fund had a rate increase implemented after the budget was developed, resulting in a higher level of gross revenues and a higher level of bad debt expense, and the fund also purchased a new ambulance that was reimbursed by the County EMS department, and several Firefighter/Paramedics went on medical leave during the year resulting in elevated overtime levels, and

WHEREAS, The ACFL fund is paying for the Van Buren land purchase on a payment schedule that was not anticipated during budget development, and

WHEREAS, The Lodging Tax awards were never updated in the budget after the City Council authorized the LTAC awards, and the Lodging Tax fund needs to be updated to avoid being over budget after all LTAC awards are paid out, and

WHEREAS, There was a modification to the Operations Building Roofing project that requires amending in order to fully fund the project,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Anacortes, Washington, as follows:

Section 1. Ordinance No. 2963 dated December 7, 2015 adopting the Budget for 2016 is hereby amended to reflect the following revisions to expenditures and revenues in the following funds:

001.110.514.90.51	Election Costs	8,000	
001.000.308.90.00	Fund Balance		8,000
001.220.594.18.64	VOIP	131,175	
001.000.308.90.00	Fund Balance		131,175
001.310.594.21.64	PD Radio purchase	495,667	
001.000.308.90.00	Fund Balance		123,917
001.310.331.97.05	FEMA Grant		371,750
001.310.523.50.51	County jail tax	74,000	
001.000.313.15.00	Public safety sales tax		74,000
001.310.594.21.64	PD OT Oyster Rund	10,000	
001.000.397.00.00	Interfund transfer		10,000
135.000.597.00.00	Lodging tax transfer out	10,000	
135.240.308.90.00	Fund balance		10,000
001.320.594.25.64	SCBA fire gear	835,588	
001.320.333.97.05	grant funds		752,029
001.000.308.90.00	Matching funds		83,559
101.410.576.80.47	Parks Utilities	30,000	
101.410.575.50.47	Depot Utilities	4,000	
101.410.575.50.31	Depot supplies	10,000	
101.410.308.90.00	Fund balance		44,000
103.440.572.20.41	Library ILS implementation	10,000	
103.440.308.90.00	Fund Balance		10,000

104.720.542.63.47	Street Lights	75,000	
104.720.308.90.00	Fund balance		75,000
104.712.542.10.10	Salaries & Wages	45,000	
104.720.542.30.10	Salaries & Wages	46,000	
104.720.542.64.10	Salaries & Wages	20,000	
104.720.308.90.00	Fund balance		111,000
104.720.542.30.41	Street Overlay	500,000	
335.240.308.10.00	REET		350,000
106.720.317.60.00	TBD		20,000
104.720.308.90.00	Fund balance		130,000
104.720.542.30.31	Supplies	10,000	
104.720.308.90.00	Fund balance		10,000
105.720.595.30.63	Flashing beacons	25,000	
335.240.308.10.00	REET		25,000
105.720.595.30.63	Com ave lights 6th/8th	3,500	
335.240.308.10.00	REET		3,500
107.410.576.30.10	Salaries & Wages	10,000	
107.410.576.30.20	Personnel Benefits	4,000	
107.410.576.30.31	Office & Operating Supplies	6,000	
107.410.362.41.10	Camping Fees		20,000
110.320.522.70.12	Overtime	70,000	
110.320.522.70.20	Benefits	55,000	
110.320.594.22.64	Ambulance purchase	208,125	
110.320.522.70.51	Bad debt expense	248,084	
110.320.313.11.00	Sales tax		36,576
110.320.337.00.00	EMS County revenues		210,000
110.320.342.60.00	Ambulance Services		223,813
110.320.308.90.00	Fund Balance		110,820
113.410.594.76.61	Land (Van Buren pmt)	60,060	
113.410.576.90.41	Prof Svcs (Heart Lake Water)	5,000	
113.410.308.90.00	Fund balance		65,060
135.240.557.30.41	LTAC awards	102,000	
135.240.308.90.00	Fund balance		102,000

501.790.594.18.62	Buildings and Structures	14,071	
501.000.397.00.00	Transfers In		14,071
335.711.597.00.00	REET 1Transfers Out	9,850	
335.000.361.10.00	REET 1 Fund Balance		9,850
001.210.597.00.00	General fund transfers out	4,221	
001.000.308.90.00	Fund Balance		4,221

Section 2. Effective date. This Ordinance shall take effect from and after five (5) days after its passage and publication, as required by law.

PASSED AND APPROVED THIS 19th day of December, 2016

CITY OF ANACORTES, WASHINGTON

BY: _____
Laurie Gere, Mayor

ATTEST:

(Corporate Seal)

Steven D. Hoglund, City Clerk

APPROVED AS TO FORM

Darcy Swetnam
City Attorney



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 7d

Subject: Budget amendment authorizing one time cash transfer from General Fund to Equipment Rental Fund replacement reserve

Staff Contact: Steve Hoglund

Approved for Submittal to Council by	
X	Laurie Gere, Mayor
X	Steve Hoglund, Finance Director
	Darcy Swetnam, City Attorney

Action Type	
X	Ordinance No. 2990
	Code Revision?
	Resolution No.
	Contract
	Public Hearing
	Staff Report

Summary Statement: The Equipment Rental Fund collects replacement funds from the departments using the vehicles to pay for future replacement when the equipment fully depreciates and is surplused. Those replacement reserves have been under funded for a number of years and a one-time transfer from the General Fund would bring those replacement reserves back to a healthy level. The amount requested does not include the Fire Department Ladder truck (whose replacement cost is over \$1.4 million alone), and includes non-utility fleet only.

Background:

When the great recession set in, a variety of cost saving measures were implemented to maintain a balanced budget, and one of those was reducing equipment replacement charges. This was a conscious decision by administration at the time to avoid layoffs and retain as many City employees as possible. Now that the economy has recovered, and the City has been saving cash reserves in the General Fund every year since 2009, it makes sense to use some of that money to get equipment replacement reserves to a healthy level. This transfer of cash will allow the operation of the Equipment Rental Fund to be more consistent and predictable, rather than budgeting on a "pay as you go" basis for vehicles the way we have for the past 6 to 8 years.

On November 21, 2016 Council approved Ordinance 2995 adopting a fund balance policy. Funding replacement reserve funds is mandatory under this policy. The proposed Ordinance 2990 would fund the Equipment Replacement Reserve for all non-utility equipment (excluding the ladder truck). Based on current year end cash projections, this transfer will leave sufficient cash in the General Fund to establish the 20% target for the Economic Stabilization Reserve Fund and retain the desired 10% of unassigned fund balance.

Budget Impact	
Amount Budgeted	0
Budget Account (BARS)	001.210.597.00.00
Proposed Expenditure	\$2,218,358.28
Budget Amendment Required?	Yes
Revenue Source	Cash reserves

Previous Council/Committee Action: Budget Ordinance 2963 adopting 2016 annual budget; ongoing discussion at Council meetings on 10/17/16 and 11/28/16 in conjunction with consideration of 2017/2018 biennial budget and Fund Balance Policy.

Competing Viewpoints Considered: Budget should not be amended, transfer should not take place, keep cash reserves in the General Fund.

Recommended Motion: I move to adopt ordinance 2990 authorizing the one time ERR transfer.

Alternative Actions: Do not adopt budget amendment.

Attachments (listed in order presented): Ordinance 2990

ORDINANCE 2990

AN ORDINANCE AMENDING ORDINANCE NO. 2963 ADOPTED ON DECEMBER 07, 2015, ENTITLED “AN ORDINANCE ADOPTING THE BUDGET FOR ALL MUNICIPAL PURPOSES AND USES FOR THE YEAR 2016”

WHEREAS, The City of Anacortes has an Equipment Rental Fund 501 that owns, maintains, and replaces all of the City’s fleet vehicles, and those vehicles are leased to the departments using them, and

WHEREAS, The leasing departments’ lease payments consist of a maintenance charge and a replacement charge for future vehicles, and

WHEREAS, When the great recession hit, the replacement charges were reduced in an effort to minimize staff reductions but continue to have a balanced budget, and

WHEREAS, The General fund has healthy cash reserves, exceeding 8 million dollars at fiscal year 2015 year end, and expected to be roughly that level at fiscal year 2016 year end, and

WHEREAS, The cash reserve for replacement of non-utility vehicles is currently underfunded and City Council desires to make a one-time operating transfer from the General Fund to the Equipment Rental Fund to bring the equipment replacement reserve balance to 75% of its fully funded amount, which will provide sufficient funds to operate the Fund consistently,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Anacortes, Washington, as follows:

Section 1. Ordinance No. 2963 dated December 7, 2015 adopting the Budget for 2016 is hereby amended to reflect the following revisions to expenditures and revenues in the following funds:

001.210.597.00.00	Transfers out	2,218,358.28	
001.000.308.90.00	Fund balance		2,218,358.28
501.151.10.00.00	Fund Balance	(2,218,358.28)	
501.000.397.00.00	Transfers in		2,218,358.28

Section 2. Effective date. This Ordinance shall take effect from and after five (5) days after its passage and publication, as required by law.

PASSED AND APPROVED THIS _____ day of December, 2016

CITY OF ANACORTES, WASHINGTON

BY: _____
Laurie Gere, Mayor

ATTEST:

(Corporate Seal)

Steven D. Hoglund, City Clerk

APPROVED AS TO FORM

Darcy Swetnam
City Attorney

General Fund	
Curr exp:	12,572,000
Total exp left	693,040

Revenues YTD	11,727,257
Projected YE receipts:	885,601

change to cash:	192,561
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Current cash:	8,530,939
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Projected YE Cash:	8,723,500
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Fund balance policy, 20% of the governmental funds expenditures:

2017 exp budget			20%
001	13,999,284		2,799,857
101	1,658,199		331,640
102	221,125		44,225
103	1,397,138		279,428
104	2,184,013		436,803
107	262,603		52,521
110	3,226,474		645,295

Fund balance policy requirement:	4,589,767
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Projecting year end cash:	8,723,500
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Cash after policy:	4,133,733
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Proposed ERR transfer:	2,218,358
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Remaining Gen Fund Cash:	1,915,375
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10% spendable cash target:	1,399,928
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Cash after spendable target:	515,446
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City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 7e

Subject: Contract Revision: Navia Benefit Solutions

Staff Contact: Emily Schuh

Approved for Submittal to Council by	
	Laurie Gere, Mayor
X	Emily Schuh, Admin Services Director
X	Darcy Swetnam, City Attorney

Action Type	
	Ordinance No.
	Code Revision?
	Resolution No.
X	Contract
	Public Hearing
	Staff Report

Summary Statement: In 2016, the City transitioned to Navia Benefit Solutions for the administration of the City's Cafeteria Plan. In preparing the contract between the City and Navia Benefit Solutions we utilized the master agreement with the Association of Washington Cities. It has come to our attention that the plan document and and description contract does not address the City's dual insurance incentive program and it is recommended that we amend the contract to include language about this program.

New language in the Plan Document for the City of Anacortes Article III Contributions to the Plan 3.1: "The Employer shall make available to each Participant in the Group Medical Plan who elects to participate in the Dual Insurance Incentive and who opts their spouse and/or dependents out of the Employer's Group Medical Plan an Employer Contribution in an amount to be determined by the Employer prior to the beginning of each Plan Year. The Employer's Contribution shall be made on a pro rata basis for each pay period of the Participant. The Employer Contribution shall be distributed as an increased wage to the Participant."

And new language in the Summary Plan Description Article III Contributions 2.: "If you participate in the Dual Insurance Incentive and opt your spouse and/or dependents out of our group medical coverage, we will contribute a discretionary amount which we will determine prior to the beginning of each Plan Year. This contribution will be provided as an increase to your wage and will be made on a pro rata basis during the year."

Background:

Budget Impact	
Amount Budgeted	
Budget Account (BARS)	
Proposed Expenditure	
Budget Amendment Required?	no
Revenue Source	

Proposed Contract	
Contractor	
Amount	
Start Date	1/1/2017
End Date	

Previous Council/Committee Action: The City of Anacortes entered into a contract with Navia Benefit Solutions that became effective on January 1, 2016.

Competing Viewpoints Considered: Do not adopt this revision and the plan document will remain silent on the dual insurance incentive.

Recommended Motion: I move that the Mayor be authorized to enter into a revised contract with Navia Benefit Solutions as the tax-favored account services vendor of the City's cafeteria plan.

Alternative Actions: Do not adopt this revision and the plan document will remain silent on the dual insurance incentive.

Attachments (listed in order presented):

- A. City of Anacortes Flexible Benefits Plan
- B. City of Anacortes Flexible Benefits Plan Summary Plan Description

**CITY OF ANACORTES FLEXIBLE BENEFITS PLAN
AND ALL SUPPORTING FORMS HAVE BEEN PRODUCED FOR
CITY OF ANACORTES**

CITY OF ANACORTES FLEXIBLE BENEFITS PLAN

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CITY OF ANACORTES FLEXIBLE BENEFITS PLAN

INTRODUCTION

The Employer has amended this Plan effective January 1, 2016, to recognize the contribution made to the Employer by its Employees. Its purpose is to reward them by providing benefits for those Employees who shall qualify hereunder and their Dependents and beneficiaries. The concept of this Plan is to allow Employees to choose among different types of benefits based on their own particular goals, desires and needs. This Plan is a restatement of a Plan which was originally effective on January 1, 2011. The Plan shall be known as City of Anacortes Flexible Benefits Plan (the "Plan").

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

ARTICLE I DEFINITIONS

1.1 **"Administrator"** means the Employer unless another person or entity has been designated by the Employer pursuant to Section 9.1 to administer the Plan on behalf of the Employer. If the Employer is the Administrator, the Employer may appoint any person, including, but not limited to, the Employees of the Employer, to perform the duties of the Administrator. Any person so appointed shall signify acceptance by filing written acceptance with the Employer. Upon the resignation or removal of any individual performing the duties of the Administrator, the Employer may designate a successor.

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

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

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

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

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

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

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

For purposes of the Health Care Flexible Spending Arrangement, a Participant's "Child" includes his/her natural child, stepchild, foster child, adopted child, or a child placed with the Participant for adoption. A Participant's Child will be an eligible Dependent until reaching the limiting age of 26, without regard to student status, marital status, financial dependency or residency status with the Employee or any other person. When the child reaches the applicable limiting age, coverage will end at the end of the calendar year.

The phrase "placed for adoption" refers to a child whom the Participant intends to adopt, whether or not the adoption has become final, who has not attained the age of 18 as of the date of such placement for adoption. The term "placed" means the assumption and retention by such Employee of a legal obligation for total or partial support of the

child in anticipation of adoption of the child. The child must be available for adoption and the legal process must have commenced.

1.8 **"Effective Date"** means January 1, 2011.

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

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

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

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

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

1.13 **"Employer Contribution"** means the contributions made by the Employer pursuant to Section 3.1 to enable a Participant to purchase Benefits. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V and as set forth in Section 3.1.

1.14 **"Insurance Contract"** means any contract issued by an Insurer underwriting a Benefit.

1.15 **"Insurance Premium Payment Plan"** means the plan of benefits contained in Section 4.1 of this Plan, which provides for the payment of Premiums.

1.16 **"Insurer"** means any insurance company that underwrites a Benefit under this Plan.

1.17 **"Key Employee"** means an Employee described in Code Section 416(i)(1) and the Treasury regulations thereunder.

1.18 **"Participant"** means any Eligible Employee who elects to become a Participant pursuant to Section 2.3 and has not for any reason become ineligible to participate further in the Plan.

1.19 **"Plan"** means this instrument, including all amendments thereto.

1.20 **"Plan Year"** means the 12-month period beginning January 1 and ending December 31. The Plan Year shall be the coverage period for the Benefits provided for under this Plan. In the event a Participant commences participation during a Plan Year, then the initial coverage period shall be that portion of the Plan Year commencing on such Participant's date of entry and ending on the last day of such Plan Year.

1.21 **"Premiums"** mean the Participant's cost for the Benefits described in Section 4.1.

1.22 **"Premium Conversion Benefit"** means the account established for a Participant pursuant to this Plan to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Premiums of the Participant shall be paid or reimbursed. If more than one type of insured Benefit is elected, sub-accounts shall be established for each type of insured Benefit.

1.23 **"Salary Redirection"** means the contributions made by the Employer on behalf of Participants pursuant to Section 3.2. These contributions shall be converted to Cafeteria Plan Benefit Dollars and allocated to the funds or accounts established under the Plan pursuant to the Participants' elections made under Article V.

1.24 **"Salary Redirection Agreement"** means an agreement between the Participant and the Employer under which the Participant agrees to reduce his Compensation or to forego all or part of the increases in such Compensation and to have such amounts contributed by the Employer to the Plan on the Participant's behalf. The Salary Redirection Agreement shall apply only to Compensation that has not been actually or constructively received by the Participant as of the date of the agreement (after taking this Plan and Code Section 125 into account) and, subsequently does not become currently available to the Participant.

1.25 **"Spouse"** means spouse as determined under Federal law.

ARTICLE II PARTICIPATION

2.1 ELIGIBILITY

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

2.2 EFFECTIVE DATE OF PARTICIPATION

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

2.3 APPLICATION TO PARTICIPATE

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

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

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured Benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

2.4 TERMINATION OF PARTICIPATION

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

- (a) **Termination of employment.** The Participant's termination of employment, subject to the provisions of Section 2.5;
- (b) **Death.** The Participant's death, subject to the provisions of Section 2.6; or
- (c) **Termination of the plan.** The termination of this Plan, subject to the provisions of Section 10.2.

2.5 TERMINATION OF EMPLOYMENT

If a Participant's employment with the Employer is terminated for any reason other than death, his participation in the Benefit Options provided under Section 4.1 shall be governed in accordance with the following:

- (a) **Insurance Benefit.** With regard to Benefits which are insured, the Participant's participation in the Plan shall cease, subject to the Participant's right to continue coverage under any Insurance Contract for which premiums have already been paid.

(b) **Day Care FSA.** With regard to the Day Care Flexible Spending Arrangement, the Participant's participation in the Plan shall cease and no further Salary Redirection contributions shall be made. However, such Participant may submit claims for employment related Day Care Expense reimbursements for claims incurred through the remainder of the Plan Year in which such termination occurs and submitted within 90 days after the end of the Plan Year, based on the level of the Participant's Day Care Flexible Spending Arrangement as of the date of termination.

(c) **COBRA applicability.** With regard to the Health Care Flexible Spending Arrangement, the Participant may submit claims for expenses that were incurred during the portion of the Plan Year before the end of the period for which payments to the Health Care Flexible Spending Arrangement have already been made. Thereafter, the health benefits under this Plan including the Health Care Flexible Spending Arrangement shall be applied and administered consistent with such further rights a Participant and his Dependents may be entitled to pursuant to Code Section 4980B and Section 11.14 of the Plan.

2.6 DEATH

If a Participant dies, his participation in the Plan shall cease. However, such Participant's spouse or Dependents may submit claims for expenses or benefits for the remainder of the Plan Year or until the Cafeteria Plan Benefit Dollars allocated to each specific benefit are exhausted. In no event may reimbursements be paid to someone who is not a spouse or Dependent. If the Plan is subject to the provisions of Code Section 4980B, then those provisions and related regulations shall apply for purposes of the Health Care Flexible Spending Arrangement.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.1 EMPLOYER CONTRIBUTION

The Employer shall make available to each Participant in the Group Medical Plan who elects to participate in the Dual Insurance Incentive and who opts their spouse and/or dependents out of the Employer's Group Medical Plan an Employer Contribution in an amount to be determined by the Employer prior to the beginning of each Plan Year. The Employer's Contribution shall be made on a pro rata basis for each pay period of the Participant. The Employer Contribution shall be distributed as an increased wage to the Participant.

3.2 SALARY REDIRECTION

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

3.3 APPLICATION OF CONTRIBUTIONS

As soon as reasonably practical after each payroll period, the Employer shall apply the Employer Contribution and Salary Redirection to provide the Benefits elected by the affected Participants. Any contribution made or withheld for the Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement shall be credited to such fund or account. Amounts designated for the Participant's Premium Conversion Benefit shall likewise be credited to such account for the purpose of paying Premiums.

3.4 PERIODIC CONTRIBUTIONS

Notwithstanding the requirement provided above and in other Articles of this Plan that Salary Redirections be contributed to the Plan by the Employer on behalf of an Employee on a level and pro rata basis for each payroll period, the Employer and Administrator may implement a procedure in which Salary Redirections are contributed throughout the Plan Year on a periodic basis that is not pro rata for each payroll period. However, with regard to the Health Care Flexible Spending Arrangement, the payment schedule for the required contributions may not be based on the rate or amount of reimbursements during the Plan Year.

ARTICLE IV BENEFITS

4.1 BENEFIT OPTIONS

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

- (1) Health Care Flexible Spending Arrangement
- (2) Day Care Flexible Spending Arrangement
- (3) Health Savings Account Benefit

In addition, except for the Health Savings Account Benefit, each Participant shall have a sufficient portion of his Employer Contributions and Salary Redirections applied to the following Benefits unless the Participant elects not to receive such Benefits:

- (4) Health Insurance Benefit
- (5) Dental Insurance Benefit
- (6) Vision Insurance Benefit

4.2 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Health Care Flexible Spending Arrangement option, in which case Article VI shall apply.

4.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENT BENEFIT

Each Participant may elect to participate in the Day Care Flexible Spending Arrangement option, in which case Article VII shall apply.

4.4 HEALTH INSURANCE BENEFIT

- (a) **Coverage for Participant and Dependents.** Each Participant may elect to be covered under a health Insurance Contract for the Participant, his or her Spouse, and his or her Dependents.
- (b) **Employer selects contracts.** The Employer may select suitable health Insurance Contracts for use in providing this health insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.
- (c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such health Insurance Contract shall be determined therefrom, and such Insurance Contract shall be incorporated herein by reference.

4.5 DENTAL INSURANCE BENEFIT

- (a) **Coverage for Participant and/or Dependents.** Each Participant may elect to be covered under the Employer's dental Insurance Contract. In addition, the Participant may elect either individual or family coverage under such Insurance Contract.
- (b) **Employer selects contracts.** The Employer may select suitable dental Insurance Contracts for use in providing this dental insurance benefit, which policies will provide uniform benefits for all Participants electing this Benefit.
- (c) **Contract incorporated by reference.** The rights and conditions with respect to the benefits payable from such dental Insurance Contract shall be determined therefrom, and such dental Insurance Contract shall be incorporated herein by reference.

4.6 VISION INSURANCE BENEFIT

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

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

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

4.7 HEALTH SAVINGS ACCOUNT BENEFIT

Each Participant may elect to have a portion of his Salary Redirections contributed to a Health Savings Account, as defined in Code Section 223. The amounts contributed shall be subject to the terms of the Health Savings Account as established.

4.8 NONDISCRIMINATION REQUIREMENTS

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

(b) **25% concentration test.** It is the intent of this Plan not to provide qualified benefits as defined under Code Section 125 to Key Employees in amounts that exceed 25% of the aggregate of such Benefits provided for all Eligible Employees under the Plan. For purposes of the preceding sentence, qualified benefits shall not include benefits which (without regard to this paragraph) are includible in gross income.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to Key Employees or a group of employees in whose favor discrimination may not occur in violation of Code Section 125, it may, but shall not be required to, reduce contributions or non-taxable Benefits in order to assure compliance with the Code and regulations. Any act taken by the Administrator shall be carried out in a uniform and nondiscriminatory manner. With respect to any affected Participant who has had Benefits reduced pursuant to this Section, the reduction shall be made proportionately among Health Care Flexible Spending Arrangement Benefits and Day Care Flexible Spending Arrangement Benefits, and once all these Benefits are expended, proportionately among insured Benefits. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and deposited into the benefit plan surplus.

ARTICLE V PARTICIPANT ELECTIONS

5.1 INITIAL ELECTIONS

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

Notwithstanding the foregoing, an Employee who is eligible to participate in this Plan and who is covered by the Employer's insured benefits under this Plan shall automatically become a Participant to the extent of the Premiums for such insurance unless the Employee elects, during the Election Period, not to participate in the Plan.

5.2 SUBSEQUENT ANNUAL ELECTIONS

During the Election Period prior to each subsequent Plan Year, each Participant shall be given the opportunity to elect, on an election of benefits form to be provided by the Administrator, which spending account Benefit options he wishes to select. Any such election shall be effective for any Benefit expenses incurred during the

Plan Year which follows the end of the Election Period. With regard to subsequent annual elections, the following options shall apply:

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

5.3 FAILURE TO ELECT

With regard to Benefits available under the Plan for which no Premiums apply, any Participant who fails to complete a new benefit election form pursuant to Section 5.2 by the end of the applicable Election Period shall be deemed to have elected not to participate in the Plan for the upcoming Plan Year. No further Salary Redirections shall therefore be authorized or made for the subsequent Plan Year for such Benefits.

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

5.4 CHANGE IN STATUS

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

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

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

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

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

eligibility conditions of this Plan or other employee benefit plan of the Employer of the Participant, Spouse, or Dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this subsection;

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

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

For the Day Care Flexible Spending Arrangement, a Dependent becoming or ceasing to be a "Qualifying Dependent" as defined under Code Section 21(b) shall also qualify as a change in status.

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

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

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

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

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

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

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

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

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

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

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

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

(j) **Change in Day Care provider.** A Participant may make a prospective election change that is on account of and corresponds with a change by the Participant in the Day Care provider. The availability of Day Care services from a new childcare provider is similar to a new benefit package option becoming available. A cost change is allowable in the Day Care Flexible Spending Arrangement only if the cost change is imposed by a Day Care provider who is not related to the Participant, as defined in Code Section 152(a)(1) through (8).

(k) **Health FSA cannot change due to insurance change.** A Participant shall not be permitted to change an election to the Health Care Flexible Spending Arrangement as a result of a cost or coverage change under any health insurance benefits.

(l) **Health Savings Account changes.** With regard to the Health Savings Account Benefit specified in Section 4.7, a Participant who has elected to make elective contributions under such arrangement may modify or revoke the election prospectively, provided such change is consistent with Code Section 223 and the Treasury regulations thereunder.

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

Conditions for revocation due to reduction in hours of service:

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

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

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

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

- (1) The Participant is eligible for a Special Enrollment Period to enroll in a Qualified Health Plan through a Marketplace (federal or state exchange) pursuant to guidance issued by the Department of Health and Human Services and any other applicable guidance, or the Participant seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
- (2) The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the Participant and any related individuals who cease coverage due to the revocation in a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

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

ARTICLE VI HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT

6.1 ESTABLISHMENT OF PLAN

This Health Care Flexible Spending Arrangement is intended to qualify as a medical reimbursement plan under Code Section 105 and shall be interpreted in a manner consistent with such Code Section and the Treasury regulations thereunder. Participants who elect to participate in this Health Care Flexible Spending Arrangement may submit claims for the reimbursement of Medical Expenses. All amounts reimbursed shall be periodically paid from amounts allocated to the Health Care Flexible Spending Arrangement. Periodic payments reimbursing Participants from the Health Care Flexible Spending Arrangement shall in no event occur less frequently than monthly. There is an additional "limited FSA" designed to coordinate with a Health Savings Account and high deductible health plan.

6.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan, the terms below have the following meaning:

(a) **"Health Care Flexible Spending Arrangement"** means the account established for Participants pursuant to this Plan to which part of their Cafeteria Plan Benefit Dollars may be allocated and from which all allowable Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents may be reimbursed.

(b) **"Highly Compensated Participant"** means, for the purposes of this Article and determining discrimination under Code Section 105(h), a participant who is:

- (1) one of the 5 highest paid officers;
- (2) a shareholder who owns (or is considered to own applying the rules of Code Section 318) more than 10 percent in value of the stock of the Employer; or
- (3) among the highest paid 25 percent of all Employees (other than exclusions permitted by Code Section 105(h)(3)(B) for those individuals who are not Participants).

(c) **"Medical Expenses"** means any expense for medical care within the meaning of the term "medical care" as defined in Code Section 213(d) and the rulings and Treasury regulations thereunder, and not otherwise used by the Participant as a deduction in determining his tax liability under the Code. "Medical

Expenses" can be incurred by the Participant, his or her Spouse and his or her Dependents. "Incurred" means, with regard to Medical Expenses, when the Participant is provided with the medical care that gives rise to the Medical Expense and not when the Participant is formally billed or charged for, or pays for, the medical care.

A Participant who contributes to a Health Savings Account may only be reimbursed for medical expenses that are considered to be for dental, vision or preventive care expenses as allowed under Code Section 223.

A Participant may not be reimbursed for the cost of any medicine or drug that is not "prescribed" within the meaning of Code Section 106(f) or is not insulin.

A Participant may not be reimbursed for the cost of other health coverage such as premiums paid under plans maintained by the employer of the Participant's Spouse or individual policies maintained by the Participant or his Spouse or Dependent.

A Participant may not be reimbursed for "qualified long-term care services" as defined in Code Section 7702B(c).

(d) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Health Care Flexible Spending Arrangement.

6.3 FORFEITURES

The amount in the Health Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 6.7 hereof, excluding any carryover) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason, subject to Section 8.2.

6.4 LIMITATION ON ALLOCATIONS

(a) Notwithstanding any provision contained in this Health Care Flexible Spending Arrangement to the contrary, the maximum amount of salary reductions and Employer Contributions convertible to cash that may be allocated to the Health Care Flexible Spending Arrangement by a Participant in or on account of any Plan Year is \$2,500, as adjusted for increases in the cost of living in accordance with Code Section 125(i)(2). The cost of living adjustment in effect for a calendar year applies to any Plan Year beginning with or within such calendar year. The dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year. For any short Plan Year, the limit shall be an amount equal to the limit for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the short Plan Year by twelve (12).

(b) **Participation in Other Plans.** All employers that are treated as a single employer under Code Sections 414(b), (c), or (m), relating to controlled groups and affiliated service groups, are treated as a single employer for purposes of the statutory limit. If a Participant participates in multiple cafeteria plans offering Health Care Flexible Spending Arrangements maintained by members of a controlled group or affiliated service group, the Participant's total Health Care Flexible Spending Arrangement contributions under all of the cafeteria plans are limited to the statutory limit (as adjusted). However, a Participant employed by two or more employers that are not members of the same controlled group may elect up to the statutory limit (as adjusted) under each Employer's Health Care Flexible Spending Arrangement.

(c) **Carryover.** A Participant in the Health Care Flexible Spending Arrangement may roll over up to \$500 of unused amounts in the Health Care Flexible Spending Arrangement remaining at the end of one Plan Year to the immediately following Plan Year. These amounts can be used during the following Plan Year for expenses incurred in that Plan Year. Amounts carried over do not affect the maximum amount of salary redirection contributions for the Plan Year to which they are carried over. Unused amounts are those remaining after expenses have been reimbursed during the runout period. These amounts may not be cashed out or converted to any other taxable or nontaxable benefit. Amounts in excess of \$500 will be forfeited. The Plan is allowed, but not required, to treat claims as being paid first from the current year amounts, then from the carryover amounts.

6.5 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Health Care Flexible Spending Arrangement not to discriminate in violation of the Code and the Treasury regulations thereunder.

(b) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination under this Health Care Flexible Spending Arrangement, it may, but shall not be required to, reject any elections or reduce contributions or Benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Health Care Flexible Spending Arrangement by the member of the group in whose favor discrimination may not occur pursuant to Code Section 105 that elected to contribute the highest amount to the fund for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section or the Code are satisfied, or until the amount designated for the fund equals the amount designated for the fund by the next member of the group in whose favor discrimination may not occur pursuant to Code Section 105 who has elected the second highest contribution to the Health Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section or the Code are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited and credited to the benefit plan surplus.

6.6 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Health Care Flexible Spending Arrangement. The enrollment under the Cafeteria Plan shall constitute enrollment under this Health Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

6.7 HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

(a) **Expenses must be incurred during Plan Year.** All Medical Expenses incurred by a Participant, his or her Spouse and his or her Dependents during the Plan Year shall be reimbursed during the Plan Year subject to Section 2.5, even though the submission of such a claim occurs after his participation hereunder ceases; but provided that the Medical Expenses were incurred during the applicable Plan Year. Medical Expenses are treated as having been incurred when the Participant is provided with the medical care that gives rise to the medical expenses, not when the Participant is formally billed or charged for, or pays for the medical care.

(b) **Reimbursement available throughout Plan Year.** The Administrator shall direct the reimbursement to each eligible Participant for all allowable Medical Expenses, up to a maximum of the amount designated by the Participant for the Health Care Flexible Spending Arrangement for the Plan Year. Reimbursements shall be made available to the Participant throughout the year without regard to the level of Cafeteria Plan Benefit Dollars which have been allocated to the fund at any given point in time. Furthermore, a Participant shall be entitled to reimbursements only for amounts in excess of any payments or other reimbursements under any health care plan covering the Participant and/or his Spouse or Dependents.

(c) **Payments.** Reimbursement payments under this Plan shall be made directly to the Participant. However, in the Administrator's discretion, payments may be made directly to the service provider. The application for payment or reimbursement shall be made to the Administrator on an acceptable form within a reasonable time of incurring the debt or paying for the service. The application shall include a written statement from an independent third party stating that the Medical Expense has been incurred and the amount of such expense. Furthermore, the Participant shall provide a written statement that the Medical Expense has not been reimbursed or is not reimbursable under any other health plan coverage and, if reimbursed from the Health Care Flexible Spending Arrangement, such amount will not be claimed as a tax deduction. The Administrator shall retain a file of all such applications.

(d) **Claims for reimbursement.** Claims for the reimbursement of Medical Expenses incurred in any Plan Year shall be paid as soon after a claim has been filed as is administratively practicable; provided however, that if a Participant fails to submit a claim within 90 days after the end of the Plan Year, those Medical Expense claims shall not be considered for reimbursement by the Administrator.

6.8 DEBIT AND CREDIT CARDS

Participants may, subject to a procedure established by the Administrator and applied in a uniform nondiscriminatory manner, use debit and/or credit (stored value) cards ("cards") provided by the Administrator and the Plan for payment of Medical Expenses, subject to the following terms:

(a) **Card only for medical expenses.** Each Participant issued a card shall certify that such card shall only be used for Medical Expenses. The Participant shall also certify that any Medical Expense paid with the card has not already been reimbursed by any other plan covering health benefits and that the Participant will not seek reimbursement from any other plan covering health benefits.

(b) **Card issuance.** Such card shall be issued upon the Participant's Effective Date of Participation and reissued for each Plan Year the Participant remains a Participant in the Health Care Flexible Spending Arrangement. Such card shall be automatically cancelled upon the Participant's death or termination of employment, or if such Participant has a change in status that results in the Participant's withdrawal from the Health Care Flexible Spending Arrangement.

(c) **Maximum dollar amount available.** The dollar amount of coverage available on the card shall be the amount elected by the Participant for the Plan Year. The maximum dollar amount of coverage available shall be the maximum amount for the Plan Year as set forth in Section 6.4.

(d) **Only available for use with certain service providers.** The cards shall only be accepted by such merchants and service providers as have been approved by the Administrator following IRS guidelines.

(e) **Card use.** The cards shall only be used for Medical Expense purchases at these providers, including, but not limited to, the following:

- (1) Co-payments for doctor and other medical care;
- (2) Purchase of drugs prescribed by a health care provider, including, if permitted by the Administrator, over-the-counter medications as allowed under IRS regulations;
- (3) Purchase of medical items such as eyeglasses, syringes, crutches, etc.

(f) **Substantiation.** Such purchases by the cards shall be subject to substantiation by the Administrator, usually by submission of a receipt from a service provider describing the service, the date and the amount. The Administrator shall also follow the requirements set forth in Revenue Ruling 2003-43 and Notice 2006-69. All charges shall be conditional pending confirmation and substantiation.

(g) **Correction methods.** If such purchase is later determined by the Administrator to not qualify as a Medical Expense, the Administrator, in its discretion, shall use one of the following correction methods to make the Plan whole. Until the amount is repaid, the Administrator shall take further action to ensure that further violations of the terms of the card do not occur, up to and including denial of access to the card.

- (1) Repayment of the improper amount by the Participant;
- (2) Withholding the improper payment from the Participant's wages or other compensation to the extent consistent with applicable federal or state law;
- (3) Claims substitution or offset of future claims until the amount is repaid; and
- (4) if subsections (1) through (3) fail to recover the amount, consistent with the Employer's business practices, the Employer may treat the amount as any other business indebtedness.

**ARTICLE VII
DAY CARE FLEXIBLE SPENDING ARRANGEMENT**

7.1 ESTABLISHMENT OF ACCOUNT

This Day Care Flexible Spending Arrangement is intended to qualify as a program under Code Section 129 and shall be interpreted in a manner consistent with such Code Section. Participants who elect to participate in this program may submit claims for the reimbursement of Employment-Related Day Care Expenses. All amounts reimbursed shall be paid from amounts allocated to the Participant's Day Care Flexible Spending Arrangement.

7.2 DEFINITIONS

For the purposes of this Article and the Cafeteria Plan the terms below shall have the following meaning:

(a) **"Day Care Flexible Spending Arrangement"** means the account established for a Participant pursuant to this Article to which part of his Cafeteria Plan Benefit Dollars may be allocated and from which Employment-Related Day Care Expenses of the Participant may be reimbursed for the care of the Qualifying Dependents of Participants.

(b) **"Earned Income"** means earned income as defined under Code Section 32(c)(2), but excluding such amounts paid or incurred by the Employer for Day Care assistance to the Participant.

(c) **"Employment-Related Day Care Expenses"** means the amounts paid for expenses of a Participant for those services which if paid by the Participant would be considered employment related expenses under Code Section 21(b)(2). Generally, they shall include expenses for household services and for the care of a Qualifying Dependent, to the extent that such expenses are incurred to enable the Participant to be gainfully employed for any period for which there are one or more Qualifying Dependents with respect to such Participant. Employment-Related Day Care Expenses are treated as having been incurred when the Participant's Qualifying Dependents are provided with the Day Care that gives rise to the Employment-Related Day Care Expenses, not when the Participant is formally billed or charged for, or pays for the Day Care. The determination of whether an amount qualifies as an Employment-Related Day Care Expense shall be made subject to the following rules:

(1) If such amounts are paid for expenses incurred outside the Participant's household, they shall constitute Employment-Related Day Care Expenses only if incurred for a Qualifying Dependent as defined in Section 7.2(d)(1) (or deemed to be, as described in Section 7.2(d)(1) pursuant to Section 7.2(d)(3)), or for a Qualifying Dependent as defined in Section 7.2(d)(2) (or deemed to be, as described in Section 7.2(d)(2) pursuant to Section 7.2(d)(3)) who regularly spends at least 8 hours per day in the Participant's household;

(2) If the expense is incurred outside the Participant's home at a facility that provides care for a fee, payment, or grant for more than 6 individuals who do not regularly reside at the facility, the facility must comply with all applicable state and local laws and regulations, including licensing requirements, if any; and

(3) Employment-Related Day Care Expenses of a Participant shall not include amounts paid or incurred to a child of such Participant who is under the age of 19 or to an individual who is a Dependent of such Participant or such Participant's Spouse.

(d) **"Qualifying Dependent"** means, for Day Care Flexible Spending Arrangement purposes,

(1) a Participant's Dependent (as defined in Code Section 152(a)(1)) who has not attained age 13;

(2) a Dependent or the Spouse of a Participant who is physically or mentally incapable of caring for himself or herself and has the same principal place of abode as the Participant for more than one-half of such taxable year; or

(3) a child that is deemed to be a Qualifying Dependent described in paragraph (1) or (2) above, whichever is appropriate, pursuant to Code Section 21(e)(5).

(e) The definitions of Article I are hereby incorporated by reference to the extent necessary to interpret and apply the provisions of this Day Care Flexible Spending Arrangement.

7.3 DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

The Administrator shall establish a Day Care Flexible Spending Arrangement for each Participant who elects to apply Cafeteria Plan Benefit Dollars to Day Care Flexible Spending Arrangement benefits.

7.4 INCREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be increased each pay period by the portion of Cafeteria Plan Benefit Dollars that he has elected to apply toward his Day Care Flexible Spending Arrangement pursuant to elections made under Article V hereof.

7.5 DECREASES IN DAY CARE FLEXIBLE SPENDING ARRANGEMENTS

A Participant's Day Care Flexible Spending Arrangement shall be reduced by the amount of any Employment-Related Day Care Expense reimbursements paid or incurred on behalf of a Participant pursuant to Section 7.12 hereof.

7.6 ALLOWABLE DAY CARE REIMBURSEMENT

Subject to limitations contained in Section 7.9 of this Program, and to the extent of the amount contained in the Participant's Day Care Flexible Spending Arrangement, a Participant who incurs Employment-Related Day Care Expenses shall be entitled to receive from the Employer full reimbursement for the entire amount of such expenses incurred during the Plan Year or portion thereof during which he is a Participant.

7.7 ANNUAL STATEMENT OF BENEFITS

On or before January 31st of each calendar year, the Employer shall furnish to each Employee who was a Participant and received benefits under Section 7.6 during the prior calendar year, a statement of all such benefits paid to or on behalf of such Participant during the prior calendar year. This statement is set forth on the Participant's Form W-2.

7.8 FORFEITURES

The amount in a Participant's Day Care Flexible Spending Arrangement as of the end of any Plan Year (and after the processing of all claims for such Plan Year pursuant to Section 7.12 hereof) shall be forfeited and credited to the benefit plan surplus. In such event, the Participant shall have no further claim to such amount for any reason.

7.9 LIMITATION ON PAYMENTS

(a) **Code limits.** Notwithstanding any provision contained in this Article to the contrary, amounts paid from a Participant's Day Care Flexible Spending Arrangement in or on account of any taxable year of the Participant shall not exceed the lesser of the Earned Income limitation described in Code Section 129(b) or \$5,000 (\$2,500 if a separate tax return is filed by a Participant who is married as determined under the rules of paragraphs (3) and (4) of Code Section 21(e)).

7.10 NONDISCRIMINATION REQUIREMENTS

(a) **Intent to be nondiscriminatory.** It is the intent of this Day Care Flexible Spending Arrangement that contributions or benefits not discriminate in favor of the group of employees in whose favor discrimination may not occur under Code Section 129(d).

(b) **25% test for shareholders.** It is the intent of this Day Care Flexible Spending Arrangement that not more than 25 percent of the amounts paid by the Employer for Day Care assistance during the Plan Year will be provided for the class of individuals who are shareholders or owners (or their Spouses or Dependents), each of whom (on any day of the Plan Year) owns more than 5 percent of the stock or of the capital or profits interest in the Employer.

(c) **Adjustment to avoid test failure.** If the Administrator deems it necessary to avoid discrimination or possible taxation to a group of employees in whose favor discrimination may not occur in

violation of Code Section 129 it may, but shall not be required to, reject any elections or reduce contributions or non-taxable benefits in order to assure compliance with this Section. Any act taken by the Administrator under this Section shall be carried out in a uniform and nondiscriminatory manner. If the Administrator decides to reject any elections or reduce contributions or Benefits, it shall be done in the following manner. First, the Benefits designated for the Day Care Flexible Spending Arrangement by the affected Participant that elected to contribute the highest amount to such account for the Plan Year shall be reduced until the nondiscrimination tests set forth in this Section are satisfied, or until the amount designated for the account equals the amount designated for the account of the affected Participant who has elected the second highest contribution to the Day Care Flexible Spending Arrangement for the Plan Year. This process shall continue until the nondiscrimination tests set forth in this Section are satisfied. Contributions which are not utilized to provide Benefits to any Participant by virtue of any administrative act under this paragraph shall be forfeited.

7.11 COORDINATION WITH CAFETERIA PLAN

All Participants under the Cafeteria Plan are eligible to receive Benefits under this Day Care Flexible Spending Arrangement. The enrollment and termination of participation under the Cafeteria Plan shall constitute enrollment and termination of participation under this Day Care Flexible Spending Arrangement. In addition, other matters concerning contributions, elections and the like shall be governed by the general provisions of the Cafeteria Plan.

7.12 DAY CARE FLEXIBLE SPENDING ARRANGEMENT CLAIMS

The Administrator shall direct the payment of all such Day Care claims to the Participant upon the presentation to the Administrator of documentation of such expenses in a form satisfactory to the Administrator. However, in the Administrator's discretion, payments may be made directly to the service provider. In its discretion in administering the Plan, the Administrator may utilize forms and require documentation of costs as may be necessary to verify the claims submitted. At a minimum, the form shall include a statement from an independent third party as proof that the expense has been incurred during the Plan Year and the amount of such expense. In addition, the Administrator may require that each Participant who desires to receive reimbursement under this Program for Employment-Related Day Care Expenses submit a statement which may contain some or all of the following information:

- (a) The Dependent or Dependents for whom the services were performed;
- (b) The nature of the services performed for the Participant, the cost of which he wishes reimbursement;
- (c) The relationship, if any, of the person performing the services to the Participant;
- (d) If the services are being performed by a child of the Participant, the age of the child;
- (e) A statement as to where the services were performed;
- (f) If any of the services were performed outside the home, a statement as to whether the Dependent for whom such services were performed spends at least 8 hours a day in the Participant's household;
- (g) If the services were being performed in a day care center, a statement:
 - (1) that the day care center complies with all applicable laws and regulations of the state of residence,
 - (2) that the day care center provides care for more than 6 individuals (other than individuals residing at the center), and
 - (3) of the amount of fee paid to the provider.
- (h) If the Participant is married, a statement containing the following:
 - (1) the Spouse's salary or wages if he or she is employed, or

- (2) if the Participant's Spouse is not employed, that
 - (i) he or she is incapacitated, or
 - (ii) he or she is a full-time student attending an educational institution and the months during the year which he or she attended such institution.
- (i) **Claims for reimbursement.** If a Participant fails to submit a claim within 90 days after the end of the Plan Year, those claims shall not be considered for reimbursement by the Administrator.

ARTICLE VIII BENEFITS AND RIGHTS

8.1 CLAIM FOR BENEFITS

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

(b) **Health and Day Care Flexible Spending Arrangement Claims.** The Participant must submit all claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

If a claim under the Plan is denied in whole or in part, the Participant will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure.

A level one appeal must be submitted within 180 days of receipt of the denial. Any such request should be accompanied by documents or records in support of the appeal. The Participant may review pertinent documents and submit issues and comments in writing. The claims administrator will review the claim and provide, within 30 days, a written response to the appeal (extended by reasonable time if necessary). In this response, the claims administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. If the Participant disagrees with the level one appeal decision the Participant may submit a request for a level two appeal to be determined by the Employer. The Participant must submit the request for level two appeal within 60 days of receipt of the level one notice. The Participant will be notified within 30 days after the Employer receives the appeal (extended by reasonable time if necessary). The Employer has the exclusive right to interpret the appropriate plan provisions. Decisions of the Employer are conclusive and binding.

The following timetable for claims applies:

Notification of whether claim is accepted or denied	30 days
Extension due to matters beyond the control of the Plan	15 days
Denial or insufficient information on the claim: Notification of	15 days
Response by Participant	45 days
Review of claim denial	30 days

The Participant must file the appeal by submitting a written request by email, fax, or mail to Navia and indicate either level one or two appeal on the email, fax, or letter.

Email: claims@naviabenefits.com

Fax: 425-451-7002 or 866-535-9227

Mail: Navia Benefit Solutions, Inc., PO Box 53250, Bellevue WA 98015.

The response will provide written or electronic notification of any claim denial. The notice will state:

- (a) The specific reason or reasons for the denial;
- (b) Reference to the specific Plan provisions on which the denial was based;
- (c) A description of any additional material or information necessary for the Participant to perfect the claim and an explanation of why such material or information is necessary;
- (d) A description of the Plan's review procedures and the time limits applicable to such procedures.
- (e) A statement that the Participant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim; and
- (f) If the denial was based on an internal rule, guideline, protocol, or other similar criterion, the specific rule, guideline, protocol, or criterion will be provided free of charge. If this is not practical, a statement will be included that such a rule, guideline, protocol, or criterion was relied upon in making the denial and a copy will be provided free of charge to the Participant upon request.

When the Participant receives a denial, the Participant will have 180 days following receipt of the notification in which to appeal the decision. The Participant may submit written comments, documents, records, and other information relating to the claim. If the Participant requests, the Participant will be provided, free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim.

The period of time within which a denial on review is required to be made will begin at the time an appeal is filed in accordance with the procedures of the Plan. This timing is without regard to whether all the necessary information accompanies the filing.

A document, record, or other information shall be considered relevant to a claim if it:

- (a) was relied upon in making the claim determination;
- (b) was submitted, considered, or generated in the course of making the claim determination, without regard to whether it was relied upon in making the claim determination;
- (c) demonstrated compliance with the administrative processes and safeguards designed to ensure and to verify that claim determinations are made in accordance with Plan documents and Plan provisions have been applied consistently with respect to all claimants; or
- (d) constituted a statement of policy or guidance with respect to the Plan concerning the denied claim.

The review will take into account all comments, documents, records, and other information submitted by the Participant relating to the claim, without regard to whether such information was submitted or considered in the initial claim determination. The review will not afford deference to the initial denial and will be conducted by a fiduciary of the Plan who is neither the individual who made the adverse determination nor a subordinate of that individual.

- (e) **Forfeitures.** Any balance remaining in the Participant's Day Care Flexible Spending Arrangement or Health Care Flexible Spending Arrangement as of the end of the time for claims reimbursement for each Plan Year and Grace Period (if applicable) shall be forfeited and deposited in the benefit plan surplus of the Employer pursuant to Section 6.3 or Section 7.8, whichever is applicable, unless the Participant had made a claim for such Plan Year, in writing, which has been denied or is pending; in which event the amount of the claim shall be held in his account until the claim appeal procedures set forth above have been satisfied or the claim is paid. If any such claim is denied on appeal, the amount held beyond the end of the Plan Year shall be forfeited and credited to the benefit plan surplus.

8.2 APPLICATION OF BENEFIT PLAN SURPLUS

Any forfeited amounts credited to the benefit plan surplus by virtue of the failure of a Participant to incur a qualified expense or seek reimbursement in a timely manner may, but need not be, separately accounted for after the close of the Plan Year (or after such further time specified herein for the filing of claims) in which such forfeitures arose. In no event shall such amounts be carried over to reimburse a Participant for expenses incurred during a subsequent Plan Year for the same or any other Benefit available under the Plan (excepting any carryover); nor shall amounts forfeited by a particular Participant be made available to such Participant in any other form or manner, except as permitted by Treasury regulations. Amounts in the benefit plan surplus shall be used to defray any administrative costs and experience losses or used to provide additional benefits under the Plan. No amounts attributable to the Health Savings Account shall be subject to the benefit plan surplus.

ARTICLE IX ADMINISTRATION

9.1 PLAN ADMINISTRATION

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

If the Employer elects, the Employer shall appoint one or more Administrators. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person so appointed shall signify acceptance by filing acceptance in writing (or such other form as acceptable to both parties) with the Employer. An Administrator may resign by delivering a resignation in writing (or such other form as acceptable to both parties) to the Employer or be removed by the Employer by delivery of notice of removal (in writing or such other form as acceptable to both parties), to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan to ensure that the Plan is being operated for the exclusive benefit of the Employees entitled to participate in the Plan in accordance with the terms of the Plan and the Code.

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

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

(f) To keep and maintain the Plan documents and all other records pertaining to and necessary for the administration of the Plan;

(g) To review and settle all claims against the Plan, to approve reimbursement requests, and to authorize the payment of benefits if the Administrator determines such shall be paid if the Administrator decides in its discretion that the applicant is entitled to them. This authority specifically permits the Administrator to settle disputed claims for benefits and any other disputed claims made against the Plan;

(h) To appoint such agents, counsel, accountants, consultants, and other persons or entities as may be required to assist in administering the Plan.

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

9.2 EXAMINATION OF RECORDS

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

9.3 PAYMENT OF EXPENSES

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

9.4 INSURANCE CONTROL CLAUSE

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

9.5 INDEMNIFICATION OF ADMINISTRATOR

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

ARTICLE X AMENDMENT OR TERMINATION OF PLAN

10.1 AMENDMENT

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

10.2 TERMINATION

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

No further additions shall be made to the Health Care Flexible Spending Arrangement or Day Care Flexible Spending Arrangement, but all payments from such fund shall continue to be made according to the elections in effect until 90 days after the termination date of the Plan. Any amounts remaining in any such fund or account as of the end of such period shall be forfeited and deposited in the benefit plan surplus after the expiration of the filing period.

ARTICLE XI MISCELLANEOUS

11.1 PLAN INTERPRETATION

All provisions of this Plan shall be interpreted and applied in a uniform, nondiscriminatory manner. This Plan shall be read in its entirety and not severed except as provided in Section 11.12.

11.2 GENDER AND NUMBER

Wherever any words are used herein in the masculine, feminine or neuter gender, they shall be construed as though they were also used in another gender in all cases where they would so apply, and whenever any words are used herein in the singular or plural form, they shall be construed as though they were also used in the other form in all cases where they would so apply.

11.3 WRITTEN DOCUMENT

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

11.4 EXCLUSIVE BENEFIT

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

11.5 PARTICIPANT'S RIGHTS

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

11.6 ACTION BY THE EMPLOYER

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

11.7 EMPLOYER'S PROTECTIVE CLAUSES

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

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

11.8 NO GUARANTEE OF TAX CONSEQUENCES

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

11.9 INDEMNIFICATION OF EMPLOYER BY PARTICIPANTS

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

11.10 FUNDING

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

11.11 GOVERNING LAW

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

11.12 SEVERABILITY

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

11.13 CAPTIONS

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

11.14 CONTINUATION OF COVERAGE (COBRA)

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

11.15 FAMILY AND MEDICAL LEAVE ACT (FMLA)

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

11.16 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

Notwithstanding anything in this Plan to the contrary, this Plan shall be operated in accordance with HIPAA and regulations thereunder.

11.17 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)

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

11.18 COMPLIANCE WITH HIPAA PRIVACY STANDARDS

(a) **Application.** If any benefits under this Cafeteria Plan are subject to the Standards for Privacy of Individually Identifiable Health Information (45 CFR Part 164, the "Privacy Standards"), then this Section shall apply.

(b) **Disclosure of PHI.** The Plan shall not disclose Protected Health Information to any member of the Employer's workforce unless each of the conditions set out in this Section are met. "Protected Health Information" shall have the same definition as set forth in the Privacy Standards but generally shall mean individually identifiable information about the past, present or future physical or mental health or condition of an individual, including genetic information and information about treatment or payment for treatment.

(c) **PHI disclosed for administrative purposes.** Protected Health Information disclosed to members of the Employer's workforce shall be used or disclosed by them only for purposes of Plan administrative functions. The Plan's administrative functions shall include all Plan payment functions and health care operations. The terms "payment" and "health care operations" shall have the same definitions as set out in the Privacy Standards, but the term "payment" generally shall mean activities taken to determine or fulfill Plan responsibilities with respect to eligibility, coverage, provision of benefits, or reimbursement for health care. Protected Health Information that consists of genetic information will not be used or disclosed for underwriting purposes.

(d) **PHI disclosed to certain workforce members.** The Plan shall disclose Protected Health Information only to members of the Employer's workforce who are designated and authorized to receive such Protected Health Information, and only to the extent and in the minimum amount necessary for that person to perform his or her duties with respect to the Plan. "Members of the Employer's workforce" shall refer to all employees and other persons under the control of the Employer. The Employer shall keep an updated list of those authorized to receive Protected Health Information.

(1) An authorized member of the Employer's workforce who receives Protected Health Information shall use or disclose the Protected Health Information only to the extent necessary to perform his or her duties with respect to the Plan.

(2) In the event that any member of the Employer's workforce uses or discloses Protected Health Information other than as permitted by this Section and the Privacy Standards, the incident shall be reported to the Plan's privacy official. The privacy official shall take appropriate action, including:

(i) investigation of the incident to determine whether the breach occurred inadvertently, through negligence or deliberately; whether there is a pattern of breaches; and the degree of harm caused by the breach;

(ii) appropriate sanctions against the persons causing the breach which, depending upon the nature of the breach, may include oral or written reprimand, additional training, or termination of employment;

(iii) mitigation of any harm caused by the breach, to the extent practicable; and

(iv) documentation of the incident and all actions taken to resolve the issue and mitigate any damages.

- (e) **Certification.** The Employer must provide certification to the Plan that it agrees to:
- (1) Not use or further disclose the information other than as permitted or required by the Plan documents or as required by law;
 - (2) Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Plan, agrees to the same restrictions and conditions that apply to the Employer with respect to such information;
 - (3) Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;
 - (4) Report to the Plan any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by this Section, or required by law;
 - (5) Make available Protected Health Information to individual Plan members in accordance with Section 164.524 of the Privacy Standards;
 - (6) Make available Protected Health Information for amendment by individual Plan members and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
 - (7) Make available the Protected Health Information required to provide an accounting of disclosures to individual Plan members in accordance with Section 164.528 of the Privacy Standards;
 - (8) Make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from the Plan available to the Department of Health and Human Services for purposes of determining compliance by the Plan with the Privacy Standards;
 - (9) If feasible, return or destroy all Protected Health Information received from the Plan that the Employer still maintains in any form, and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
 - (10) Ensure the adequate separation between the Plan and members of the Employer's workforce, as required by Section 164.504(f)(2)(iii) of the Privacy Standards and set out in (d) above.

11.19 COMPLIANCE WITH HIPAA ELECTRONIC SECURITY STANDARDS

Under the Security Standards for the Protection of Electronic Protected Health Information (45 CFR Part 164.300 et. seq., the "Security Standards"):

- (a) **Implementation.** The Employer agrees to implement reasonable and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of Electronic Protected Health Information that the Employer creates, maintains or transmits on behalf of the Plan. "Electronic Protected Health Information" shall have the same definition as set out in the Security Standards, but generally shall mean Protected Health Information that is transmitted by or maintained in electronic media.
- (b) **Agents or subcontractors shall meet security standards.** The Employer shall ensure that any agent or subcontractor to whom it provides Electronic Protected Health Information shall agree, in writing, to implement reasonable and appropriate security measures to protect the Electronic Protected Health Information.
- (c) **Employer shall ensure security standards.** The Employer shall ensure that reasonable and appropriate security measures are implemented to comply with the conditions and requirements set forth in Section 11.18.

11.20 MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Mental Health Parity and Addiction Equity Act.

11.21 GENETIC INFORMATION NONDISCRIMINATION ACT (GINA)

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Genetic Information Nondiscrimination Act.

11.22 WOMEN'S HEALTH AND CANCER RIGHTS ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Women's Health and Cancer Rights Act of 1998.

11.23 NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT

Notwithstanding anything in the Plan to the contrary, the Plan will comply with the Newborns' and Mothers' Health Protection Act.

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

City of Anacortes

By _____
EMPLOYER

ADOPTING RESOLUTION

The undersigned authorized representative of City of Anacortes (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on _____, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of amended Cafeteria Plan including a Health Care Flexible Spending Arrangement and Day Care Flexible Spending Arrangement effective January 1, 2016, presented to this meeting is hereby approved and adopted and that an authorized representative of the Employer is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

The undersigned further certifies that attached are true copies of City of Anacortes Flexible Benefits Plan as amended and restated, and the Summary Plan Description approved and adopted in the foregoing resolutions.

Date: _____

Signed: _____

[print name/title]

CITY OF ANACORTES FLEXIBLE BENEFITS PLAN
SUMMARY PLAN DESCRIPTION

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**XI
SUMMARY**

CITY OF ANACORTES FLEXIBLE BENEFITS PLAN

INTRODUCTION

We have amended the "Flexible Benefits Plan" that we previously established for you and other eligible employees. Under this Plan, you will be able to choose among certain benefits that we make available. The benefits that you may choose are outlined in this Summary Plan Description. We will also tell you about other important information concerning the amended Plan, such as the rules you must satisfy before you can join and the laws that protect your rights.

One of the most important features of our Plan is that the benefits being offered are generally ones that you are already paying for, but normally with money that has first been subject to income and Social Security taxes. Under our Plan, these same expenses will be paid for with a portion of your pay before Federal income or Social Security taxes are withheld. This means that you will pay less tax and have more money to spend and save.

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

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

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

I ELIGIBILITY

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

Before you become a Plan member (referred to in this Summary Plan Description as a "Participant"), there are certain rules which you must satisfy. First, you must meet the eligibility requirements and be an active employee. After that, the next step is to actually join the Plan on the "entry date" that we have established for all employees. The "entry date" is defined in Question 3 below. You will also be required to complete certain application forms before you can enroll in the Health Flexible Spending Account or Dependent Care Flexible Spending Account.

2. What are the eligibility requirements for our Plan?

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

3. When is my entry date?

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

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

Before you can join the Plan, you must complete an application to participate in the Plan. The application includes your personal choices for each of the benefits which are being offered under the Plan. You must also authorize us to set some of your earnings aside in order to pay for a portion of the benefits you have elected.

However, if you are already covered under any of the insured benefits, you will automatically participate in this Plan to the extent of your premiums unless you elect not to participate in this Plan.

II OPERATION

1. How does this Plan operate?

Before the start of each Plan Year, you will be able to elect to have some of your upcoming pay contributed to the Plan. These amounts will be used to pay for the benefits you have chosen. The portion of your pay that is paid to the Plan is not subject to Federal income or Social Security taxes. In other words, this allows you to use tax-free dollars to pay for certain kinds of benefits and expenses which you normally pay for with out-of-pocket, taxable dollars. Also, we will make additional Employer contributions to the Plan that you may use to increase the amounts used to pay benefits. However, if you receive a reimbursement for an expense under the Plan, you cannot claim a Federal income tax credit or deduction on your return. (See the Article entitled "General Information About Our Plan" for the definition of "Plan Year.")

III CONTRIBUTIONS

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

Each year, we will automatically contribute on your behalf enough of your compensation to pay for the insurance coverage provided unless you elect not to receive any or all of such coverage. You may also elect to have us contribute on your behalf enough of your compensation to pay for any other benefits that you elect under the Plan. These amounts will be deducted from your pay over the course of the year.

2. How much will the Employer contribute each year?

If you participate in the Dual Insurance Incentive and opt your spouse and/or dependents out of our group medical coverage, we will contribute a discretionary amount which we will determine prior to the beginning of each Plan Year. This contribution will be provided as an increase to your wage and will be made on a pro rata basis during the year.

3. What happens to contributions made to the Plan?

Before each Plan Year begins, you will select the benefits you want and how much of the contributions should go toward each benefit. It is very important that you make these choices carefully based on what you expect to spend on each covered benefit or expense during the Plan Year. Later, they will be used to pay for the expenses as they arise during the Plan Year.

4. When must I decide which accounts I want to use?

You are required by Federal law to decide before the Plan Year begins, during the election period (defined below). You must decide two things. First, which benefits you want and, second, how much should go toward each benefit.

If you are already covered by any of the insured benefits offered by this Plan, you will automatically become a Participant to the extent of the premiums for such insurance unless you elect, during the election period (defined below), not to participate in the Plan.

5. When is the election period for our Plan?

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

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

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

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

In addition, if you are participating in the Dependent Care Flexible Spending Account, then there is a change in status if your dependent no longer meets the qualifications to be eligible for dependent care.

However, with respect to the Health Savings Account, you may modify or revoke your elections without having to have a change in status.

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

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

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

These rules on change due to cost or coverage do not apply to the Health Flexible Spending Account, and you may not change your election to the Health Flexible Spending Account if you make a change due to cost or coverage for insurance or if you decide to participate in the Health Savings Account.

You may not change your election under the Dependent Care Flexible Spending Account if the cost change is imposed by a dependent care provider who is your relative.

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

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

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

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

IV BENEFITS

1. Health Flexible Spending Account

The Health Flexible Spending Account enables you to pay for expenses allowed under Sections 105 and 213(d) of the Internal Revenue Code which are not covered by our insured medical plan and save taxes at the same time. The Health Flexible Spending Account allows you to be reimbursed by the Employer for expenses incurred by you and your dependents.

However, if you participate in a HSA, you can only be reimbursed by the Employer for out-of-pocket dental, vision or preventive care expenses incurred by you and your dependents.

If you are a HSA participant, drug costs, including insulin, may be reimbursed if they are considered for dental, vision or preventive care expenses.

You may be reimbursed for "over the counter" drugs only if those drugs are prescribed for you. You may not, however, be reimbursed for the cost of other health care coverage maintained outside of the Plan, or for long-term care expenses. A list of covered expenses is available from the Administrator.

The most that you can contribute to your Health Flexible Spending Account each Plan Year is \$2550. This includes salary reductions and employer contributions. After 2016, the dollar limit may increase for cost of living adjustments. In addition, you will be eligible to carryover amounts left in your Health Flexible Spending Account, up to \$500. This means that amounts you do not use during a Plan Year can be carried over to the next Plan Year and used for expenses incurred in the next Plan Year.

In order to be reimbursed for a health care expense, you must submit to the Administrator an itemized bill from the service provider. We will also provide you with a debit or credit card to use to pay for medical expenses. The Administrator will provide you with further details. Amounts reimbursed from the Plan may not be claimed as a deduction on your personal income tax return. Reimbursement from the fund shall be paid at least once a month. Expenses under this Plan are treated as being "incurred" when you are provided with the care that gives rise to the expenses, not when you are formally billed or charged, or you pay for the medical care.

You may be reimbursed for expenses for any child until the end of the calendar year in which the child reaches age 26. A child is a natural child, stepchild, foster child, adopted child, or a child placed with you for adoption. If a child gains or regains eligibility due to these new rules, that qualifies as a change in status to change coverage.

Newborns' and Mothers' Health Protection Act: Group health plans generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

Women's Health and Cancer Rights Act: This plan, as required by the Women's Health and Cancer Rights Act of 1998, will reimburse up to plan limits for benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Contact your Plan Administrator for more information.

2. Dependent Care Flexible Spending Account

The Dependent Care Flexible Spending Account enables you to pay for out-of-pocket, work-related dependent day-care cost with pre-tax dollars. If you are married, you can use the account if you and your spouse both work or, in some situations, if your spouse goes to school full-time. Single employees can also use the account.

An eligible dependent is someone for whom you can claim expenses on Federal Income Tax Form 2441 "Credit for Child and Dependent Care Expenses." Children must be under age 13. Other dependents must be physically or mentally unable to care for themselves. Dependent Care arrangements which qualify include:

- (a) A Dependent (Day) Care Center, provided that if care is provided by the facility for more than six individuals, the facility complies with applicable state and local laws;
- (b) An Educational Institution for pre-school children. For older children, only expenses for non-school care are eligible; and
- (c) An "Individual" who provides care inside or outside your home: The "Individual" may not be a child of yours under age 19 or anyone you claim as a dependent for Federal tax purposes.

You should make sure that the dependent care expenses you are currently paying for qualify under our Plan.

The law places limits on the amount of money that can be paid to you in a calendar year from your Dependent Care Flexible Spending Account. Generally, your reimbursements may not exceed the lesser of: (a) \$5,000 (if you are married filing a joint return or you are head of a household) or \$2,500 (if you are married filing separate returns); (b) your taxable compensation; (c) your spouse's actual or deemed earned income (a spouse who is a full time student or incapable of caring for himself/herself has a monthly earned income of \$250 for one dependent or \$500 for two or more dependents).

Also, in order to have the reimbursements made to you from this account be excludable from your income, you must provide a statement from the service provider including the name, address, and in most cases, the taxpayer identification number of the service provider on your tax form for the year, as well as the amount of such expense as proof that the expense has been incurred. In addition, Federal tax laws permit a tax credit for certain dependent care expenses you may be paying for even if you are not a Participant in this Plan. You may save more money if you take advantage of this tax credit rather than using the Dependent Care Flexible Spending Account under our Plan. Ask your tax adviser which is better for you.

3. Premium Expense Account

A Premium Expense Account allows you to use tax-free dollars to pay for certain premium expenses under various insurance programs that we offer you. These premium expenses include:

- Health care premiums under our insured group medical plan.
- Dental insurance premiums.
- Vision insurance premiums.

Under our Plan, we will establish sub-accounts for you for each different type of insurance coverage that is available. Also, certain limits on the amount of coverage may apply.

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

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

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

4. May I direct Plan contributions to my Health Savings Account?

Yes. Any monies that you do not apply toward available benefits can be contributed to your Health Savings Account, which enables you to pay for expenses which are not covered by our insured medical plan and save taxes at the same time. Please see your Plan Administrator for further details.

V BENEFIT PAYMENTS

1. When will I receive payments from my accounts?

During the course of the Plan Year, you may submit requests for reimbursement of expenses you have incurred. Expenses are considered "incurred" when the service is performed, not necessarily when it is paid for. The Administrator will provide you with acceptable forms for submitting these requests for reimbursement. If the request qualifies as a benefit or expense that the Plan has agreed to pay, you will receive a reimbursement payment soon thereafter. Remember, these reimbursements which are made from the Plan are generally not subject to federal income tax or withholding. Nor are they subject to Social Security taxes. Requests for payment of insured benefits should be made directly to the insurer. You will only be reimbursed from the Dependent Care Flexible Spending Account to the extent that there are sufficient funds in the Account to cover your request.

2. What happens if I don't spend all Plan contributions during the Plan Year?

Any monies left at the end of the Plan Year will be forfeited, except for \$500 that can be carried over into the next Plan Year or, except for amounts contributed to your Health Savings Account. Obviously, qualifying expenses that you incur late in the Plan Year for which you seek reimbursement after the end of such Plan Year will be paid first before any amount is forfeited. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Because it is possible that you might forfeit amounts in the Plan if you do not fully use the contributions that have been made, it is important that you decide how much to place in each account carefully and conservatively. Remember, you must decide which benefits you want to contribute to and how much to place in each account before the Plan Year begins. You want to be as certain as you can that the amount you decide to place in each account will be used up entirely.

3. Family and Medical Leave Act (FMLA)

If you take leave under the Family and Medical Leave Act, you may revoke or change your existing elections for health insurance and the Health Flexible Spending Account. If your coverage in these benefits terminates, due to your revocation of the benefit while on leave or due to your non-payment of contributions, you will be permitted to reinstate coverage for the remaining part of the Plan Year upon your return. For the Health Flexible Spending Account, you may continue your coverage or you may revoke your coverage and resume it when you return. You can resume your coverage at its original level and make payments for the time that you are on leave. For example, if you elect \$1,200 for the year and are out on leave for 3 months, then return and elect to resume your coverage at that level, your remaining payments will be increased to cover the difference - from \$100 per month to \$150 per month. Alternatively your maximum amount will be reduced proportionately for the time that you were gone. For example, if you elect \$1,200 for the year and are out on leave for 3 months, your amount will be reduced to \$900. The expenses you incur during the time you are not in the Health Flexible Spending Account are not reimbursable.

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

4. Uniformed Services Employment and Reemployment Rights Act (USERRA)

If you are going into or returning from military service, you may have special rights to health care coverage under your Health Flexible Spending Account under the Uniformed Services Employment and Reemployment Rights Act of 1994. These rights can include extended health care coverage. If you may be affected by this law, ask your Administrator for further details.

5. What happens if I terminate employment?

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

- (a) You will remain covered by insurance, but only for the period for which premiums have been paid prior to your termination of employment.
- (b) You will still be able to request reimbursement for qualifying dependent care expenses incurred during the remainder of the Plan Year from the balance remaining in your dependent care account at the time of termination of employment. However, no further salary redirection and contributions will be made on your behalf after you terminate. You must submit claims within 90 days after the end of the Plan Year in which termination occurs.
- (c) Your Health Savings Account amounts will remain yours even after your termination of employment.
- (d) For health benefit coverage and Health Flexible Spending Account coverage on termination of employment, please see the Article entitled "Continuation Coverage Rights Under COBRA." Upon your termination of employment, your participation in the Health Flexible Spending Account will cease, and no further salary redirection and contributions will be contributed on your behalf. However, you will be able to submit claims for health care expenses that were incurred before the end of the period for which payments to the Health Flexible Spending Account have already been made. Your further participation will be governed by "Continuation Coverage Rights Under COBRA."

6. Will my Social Security benefits be affected?

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

VI HIGHLY COMPENSATED AND KEY EMPLOYEES

1. Do limitations apply to highly compensated employees?

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

If you are within these categories, the amount of contributions and benefits for you may be limited so that the Plan as a whole does not unfairly favor those who are highly paid, their spouses or their dependents. Federal tax laws state that a plan will be considered to unfairly favor the key employees if they as a group receive more than 25% of all of the nontaxable benefits provided for under our Plan.

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

VII PLAN ACCOUNTING

1. Periodic Statements

The Administrator will provide you with the ability to view your account balance online anytime during the Plan Year. It is important to review this information periodically so you understand the balance remaining to pay for a benefit. Remember, you want to spend all the money you have designated for a particular benefit by the end of the Plan Year.

VIII GENERAL INFORMATION ABOUT OUR PLAN

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

1. General Plan Information

City of Anacortes Flexible Benefits Plan is the name of the Plan.

Your Employer has assigned Plan Number 501 to your Plan.

The provisions of your amended Plan become effective on January 1, 2016. Your Plan was originally effective on January 1, 2011.

Your Plan's records are maintained on a twelve-month period of time. This is known as the Plan Year. The Plan Year begins on January 1 and ends on December 31.

2. Employer Information

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

City of Anacortes
PO Box 547
Anacortes, Washington 98221
91-6001227

3. Plan Administrator Information

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

City of Anacortes
PO Box 547
Anacortes, Washington 98221
(360) 293-1903

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

4. Service of Legal Process

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

City of Anacortes
PO Box 547
Anacortes, Washington 98221

5. Type of Administration

The type of Administration is Employer Administration.

6. Claims Submission

Claims for expenses should be submitted to:

Navia Benefit Solutions, Inc.
PO Box 53250
Bellevue, Washington 98015

IX ADDITIONAL PLAN INFORMATION

1. Claims Process

You should submit all reimbursement claims during the Plan Year. For the Health Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. For the Dependent Care Flexible Spending Account, you must submit claims no later than 90 days after the end of the Plan Year. Any claims submitted after that time will not be considered.

Claims that are insured or self-funded will be handled in accordance with procedures contained in the insurance policies or contracts. All other general requests should be directed to the Administrator of our Plan. If a Day Care or medical expense claim under the Plan is denied in whole or in part, you will receive written notification. The notification will include the reasons for the denial, with reference to the specific provisions of the Plan on which the denial was based, a description of any additional information needed to process the claim and an explanation of the claims review procedure. Within 180 days after receipt of the denial, you may submit a written request for reconsideration of the denial to the claims administrator.

Any such request should be accompanied by documents or records in support of your appeal. You may review pertinent documents and submit issues and comments in writing. The claims administrator will review the claim and provide, within 30 days, a written response to the appeal (extended by reasonable time if necessary). In this response, the claims administrator will explain the reason for the decision, with specific reference to the provisions of the Plan on which the decision is based. If you disagree with the level one appeal decision you may submit a request for a level two appeal to be determined by the Employer. You must submit your request for level two appeal within 60 days of receipt of the level one notice. You will

be notified within 30 days after the Employer receives the appeal (extended by reasonable time if necessary). The Employer has the exclusive right to interpret the appropriate plan provisions. Decisions of the Employer are conclusive and binding.

You must file both level one and level two appeals by submitting a written request by email, fax, or mail. Indicate either level one or two appeal on the email, fax, or letter.

Email: claims@naviabenefits.com

Fax: 425-451-7002 or 866-535-9227

Mail to: Navia Benefit Solutions, Inc., PO Box 53250, Bellevue WA 98015.

X CONTINUATION COVERAGE RIGHTS UNDER COBRA

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

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

1. What is COBRA continuation coverage?

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

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

2. Who can become a Qualified Beneficiary?

In general, a Qualified Beneficiary can be:

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

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

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

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

3. What is a Qualifying Event?

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

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

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

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

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

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

- **Premiums:** This plan can charge up to 102% of total plan premiums for COBRA coverage. Other options, like coverage on a spouse's plan or through the Marketplace, may be less expensive. Qualified Beneficiaries have special enrollment rights under federal law (HIPAA). They have the right to request special enrollment in another group health plan for which they are otherwise eligible (such as a plan sponsored by a spouse's employer) within 30 days after Plan coverage ends due to one of the Qualifying Events listed above.
- **Provider Networks:** If a Qualified Beneficiary is currently getting care or treatment for a condition, a change in health coverage may affect access to a particular health care provider. You may want to check to see if your current health care providers participate in a network in considering options for health coverage.
- **Drug Formularies:** For Qualified Beneficiaries taking medication, a change in health coverage may affect costs for medication – and in some cases, the medication may not be covered by another plan. Qualified beneficiaries should check to see if current medications are listed in drug formularies for other health coverage.
- **Severance payments:** If COBRA rights arise because the Employee has lost his job and there is a severance package available from the employer, the former employer may have offered to pay some or all of the Employee's

COBRA payments for a period of time. This can affect the timing of coverage available in the Marketplace. In this scenario, the Employee may want to contact the Department of Labor at 1-866-444-3272 to discuss options.

- **Medicare Eligibility:** You should be aware of how COBRA coverage coordinates with Medicare eligibility. If you are eligible for Medicare at the time of the Qualifying Event, or if you will become eligible soon after the Qualifying Event, you should know that you have 8 months to enroll in Medicare after your employment –related health coverage ends. Electing COBRA coverage does not extend this 8-month period. For more information, see [medicare.gov/sign-up-change-plan](https://www.medicare.gov/sign-up-change-plan).
- **Service Areas:** If benefits under the Plan are limited to specific service or coverage areas, benefits may not be available to a Qualified Beneficiary who moves out of the area.
- **Other Cost-Sharing:** In addition to premiums or contributions for health coverage, the Plan requires participants to pay copayments, deductibles, coinsurance, or other amounts as benefits are used. Qualified beneficiaries should check to see what the cost-sharing requirements are for other health coverage options. For example, one option may have much lower monthly premiums, but a much higher deductible and higher copayments.

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

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

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

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

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

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

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

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

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

IMPORTANT:

For the other Qualifying Events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you or someone on your behalf must notify the Plan

Administrator or its designee in writing within 60 days after the Qualifying Event occurs, using the procedures specified below. If these procedures are not followed or if the notice is not provided in writing to the Plan Administrator or its designee during the 60-day notice period, any spouse or dependent child who loses coverage will not be offered the option to elect continuation coverage. You must send this notice to the Plan Administrator or its designee.

NOTICE PROCEDURES:

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

City of Anacortes
PO Box 547
Anacortes, Washington 98221

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

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

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

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

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

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

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

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

Qualified Beneficiaries who are entitled to elect COBRA continuation coverage may do so even if they are covered under another group health plan or are entitled to Medicare benefits on or before the date on which COBRA is elected. However, a Qualified Beneficiary's COBRA coverage will terminate automatically if, after electing COBRA, he or she becomes entitled to Medicare or becomes covered under other group health plan coverage (but only after any applicable preexisting condition exclusions of that other plan have been exhausted or satisfied).

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

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

- (a) The last day of the applicable maximum coverage period.
- (b) The first day for which Timely Payment is not made to the Plan with respect to the Qualified Beneficiary.
- (c) The date upon which the Employer ceases to provide any group health plan (including a successor plan) to any employee.

(d) The date, after the date of the election, that the Qualified Beneficiary first becomes entitled to Medicare (either part A or part B, whichever occurs earlier).

(e) In the case of a Qualified Beneficiary entitled to a disability extension, the later of:

(1) (i) 29 months after the date of the Qualifying Event, or (ii) the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act that the disabled Qualified Beneficiary whose disability resulted in the Qualified Beneficiary's entitlement to the disability extension is no longer disabled, whichever is earlier; or

(2) the end of the maximum coverage period that applies to the Qualified Beneficiary without regard to the disability extension.

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

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

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

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

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

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

(1) 36 months after the date the covered Employee becomes enrolled in the Medicare program. This extension does not apply to the covered Employee; or

(2) 18 months (or 29 months, if there is a disability extension) after the date of the covered Employee's termination of employment or reduction of hours of employment.

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

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

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

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

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

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

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

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

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

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

16. What is Timely Payment for COBRA continuation coverage?

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

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

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

17. How is my participation in the Health Flexible Spending Account affected?

You can elect to continue your participation in the Health Flexible Spending Account for the remainder of the Plan Year, subject to the following conditions. You may only continue to participate in the Health Flexible Spending Account if you have elected to contribute more money including any carryover amounts than you have taken out in claims. For example, if you elected to contribute an annual amount of \$500 and, at the time you terminate employment, you have contributed \$300 but only claimed \$150, you may elect to continue coverage under the Health Flexible Spending Account. If you elect to continue coverage, then you would be able to continue to receive your health reimbursements up to the \$500. However, you must continue to pay for the coverage, just as the money has been taken out of your paycheck, but on an after-tax basis. The Plan can also charge you an extra amount (as explained above for other health benefits) to provide this benefit.

IF YOU HAVE QUESTIONS

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

KEEP YOUR PLAN ADMINISTRATOR INFORMED OF ADDRESS CHANGES

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

**XI
SUMMARY**

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

If you have any questions, please contact the Administrator.

APPENDIX I TO THE FLEXIBLE SPENDING ARRANGEMENT SUMMARY PLAN DESCRIPTION

NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW PHI ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION PLEASE REVIEW IT CAREFULLY

EFFECTIVE DATE: SEPTEMBER 23, 2013

This Notice of Privacy Practices ("Notice") describes the legal obligations of the Plan and your rights regarding your protected health information ("PHI") held by the Flexible Spending Arrangement Plan (the "Plan"). PHI is defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). PHI generally means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual. PHI includes information of persons living or deceased.

This Notice describes how your PHI may be used or disclosed to carry out treatment, payment, or health care operations, or for any other purposes permitted or required by law.

We are required by law to:

- maintain the privacy of your PHI;
- provide you with the notice of our legal duties and privacy practices with respect to your PHI; and
- follow the terms of the Notice that is currently in effect.

Your PHI will be disclosed to certain employees of Employer who assist in administration of the Plan. These individuals may only use your PHI for Plan administration functions including those described below, provided they do not violate the provisions set forth herein. Any employee of Employer who violates the rules for handling PHI established herein will be subject to adverse disciplinary action. Employer will establish a mechanism for resolving privacy issues and will take prompt corrective action to cure any violations.

Employer may not use or disclose your PHI other than as summarized herein or as required by law. Your PHI may not be used by Employer for any employment-related actions or decisions or in connection with any other benefit or employee benefit plan of Employer. Employer must report to the Plan any uses or disclosures of your PHI of which the Employer becomes aware that are inconsistent with the provisions set forth herein.

HOW WE MAY USE AND DISCLOSE YOUR PHI

The following categories describe different ways that we use and disclose PHI for purposes of Plan administration. For each category of uses or disclosures we will explain what we mean and try to give some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the categories.

For Payment (as described in applicable regulations) We may use and disclose PHI about you to determine eligibility for Plan benefits, to facilitate payment for the treatment and services you receive from health care providers, to determine benefit responsibility under the Plan, or to coordinate Plan coverage.

For Health Care Operations (as described in applicable regulations) We may use and disclose PHI about you for other Plan operations. These uses and disclosures are necessary to administer the Plan.

To Business Associates, Subcontractors, Brokers, and Agents We may contract with entities known as Business Associates to perform various functions on the Plan's behalf or to provide certain types of services. In order to perform these functions or to provide these services, Business Associates will receive, create, maintain, transmit, use, and/or disclose your PHI, but only after they agree in writing to implement appropriate safeguards regarding your PHI in a Business Associate Agreement. Our Business Associates shall also require each of its subcontractors or agents to agree in writing to provisions that impose at least the same obligations to protect PHI as are imposed on Business Associate by the Business Associate Agreement or by HIPAA.

As Required By Law We will disclose PHI about you when required to do so by federal, state, or local law.

To Avert a Serious Threat to Health or Safety We may use and disclose PHI about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.

Disclosure to Health Plan Sponsor Information may be disclosed to another health plan maintained by Employer for

purposes of facilitating claims payments under that plan. In addition, PHI may be disclosed to Employer personnel solely for purposes of administering benefits under the Plan.

SPECIAL SITUATIONS

Organ and Tissue Donation If you are an organ donor, we may release PHI to organizations that handle organ procurement or organ, eye, or tissue transplantation or to an organ donation bank, as necessary to facilitate organ or tissue donation and transplantation.

Military and Veterans If you are a member of the armed forces, we may release PHI about you as required by military command authorities.

Workers' Compensation We may release PHI about you for workers' compensation or similar programs.

Public Health Risks We may disclose PHI about you for public health activities (e.g., to prevent or control disease, injury, or disability).

Health Oversight Activities We may disclose PHI to a health oversight agency for activities authorized by law.

Lawsuits and Disputes If you are involved in a lawsuit or a dispute, we may disclose PHI about you in response to a court or administrative order. We may also disclose PHI about you in response to a subpoena, discovery request, or other lawful process by someone else involved in the dispute, but only if efforts have been made to tell you about the request or to obtain an order protecting the information requested.

Law Enforcement We may release PHI if asked to do so by a law enforcement official for law enforcement purposes.

Coroners, Medical Examiners and Funeral Directors We may release PHI to a coroner or medical examiner. We may also release PHI about patients of the hospital to funeral directors as necessary to carry out their duties.

National Security and Intelligence Activities We may release PHI about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.

Inmates If you are an inmate of a correctional institution or under the custody of a law enforcement official, we may release PHI about you to the correctional institution or law enforcement official.

Research We may disclose your PHI for research if the individual identifiers have been removed or when an institutional review board or privacy board has reviewed the research proposal and established protocols to ensure the privacy of the requested information and approves the research.

REQUIRED DISCLOSURES

Government Audits We are required to disclose your PHI to Health and Human Services ("HHS") in the event of an audit in order to determine our compliance with HIPAA.

Disclosures to you We are required to disclose your PHI to you. We are also required, when requested, to provide you with an accounting of most disclosures of your PHI if the disclosure was for reasons other than for treatment, payment, or health care operations, and if the PHI was not disclosed pursuant to your authorization.

YOUR RIGHTS REGARDING YOUR PHI

You have the following rights regarding your PHI:

Right to Inspect and Copy You have the right to inspect and copy PHI that may be used to make decisions about your Plan benefits. To inspect and copy PHI that may be used to make decisions about you, you must submit your request in writing to your Human Resources Department. If the information you request is in electronic copy, and you request an electronic copy, we will provide a copy in electronic format unless the information cannot be readily produced in that format then we will work with you to come to an agreement on a different format. If we cannot agree, we will provide you with a paper copy.

If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request.

In certain very limited circumstances, we may deny your request to inspect and copy. If you are denied access to PHI, you may request that the denial be reviewed by your Human Resources Department.

Right to Amend If you feel that the PHI we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the Plan.

To request an amendment, your request must be made in writing and submitted to your Human Resources Department. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Is not part of the PHI kept by or for the Plan;
- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment;
- Is not part of the information which you would be permitted to inspect and copy; or
- Is accurate and complete.

Right to Receive Notice of Breach You have a right to be notified upon a breach of your unsecured PHI.

Right to an Accounting of Disclosures You have the right to request an "accounting of disclosures" of PHI made in the six years prior to the date on which the accounting is requested, except for disclosures:

- To carry out treatment, payment and health care operations as provided in §164.506;
- To individuals of PHI about them as provided in §164.502;
- Incident to a use or disclosure otherwise permitted;
- Pursuant to an authorization as provided in §164.508;
- To persons involved in the individual's care or other notification purposes as provided in §164.510;
- For national security or intelligence purposes as provided in §164.512(k)(2);
- To correctional institutions or law enforcement officials as provided in §164.512(k)(5);
- As part of a limited data set in accordance with §164.514(e); or
- That occurred prior to the compliance date for the Plan.

Please submit a written request of an accounting of disclosures to your Human Resources Department.

Employer must act on your request for an accounting of the disclosures of your PHI no later than 60 days after receipt of the request. Employer may extend the time for providing you an accounting by no more than 30 days, but it must provide you a written explanation for the delay. You may request one accounting in any 12-month period free of charge. Employer will impose a fee for each subsequent request within the 12-month period.

Right to Request Restrictions You have the right to request a restriction or limitation on the PHI we use or disclose for treatment, payment, or health care operations. You also have the right to request a limit on the PHI we disclose to someone involved in your care or the payment for your care, like a family member or friend. For example, you could ask that we not share information about a particular claim with your spouse. To request a restriction, you must make your request, in writing, to your Human Resources Department. We are not required to agree to your request unless you are asking us to restrict the use and disclosure of your PHI to a health plan for payment or health care operation purposes and such information you wish to restrict pertains solely to a health care item or service for which you have paid the health care provider "out-of-pocket" in full. If we agree, we will comply with your request unless the information is needed to provide you with emergency treatment.

Right to Request Confidential Communications You have the right to request that we communicate with you about your PHI a certain way or at a certain location. For example, you can ask that we only contact you at work or by mail.

To request confidential communications, you must make your request in writing to your Human Resources Department. We will not ask you the reason for your request. We will accommodate all requests we deem reasonable. Your request must specify how or where you wish to be contacted.

Right to a Paper Copy You have a right to a paper copy of this Notice. You may ask for a copy at any time. Even if you have agreed to receive this Notice electronically, you are still entitled to a paper copy. Contact the Human Resources Department for a paper copy of this Notice.

CHANGES TO THIS SUMMARY AND THE SEPARATE PRIVACY NOTICE

We reserve the right to change this Notice of Privacy Practices that may be provided to you. We reserve the right to make the revised or changed Notice effective for PHI we already have about you as well as any information we receive in the future. The Notice will indicate the effective date on the front page.

COMPLAINTS

If you believe your privacy rights have been violated, you may file a complaint with the Plan or with the Secretary of the Department of HHS. To file a complaint with the Plan, contact your Human Resources Department. All complaints must be submitted in writing.

You will not be penalized for filing a complaint.

OTHER USES OF PHI

Other uses and disclosures of PHI not covered by this Notice or the laws that apply to us will be made only with your written authorization. If you provide us with an authorization to use or disclose PHI about you, you may revoke that authorization, in writing, at any time. If you revoke your authorization, we will no longer use or disclose PHI about you for the reasons covered by your written authorization. We are unable to take back any disclosures we have already made with your authorization and that we are required to retain our records of the care that we provided to you.

Authorizations for Psychiatric Notes, Genetic Information, Marketing, & Sale In general, and subject to specific conditions, we will not use or disclose psychiatric notes without your authorization; we will not use or disclose PHI that is genetic information for underwriting purposes; we will not sell your PHI, i.e. receive direct or indirect payment in exchange for your PHI, without your authorization; we will not use your PHI for marketing purposes without your authorization; and we will not use or disclose your PHI for fundraising purposes unless we disclose that activity in this Notice.

Personal Representatives We may disclose your PHI to individuals authorized by you, or an individual designated as your personal representative, provided that we have received your authorization or some other Notice or documentation demonstrating the legal right of that individual to receive such information. Under HIPAA we do not have to disclose PHI to a personal representative if we have a reasonable belief that:

- 1) you have been or may be subjected to domestic violence, abuse, or neglect by such person; or
- 2) treating such person as your personal representative could endanger you; and
- 3) in the exercise of professional judgment, it is not in your best interest to treat the person as your personal representative.

Spouses and other Family Members With only limited exceptions, we will send all mail to the employee. This may include information regarding a spouse or dependents also covered under the Plan. Information includes, but is not limited to, Plan statements, benefit denials, and benefit debit cards and accompanying information.



City Council Agenda Bill

Meeting Date: 12/19/2016

Agenda Item: 7f

Subject: Updated Travel Policy

Staff Contact: Steve Hوجلund

Approved for Submittal to Council by	
x	Laurie Gere, Mayor
x	Steve Hوجلund, Finance Director
x	Darcy Swetnam, City Attorney

Action Type	
x	Ordinance No. 3000
	Code Revision?
x	Resolution No. 1979
	Contract
	Public Hearing
	Staff Report

Summary Statement: Update the City Travel policy, which also includes clarification on meal reimbursements and provision of refreshments at business meetings.

Background:

The update to the travel policy contains four significant changes from the current policy: 1) A City Council Finance Committee member is no longer required to sign the Travel Authorization Request form. The department head, Finance Department, and the Mayor are still required signatures to authorize the travel, but a City Council signature is no longer required. 2) Mileage reimbursement for using a privately owned vehicle, when a fleet vehicle is available, is now tied to the General Services Administration rate for that event, rather than a flat 15 cents per mile. 3) A provision was added to allow for local meals to be reimbursed if they were part of official city business. 4) Language was added to clarify when meals or refreshments could be provided at City sponsored meetings or events.

Following initial presentation of the new policy at the December 12, 2016 City Council meeting, a motion was made and seconded to adopt Resolution 1979 as proposed.

Some councilmembers found the section regarding reimbursement for local business meals to be overly broad and requested that staff bring back revised language to constrain use of that portion of the policy. Mr. Walters also asked that Ordinance 2825, which adopted the prior travel policy, be repealed by ordinance. A motion was subsequently made, seconded and passed by voice vote to postpone consideration of the motion to adopt Resolution 1979 until the next regular City Council meeting.

The attached revised policy provides additional information regarding reimbursement for local business meals, which are now treated exclusively on page 6 of the policy.

Budget Impact	
Amount Budgeted	N/A
Budget Account (BARS)	N/A
Proposed Expenditure	N/A
Budget Amendment Required?	N/A
Revenue Source	N/A

Previous Council/Committee Action: Ordinance 2825 adopted June 21, 2010; motion was made and seconded to adopt Resolution 1979 as proposed at the December 12, 2016 meeting; that motion was subsequently postponed to the current meeting.

Competing Viewpoints Considered: No update to the travel policy is necessary.

Recommended Motion: I move to authorize Resolution 1979 adopting a new Travel Policy for the City of Anacortes dated December 19, 2016 and to adopt Ordinance 3000 repealing Ordinance 2825.

Alternative Actions: Do not authorize any update and leave the old travel policy in place OR adopt the policy as presented on December 12.

Attachments (listed in order presented): Resolution 1979 adopting new travel policy; Ordinance 3000 repealing Ordinance 2825; Ordinance 2825 adopting 2010 [current] travel policy

RESOLUTION NO. 1979

A RESOLUTION ADOPTING A NEW TRAVEL POLICY FOR THE CITY OF
ANACORTES

WHEREAS, the existing travel policy adopted by Ordinance 2825 on June 21, 2010 does not address all questions of travel and meal reimbursement; and

WHEREAS, the City would like to update its travel policy to be more up to date, clear, and comprehensive; and

WHEREAS, the existing travel policy adopted by Ordinance 2825 on June 21, 2010 will be entirely replaced by the new policy adopted by this resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE ANACORTES CITY COUNCIL that the attached document entitled *Travel, Lodging, Food, and Business Meeting Costs* is hereby adopted as the official travel policies and procedures of the City.

PASSED and APPROVED this _____ day of December 2016.

City of Anacortes, Washington

BY: _____
Laurie Gere, Mayor

ATTEST:

Steven D. Hoglund, City Clerk

CITY OF ANACORTES

TRAVEL, LODGING, FOOD, AND BUSINESS MEETING COSTS

Policy:

The City of Anacortes pays or reimburses City staff for reasonable and necessary expenses when engaged in official City business. The City agrees to pay for the cost of certain allowable meeting and travel expenses that are incurred as part of official City travel.

Comment:

Travel shall be for the purpose of conducting official City business, including attending professional meetings, conferences, or trainings that promote overall knowledge of the City or city operations or are officially affiliated for the purpose of education, research, development, promotion, projects, or joint action.

Employees shall exercise prudent judgment in planning trips and incurring expenses. Unnecessary or excessive expenses will not be reimbursed.

Travel Authorization Request (TAR) Form

Authorization of travel is to be exercised through the use of a Travel Authorization Form. Approval for travel must be obtained before travel is booked and/or occurs, from the employee's department head, the Finance Director, and the Mayor. If plans change after travel has been authorized, notice must be provided to the Department Head prior to the travel occurring. Documentation must be provided with the TAR that, at a minimum, explains the purpose to the trip, how it relates to the employee's work assignment, location, and any costs including registration fees, meals, mileage reimbursement, lodging, or other provisions provided. This documentation is typically a flyer or printout of the class or conference advertisement, agenda, schedule, or a combination thereof.

Travel Expense Voucher

Reimbursement of travel expenses is made through a Travel Expense Voucher (TEV). Employees must submit their approved TAR along with their completed TEV. This form must explain the requested reimbursement and detail any meals, lodging, or other expenses incurred for which the employee is requesting reimbursement. A separate TEV is required to be filled out and submitted for any charges incurred on a City credit card.

Reimbursement is to be made for all authorized travel, subject to the restrictions provided herein, but shall not be made for transportation incurred between the official work place and official residence of the traveler.

The City will not pay for:

- (1) Alcoholic beverages
- (2) Theft, loss, or damage to personal property
- (3) Expenses of friends, family, or other persons not authorized to receive reimbursement under this policy
- (4) Fines for parking violations or traffic violations
- (5) Personal telephone calls
- (6) Personal entertainment
- (7) Personal care, except as required under the Americans with Disabilities Act.

Methods of Transportation

City owned vehicles are the preferred method of transportation as that is the least costly to the City. The driver must have a valid driver's license in their possession while driving the vehicle. The driver's license must be recognized as valid under Washington State Law. City vehicle fuel cards and/or City credit cards are to be utilized for required fuel and repairs to City vehicles while on official City business. City credit cards may not be used for private vehicle expenses including fuel or repairs.

Personal use of City-owned vehicles is prohibited and may result in discipline, up to and including termination. Employees are responsible for all costs associated with fines resulting from violation of traffic safety laws.

Non-employees are not permitted to ride in City-owned vehicles except in the case of ride-sharing with employees from neighboring jurisdictions who are covered by Labor and Industries and who are traveling to the same destination on City business. Elected officials and volunteers of the City are permitted to drive City vehicles when on official City business.

Privately-owned vehicles (POV) with automobile insurance may be used for official travel when a City-owned vehicle is not available, or when it is advantageous or more convenient for the employee or City. Under no circumstances will the City cover any damage to a privately owned vehicle while on official City business.

Mileage reimbursement for use of a POV is paid by the City at the current IRS rate if a City vehicle is not available. If a City vehicle is available but the employee takes a POV for convenience, the City will reimburse based on the General Services Administration (GSA) mileage rate "if government-furnished automobile is available":

<http://www.gsa.gov/portal/content/100715>

Mileage between points is determined by an online road map (Google, MapQuest, etc.) or by actual odometer readings.

The City only reimburses for mileage incurred at an employee's official work place or official residence which exceeds that of the employee's regular daily commute. If two or more employees from the same office travel in the same vehicle, the City reimburses mileage for only one employee. Transporting family members or others not involved in official City business, while on official City business, is a personal decision and the City does not provide excess liability protection to the non-business passengers in the event of an accident.

Accidents

Accident reports must be prepared for accident, loss, or damage occurring to a City-owned, privately owned, or rental vehicle while on official City business.

- The employee must make a verbal report to his or her supervisor and to the City Attorney within 24 hours of the accident (in addition to filing police, insurance company, and other state required reports).
- Accident, loss, or damage to a *City-owned* vehicle must be reported to the City Attorney using the Vehicle Accident Report within 24 hours of the mishap. Negligence or culpability, including D.U.I., on the part of City officials or employees may make them financially responsible for the damage(s).

Extra Travel

The City agrees to pay only for authorized travel and related expenses; travel expenses incurred for convenience of the employee will not be paid by the City.

No reimbursement for subsistence or lodging is to be paid to employees for extra time incurred if traveling to a destination for the employee's own convenience is in advance of the necessary time for arrival, or if remaining at the destination following an official meeting or other work assignment is for the employee's own convenience.

An employee may couple a vacation or other personal use onto a legitimate business trip where all of the following conditions exist:

- The primary purpose of the trip is official City business
- The employee uses, where necessary, his or her approved leave for the vacation or personal part of the trip
- The City does not incur any extra expenses beyond what it would normally incur had the trip occurred without any personal use coupled to the trip.

When vacation leave is taken while in a travel status, the exact hour of departure and return to the official work place must be shown on the Travel Expense Voucher. Except as provided in the following paragraphs, per diem is not to be granted for such period nor are expenses to be allowed for transportation to and from the official business destination.

Per diem

The per diem method is the basis for reimbursement. Per diem reimbursement will be based on payment for lodging on an actual expense basis, as evidenced by an original receipt, up to a specified maximum, and on a cumulative per-meal entitlement basis for subsistence. The reimbursement amounts shall not exceed the maximum allowable per diem rates as published in the State of Washington travel schedules. Per diem rates are updated annually and published separately by the Finance Department. <http://www.ofm.wa.gov/resources/travel.asp>

Time computation begins when the employee leaves the official residence or official work place, whichever is nearest the destination. No expenses incurred at or between the official work place and residence are reimbursed.

Travel outside the State of Washington requires the use of per diem rates from <http://www.gsa.gov/portal/content/104877>. Contact the Finance Department for help with the rate charts.

For accounting purposes, each day begins and ends at midnight.

Miscellaneous

Miscellaneous travel expenses essential to the transaction of official City business are reimbursable to the employee. Reimbursable expenses include, but are not limited to:

- Taxi fares (including a customary tip or gratuity), motor vehicle rentals, parking fees, and ferry and bridge tolls.
- Registration fees required in connection with attendance at approved conventions, conferences, and official meetings.

- Rental of room in a hotel or other place which is used to transact official business. The room rental is reimbursable as a separate item when authorized.
- Internet access for business purposes.
- Mandatory fees charged by lodging facilities for items such as room safes.
- Charges for checked baggage, if any, excluding overweight

Reimbursement of lodging expenses incurred at a lodging facility located at either the employee's official work place or official residence is prohibited. Allowable lodging expenses include the basic commercial lodging cost and any applicable sales taxes and/or hotel/motel taxes. Lodging costs in excess of the allowable lodging rate and the associated taxes on the excess will be paid by the traveler. When this occurs, taxes are to be prorated between the allowable and unallowable costs.

Purchase of lodging accommodations while on official City business must be made using a City credit card. Employees must attach lodging receipts to the Travel Expense Voucher for all lodging payments made.

100-Mile rule

Reimbursement for lodging expenses incurred at a lodging facility within one hundred (100) miles of the closer of either the employee's official residence or official work place is not allowed except under one of the following three conditions:

- An overnight stay in commercial lodging to avoid having an employee drive back and forth for back-to-back late night/early morning official City business.
- When the health and safety of travelers is of concern.
- When an employee can demonstrate that staying overnight is more economical to the City.

Employees are required to obtain prior written approval from their department head or designee to use the first and third conditions, and the written authorization and cost analysis must be attached to the employee's travel expense voucher. Prior approval for use of the second condition is not required; however, supervisors are to be promptly notified that this condition is being invoked. This condition is to be noted on the travel expense voucher by the employee in order to obtain reimbursement of the lodging costs.

Meal reimbursement

Reimbursement for subsistence expenses incurred at an employee's official work place or official residence is prohibited.

An employee is eligible for meal and lodging reimbursement if in travel status, i.e., away from both the official residence and the official work place.

Per diem rates for meals apply when the employee does not use a City credit card.

If the employee chooses to use a City credit card for meals, actual expenses will be paid. However, any meal expense exceeding the per diem rate must be reimbursed to the City by the employee or deducted from reimbursements owed to the employee. The per diem rate will be calculated on a cumulative per meal basis up to the per day rate. For example, if the employee is

in travel status for breakfast and dinner, the two meals will be added together to arrive at that day's per diem amount.

Employees must be in travel status during department determined meal times to qualify for meal cost reimbursement.

To qualify for breakfast, an employee must be in travel status for at least 1 hour before their official starting time.

The department lunch meal period is the employee's regularly scheduled lunch meal period. To be reimbursed for lunch, an employee must be in travel status during the entire regularly scheduled lunchtime.

To qualify for dinner, an employee must be in travel status at least 2 hours after the regularly scheduled quitting time.

For weekends and holidays, determine the department established meal times by using the employee's regular work schedule.

Reimbursement for subsistence expenses is not to be authorized when an employee does not incur expenses for meals because they are furnished by the City, or host facility, or included in the pre-paid registration fee for a meeting, conference, or convention.

Subsistence payments are not required to be reduced or eliminated due to meals served on airlines. Similarly, subsistence payments are not required to be reduced for minor meals served, such as continental breakfast or receptions, included in the registration fee of meeting, hotel, conference, or convention.

Meals that include an overnight stay are not subject to federal income tax and therefore can be reimbursed through an invoice.

Meals that are not associated with an overnight stay are subject to federal income tax and will be reimbursed on the employee's subsequent paycheck showing as code MLR (meal reimbursement).

If a City credit card was used and the trip did not involve an overnight stay, the City pays the full price of the meal but the employee will be taxed for the meal value on the next paycheck as code MLN (meal non reimbursement). If the employee stays overnight and uses the City credit card, the City needs receipts for meals and lodging, as discussed under the TEV section.

Non -Employees

Volunteers must have advance written approval from the relevant department head and Mayor, using the TAR form. City Council members must have advance written approval from the Mayor.

Travel expenses are reimbursed in amounts not greater than the maximum allowed for City employees using privately owned vehicles. Volunteers and City Council members receive the same per diem lodging and meal rates that are paid to City employees. A TEV must be submitted with the written approval attached to receive any reimbursement.

Meals, Coffee and Light Refreshments at Meetings

Meals at Local Meetings

City-purchased meals are allowed at local meetings, trainings, and retreats (when City representative is not in travel status) with advance permission of the Department Head, Finance Director, and the Mayor. Meals may be provided at meetings for the required meeting attendees when the following conditions are met:

1. The meeting time is scheduled to run through a generally accepted meal time, such as noon for lunch, and 6:00 PM for dinner.
2. The schedule is set for that time because of attendance requirements of various participants, or an unusually long meeting schedule will impact the meal time.
3. The total cost on a per meal basis (including 15% tip) does not exceed meal limits as defined elsewhere in this policy.
4. At least one non-City employee is in attendance.
5. The City representative(s) are in attendance to conduct city business, or the meeting is to support city business, and the circumstances of the meeting and meal reimbursement are within the spirit of this policy.

Such local meal reimbursements are expected to be rare. Meetings between city staff and consultants do not qualify, nor do meetings between city staff. Examples of meals which would qualify include the Mayor and/or a Councilmember meeting over a meal locally with a visiting elected official; the Mayor and/or a Councilmember meeting over a meal locally with another local government elected or appointed official; a Department Head being reimbursed for attending the local Chamber of Commerce lunch to support the State of the City presentation.

Coffee and Light Refreshments

Provision of coffee and light refreshments is allowed at City sponsored meetings or formal training sessions with the advance written permission of the Department Head, and Finance Director. Permission may be obtained using a TAR or via emailed consent from both Department Head and Finance Director to include as backup documentation for the expenditure.

The following conditions must be met before coffee and light refreshments will be allowed:

1. City business is being conducted at the meeting or training being held.
2. The coffee and light refreshments are an integral part of the meeting or training.
3. If an outside vendor is used for the provision of coffee and light refreshments that Vendor should bill the City directly, if a City credit card or purchasing card cannot be used.
4. The coordinator of the meeting or training must have prior approval before purchasing or ordering the coffee and light refreshments.

Please note the provision of coffee and light refreshments is not intended for use with daily normal business such as staff or interdepartmental meetings. It is intended to be used for special situations or occasions only.

Also note there are important exclusions to the rule, so please check with the Finance Department before arranging for the provision of coffee and light refreshments.

Ordinance No. 3000

AN ORDINANCE REPEALING ORDINANCE 2825 ADOPTED JUNE 21, 2010

Whereas Ordinance 2825 adopted June 21, 2010 adopted *City of Anacortes Travel Policy Manual* dated June 2010 as the official travel policies and procedures of the City; and

Whereas the Anacortes City Council wishes to adopt by resolution a new and revised Travel Policy;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

Section 1. Ordinance 2825 adopted June 21, 2010 is hereby repealed.

Section 2. This Ordinance shall take effect from and after five (5) days after its passage and publication, as required by law.

PASSED and APPROVED this ____ day of _____, 2016.

CITY OF ANACORTES:

Laurie Gere, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

ORDINANCE NO. 2825

AN ORDINANCE REPEALING ORDINANCE NO. 2514
DATED DECEMBER 20, 1999, AND ADOPTING NEW
TRAVEL POLICIES AND PROCEDURES FOR THE CITY
OF ANACORTES

WHEREAS, it is determined that the City now desires to adopt a new and comprehensive travel policies and procedures program;

THE CITY COUNCIL OF THE CITY OF ANACORTES DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The following is hereby repealed in its entirety:

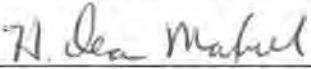
Ordinance No. 2514 dated December 20, 1999

SECTION 2: The attached document entitled *City of Anacortes Travel Policy Manual* dated June 2010 is hereby adopted as the official travel policies and procedures of the City.

SECTION 3: Effective Date. This ordinance shall take effect from and after five (5) days after its passage and publication as required by law.

PASSED AND APPROVED this 21st day of June, 2010.

CITY OF ANACORTES:



H. Dean Maxwell, Mayor

ATTEST:



Steve Hoglund, City Clerk

APPROVED AS TO FORM:



Bradford E. Furlong, WSBA #12924
City Attorney



City of Anacortes

Travel Policy Manual

June 2010

(Adapted from State Auditor's Office Travel Manual, March 2009)

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I. INTRODUCTION

The purpose of this manual is to prescribe the policies, rules, and procedures for authorization and reimbursement of expenses incurred by City of Anacortes personnel while traveling on official business.

If you have questions or concerns regarding these policies, rules, and regulations, please contact the Finance Department, telephone number 293-1900.

II. POLICIES, RULES, AND REGULATIONS

A. Authorizations and Travel Management

1. Approvals

The City Council has approved the methods of reimbursement described in this manual.

2. General Travel Policies

a) Supervisors should ensure that all travel costs incurred are:

(1) Directly work-related.

(2) Obtained at the most economical price.

(3) Both critical and necessary for city business.

(4) Training dollars are best spent on training rather than travel expenses. As a result local training opportunities should be pursued first.

b) All employees shall exercise prudent judgement in planning trips and incurring expenses. Unnecessary or excessive expenses will not be reimbursed. Each employee should eliminate unnecessary travel. When feasible, two or more employees should travel on official business in one vehicle.

c) Before placing a person on travel status, the supervisor is to determine whether it is more costly to provide the traveler with meals and/or overnight lodging or require return to the official work place or residence at the end of the day or week. When employees choose to commute daily, the manager may choose to limit daily mileage reimbursement to the maximum daily per diem allowance for the location. This does not apply to the first and last day for which greater travel expenses would be incurred.

d) Authorization of travel is to be exercised through the use of a travel authorization form. Prior approval must be obtained from the department head, mayor, and Council Finance Committee. If plans change after travel has been authorized, notice must be provided to the Finance Department prior to the travel occurring.

e) Employees must submit with their approved travel expense voucher documents which explain the justification/reason for all travel. At a minimum, this documentation must explain the purpose to the trip and how it relates to the employee's work assignment;

f) Employees are to develop and implement alternatives to travel, as well as less expensive means of travel. These methods should include, but are not limited to:

- (1) Teleconferencing, video conferencing;
- (2) Video recording, published reports;
- (3) Using State-contracted airfare;
- (4) Sharing rooms;
- (5) Using government discount rate;
- (6) Car-pooling (including with staff from neighboring jurisdictions) and greater use of public transportation;
- (7) Reduced frequency of out of town meetings;
- (8) Restrictions on the number of staff traveling to the same destination; and
- (9) Coordinating between departments for joint travel arrangements when more than one department is involved.

3. Health and Safety of Travelers

a) Health and safety of travelers is a top priority. It is considered advantageous to the city for travel plans and itineraries to be established and altered with consideration of hazardous inclement weather and other situations that could threaten the health and safety of city personnel. When this occurs, travelers should:

- (1) Promptly notify the traveler's supervisor of the change in travel plans.
- (2) Note the reason for any additional expenses on the travel expense voucher.

4. Compliance with the Americans With Disabilities Act

a) Compliance with the Americans With Disabilities Act is considered to be advantageous. All city personnel are to be afforded equal opportunity to perform travel for official business even if the travel costs for disabled travelers will exceed what would normally be most economical to the city. For example:

- (1) When a traveler uses a wheelchair and it is necessary to pay more for an airline ticket so the traveler can fly on a larger airplane that can accommodate the wheelchair.
- (2) When a traveler has hearing or vision impairments and there is a cost of providing auxiliary aids and services to enable the traveler to successfully accomplish the purpose of the travel.

b) Documentation Requirements – Travel authorizations and travel claims should be annotated that the extra costs were required to comply with the Americans With Disabilities Act

5. Travel for Convenience of Employee

a) No reimbursement for subsistence or lodging is to be paid to employee for extra time incurred if;

(1) Traveling to a destination for the employee's own convenience is in advance of the necessary time for arrival; or

(2) Remaining at the destination following an official meeting or other work assignment is for the employee's own convenience.

b) An employee may couple a vacation or other personal use onto a legitimate business trip WHERE ALL OF THE FOLLOWING CONDITIONS EXIST:

(1) The primary purpose of the trip is official city business;

(2) The employee uses, where necessary, his or her approved leave for the vacation or personal part of the trip;

(3) The city does not incur any extra expenses beyond what it would normally incur had the trip occurred without any personal use coupled to the trip.

c) When vacation leave is taken while in a travel status, the exact hour of departure and return to the official work place must be shown on the Travel Expense Voucher. Except as provided in the following paragraphs, per diem is not to be granted for such period nor are expenses to be allowed for transportation to and from the official business destination.

6. Direct payments

In certain cases, such as conferences, it may be more economical and advantageous to the city to pay the vendor directly for travel related expenses. Written approval of the department head must be obtained prior to authorizing direct billing to the city.

a) Any payments made in accordance with this subsection are to be supported, at a minimum, by documents consisting of:

(1) A copy of the agreement entered into between the vendor and the City setting forth the services to be rendered by the vendor and the charges for these services.

(2) A list of the city officials, employees, and other attendees for whom such services are provided and the dates of their attendance or inclusive date of the agreement. A copy of this list must be provided to the Finance Department.

(3) A vendor billing in sufficient detail to ensure that payments are made in conformance with the written agreement between the parties.

b) Direct billings for employee lodging are not to include any individual room charges for meals, telephones or other personal expenses.

c) Payments to vendors for travel expenses are not to result in a cost to the city in excess of what would be payable by way of reimbursement to the individuals involved.

B. Travel Expenses

1. General

a) All travel expenses are reimbursed using the Travel Expense Voucher.

b) Reimbursement for alcoholic beverage expense is prohibited.

c) Reimbursement is to be made for all authorized travel, subject to the restrictions provided herein, but shall not be made for transportation incurred between the official work place and official residence of the traveler.

2. Basis for Reimbursement

The per diem method is the basis for reimbursement. It consists of payment for lodging on an actual expense basis, as evidenced by an original receipt, up to a specified maximum and on a set per-meal entitlement basis for subsistence. The reimbursement amounts shall not exceed the maximum allowable per diem rates stated in the official State of Washington travel schedules.

3. Reimbursement Guidelines

a) In-State Travel

(1) Time computation begins when the employee leaves the official residence or official work place, whichever is nearest the destination. No expenses incurred at or between the official work place and residence are reimbursed.

(2) The employee is to promptly return from a business trip when the City business is completed so the City does not incur any travel expenses it need not incur, such as an extra meal cost.

(3) For accounting purposes, each day begins and ends at midnight.

b) Out-of-State Travel

(1) Travel outside the State of Washington shall only occur in special circumstances as approved by the Mayor.

4. Miscellaneous Travel Expenses

a) Miscellaneous Travel expenses essential to the transaction of official city business are reimbursable to the employee. Reimbursable expenses include, but are not limited to:

(1) Taxi fares (including a customary tip or gratuity), motor vehicle rentals, parking fees, and ferry and bridge tolls.

(2) Registration fees required in connection with attendance at approved conventions, conferences, and official meetings.

(3) Rental of room in a hotel or other place which is used to transact official business. The room rental is reimbursable as a separate item when authorized.

(4) Charges for necessary facsimile (FAX) services.

(5) Internet access for business purposes.

(6) Mandatory fees charged by lodging facilities for items such as room safes.

(7) Charges for checked baggage, if any, excluding overweight charges, for up to the first two bags on domestic flights

b) The cost of personal care attendant services which are required by disabled employees in order for them to travel will be allowed as a miscellaneous travel expense. Such costs may include fees and travel expenses of the attendant. The mayor or his designee will set the maximum reimbursement for attendant services.

c) Certain travel expenses are considered as personal and not essential to the transaction of official city business and therefore not reimbursable. Such non-reimbursable expenses include, but are not limited to:

(1) Valet services, entertainment expenses, radio or television rental, and other items of a similar nature. Valet services are defined as the hiring of a personal attendant who takes care of the individual's clothes, or helps the individual in dressing, etc. The prohibition against valet services for general travelers is not to be considered as a prohibition against the use of a personal care attendant required by a disabled employee under the provisions of paragraph b. above.

(2) Taxi fares, motor vehicle rental, and other transportation costs to or from places of entertainment and other similar facilities. In addition, transportation expenses between an employee's official residence and official work place are not allowable.

(3) Costs of personal trip insurance (such as personal accident insurance, personal effects insurance and extended liability insurance), and medical and hospital services.

(4) Personal telephone calls of an employee. However, reasonable charges for brief personal telephone calls home to relay changes in travel plans are allowable.

(5) Any tips or gratuities associated with the personal expenses, such as those listed here in paragraph c., are not reimbursable. This includes tips associated with the procurement of lodging.

d) Receipts for allowable sundry expenditures for amounts in excess of \$5, plus any applicable tax, are required and must be attached to the expense voucher, except for the following:

(1) Day parking fees

(2) Transit fares, bridge and road tolls, and taxi and limousine fares when necessary and on official business.

C. Lodging

1. General

- a) Reimbursement of lodging expenses incurred at a lodging facility located at either the employee's official work place or official residence is prohibited.
- b) Allowable lodging expenses include, within the applicable maximum lodging rate, the basic commercial lodging cost and any applicable sales taxes and/or hotel/motel taxes. Lodging costs in excess of the allowable lodging rate and the associated taxes on the excess will be paid by the traveler. When this occurs, taxes are to be prorated between the allowable and unallowable costs.
- c) Reimbursement for lodging expenses is not to be authorized when an employee does not incur lodging expenses at a commercial lodging facility.

2. Purchase of Lodging Accommodations

- a) The preferred method of purchasing lodging accommodations while on official City business is through the use of the corporate charge card. Employees are to attach lodging receipts to the Travel Expense Voucher for all lodging reimbursement.

3. 100-Mile rule

- a) Reimbursement for lodging expenses incurred at a lodging facility within one hundred (100) miles of the closer of either the employee's official residence or official work place is not allowed except under one of the following three conditions:
 - (1) An overnight stay in commercial lodging to avoid having an employee drive back and forth for back-to-back late night/early morning official City business.
 - (2) When the health and safety of travelers is of concern.
 - (3) When an employee can demonstrate that staying overnight is more economical to the City.

b) Employees are required to obtain prior written approval from their department head or designee to use the first and third conditions, and the written authorization and cost analysis must be attached to the employee's travel expense voucher. Prior approval for use of the second condition is not required; however, supervisors are to be promptly notified that this condition is being invoked. This condition is to be noted on the travel expense voucher by the employee in order to obtain reimbursement of the lodging costs.

4. Lodging Exception to the Maximum Allowable Per Diem Rate

a) When lodging costs as evidenced by a receipt, exceed the allowable subsistence amount, the department head or designee may approve payment of lodging expenses not to exceed 150 percent of the maximum per diem amount for the location:

When an exception to the maximum allowable lodging amount is used, the employee is to select the most economical room available under the circumstances.

Written approval for the exception signed by the department head or designee, must be part of the payment document. An explanation of why an exception was necessary shall also be attached.

The approved exceptions to the maximum allowable lodging amounts are:

(1) When a traveler is assigned to accompany an elected official, foreign dignitary, or others as authorized by law, and is required to stay in the same lodging facility (i.e., security); or

(2) When costs in the area have escalated for a brief period either during special events or disasters; or

(3) Affordable lodging is not available at the traveler's destination and the savings achieved from occupying less expensive lodging at a more distant site are consumed by an increase in transportation or other costs; or

(4) The traveler attends a meeting, conference, convention, or training session where the traveler is expected to have business interaction with other participants in addition to scheduled events, and it is anticipated that maximum benefit will be achieved by authorizing the traveler to stay at the lodging facility where the meeting, conference, convention or training session is held.

(5) To comply with provisions of the Americans with Disabilities Act or when the health and safety of the traveler is at risk; or

(6) When meeting facilities are necessary to conduct City business and it is more economical for the employee to acquire

special lodging accommodations such as a suite rather than to acquire a meeting room and a room for lodging.

- a) When utilizing any of these conditions, all employees are to be treated the same under like travel conditions.

D. Meals, Coffee, Light Refreshments

1. General

- a) Reimbursement for subsistence expenses incurred at an employee's official work place or official residence is prohibited.
- b) An employee is eligible for meal and lodging reimbursement if in travel status, i.e., away from both the official residence and the official work place.
 - (1) Per diem rates for meals apply when the employee does not use a city credit card.
 - (2) If the employee chooses to use a city credit card for meals, actual expenses will be paid. Any expense exceeding the per diem rate must be reimbursed to the city or deducted from reimbursements owed to the employee.
- c) Employees must be in travel status during department determined meal times to qualify for meal cost reimbursement.
 - (1) To qualify for breakfast, an employee must be in travel status for at least 1 hour before their official starting time.
 - (2) The department lunch meal period is your regularly scheduled lunch meal period. To be reimbursed for lunch, an employee must be in travel status during their entire regularly scheduled lunchtime.
 - (3) To qualify for dinner, an employee must be in travel status at least 2 hours after the regularly scheduled quitting time.
 - (4) For weekends and holidays, determine the department established meal times by using the employee's regular work schedule.
- d) **Reimbursement for subsistence expenses is not to be authorized when an employee does not incur expenses for meals because they are furnished.**
 - (1) Regular per diem reimbursement is not provided when:
 - (a) Meals and/or lodging is furnished by the city or host facility visited.

(b) The cost of meals are included in the pre-paid registration fee for a meeting, conference, or convention.

(2) When it is necessary to determine the amounts for individual meals from a total per diem subsistence figure, the corresponding meal figures in Schedule B will apply.

e) Subsistence payments are not required to be reduced or eliminated due to meals served on airlines. Similarly, subsistence payments are not required to be reduced for continental breakfasts included in the registration fee of meeting, conference or convention.

E. Methods of Transportation

1. Commercial Carrier

Employees requesting transportation by airline or train are to contact the Travel Representative in the Finance Department who will make the travel accommodations. The employee is responsible for providing the necessary information along with an approved travel authorization.

a) All common carrier tickets must be purchased from a travel agency, website, or airline approved for use by the City.

b) To take advantage of reduced rates, advance payment of fares may be authorized.

c) For those rare instances when an employee is authorized to purchase his or her own ticket, the city reimburses the cost of the ticket based on receipts. All tickets must be purchased using the City corporate charge card and from a travel website approved for use by the city administration.

d) Do not purchase any airline ticket without prior approval.

2. Privately-Owned Vehicles

Privately-owned vehicles (POV) with automobile insurance may be used for official travel when a city-owned vehicle is not available, or when it is advantageous to the city from a cost and convenience standpoint. Under no circumstances will the City cover any damage to a privately owned vehicle while on official City business.

a) The authorizing supervisor is responsible for assuring;

(1) Employees submit for mileage reimbursement, and

(2) Excessive expenses are not approved or reimbursed.

- b) The city only reimburses for mileage incurred at employee's official work place or official residence which exceeds that of their regular daily commute.
- c) If two or more employees from the same office travel in the same vehicle, the city reimburses mileage for only one employee. When completing the travel expense voucher, list the names of all employees that traveled in the same vehicle.
- d) Transporting family members or others not involved in official City business, while on official city business, is a personal decision and the City does not provide excess liability protection to the non-business passengers in the event of an accident.
- e) City mileage reimbursement pays according to the following:
 - (1) Current IRS rate
 - (2) Mileage between points as determined by www.mapquest.com.
 - (3) Out-of-state mileage is determined by www.mapquest.com or by actual odometer readings.
 - (4) "Vicinity" mileage is determined by odometer readings.
- f) To save time and mileage, the employee may travel directly from their official residence to their destination on official city business and back to their official residence or on to their official work place.

3. City-Owned Vehicles

City-owned vehicles may be used for official business only.

- a) The driver(s) must have a driver's license in their possession while driving the vehicle. The driver's license must be recognized as valid under Washington State Law.
- b) City vehicle fuel cards and/or gasoline credit cards are to be utilized for required fuel and repairs to City vehicles while on official City business. Major fuel credit cards may be checked out and in with the Finance Department. City credit cards may not be used for private vehicles.
- c) All employees be advised that personal use of city-owned vehicles or violation of traffic safety laws constitute ground for disciplinary action which may include deductions from salaries or other allowances due, and discipline up to and including termination.
- d) Non-employees are not permitted to ride in City owned vehicles *except* in the case of ride-sharing with employees from neighboring jurisdictions traveling to the same destination on City business.

4. Accident Reports

Accident reports must be prepared for accident, loss, or damage occurring to a city-owned, privately owned, or rental vehicle while on official city business

- a) The employee should make a verbal report to the supervisor, Finance Department and Human Resources Department within 24 hours of the accident (in addition to police, insurance company, and other state required reports).
- b) Negligence or culpability, including D.U.I., on the part of City officials or employees may make them financially responsible for the damage(s) resulting.
- c) The accident, loss, or damage to a city-owned vehicle must be reported to the Legal Department using the Vehicle Accident Report within 24 hours of the mishap.

F. Miscellaneous

1. Non-Employee Expenses

a) Volunteer Workers and City Council

- (1) Advance approval for volunteer expense reimbursement is required by the department head and Mayor in writing. The requestor should write a request explaining the benefits to the department or City and the estimated travel costs.
- (2) Travel expenses are reimbursed in amounts not greater than the maximum allowed for City employees using privately owned vehicles. This does not exclude using common carriers. Parking fees, ferry fares, bridge tolls, etc., are reimbursed.
- (3) Volunteers receive the same per diem lodging and meal rates paid to City employees. Use the Travel Expense Voucher to claim reimbursement. The written approval must be attached to the travel voucher to receive reimbursement.

III. FORMS COMPLETION AND PROCEDURES

A. The Travel Authorization Request (TAR) Form

1. Employee should determine method of travel, length of proposed trip, and if lodging arrangements are desired and discuss with the supervisor before completing the form.
2. Employee should review Section II of the Travel Manual to determine the allowable reimbursement for lodging and subsistence and also determine the itinerary and estimated travel expense.
3. All travel must be pre-approved by the appropriate supervisor, department head, Mayor, and City Council Finance Committee. Attach to the TAR copies (not originals) of any paperwork that will explain what the travel is for. If anticipated lodging expense will be more than the allowed per diem amount, also attach the Lodging Exception to the Maximum Allowable Per Diem Rate form.
4. After the TAR has been approved, a signed copy will be returned to the employee. Employee should then enter an invoice for registration payment if appropriate.

B. The Travel Expense Voucher (TEV) Form

1. The TEV summarizes travel expenses after the trip is complete. Separate forms should be used to distinguish what expenses are to be paid on the City corporate credit card and what expenses are reimbursable to the employee.
 - a) Enter the expenses as an invoice in the financial accounting system.
 - (1) Meals that include an overnight stay can be reimbursed through an invoice because they are not taxed.
 - (2) Meals that are not during an overnight stay are taxed and will be reimbursed on the next paycheck showing as code MLR (meal reimbursement).
 - (3) If a City credit card was used and the trip did not involve an overnight stay, the city pays the full price of the meal to Visa but the employee will be taxed for the meal on the next paycheck as code MLN (meal non reimbursement). If the employee stays overnight and uses the city credit card, the city needs receipts for meals and lodging.
 - b) Send the original TEV form to the Finance Department along with the appropriate documentation i.e., receipts and copy of the signed TAR.

IV. PLANNING A TRIP

Employees who are planning on taking a trip should acquaint themselves with the city travel regulations prior to the trip. Familiarity with the travel regulations may prevent employees from spending money for which the City cannot provide reimbursement.

A. How often must I submit my travel expense voucher to the Finance Department?

If you have incurred reimbursable travel expenses, you must submit a travel expense voucher at the end of your trip or at the end of each month for those so authorized to do so.

B. Can I choose to utilize my personal vehicle to drive to trainings?

The City provides mileage reimbursement for miles driven for business purposes. This is not the most cost effective way to travel or to use training budgets. Employees are expected to use a City owned vehicle whenever one is available.

C. Who should I call if I have travel related questions?

You should call your supervisor first. If he or she cannot answer your question call your department head, the Travel Representative in the Finance Department or the Mayor.

ATTACHMENT A: MILEAGE CHART

Consult www.mapquest.com for exact mileage. See per diem map on Intranet for current mileage rates.

ATTACHMENT B: WASHINGTON STATE PER DIEM RATES

See per diem map on Intranet

For out of state per diem rates, see the following web sites

<http://www.gsa.gov/travel.htm>

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_BASIC&contentId=17943&noc=T

Revised 03/23/10



Anacortes City Council

Proposed Agenda Items for the Next Eight Weeks Beginning December 27, 2016

Subjects listed below have been tentatively suggested for consideration by the Anacortes City Council on the dates indicated. Items may be added to, removed from or rearranged on this list. Routine business such as approval of minutes, vouchers and consent agenda items is not included. The complete Preliminary Agenda for each meeting is published at 3:00 on the Wednesday prior to the meeting. Published Agendas are subject to change and may be updated following the posting period. For additional information on agenda topics, please contact the City Clerk's office at 360-299-1960 to be directed to the sponsoring staff member.

December 27, 2016

Special Meeting: MEETING MAY BE CANCELLED

January 3, 2017

January 9, 2017

- Resolution ____ : Establishing Fees for the Storm Water Utility and Ordinance 2979 Removing Storm Rates from AMC (Discussion/Possible Action)
- Resolution ____: Establishing Fees for the Water Utility (Discussion/Possible Action)

January 17, 2017

January 23, 2017

February 6, 2017

- Closed Record Public Hearing, Conditional Use Permit to Permit Construction of Private Parking Lot in the R4 Zoning District, CUP-2016-1003

February 13, 2017

February 21, 2017

Upcoming City Council Committee Meetings

The public is welcome to attend City Council Committee Meetings.

- Public Works, Monday, Dec 19, 2016, 4:30 PM, Mayor's Office, City Hall
- Planning, Tuesday, Dec 27, 2016, 5:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Dec 28, 2016, 5:00 PM, Johnny Picasso's, 501 Commercial Avenue
- Public Works, Tuesday, Jan 3, 2017, 4:30 PM, Mayor's Office, City Hall
- Planning, Monday, Jan 9, 2017, 3:00 PM, Main Conference Room, City Hall
- Finance, Wednesday, Jan 11, 2017, 5:00 PM, Johnny Picasso's, 501 Commercial Avenue
- Personnel Committee, Wednesday, Jan 25, 2017, 4:00 PM, Main Conference Room, City Hall
