

- Meetings may be viewed on the [City of Anacortes website](#), on the City of Anacortes [YouTube Channel](#), or on TV [Channel 10](#).
- The public may also watch, listen to, or participate in the meeting live by visiting <https://us02web.zoom.us/j/89255646791> or by telephoning 1-253-215-8782 and entering Meeting ID 892 5564 6791.
- The public is encouraged to comment via email to [cityclerk@cityofanacortes.org](mailto:cityclerk@cityofanacortes.org) or via written comment addressed to City Clerk, P.O. Box 547, Anacortes, WA 98221. Public comments received by the [City Clerk](#) prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes City Council meetings are available [here](#). View the quick video example for connecting to the meeting [here](#).



**Anacortes City Council**  
Municipal Building Council Chambers  
904 6th Street

**March 28, 2022**  
**5:30 PM**

**PRELIMINARY AGENDA**  
[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order - Special 5:30 Start Time**
2. **Pledge of Allegiance**
3. **Executive Session**
  - a. Potential Litigation or Litigation per RCW 42.30.110(1)(i) (45 minutes) (Discussion)
4. **Announcements and Committee Reports**
  - a. Finance Committee
  - b. Fiber Committee
  - c. Housing Affordability and Community Services Committee
5. **Public Comment**
6. **Consent Agenda**
  - a. Minutes of March 21, 2022 (Action)
  - b. Approval of claims in the amount of \$283,921.95 (Action)
  - c. Street Fair Application - Waterfront Festival Car Show (Action)
  - d. Street Fair Application - July 4 Parade (Action)
  - e. Street Fair Application - Oyster Run Event (Action)
  - f. Contract Award: Old Water Treatment Plant 36-Inch Line Disconnect #22-094-WTR-001 (Action)
  - g. Contract Award: Water Treatment Plant Lagoon #1 Dike Armoring #22-098-WTR-001 (Action)
  - h. Contract Award: Purchase of a New Public Safety Building Generator #22-099-ERR-001 (Action)

*Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk (\*) may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community. For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.

- i. One Washington Memorandum of Understanding Between Washington Municipalities Relating to the Allocation and Use of the Proceeds from Opioid Settlements #22-096-LEG-001 (Action)
- 7. **Other Business**
  - a. \* Ordinance 4017: Authorization to Issue Bonds to Refund the 2012 Utility System Revenue Bonds (Discussion/Possible Action)
  - b. \* City Council Ward Redistricting (Discussion)
  - c. Contract Award: 32nd Street and M Avenue Intersection Improvements Project #19-002-TRN-003 (Discussion/Action)
  - d. \* Ordinance 4019: Creating a New Chapter 2.48, Lodging Tax Advisory Committee (Discussion)
  - e. \* Ordinance 4015: Critical Areas Regulation Amendments (Discussion/Action)
- 8. **Adjournment**

*Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk (\*) may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community.  
For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.





**Anacortes City Council  
NOTICE OF SPECIAL MEETING**

**March 28, 2022  
5:30 p.m.**

**Municipal Building Council Chambers  
904 6<sup>th</sup> Street**

**NOTICE IS HEREBY GIVEN** that the regular Anacortes City Council meeting of March 28, 2022 will begin at 5:30 p.m.

The Planning Committee meeting scheduled for 5:00 p.m. on March 28, 2022 has been cancelled.

**Published: March 23, 2022**

**Distribution: City Council  
Media**

## **Anacortes City Council Minutes - March 21, 2022**

### **Call to Order**

Mayor Matt Miller called to order the Anacortes City Council meeting of March 21, 2022 at 6:00 p.m. Councilmembers Jeremy Carter, Christine Cleland-McGrath, Bruce McDougall and Amanda Hubik were present. Councilmembers Anthony Young, Ryan Walters and Carolyn Moulton participated in the meeting remotely via Zoom.

### **Pledge of Allegiance**

The assembly joined in the Pledge of Allegiance.

### **Announcements and Committee Reports**

Mayor Miller reported that COVID cases and hospitalizations continue to trend downward,

Housing Affordability and Community Services Committee: Mr. Walters reported from the Committee meeting held the previous week. The meeting consisted of a workshop following up on the County Health Department presentation on mental health services, then a discussion about a Habitat for Humanity proposal for housing on city-owned property.

Public Works Committee: Ms. Moulton reported from the Committee meeting held earlier in the evening. The meeting included a presentation from Michelle Metzler of Waste Management about recycling contamination charges, as well as an update on the wastewater treatment plant outfall project which would be discussed later on the agenda.

### **Public Comment**

Mayor Miller invited the public to comment on any item not on the agenda. No one present wished to address the Council on any topic not already on the agenda.

### **Consent Agenda**

Mr. McDougall moved, seconded by Mr. Young, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

- a. Minutes of March 14, 2022
- b. Approval of claims in the amount of \$1,120,262.60
  - The following vouchers/checks were approved for payment:
  - EFT numbers: 102732 through 102770, total \$982,731.34
  - Check numbers: 102771 through 102787, total \$112,964.42
  - Wire transfer numbers: 300159 through 300668, total \$24,566.84
- c. Resolution 3076: Conservation Easement Program Contract

## **OTHER BUSINESS**

### **Finance Update**

Finance Director Steve Hoglund presented a periodic update on the city's financial position as of the end of February 2022, referring to the extensive set of charts included in the packet materials for this agenda item. Mr. Hoglund concluded that revenues were generally trending higher than budgeted and expenditures were on target.

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

**Ordinance 4018: Authorizing the 2022 First Quarter Budget Amendment**

Mr. Hoglund introduced Ordinance 4018 to authorize an amendment of the 2022 budget. Mr. Hoglund briefly reviewed the rationale for each line item of the amendment, referring to the packet materials for the meeting.

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

ANTHONY YOUNG moved, seconded by CAROLYN MOULTON, to approve Ordinance 4018 adopting the 1st quarter 2022 budget amendment. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed

**Contract Award: Wastewater Treatment Plant Outfall Relocation - Upland Phase**

Public Works Director Fred Buckenmeyer reported that proposals were opened the prior Thursday and that only one had been submitted, from IMCO. He explained that because IMCO's proposal was \$10.6M, nearly double the Engineer's Estimate, FEMA had to get approval from another federal agency before recommending that the city award the contract. FEMA was trying to respond by April 4, 2022. Mr. Buckenmeyer said there would thus be at least a two-week delay in considering the contract.

**Adjournment**

There being no further business, at approximately 6:40 p.m. the Anacortes City Council meeting of March 21, 2022 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 March 28, 2022 City Council meeting:**  
[Download this file in OpenDocument spreadsheet format.](#)

| Invoice Doc # | Transaction Date | Invoice #           | Vendor Full Name              | Description                                          | Total Amount | Approval Queue |
|---------------|------------------|---------------------|-------------------------------|------------------------------------------------------|--------------|----------------|
| 300709        | 8/31/2021        | Invoice #1          | PORT OF ANACORTES             | LTAC PORT SUMMER CONCERTS 2021                       | \$ 8,000.00  | plan           |
| 301034        | 11/22/2021       | INV47               | CARTEGRAPH SYSTEMS LLC        | 2022 CARTEGRAPH SOLUTIONS AND SUBSCRIPTION AGREEMENT | \$ 42,639.80 | pw1            |
| 300833        | 12/22/2021       | 2809045             | FOSTER GARVEY PC              | SEWER UTILITY ISSUES MATTER NO. 97                   | \$ 973.00    | legal          |
| 300766        | 2/7/2022         | WAANA139605         | FASTENAL COMPANY              | HARDWARE FASTENERS                                   | \$ 53.76     | dshop          |
| 300722        | 2/25/2022        | 9415220082          | 3M COMPANY                    | SIGN MATERIAL                                        | \$ 1,534.73  | dshop          |
| 300919        | 2/28/2022        | 576                 | BOYS & GIRLS CLUBS            | FEB - LUNCH PROGRAM SERVICE PROVISION                | \$ 140.00    | finance        |
| 301020        | 2/28/2022        | 10439948            | NAVIA BENEFIT SOLUTIONS, INC  | FEBRUARY FLEXIBLE SPENDING FEES                      | \$ 120.35    | hr             |
| 301015        | 2/28/2022        | 29270               | ORCA INFORMATION, INC         | ORCA BACKGROUND CHECKS                               | \$ 440.00    | hr             |
| 300760        | 3/2/2022         | 3975417             | LTI, INC.                     | ROAD SALT                                            | \$ 5,924.33  | dshop          |
| 300707        | 3/2/2022         | 102853701-0009363   | WAVE                          | DEDICATED INTERNET ACCESS 3/1-3/31/22                | \$ 1,469.82  | fiber          |
| 300924        | 3/4/2022         | BC1562127           | GALLS, LLC.                   | ANNUAL UNIFORM ORDER: MT                             | \$ 267.07    | medic          |
| 300925        | 3/8/2022         | BC1564197           | GALLS, LLC.                   | NEW HIRE UNIFORM ORDER: R. BERG                      | \$ 1,539.74  | medic          |
| 300759        | 3/8/2022         | 253900              | NAPA                          | IDLER ARM ASSEMBLY #003                              | \$ 142.03    | dshop          |
| 300723        | 3/9/2022         | 9415429499          | 3M COMPANY                    | SIGN MATERIAL                                        | \$ 689.52    | dshop          |
| 300939        | 3/9/2022         | 831801              | CASCADE COLUMBIA DISTRIBUTION | 1 PALLET/40 BAGS SODIUM FLUORIDE                     | \$ 2,564.00  | dwtpt          |
| 300767        | 3/9/2022         | WAANA140254         | FASTENAL COMPANY              | HARDWARE FASTENERS                                   | \$ 6.78      | dshop          |
| 300710        | 3/9/2022         | 254163              | NAPA                          | OIL FILTER #7929                                     | \$ 7.70      | dshop          |
| 300716        | 3/9/2022         | 0281600-IN          | REISNER DISTRIBUTOR INC       | LUBE OIL- SHOP                                       | \$ 1,970.70  | dshop          |
| 300762        | 3/10/2022        | 8498 30 030 0111230 | COMCAST                       | WTP 14489 RIVER BEND RD. - 3/19-4/18/22              | \$ 263.45    | finance        |
| 300711        | 3/10/2022        | 254222              | NAPA                          | LENS #152                                            | \$ 9.66      | dshop          |
| 300706        | 3/11/2022        | 8498 30 017 0464628 | COMCAST                       | WA PARK INTERNET 3/21-4/20/22                        | \$ 108.16    | finance        |
| 300936        | 3/11/2022        | 98056884            | ECO SERVICES OPERATIONS CORP  | ALUMINUM SULFATE                                     | \$ 4,574.32  | dwtpt          |
| 300713        | 3/11/2022        | 9325945578          | GRAYBAR ELECTRIC COMPANY, INC | 144 FIBER CABLE - OAK HARBOR                         | \$ 22,456.59 | wdist          |
| 301030        | 3/11/2022        | 109524              | JET CHEVROLET INC.            | 2022 CHEVY SILVERADO 2500 SERVICE BODY TRUCK         | \$ 49,867.68 | pw1            |
| 300820        | 3/14/2022        | INV2440047          | COPIERS NORTHWEST, INC        | Canon/IRC5870i/3rd Floor 2/10-3/10/22                | \$ 334.26    | finance        |
| 300754        | 3/14/2022        | WAANA140360         | FASTENAL COMPANY              | PARKS GENERAL MAINTENANCE                            | \$ 11.84     | parks1         |
| 300712        | 3/14/2022        | 1068932             | FERGUSON ENTERPRISES, INC     | MXU'S WARRANTY / INVENTORY                           | \$ 451.54    | wdist          |
| 301019        | 3/14/2022        | 9325953767          | GRAYBAR ELECTRIC COMPANY, INC | WALLBOXES FOR CUSTOMER INSTALLS                      | \$ 16,991.02 | fiber          |
| 300718        | 3/14/2022        | 3954705             | LTI, INC.                     | ROAD SALT                                            | \$ 5,723.49  | dshop          |
| 300927        | 3/14/2022        | 300000290027        | PUGET SOUND ENERGY INC        | WTP RESERVOIR & PUMP STATION 2/5-3/7/22              | \$ 4,434.73  | dwtpt          |

| Invoice Doc # | Transaction Date | Invoice #      | Vendor Full Name              | Description                            | Total Amount | Approval Queue |
|---------------|------------------|----------------|-------------------------------|----------------------------------------|--------------|----------------|
| 300942        | 3/14/2022        | 244419         | SCOTT RICHARDS INSURANCE, INC | CITY WATER PIPELINE RENEWAL POLICY     | \$ 2,262.00  | finance        |
| 300822        | 3/14/2022        | 03/1482022     | SIGNATURE TREE SERVICE        | TREE REMOVAL- W 5TH & KANSAS           | \$ 2,067.20  | dshop          |
| 300715        | 3/15/2022        | 22865          | APSCO, INC                    | MAINTENANCE SUPPLIES - INCINERATOR     | \$ 128.68    | dwwtp          |
| 300823        | 3/15/2022        | 317632         | BAY CITY SUPPLY               | FACILITY SUPPLIES                      | \$ 1,526.83  | pwfac          |
| 300945        | 3/15/2022        | 978 800 0000 1 | CASCADE NATURAL GAS CORP.     | STA 3: 2/10 - 3/14/22                  | \$ 140.33    | medic          |
| 301022        | 3/15/2022        | 0001269        | CITY OF BURLINGTON            | DARK FIBER AND RACK SPACE              | \$ 275.00    | fiber          |
| 300757        | 3/15/2022        | S010379220.005 | CONSOLIDATED SUPPLY CO.       | METER BOXES & SUPPLIES                 | \$ 3,425.57  | wdist          |
| 300717        | 3/15/2022        | Q327859        | CORE & MAIN LP                | INVENTORY                              | \$ 810.05    | wdist          |
| 300721        | 3/15/2022        | Q477500        | CORE & MAIN LP                | METER SETTER                           | \$ 4,470.25  | wdist          |
| 301026        | 3/15/2022        | 15-85275       | CUMMINS, INC.                 | MUFFLER #9910                          | \$ 4,955.52  | dshop          |
| 301021        | 3/15/2022        | 9325973511     | GRAYBAR ELECTRIC COMPANY, INC | PRECONNECTORIZED FIBER CABLES          | \$ 3,491.94  | fiber          |
| 300940        | 3/15/2022        | 12928287       | HACH COMPANY                  | CHLORINE ANALYZER REAGENTS             | \$ 87.18     | dwwtp          |
| 300935        | 3/15/2022        | INV577271      | L.N. CURTIS & SONS            | 2- 24 FT LADDERS                       | \$ 3,216.13  | medic          |
| 300756        | 3/15/2022        | 1921725        | MILES SAND & GRAVEL CO.       | 1 1/4" CSBC                            | \$ 282.88    | dshop          |
| 300624        | 3/15/2022        | 343931         | MUNTEAN-SALAZAR, RACHEL       | GALLERY ART SALE COMMISSION            | \$ 175.00    | parks1         |
| 300937        | 3/15/2022        | 3413           | SKAGIT 911                    | 2ND QTR 2022 RADIO MAINTENANCE FEE     | \$ 8,241.00  | medic          |
| 300763        | 3/16/2022        | 254981         | NAPA                          | HI POWER V BELT #10011                 | \$ 45.10     | dshop          |
| 300765        | 3/16/2022        | 254974         | NAPA                          | BATTERY #024                           | \$ 155.53    | dshop          |
| 300719        | 3/16/2022        | Ref000300719   | PYE BARKER FIRE & SAFETY      | Canceled Permit, Refund per EM         | \$ 190.33    | bldg           |
| 300944        | 3/16/2022        | INV15256       | SEAWESTERN, INC.              | PPE: COLWELL, HORNE HUTSELL            | \$ 15,728.13 | medic          |
| 300758        | 3/16/2022        | 0261151        | SIRENNET.COM                  | ION LIGHT AMBER #1000                  | \$ 653.45    | dshop          |
| 300931        | 3/16/2022        | 913217         | USA BLUE BOOK                 | HARDNESS STANDARD                      | \$ 70.84     | dwwtp          |
| 300720        | 3/16/2022        | Invoice #2     | WHIDBEY ISLAND RACE WEEK LLC  | LTAC RACEWEEK INVOICE #2               | \$ 2,244.00  | plan           |
| 300926        | 3/17/2022        | 7192322198     | CARDINAL HEALTH 110, INC.     | PHARMA: KETALAR                        | \$ 131.70    | medic          |
| 301014        | 3/17/2022        | 03/17/2022     | FIDALGO CLEANING              | MUSEUM CLEANING                        | \$ 160.00    | museum         |
| 300837        | 3/17/2022        | 2817067        | FOSTER GARVEY PC              | HUMAN RESOURCES MATTER NO. 32          | \$ 3,146.00  | legal          |
| 300949        | 3/17/2022        | 1432924        | GENERAL PACIFIC INC           | 2" HDPE SDR11, FOR OAK HARBOR FIBER    | \$ 6,990.40  | wdist          |
| 301011        | 3/17/2022        | 22016          | HUTCH'S POLYGRAPH SERVICES    | PRE-EMPLOYMENT POLYGRAPH               | \$ 200.00    | apd            |
| 300946        | 3/17/2022        | 1188430        | LIFE ASSIST, INC              | MEGAMOVERS, COLLARS, PRESSURE BAG, BAG | \$ 2,358.13  | medic          |
| 300821        | 3/17/2022        | 255017         | NAPA                          | PARTS- #713                            | \$ 21.02     | dshop          |
| 300929        | 3/17/2022        | 914809         | USA BLUE BOOK                 | BUFFER 6.0, HYDROCHLORIC ACID          | \$ 93.07     | dwwtp          |
| 300761        | 3/17/2022        | 111141         | WALTON BEVERAGE COMPANY, INC  | OPS BREAKROOM SUPPLIES                 | \$ 151.00    | dshop          |
| 300769        | 3/17/2022        | 111139         | WALTON BEVERAGE COMPANY, INC  | CITY HALL BREAK ROOM SUPPLIES          | \$ 390.00    | finance        |
| 300941        | 3/17/2022        | 111145         | WALTON BEVERAGE COMPANY, INC  | WTP BREAKROOM SUPPLIES                 | \$ 66.00     | dwwtp          |
| 301028        | 3/18/2022        | 812-24519      | GCR TIRES & SERVICES          | FLAT REPAIR- #517                      | \$ 43.08     | dshop          |
| 301029        | 3/18/2022        | 812-24520      | GCR TIRES & SERVICES          | TIRES- #511 & #512                     | \$ 930.81    | dshop          |
| 299157        | 3/18/2022        | I6041821       | HD FOWLER COMPANY INC         | INVENTORY                              | \$ 7,916.60  | wdist          |
| 301003        | 3/18/2022        | 1922626        | MILES SAND & GRAVEL CO.       | CONCRETE & EXPANSION JOINT             | \$ 1,093.99  | dshop          |
| 301017        | 3/18/2022        | 135238         | SUMMIT LAW GROUP, PLLC        | LEGAL SERVICES, POLICE BARGAINING UNIT | \$ 5,850.00  | hr             |

| Invoice Doc # | Transaction Date | Invoice #       | Vendor Full Name              | Description                                                       | Total Amount | Approval Queue |
|---------------|------------------|-----------------|-------------------------------|-------------------------------------------------------------------|--------------|----------------|
| 301013        | 3/19/2022        | 00005W5A83122   | UNITED PARCEL SERVICE, INC    | UPS SHIPPING CHARGES; WEEK ENDING 3-19-22                         | \$ 10.58     | apd            |
| 301032        | 3/20/2022        | 2132-1          | MAKERS ARCHITECTURE           | HOUSING ACTION PLAN - PROFESSIONAL SERVICES THROUGH FEBRUARY 2022 | \$ 3,617.50  | plan           |
| 301033        | 3/20/2022        | INV-17844       | POWERDMS, INC                 | POLICE POLICY MANUAL & ACCREDITATION MANAGEMENT - 5/19/22-5/18/23 | \$ 6,763.63  | apd            |
| 300943        | 3/21/2022        | 04/01/2022      | SCOTT MILO GALLERY/FRAMEMAKER | FEE FOR ART WALK                                                  | \$ 45.00     | parks1         |
| 301008        | 3/21/2022        | S20218785       | SUPERIOR SYSTEMS, INC         | REPAIR TO HOLE IN S/S FUNNEL                                      | \$ 62.45     | dwtp           |
| 301009        | 3/21/2022        | S20218786       | SUPERIOR SYSTEMS, INC         | WELD REPAIR TO ALUMINUM STAIRS                                    | \$ 249.78    | dwtp           |
| 301010        | 3/21/2022        | 20220500        | SYSTEMS DESIGN WEST, LLC      | AMBULANCE SERVICE BILLING FEB 2022                                | \$ 3,611.04  | finance        |
| 301007        | 3/21/2022        | 50085597        | UNIVAR USA INC                | SODIUM HYDROXIDE                                                  | \$ 4,524.49  | dwtp           |
| 300933        | 3/21/2022        | 911683          | USA BLUE BOOK                 | PLANT LAB SUPPLIES                                                | \$ 1,480.26  | dwtp           |
| 300923        | 3/21/2022        | 111140          | WALTON BEVERAGE COMPANY, INC  | AFD BREAKROOM SUPPLIES                                            | \$ 120.00    | medic          |
| 301025        | 3/22/2022        | 170956          | BLADE CHEVROLET, INC          | REPAIRS #175                                                      | \$ 3,031.18  | dshop          |
| 301005        | 3/22/2022        | RefundEscamilla | ESCAMILLA, JOEL               | REFUND ESCAMILLA                                                  | \$ 31.00     | parks1         |
| 301027        | 3/22/2022        | 255567          | NAPA                          | 20LB DE OIL DRY                                                   | \$ 80.23     | dshop          |
| 300922        | 4/1/2022         | 20220401        | CHOWANEC, WILLIAM             | STA 3 RENT - APRIL                                                | \$ 2,400.00  | medic          |

**Total** **\$283,921.95**



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.c.

**Agenda Item Title:** Street Fair Application - Waterfront Festival Car Show

**Staff Contact(s):** DON MEASAMER

**Approved for Submittal to Council by**      **Action Type**

Joann Stewart  
DON MEASAMER

Motion

**Item Summary:** Review and approve Waterfront Festival Car Show Street Fair Application

**Budget Impact:**

None

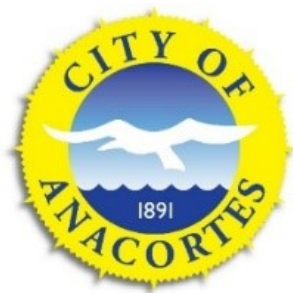
**Previous Action:**

**Recommended Motion:** Motion to approve the application for the Waterfront Festival Car Show as submitted.

**Alternative Actions:** Deny the applications

**Attachments (listed in order presented):**

1. Waterfront Fest Full Packet



## Street Fair Application Processing

Administrator reviews the application for completeness. Administrator contacts the applicant to obtain any missing information and updates the application accordingly, including a legible copy of the Indemnification Agreement if that was not provided. It is recommended that the Administrator also verify that the applicant has entered phone and email correctly! Administrator then sets the target City Council date and routes the application for review by department heads.

View Anacortes Municipal Code [Chapter 7.04, Special Events](#)

### Application

---

**Application Date \***

2/21/2022

**Event Name \***

Anacortes Waterfront Festival and Car Show

**Applicant/Organization Name \***

Majestic Glass Corvette Club / Anacortes Chamber of Commerce

**Mailing Address \***

819 Commercial Ave Ste F, Anacortes WA 98221

**Event Contact Person \***

Linda Gilbert (MGCC) / Kate Helmreich (Anacortes Chamber of Commerce)

**Event Contact Email \***

edgarmgcc@gmail.com

**Event Contact Phone \***

(360) 293-7911

**Event Website**

[http://www.majesticglass.org/myweb7/code/car\\_show.htm](http://www.majesticglass.org/myweb7/code/car_show.htm)

**Estimated Number of Participants/Attendees \***

10,000 combined (500 car show only)

**Event Description \***

2 day family festival with vendors, children's activities, live entertainment and Classic Car Show as part of the Waterfront Festival Activities.

**Will food vendors participate in this event? \***

All Food Vendors must be inspected by the Fire Marshall on site prior to the start of the event.

☒ Yes ☐ No



**Date Event Starts \***

6/4/2022

**Time Event Starts \***

7:00:00 AM

**Date Event Ends \***

6/5/2022

**Time Event Ends \***

6:00:00 PM

**Date Street Closure Starts \***

Include requested closures before and after the event hours if required for set up and tear down.

6/4/2022

**Time Street Closure Starts \***

12:00:00 AM

**Date Street Closure Ends \***

6/5/2022

**Time Street Closure Ends \***

6:00:00 PM

**Event Location \***

List end points of each street that will be closed (e.g. 6th Street from O Ave to Q Ave). Also include location and dimensions of any structures that will be erected and locations of the event that will not be on city street right of way.

Waterfront Festival: Cap Sante parking lot 9th-11th and Q Ave;

Car Show: 9th Street starting at Q Avenue and curving around to R Avenue to the Maritime Museum and

Market Street from 9th Avenue to the entrance to the Cap Sante Parking lot (behind the WT Preston)

Street sweep of the parking lot at Cap Sante Marina on the Monday after the festival (June 8th)

**Parking Location**

List any public parking areas that the event requests to use for dedicated event parking, including handicapped parking.

Street parking – limited at Cap Sante Marina, some ADA at cap Sante Marina, parking limited to car show participants

on 9th from Q to R and R from 9th to the Maritime Museum and Market from 9th to Cap Sante north parking lot entrance (behind WT Preston).

**Event Map (optional)**

Upload one or more maps of the event

[Waterfront Festival and Car ...](#) 371.52KB

**Indemnification Agreement \***

Upload scan of SIGNED indemnification agreement

[COA Special Event Indemnif...](#) 304.36KB

**Download the Indemnification Agreement [here](#).**

**Signage**

Street closure signs will be provided by the City of Anacortes. Applicants must contact City staff one week prior to the event to arrange sign delivery. Event sponsor personnel are responsible for placing street closure signs, which may not be posted more that 48 hours prior to the approved closure, must be removed immediately following the event, and must be returned to city staff the first business day following the event.

**Insurance**

The applicant may be required to provide public liability insurance subject to the provisions of AMC 7.04.100. Applicants will be notified following application approval of insurance requirements for the specific event.

### Electronic Signature Agreement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

**I state that I am over the age of 18, that I agree to assume responsibility for the above-described event and to abide by all conditions stipulated by the approval of the application.\***

☒ Yes

### Signature

*John Lucke for MGCC*

## Admin Review

---

### Council Meeting Date \*

Target date for presentation to City Council; no later than 30 days prior to event

3/28/2022

### Staff Review Deadline \*

Staff review/approval required no later than 7 days prior to City Council meeting to allow packet preparation

3/21/2022

### Administrator comments and conditions of approval

Looks good for approval

### Insurance Certificate

Insurance certificate may be required by staff or as a condition of Council approval

## Departmental Review

---

**Building Department will provide the following services for this event:**

**Building Department concerns, objections, or conditions of approval \***

None

**Fire Department will provide the following services for this event:**

**Fire Department concerns, objections, or conditions of approval \***

None

**Parks Department will provide the following services for this event:**

**Parks Department concerns, objections, or conditions of approval \***

None

**Police Department will provide the following services for this event:**

**Police Department concerns, objections, or conditions of approval \***

None

**Public Works Department will provide the following services for this event:**

**Public Works Department concerns, objections, or conditions of approval \***

None

**Departmental attachments**

Upload any staff memos, guidelines, or requirements that will be in effect for this event.

The area in RED outlines the Waterfront Festival and the YELLOW highlights the street closure area for the car show.







## SPECIAL EVENT INDEMNIFICATION AGREEMENT

The undersigned applicant, by signing below, certifies that the applicant is the authorized officer of the sponsoring organization and agrees as follows:

Pursuant to Anacortes Municipal Code Title 7.04.090, the undersigned applicant agrees to defend, indemnify and hold the City of Anacortes, its agents, employees and officers, harmless from any and all claims, injuries, suits, damages, losses, demands and judgments including the attorneys' fees and other costs of their defense, arising out of in whole or in part, the activities, omissions or appliances of the applicant, his employees, agents, volunteers or otherwise, except any claims arising from the sole negligence of the City. The applicant further agrees to comply with all provisions of pertinent laws, rules and regulations, and agrees that any failure to so comply may lead to revocation of an applicant's permit. This Indemnification Agreement constitutes substantial adequate consideration in return for the City's issuance of a special event permit.

Date: 2/16/22

Kate Helmreich - Events + Communications Coordinator  
Name and Title - Printed

Kate Helmreich  
Signature

Linda Gilbert - President  
Name and Title - Printed

Linda Gilbert  
Signature



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.d.

**Agenda Item Title:** Street Fair Application - July 4 Parade

**Staff Contact(s):** DON MEASAMER

| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
|----------------------------------------------------|---------------------------|
| Joann Stewart                                      | Motion                    |
| DON MEASAMER                                       |                           |

**Item Summary:**

**Budget Impact:**  
None

**Previous Action:** None

**Recommended Motion:** Move to approve the street fair application as submitted

**Alternative Actions:** Deny the street fair application

**Attachments (listed in order presented):**

1. 4th of July Full Packet



## Street Fair Application Processing

Administrator adds this event to the City Council agenda, creates the agenda bill, downloads the reviewed application and any attachments using the link in the email, and uploads those attachments in CivicClerk to go into the City Council packet.

View Anacortes Municipal Code [Chapter 7.04, Special Events](#)

### Application

**Application Date \***

3/1/2022

**Event Name \***

4th of July Parade

**Applicant/Organization Name \***

City of Anacortes

**Mailing Address \***

P.O.Box 547

**Event Contact Person \***

Jonh Lunsford / Sylvia Cooper

**Event Contact Email \***

jonnl@cityofanacortes.org

**Event Contact Phone \***

(360) 299-1953

**Event Website**

**Estimated Number of Participants/Attendees \***

4000

**Event Description \***

Event will start at 3rd and commercial, head south to 10th street, turn right on 10th Street and then right on N Avenue to complete the parade route. Floats, marching bands, cars, etc. will parade down Commercial in celebration of America's Independence.

**Will food vendors participate in this event? \***

All Food Vendors must be inspected by the Fire Marshall on site prior to the start of the event.

☐ Yes ☒ No

**Date Event Starts \***

7/4/2022

**Time Event Starts \***

10:30:00

AM ▾

**Date Event Ends \***

7/4/2022

**Time Event Ends \***

12:30:00

PM ▾

**Date Street Closure Starts \***

Include requested closures before and after the event hours if required for set up and tear down.

7/4/2022

**Time Street Closure Starts \***

8:00:00

AM ▾

**Date Street Closure Ends \***

7/4/2022

**Time Street Closure Ends \***

2:00:00

PM ▾

**Event Location \***

List end points of each street that will be closed (e.g. 6th Street from O Ave to Q Ave). Also include location and dimensions of any structures that will be erected and locations of the event that will not be on city street right of way.

Event will start at 3rd and commercial, head south to 10th street, turn right on 10th Street and then right on N Avenue to complete the parade route.

**Parking Location**

List any public parking areas that the event requests to use for dedicated event parking, including handicapped parking.

No parking required

**Event Map (optional)**

Upload one or more maps of the event

Upload

[July 4 Parade Map.pdf](#)

1.43MB

**Indemnification Agreement \***

Upload scan of SIGNED indemnification agreement

Upload

[2022 4th of July Special Eve...](#) 53.86KB

**Download the Indemnification Agreement [here](#).**

**Signage**

Street closure signs will be provided by the City of Anacortes. Applicants must contact City staff one week prior to the event to arrange sign delivery. Event sponsor personnel are responsible for placing street closure signs, which may not be posted more that 48 hours prior to the approved closure, must be removed immediately following the event, and must be returned to city staff the first business day following the event.

**Insurance**



The applicant may be required to provide public liability insurance subject to the provisions of AMC 7.04.100. Applicants will be notified following application approval of insurance requirements for the specific event.

### Electronic Signature Agreement

By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

**I state that I am over the age of 18, that I agree to assume responsibility for the above-described event and to abide by all conditions stipulated by the approval of the application.\***

☒ Yes

### Signature

*Sylvia Cooper*

## Admin Review

### Council Meeting Date \*

Target date for presentation to City Council; no later than 30 days prior to event

3/28/2022



### Staff Review Deadline \*

Staff review/approval required no later than 7 days prior to City Council meeting to allow packet preparation

3/21/2022

### Administrator comments and conditions of approval

### Insurance Certificate

Upload

Insurance certificate may be required by staff or as a condition of Council approval

## Departmental Review

### Building Department will provide the following services for this event:

**Building Department concerns, objections, or conditions of approval \***

None

**Fire Department will provide the following services for this event:****Fire Department concerns, objections, or conditions of approval \***

None

**Parks Department will provide the following services for this event:**

parks & recreation will set up no parking signage before the event

**Parks Department concerns, objections, or conditions of approval \***

None

**Police Department will provide the following services for this event:****Police Department concerns, objections, or conditions of approval \***

None

**Public Works Department will provide the following services for this event:****Public Works Department concerns, objections, or conditions of approval \***

None

Departmental attachments

Upload any staff memos, guidelines, or requirements that will be in effect for this event.

Upload

Comments

Council Packet Complete

Cancel Application



## SPECIAL EVENT INDEMNIFICATION AGREEMENT

The undersigned applicant, by signing below, certifies that the applicant is the authorized officer of the sponsoring organization and agrees as follows:

Pursuant to Anacortes Municipal Code Title 7.04.090, the undersigned applicant agrees to defend, indemnify and hold the City of Anacortes, its agents, employees and officers, harmless from any and all claims, injuries, suits, damages, losses, demands and judgments including the attorneys' fees and other costs of their defense, arising out of in whole or in part, the activities, omissions or appliances of the applicant, his employees, agents, volunteers or otherwise, except any claims arising from the sole negligence of the City. The applicant further agrees to comply with all provisions of pertinent laws, rules and regulations, and agrees that any failure to so comply may lead to revocation of an applicant's permit. This Indemnification Agreement constitutes substantial adequate consideration in return for the City's issuance of a special event permit.

Date: 3-1-2022

Sylvia Cooper-Cordano  
Name and Title – Printed

[Signature]  
Signature

\_\_\_\_\_  
Name and Title – Printed

\_\_\_\_\_  
Signature





# 4th of July Parade Route





## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.e.

**Agenda Item Title:** Street Fair Application - Oyster Run Event

**Staff Contact(s):** DON MEASAMER

**Approved for Submittal to Council by**      **Action Type**

Joann Stewart  
DON MEASAMER

Motion

**Item Summary:** Annual Oyster Run Event Street Fair application

**Budget Impact:**

The applicant will be responsible for all overtime costs for both Fire and Police.

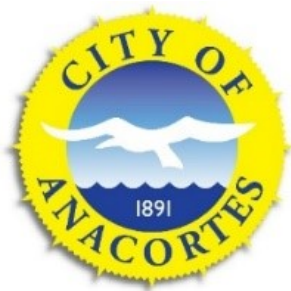
**Previous Action:**

**Recommended Motion:** Motion to approve Oyster Run Street Fair Application as submitted and in accordance to attached conditions of approval

**Alternative Actions:** Deny application

**Attachments (listed in order presented):**

1. Oyster Run Full Packet
2. Conditions of Approval



## Street Fair Application Processing

Administrator reviews the application for completeness. Administrator contacts the applicant to obtain any missing information and updates the application accordingly, including a legible copy of the Indemnification Agreement if that was not provided. It is recommended that the Administrator also verify that the applicant has entered phone and email correctly! Administrator then sets the target City Council date and routes the application for review by department heads.

View Anacortes Municipal Code [Chapter 7.04, Special Events](#)

### Application

**Application Date \***

2/28/2022

**Event Name \***

Oyster Run

**Applicant/Organization Name \***

Oyster Run Committee

**Mailing Address \***

5129 Evergreen Way #473 Everett WA 98203

**Event Contact Person \***

Angie Haynes

**Event Contact Email \***

angela.haynes@comcast.net

**Event Contact Phone \***

(425) 508-8524

**Event Website**

www.oysterrun.org

**Estimated Number of Participants/Attendees \***

10,000

**Event Description \***

Motorcycle Rally with food & merch vendors plus live music and Cossacks drill team. Event to be held on Commercial and side streets 1 block east and 1 block west from 3rd to 10th.

\*\*\*Insurance to be sent in August or Sept as usual.\*\*\*

**Will food vendors participate in this event? \***

All Food Vendors must be inspected by the Fire Marshall on site prior to the start of the event.

☒ Yes ☐ No

**Date Event Starts \***

9/25/2022

**Time Event Starts \***

8:00:00 AM

**Date Event Ends \***

9/25/2022

**Time Event Ends \***

5:00:00 PM

**Date Street Closure Starts \***

Include requested closures before and after the event hours if required for set up and tear down.

9/25/2022

**Time Street Closure Starts \***

6:00:00 AM

**Date Street Closure Ends \***

9/25/2022

**Time Street Closure Ends \***

6:00:00 PM

**Event Location \***

List end points of each street that will be closed (e.g. 6th Street from O Ave to Q Ave). Also include location and dimensions of any structures that will be erected and locations of the event that will not be on city street right of way.

Commercial and side streets 1 block east and 1 block west from 3rd to 10th

**Parking Location**

List any public parking areas that the event requests to use for dedicated event parking, including handicapped parking.

Side of R from 9th to 4th plus east and west sides of o from 4th to 5th

**Event Map (optional)**

Upload one or more maps of the event

[Oyster Run Vendor Map.pdf](#) 176.6KB

**Indemnification Agreement \***

Upload scan of SIGNED indemnification agreement

[Image \(11\).jpg](#) 262.45KB

**Download the Indemnification Agreement [here](#).**

**Signage**

Street closure signs will be provided by the City of Anacortes. Applicants must contact City staff one week prior to the event to arrange sign delivery. Event sponsor personnel are responsible for placing street closure signs, which may not be posted more that 48 hours prior to the approved closure, must be removed immediately following the event, and must be returned to city staff the first business day following the event.

**Insurance**

The applicant may be required to provide public liability insurance subject to the provisions of AMC 7.04.100. Applicants will be notified following application approval of insurance requirements for the specific event.

**Electronic Signature Agreement**



By checking the "I agree" box below, you agree and acknowledge that 1) your application will not be signed in the sense of a traditional paper document, 2) by signing in this alternate manner, you authorize your electronic signature to be valid and binding upon you to the same force and effect as a handwritten signature, and 3) you may still be required to provide a traditional signature at a later date.

**I state that I am over the age of 18, that I agree to assume responsibility for the above-described event and to abide by all conditions stipulated by the approval of the application. \***

☒ Yes

### Signature

*Angie Haynes*

## Admin Review

---

### Council Meeting Date \*

Target date for presentation to City Council; no later than 30 days prior to event

3/28/2022

### Staff Review Deadline \*

Staff review/approval required no later than 7 days prior to City Council meeting to allow packet preparation

3/21/2022

### Administrator comments and conditions of approval

### Insurance Certificate

Insurance certificate may be required by staff or as a condition of Council approval

## Departmental Review

---

**Building Department will provide the following services for this event:**

### Building Department concerns, objections, or conditions of approval \*

None

**Fire Department will provide the following services for this event:**

### Fire Department concerns, objections, or conditions of approval \*

Overtime for additional Medic unit on 9/25/22 to be covered by Event Committee.

**Parks Department will provide the following services for this event:**

**Parks Department concerns, objections, or conditions of approval \***

None

**Police Department will provide the following services for this event:**

Downtown foot patrols and visual presence throughout the event.

**Police Department concerns, objections, or conditions of approval \***

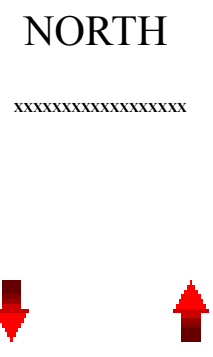
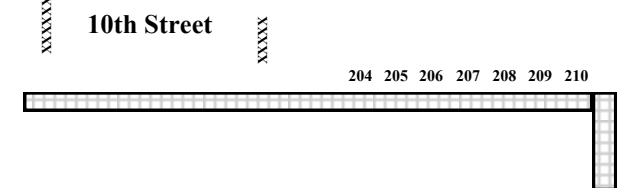
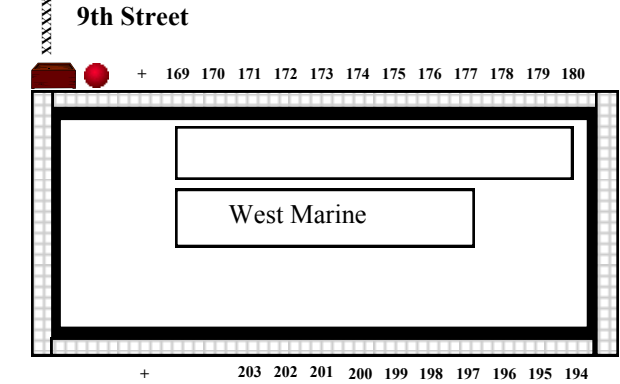
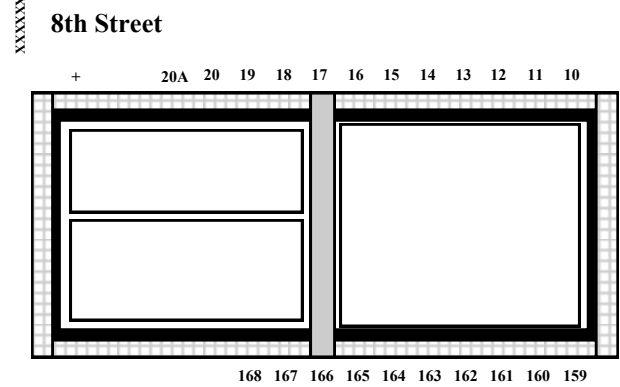
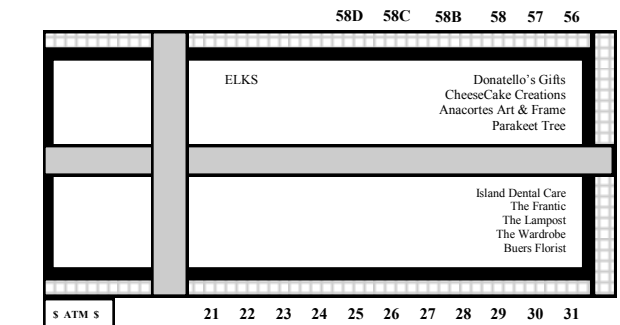
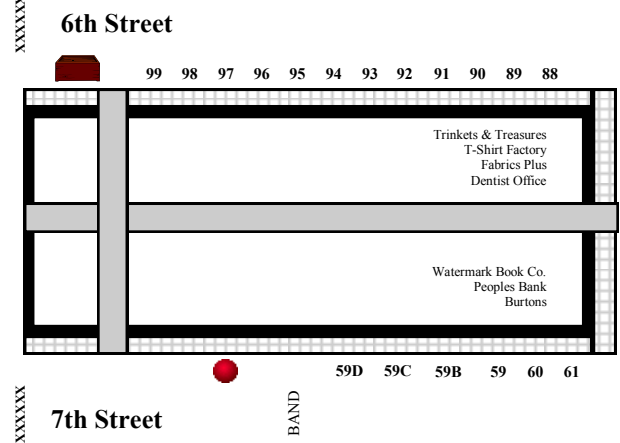
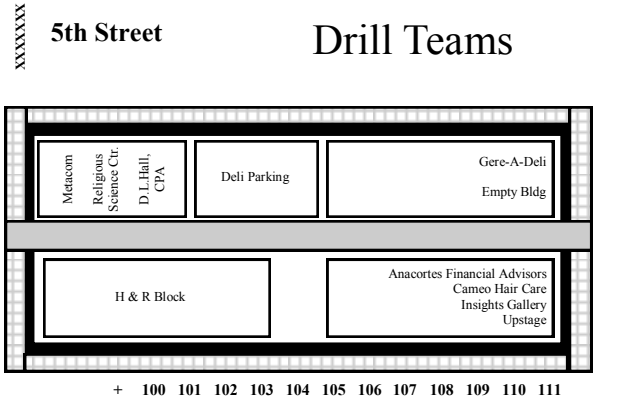
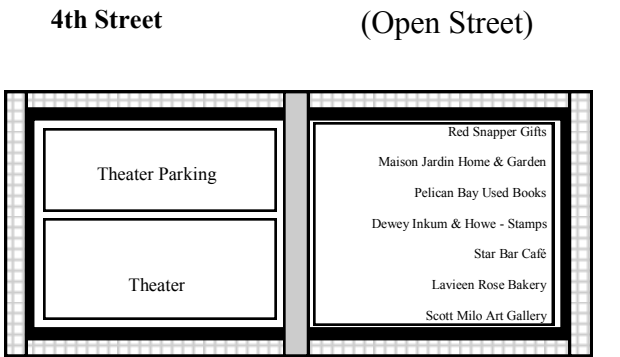
None

**Public Works Department will provide the following services for this event:****Public Works Department concerns, objections, or conditions of approval \***

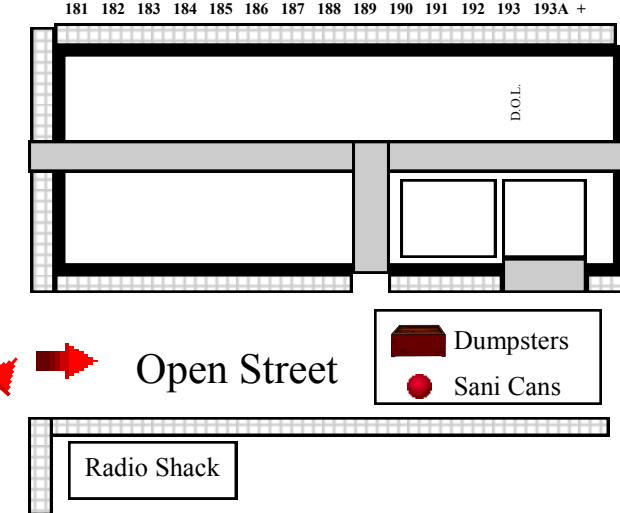
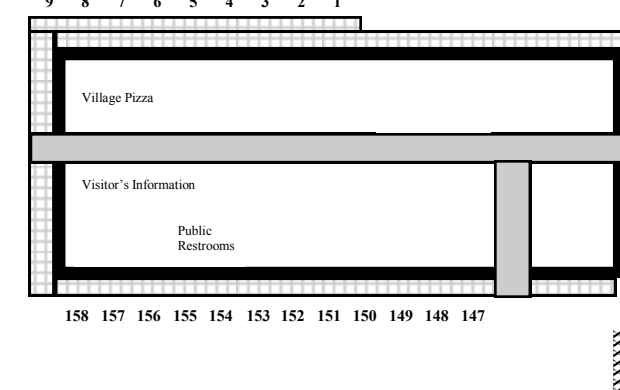
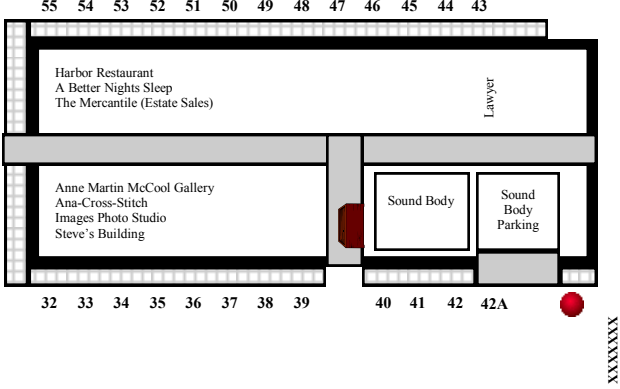
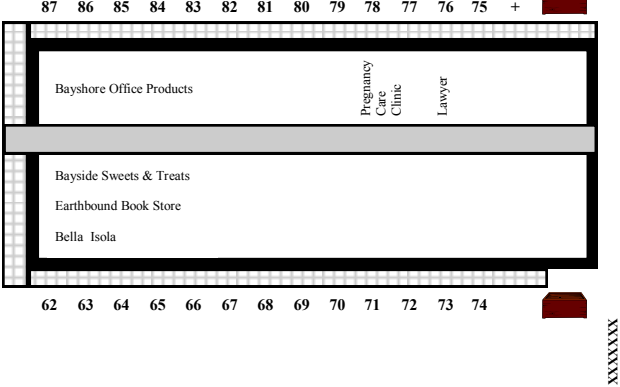
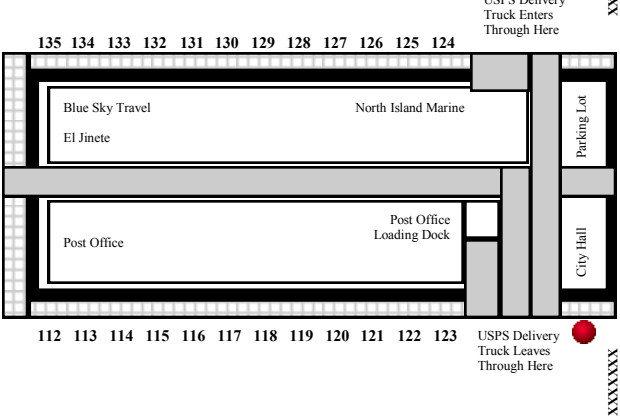
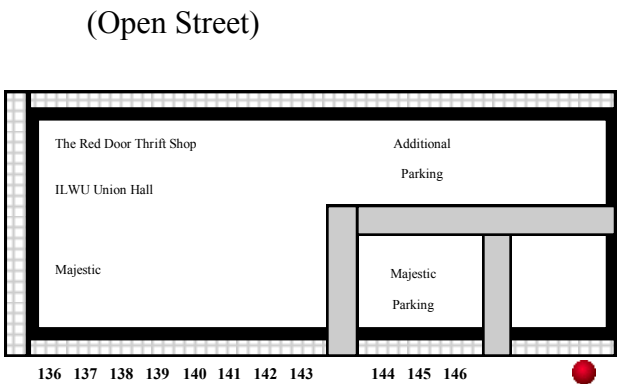
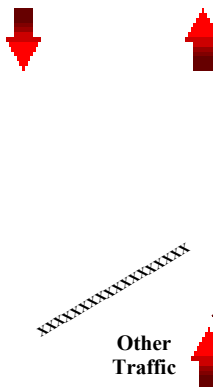
None

**Departmental attachments**

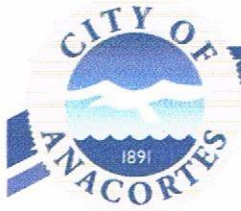
Upload any staff memos, guidelines, or requirements that will be in effect for this event.



COMMERCIAL AVE  
MOTORCYCLE TRAFFIC ONLY



- Dumpsters
- Sani Cans



## SPECIAL EVENT INDEMNIFICATION AGREEMENT

The undersigned applicant, by signing below, certifies that the applicant is the authorized officer of the sponsoring organization and agrees as follows:

Pursuant to Anacortes Municipal Code Title 7.04.090, the undersigned applicant agrees to defend, indemnify and hold the City of Anacortes, its agents, employees and officers, harmless from any and all claims, injuries, suits, damages, losses, demands and judgments including the attorneys' fees and other costs of their defense, arising out of in whole or in part, the activities, omissions or appliances of the applicant, his employees, agents, volunteers or otherwise, except any claims arising from the sole negligence of the City. The applicant further agrees to comply with all provisions of pertinent laws, rules and regulations, and agrees that any failure to so comply may lead to revocation of an applicant's permit. This Indemnification Agreement constitutes substantial adequate consideration in return for the City's issuance of a special event permit.

Date: 2/28/22

\_\_\_\_\_  
Name and Title – Printed

\_\_\_\_\_  
Signature

Angie Haynes- Coordinator  
Name and Title – Printed

Angie Haynes  
Signature

**EVENT PERMIT CONDITIONS OF APPROVAL  
THE OYSTER RUN**

1. All Anacortes Police Department and Fire Department overtime costs will be paid by the Oyster Run organization. This will include additional staffing on Saturday night prior to the event. The City will submit an invoice to the Oyster Run organization after the event and the full balance of the invoice must be paid within 30 days of the date of the event.
2. The drill team, the Cossacks, will be the only motorcycle performance allowed at the Oyster Run. No other stunt riders will be allowed.
3. No Portable Toilets will be placed 900 Block of 6<sup>th</sup> Street (east of Commercial).
4. No Parking Signs will be placed on all closed streets, 2 on each side of each block (see street closure map). Signs will be placed 48 hours prior to the event (no earlier than 48 hours) and removed promptly at the completion of the event.
5. The Oyster Run Organization must agree and sign the Special Event Indemnification Agreement and submit it to the Planning Director along with the street fair application.
6. The Oyster Run Organization must ensure that all food vendors conform to the 2019 Fire Code requirements as outlined in the Food Vendors Fire Code Enforcement memorandum.
7. The Oyster Run (Permittee) must obtain and provide insurance for the event as follows: All certificates, endorsements, and other documentation must be received by the Planning Director no later than one calendar month prior to the event. Failure to provide the required insurance documentation in a timely manner may result in immediate revocation of this permit. Insurance requirements subject to approval by WCIA.

**8. Insurance Term**

The Permittee shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities associated with the Oyster Run with the issuance of this Permit.

**9. No Limitation**

The Permittee's maintenance of insurance as required by the Permit shall not be construed to limit the liability of the Permittee to the coverage provided by such insurance, or otherwise limit the City of Anacortes's recourse to any remedy available at law or in equity.

**10. Minimum Scope of Insurance**

The Permittee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City of Anacortes shall be named as an additional insured under the Permittee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

#### **11. Minimum Amounts of Insurance**

The Permittee shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than **\$2,000,000 each occurrence, \$4,000,000 general aggregate and a \$4,000,000 products-completed operations aggregate limit.**

#### **12. Other Insurance Provision**

The Permittee's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance with respect to the City of Anacortes. Any insurance, self-insurance, or self-insured pool coverage maintained by the City of Anacortes shall be excess of the Permittee's insurance and shall not contribute with it.

#### **13. Acceptability of Insurers**

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

#### **14. Verification of Coverage**

The Permittee shall furnish the City of Anacortes with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Permittee before issuance of the Permit.

#### **15. Notice of Cancellation**

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

#### **16. Failure to Maintain Insurance**



Failure on the part of the Permittee to maintain the insurance as required shall constitute a material breach of the Permit, upon which the City of Anacortes may, after giving two business days' notice to the Permittee to correct the breach, immediately terminate the Permit or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City of Anacortes on demand.

**17. Public Entity Full Availability of Permittee Limits**

If the Permittee maintains higher insurance limits than the minimums shown above, the City of Anacortes shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Permittee, irrespective of whether such limits maintained by the Permittee are greater than those required by this Permit or whether any certificate of insurance furnished to the City of Anacortes evidences limits of liability lower than those maintained by the Permittee.



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.f.

**Agenda Item Title:** Contract Award: Old Water Treatment Plant 36-Inch Line Disconnect #22-094-WTR-001

**Staff Contact(s):** FRED BUCKENMEYER, BRIAN MCDANIEL

|                                                    |                           |
|----------------------------------------------------|---------------------------|
| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
| TIFFANY MATSON                                     | Contract Award            |

**Item Summary:** City staff seeks City Council consent to award a contract in the amount of \$48,327.00 to IMCO General Construction to remove a section of pipe from the old water treatment plant and install a blind flange on the existing valve.

**Background:**

1. **History:** The contract request is for disconnecting and removing a section of the 36" finish water line. The line is currently still plumbed into the old plant. The section of pipe needs to be removed and capped to isolate it from the line that is currently in use. This project is part of the old plant demo.
2. **Key Terms:**
  - Contract is for a fixed price of \$48,327.00.
  - The Contractor shall complete the work within 90 days of the Notice to Proceed.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with IMCO General Construction

**Budget Impact:**

|                            |                           |
|----------------------------|---------------------------|
| Contractor                 | IMCO General Construction |
| Contract Amount            | \$48,327.00               |
| Earmarked Funds            | \$100,000.00              |
| BARS #                     | 401.000.594.34.63         |
| Budget Amendment Required? | No                        |
| Start Date                 | Notice to Proceed         |

End Date

90 days

**Previous Action:** N/A

**Recommended Motion:** I move that City Council authorize the Mayor to sign contract 22-094-WTR-001 with IMCO General Construction in the amount of \$48,327.00 to perform the Old Water Treatment Plant 36-Inch Line Disconnect.

**Alternative Actions:** Not approve the contract.

**Attachments (listed in order presented):**

1. 22-094-WTR-001



CONTRACT 22-094-WTR-001  
AGREEMENT WITH  
**IMCO GENERAL CONSTRUCTION**

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and IMCO General Construction, a private contractor at 2116 Buchanan Loop, Ferndale, WA 98248 (herein after referred to as "Contractor").

**PROJECT**  
**Old Water Treatment Plant 36-Inch Line Disconnect**

1. **Scope of Work:** Contractor shall furnish all materials, equipment, labor, and related items necessary to remove section of pipe from the old water treatment plant and install blind flange on existing valve at the Anacortes Water Treatment Plant, 14489 River Bend Rd, Mount Vernon, WA 98273. Work includes:

- Remove section of pipe between existing valve at cross to the existing above grade piping system to the old pump station
- Install blind flange on existing valve
- Install new 1" valve to existing yard hydrant
- Backfill and restore area, seed

2. **Contract Price:** The Contractor will perform the scope of work above for a firm fixed price of **Forty-Eight Thousand Three Hundred Twenty-Seven Dollars (\$48,327.00)**, which includes \$3,827.00 in 8.6% sales tax. This includes all labor, materials, and standard freight for the project. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.

3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.

4. **Time of Completion:** The Contractor shall complete the work within ninety (90) days of the Notice to Proceed.

5. **Project Management.** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager Mario Gonzalez, 360-428-1598.

6. **Contract Requirements:** Contractor must have a contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsement (see General Provisions); 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.

7. **Contract Documents:** The attached General Provisions are included in this Contract Agreement.

**The parties acknowledge** that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

**Owner:**  
City of Anacortes

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**Contractor:**  
IMCO General Construction

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor License #

**1. WASHINGTON STATE PREVAILING WAGES:** Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I) (*ONE (1) filed per contractor and each subcontractor per contract*). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I (*ONE (1) filed per contractor and each subcontractor per contract*). L&I provides the wage forms. ***All costs associated with such fees shall be included in the Contract price as part of the fixed costs of overhead for this Contract, including any anticipated subcontractor filing fees. Any change in the fee by L&I will not be grounds for revision in the Contract Amount. The City will only pay for the actual cost charged by L&I for the filing of the intent and affidavit.***

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquires may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 904 6<sup>th</sup> Street, Anacortes, WA. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project.

At least once a month Contractor must file weekly certified payroll reports online with the Washington Department of Labor and Industries as required by RCW 39.12.120.

**2. Performance and Payment Bonds.** The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

#### *Release of Bonds*

Bonds will not be released until the project has been completed and finally accepted.

**Performance Bonds** – Performance Bonds will be released at the end of the warranty period or twelve months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

**Payment Bonds** – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Department of Revenue, Department of Employment Security and the Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

**Exceptions** – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

**3. Retainage.** Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released **45 days after final acceptance**, provided that the following has occurred:

- 1) All liens placed against the project have been released. For projects over \$35,000, releases from the Department of Labor and Industries, Department of Employment Security and the Department of Revenue will also be required.

- 2) Affidavits of Wages paid for the final correct contract amount are approved and on file for the Contractor and any subcontractors.
- 3) Worker's Compensation Premiums for the Contractor and any subcontractors are current.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

**4. Subcontracts.** The Contractor shall give notice reasonably in advance of placing any subcontract; preferably the Contractor shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of the prime Contractor or a subcontractor. 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 subcontractor, (iv) proposed subcontract price. 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 Contractor of any responsibility for performing this Contract.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

**5. Job Safety & COVID-19 Safety Requirements Compliance.** The Contractor, and its subcontractors of any tier, shall comply with all Washington Dept. of Labor & Industries safety standards, as well as comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and Office of the Mayor of the City of Anacortes as it may relate to City of Anacortes projects.

**6. Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

**7. Invoicing.** All invoices shall at a minimum include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, **Agreement Number**, and Price. The Contractor must allow 30 calendar days from receipt of the invoice for payment. ***If requested by the City the Contractor shall provide a cost breakdown of charges.*** Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to [accountspayable@cityofanacortes.org](mailto:accountspayable@cityofanacortes.org). Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Contractor 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.

**8. Withholding Payment.** In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

**9. Final Payment: Waiver of Claim.** The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

**10. Inspection.**

**A. Of the Work**

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

**B. Project Manager's Authority**

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Contractor 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, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

**11. New and Unused.** All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

**12. Warranty.** The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. For one year after acceptance of any corrections by the City the Contractor shall be responsible for correcting all defects in workmanship and materials in the corrected work. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or impact any other legal rights or remedies of the City.

**13. Indemnification / Hold Harmless.** The Contractor 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver 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 section shall survive the expiration or termination of this Agreement.

**14. Insurance.**

**A. Insurance Term:** The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

**B. No Limitation:** The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**C. Minimum Scope of Insurance:** The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap



liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

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

**D. Minimum Amounts of Insurance:** The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

**E. City Full Availability of Contractor Limits:** If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

**F. Other Insurance Provision:** The Contractor's Automobile Liability and Commercial General 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 self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

**H. Verification of Coverage:** The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor **before scheduling of the work**. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

**I. Subcontractors' Insurance:** The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

**J. Notice of Cancellation:** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

**K. Failure to Maintain Insurance:** Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

**15. Acceptance.** Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

**16. Registered or Licensed Contractor.** The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Anacortes Municipal Code requires that every person engaging in business within the city limits of Anacortes register their business with the state and include a City of Anacortes Endorsement. Businesses from outside city limits with a gross annual income of \$2,000 in Anacortes are also required to obtain a city endorsement. Business licenses and city endorsements can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at [bls.dor.wa.gov](https://bls.dor.wa.gov).

**17. Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

**18. Contractor is an Independent Contractor.** The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Sub-Contractors during the performance of this Agreement.

**19. No Third Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

**20. The City's Right to Terminate Agreement.**

**A. Termination for Default:** If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, 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 Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

**B. Termination for Public Convenience:** The City may terminate the Agreement 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 Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. If the City exercises its option under this Paragraph, the City shall not be responsible for payment for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

**21. Changes/Additional Work.** The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor 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 Agreement. 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 Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

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

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

**24. Disputes**

**A. General:** Differences between the Contractor and the City, arising under and by virtue of this Agreement 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 Agreement.

**B. Notice of Potential Claims:** The Contractor 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 City, or (2) the happening of any event or occurrence, unless the Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor 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.

**D. Dispute Resolution:** In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. 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.

**25. Force Majeure.** Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement 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 Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

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

**27. Compliance with Laws.** The Contractor in the performance of this Agreement 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 Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

**28. Severability.** If any term or condition of this Agreement 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 Agreement are declared severable.

**29. Survival of Contract Termination.** The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Indemnification / Hold Harmless; Disputes.

**30. Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

**CITY:**

City of Anacortes  
Tiffany Matson  
904 6th Street  
PO Box 547  
Anacortes, WA 98221

**CONTRACTOR:**

IMCO General Construction  
Mitchell Sorestad  
2116 Buchanan Loop  
Ferndale, WA 98248

## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.g.

**Agenda Item Title:** Contract Award: Water Treatment Plant Lagoon #1 Dike Armoring #22-098-WTR-001

**Staff Contact(s):** FRED BUCKENMEYER, BRIAN MCDANIEL

**Approved for Submittal to Council by**      **Action Type**  
TIFFANY MATSON      Contract Award

**Item Summary:** City staff seeks City Council consent to award a contract in the amount of \$48,327.00 to IMCO General Construction to perform the lagoon #1 dike armoring at the WTP.

### **Background:**

1. **History:** The contract request is for installing quarry spall to armor the ring dike around lagoon #1. The dike is currently being undermined and poses the risk of failing. The rock will protect the dike from further damage.
2. **Key Terms:**
  - Contract is for a fixed price of \$48,327.00.
  - The Contractor shall complete the work within 90 days of the Notice to Proceed.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with IMCO General Construction.

### **Budget Impact:**

|                            |                              |
|----------------------------|------------------------------|
| Contractor                 | IMCO General Construction    |
| Contract Amount            | \$48,327.00                  |
| Earmarked Funds            | \$285,000.00 (within bars #) |
| BARS #                     | 401.730.534.10.48            |
| Budget Amendment Required? | No                           |
| Start Date                 | Notice to Proceed            |
| End Date                   | 90 days                      |



**Previous Action:** N/A

**Recommended Motion:** I move that City Council authorize the Mayor to sign contract 22-098-WTR-001 with IMCO General Construction in the amount of \$48,327.00 to perform the WTP Lagoon #1 Dike Armoring.

**Alternative Actions:** Not approve the contract.

**Attachments (listed in order presented):**

1. 22-098-WTR-001



CONTRACT 22-098-WTR-001  
AGREEMENT WITH  
**IMCO GENERAL CONSTRUCTION**

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and IMCO General Construction, a private contractor at 2116 Buchanan Loop, Ferndale, WA 98248 (herein after referred to as "Contractor").

**PROJECT**  
**WTP Lagoon #1 Dike Armoring**

1. **Scope of Work:** Contractor shall furnish all materials, equipment, labor, and related items necessary to perform the lagoon #1 dike armoring at the Anacortes Water Treatment Plant, 14489 River Bend Rd, Mount Vernon, WA 98273. Work includes:

- Excavate a bench where applicable to support quarry spall armor
- Install quarry spall armor
- Restore area, seed

2. **Contract Price:** The Contractor will perform the scope of work above for a firm fixed price of **Forty-Eight Thousand Three Hundred Twenty-Seven Dollars (\$48,327.00)**, which includes \$3,827.00 in 8.6% sales tax. This includes all labor, materials, and standard freight for the project. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.

3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.

4. **Time of Completion:** The Contractor shall complete the work within ninety (90) days of the Notice to Proceed.

5. **Project Management.** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager Mario Gonzalez, 360-428-1598.

6. **Contract Requirements:** Contractor must have a contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsement (see General Provisions); 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.

7. **Contract Documents:** The attached General Provisions are included in this Contract Agreement.

**The parties acknowledge** that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

**Owner:**

City of Anacortes

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

**Contractor:**

IMCO General Construction

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor License #

**1. WASHINGTON STATE PREVAILING WAGES:** Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I) (*ONE (1) filed per contractor and each subcontractor per contract*). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I (*ONE (1) filed per contractor and each subcontractor per contract*). L&I provides the wage forms. ***All costs associated with such fees shall be included in the Contract price as part of the fixed costs of overhead for this Contract, including any anticipated subcontractor filing fees. Any change in the fee by L&I will not be grounds for revision in the Contract Amount. The City will only pay for the actual cost charged by L&I for the filing of the intent and affidavit.***

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquires may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvwagelookup.aspx>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at 904 6<sup>th</sup> Street, Anacortes, WA. Upon request, the Owner will mail a hard copy of the applicable prevailing wages for this project.

At least once a month Contractor must file weekly certified payroll reports online with the Washington Department of Labor and Industries as required by RCW 39.12.120.

**2. Performance and Payment Bonds.** The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

#### *Release of Bonds*

Bonds will not be released until the project has been completed and finally accepted.

**Performance Bonds** – Performance Bonds will be released at the end of the warranty period or twelve months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

**Payment Bonds** – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Department of Revenue, Department of Employment Security and the Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

**Exceptions** – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

**3. Retainage.** Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released **45 days after final acceptance**, provided that the following has occurred:

- 1) All liens placed against the project have been released. For projects over \$35,000, releases from the Department of Labor and Industries, Department of Employment Security and the Department of Revenue will also be required.

- 2) Affidavits of Wages paid for the final correct contract amount are approved and on file for the Contractor and any subcontractors.
- 3) Worker's Compensation Premiums for the Contractor and any subcontractors are current.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

**4. Subcontracts.** The Contractor shall give notice reasonably in advance of placing any subcontract; preferably the Contractor shall identify subcontracts before subcontracted work begins. "Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of the prime Contractor or a subcontractor. 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 subcontractor, (iv) proposed subcontract price. 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 Contractor of any responsibility for performing this Contract.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

**5. Job Safety & COVID-19 Safety Requirements Compliance.** The Contractor, and its subcontractors of any tier, shall comply with all Washington Dept. of Labor & Industries safety standards, as well as comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and Office of the Mayor of the City of Anacortes as it may relate to City of Anacortes projects.

**6. Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

**7. Invoicing.** All invoices shall at a minimum include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, **Agreement Number**, and Price. The Contractor must allow 30 calendar days from receipt of the invoice for payment. ***If requested by the City the Contractor shall provide a cost breakdown of charges.*** Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to [accountspayable@cityofanacortes.org](mailto:accountspayable@cityofanacortes.org). Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Contractor 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.

**8. Withholding Payment.** In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

**9. Final Payment: Waiver of Claim.** The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

**10. Inspection.**

**A. Of the Work**

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

**B. Project Manager's Authority**

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Contractor 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, however, shall be taken to relieve the Contractor of his/her obligations or responsibilities under the Contract.

**11. New and Unused.** All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

**12. Warranty.** The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. For one year after acceptance of any corrections by the City the Contractor shall be responsible for correcting all defects in workmanship and materials in the corrected work. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or impact any other legal rights or remedies of the City.

**13. Indemnification / Hold Harmless.** The Contractor 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver 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 section shall survive the expiration or termination of this Agreement.

**14. Insurance.**

**A. Insurance Term:** The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

**B. No Limitation:** The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**C. Minimum Scope of Insurance:** The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap

liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

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

**D. Minimum Amounts of Insurance:** The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

**E. City Full Availability of Contractor Limits:** If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

**F. Other Insurance Provision:** The Contractor's Automobile Liability and Commercial General 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 self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

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

**H. Verification of Coverage:** The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor **before scheduling of the work**. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

**I. Subcontractors' Insurance:** The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

**J. Notice of Cancellation:** The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

**K. Failure to Maintain Insurance:** Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

**15. Acceptance.** Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

**16. Registered or Licensed Contractor.** The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Anacortes Municipal Code requires that every person engaging in business within the city limits of Anacortes register their business with the state and include a City of Anacortes Endorsement. Businesses from outside city limits with a gross annual income of \$2,000 in Anacortes are also required to obtain a city endorsement. Business licenses and city endorsements can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at [bls.dor.wa.gov](https://bls.dor.wa.gov).



**17. Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

**18. Contractor is an Independent Contractor.** The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Sub-Contractors during the performance of this Agreement.

**19. No Third Party Beneficiary Rights.** This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

**20. The City's Right to Terminate Agreement.**

**A. Termination for Default:** If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, 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 Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

**B. Termination for Public Convenience:** The City may terminate the Agreement 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 Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. If the City exercises its option under this Paragraph, the City shall not be responsible for payment for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

**21. Changes/Additional Work.** The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor 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 Agreement. 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 Contractor to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

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

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

**24. Disputes**

**A. General:** Differences between the Contractor and the City, arising under and by virtue of this Agreement 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 Agreement.

**B. Notice of Potential Claims:** The Contractor 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 City, or (2) the happening of any event or occurrence, unless the Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor 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.

**D. Dispute Resolution:** In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. 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.

**25. Force Majeure.** Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement 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 Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

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

**27. Compliance with Laws.** The Contractor in the performance of this Agreement 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 Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

**28. Severability.** If any term or condition of this Agreement 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 Agreement are declared severable.

**29. Survival of Contract Termination.** The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Indemnification / Hold Harmless; Disputes.

**30. Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes  
Tiffany Matson  
904 6th Street  
PO Box 547  
Anacortes, WA 98221

CONTRACTOR:

IMCO General Construction  
Mitchell Sorestad  
2116 Buchanan Loop  
Ferndale, WA 98248

## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 6.h.

**Agenda Item Title:** Contract Award: Purchase of a New Public Safety Building Generator #22-099-ERR-001

**Staff Contact(s):** FRED BUCKENMEYER, WIL LUDEMANN

|                                                    |                           |
|----------------------------------------------------|---------------------------|
| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
| TIFFANY MATSON                                     | Contract Award            |

**Item Summary: Summary Statement:** City staff seeks City Council consent to award a contract in the amount of \$99,711.94 to Cummins, Inc. for the purchase of a new Public Safety Building generator. The contract piggybacks on Sourcewell contract [120617-CMM](#).

**Background:**

**1. History:** In December of 2019 the Public Safety Building's generator #1903 (20 years old) had a catastrophic failure of the generator windings and bearings. The unit was non-repairable, no parts available due to its age and brand. Sourcing and replacing a generator of that size is complicated and time consuming. We determined at that time the best option was to purchase a used mobile generator and have it wired in until we were able to budget for and procure and new unit to have installed. This was a considerable savings vs. renting. Purchasing the used temporary unit was less expensive than renting a unit and when we are done using the temporary unit, we will have it available for a backup in case this happens at another location around town. We have about 28 generators in the city.

The new Cummins generator has about a 46 week lead-time and we will have to have an electrical contractor install it. This purchase will be done with budgeted replacement funds and the old unit will be surplus. Facilities will be seeking an installation contract when the arrival of the generator gets closer. Preliminary estimate of install is \$75k, for a total project cost of about \$175,000.

This project will give the Anacortes Police Department, Emergency Operations Center and the Municipal Court reliable back up power. Some costs were higher than expected because we have prisoner holding cells in the Police Department and guidelines require different transfer switches for redundancy.



## 2. Key Terms:

- Total contract price of \$99,711.94 which includes \$8,064.936 in sales tax.

3.Competitive Bidding: The City has a cooperative purchasing agreement with Sourcewell and is procuring this purchase through contract 120617-CMM.

## **Budget Impact:**

|                            |                          |
|----------------------------|--------------------------|
| Contractor                 | Cummins, Inc.            |
| Contract Amount            | \$99,711.94              |
| Earmarked Funds            | \$1,438,000.00 in bars # |
| BARS #                     | 501.790.594.48.60        |
| Budget Amendment Required? | No                       |

**Previous Action:** N/A

**Recommended Motion:** I move that City Council authorize the Mayor to sign a contract 22-099-ERR-001 with Cummins, Inc. in the amount of \$99,711.94 for the Purchase of a New Public Safety Building Generator.

**Alternative Actions:** Not approve the contract.

## **Attachments (listed in order presented):**

1. 22-099-ERR-001



## PURCHASE ORDER # 22-099-ERR-001

City of Anacortes  
Accounts Payable  
PO Box 547  
Anacortes, WA 98221

**VENDOR: CUMMINS, INC.**

**Email:** zach.t.schulte@cummins.com

**Phone:** (206) 794-9801

**Date:** 3/28/2022

**Department:** Public Works - Operations

**Contact:** WiL Ludemann - ludemannw@cityofanacortes.org

**Deliver To:** **City of Anacortes**

Anacortes Public Safety Building  
1218 24th Street  
Anacortes, WA 98221

**This Work is subject to:**

Exhibit A, Specifications;

Exhibit B, Special Provisions; and

Exhibit C, Sourcewell Contract 120617-CMM

The aforementioned Exhibits A through C are hereby incorporated by reference and made a part hereof.

| Item           | Qty | DESCRIPTION                                                                                          | U/M | Unit Price   | Amount       |
|----------------|-----|------------------------------------------------------------------------------------------------------|-----|--------------|--------------|
| 1.0            | 1.0 | DSHAD, Commercial Diesel Generator Set, 230kW Standby 60Hz and accessories as detailed in Exhibit A. | LS  | \$ 91,647.00 | \$ 91,647.00 |
| Sum Total      |     |                                                                                                      |     |              | \$ 91,647.00 |
| 8.8% Sales Tax |     |                                                                                                      |     |              | \$ 8,064.94  |
| Total Price    |     |                                                                                                      |     |              | \$ 99,711.94 |

**The parties acknowledge** that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that s/he or it is signing with full and complete authority to bind the party on whose behalf of whom s/he or it is signing, to each and every term of this Agreement.

CUMMINS, INC.

CITY OF ANACORTES

\_\_\_\_\_  
Matt Miller, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Purchase Order #22-099-ERR-001

## Exhibit A – Specifications

| Item | Description                                                        | Qty |
|------|--------------------------------------------------------------------|-----|
| 1    | <b>DSHAD, Commercial Diesel Generator Set, 230kW Standby 60Hz</b>  | 1   |
|      | U.S. EPA, Stationary Emergency Application                         |     |
|      | 230DSHAD, Diesel Genset, 60Hz, 230kW                               |     |
|      | Duty Rating-Standby Power (ESP)                                    |     |
|      | Emission Certification, EPA, Tier 3, NSPS CI Stationary Emergency  |     |
|      | Listing-UL 2200                                                    |     |
|      | Cert-Seismic, IBC2000, IBC2003, IBC2006, IBC2009, IBC2011          |     |
|      | PowerCommand 2100 Generator Controller                             |     |
|      | Backlit Digital Control Display                                    |     |
|      | Relays-Genset Status, User Configured                              |     |
|      | Alarm-Audible, Engine Shutdown                                     |     |
|      | Interface-Comms Network, FTT-10                                    |     |
|      | Control Display Language-English                                   |     |
|      | Circuit Breaker or Entrance Box or Terminal Box-Right And Left     |     |
|      | Circuit Breaker-800A, Left, 3P, 600/415V, SS RMS, 80%UL/IEC        |     |
|      | Circuit Breaker-70A, Right, 3P, 600/525V, TM, 80%, UL/IEC          |     |
|      | Bottom Entry, Left                                                 |     |
|      | Bottom Entry, Right                                                |     |
|      | Auxiliary contacts/Trip Alarm-Dual Circuit Breakers                |     |
|      | Engine Governor-Electronic, Isochronous                            |     |
|      | Engine Cooling-Radiator, High Ambient Air Temperature, Ship Fitted |     |
|      | Shutdown-Low Coolant Level                                         |     |
|      | Coolant Heater-120V, Single Phase                                  |     |
|      | Voltage-120/208, 3 Phase, Wye, 4 Wire                              |     |
|      | Genset Warranty-2 Years Base                                       |     |
|      | Alternator-60Hz, 12 Lead, Upper Broad Range, 125C                  |     |
|      | Packing-Skid, Poly Bag                                             |     |
|      | Battery Rack                                                       |     |
|      | Exciter/Regulator-Permanent Magnet Generator, 3 Phase Sensor       |     |
|      | Aluminum Sound Attenuated Level 2 Enclosure, with Exhaust System   |     |
|      | Wind Rating-150 MPH, Aluminum Housing                              |     |
|      | Skidbase-Housing Ready                                             |     |
| 2    | <b>OTEC, OTEC Transfer Switch-Electronic Control: 800A</b>         | 1   |
|      | OTEC800, Transfer Switch, PowerCommand, 800 Amp                    |     |
|      | Listing-UL 1008/CSA Certification                                  |     |
|      | IBC Seismic Certification                                          |     |
|      | Application-Utility to Genset                                      |     |
|      | Transfer Switch Warranty-2 Year Comprehensive                      |     |

|   |                                                                                                             |   |
|---|-------------------------------------------------------------------------------------------------------------|---|
|   | Cabinet-Type 1                                                                                              |   |
|   | Poles-4 (Switched Neutral)                                                                                  |   |
|   | Frequency-60 Hz                                                                                             |   |
|   | System-3 Phase, 3 or 4 Wire                                                                                 |   |
|   | Voltage-208 Volts AC                                                                                        |   |
|   | Genset Starting Battery-12V DC                                                                              |   |
|   | PC40 Control                                                                                                |   |
|   | Aux Relay-Emergency Position-12 Volts DC                                                                    |   |
|   | Aux Relay-Normal Position-12 Volts DC                                                                       |   |
| 3 | <b>OTECA, OTEC Transfer Switch-Electronic Control: 70A</b>                                                  | 1 |
|   | OTEC70, Transfer Switch-Electronic Control, 70 Amp                                                          |   |
|   | Listing-UL 1008/CSA Certification                                                                           |   |
|   | IBC Seismic Certification                                                                                   |   |
|   | Application-Utility to Genset                                                                               |   |
|   | Transfer Switch Warranty-2 Year Comprehensive                                                               |   |
|   | Cabinet-Type 1                                                                                              |   |
|   | Poles-4 (Switched Neutral)                                                                                  |   |
|   | Frequency-60 Hz                                                                                             |   |
|   | System-3 Phase, 3 or 4 Wire                                                                                 |   |
|   | Voltage-208 Volts AC                                                                                        |   |
|   | Genset Starting Battery-12V DC                                                                              |   |
|   | PC40 Control                                                                                                |   |
|   | Aux Relay-Emergency Position-12 Volts DC                                                                    |   |
|   | Aux Relay-Normal Position-12 Volts DC                                                                       |   |
|   | 800A, 208V, NEMA 3R, MTS with camlock connectors for portable generator connection and load bank connection |   |
|   | Delivery to site, off-loading by others                                                                     |   |
|   | Generator battery, Group 34                                                                                 |   |
|   | Start up and 2 hour load test                                                                               |   |



**PURCHASE ORDER #22-099-ERR-001  
SPECIAL PROVISIONS  
EXHIBIT B**

1. **Delivery.** Advance coordination of the work shall be made with the Project Manager Wil Ludemann, (360) 299-1515.

2. **Supplier Bears Risk.** The risk of loss or damage shall be borne by Supplier at all times until the Acceptance of the Goods or Services by City. Delivery of items specified on the PO to the designated delivery point must be as Freight-On-Board (FOB) Destination, Freight Prepaid.

3. **Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

4. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, PO Number and Price, or Amended Price. Supplier shall allow 30 days for payment. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to [accountspayable@cityofanacortes.org](mailto:accountspayable@cityofanacortes.org). Suppliers may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Supplier within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Supplier 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.

5. **Withholding Payment.** In the event the City determines that the Supplier has failed to perform any obligation under this PO within the times set forth in this PO, then the City may withhold from amounts otherwise due and payable to Supplier the amount determined by the City as necessary to cure the default, until the City Attorney determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Supplier to terminate or damages, provided that the City promptly gives notice in writing to the Supplier of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Supplier of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Supplier acts within the times and in strict accord with the provisions of the Disputes clause of this PO. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the PO, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Supplier, (3) to set off any amount so paid or incurred from amounts due to become due the Supplier. In the event the Supplier obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Supplier by reason of good faith withholding by the City under this clause.

6. **Final Payment: Waiver of Claim** the Supplier's acceptance of final payment shall constitute a waiver of claims, except those previously and properly made and identified by the Supplier as unsettled at the time request for final payment is made.

7. **Acceptance.** Supplier acknowledges and agrees that these Special Provisions are incorporated in, and are a part of, each purchase order or other Contract relating to the provision of goods and/or related services by Supplier. These Special Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

8. **New and Unused.** All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

9. **Warranty.** The Supplier shall return to the project and repair or replace all defects in workmanship and material discovered within one year after delivery of all items, including any necessary labor and materials. The Supplier shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another Supplier, in which case the cost of corrections shall be paid by the Supplier. In the event the Supplier does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Supplier. When corrections of defects are made, the Supplier shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the

corrections by City. In addition, the Supplier shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Supplier's work comply with the requirements of the Contract or any other legal rights or remedies of the City.

**10. Inspection.**

**A. Of the Work:** All materials furnished and work done shall be subject to inspection. The City Project Manager administering the PO shall at all times have access to the work wherever it is in progress or being performed, and the Supplier shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Supplier of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the PO. All material or work approved and later found to be defective shall be replaced without cost to the City.

**B. Project Manager's Authority:** The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Supplier may appeal to the City Attorney whose decision shall be final. The PO shall be carried out under the general control of the representative of the City administering the PO, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Supplier shall comply with any and all orders and instructions given by the representative of the particular Department administering the PO in accordance with the terms of the PO. Nothing herein contained, however, shall be taken to relieve the Supplier of his/her obligations or responsibilities under the PO.

**11. Defense and Indemnity Agreement.** The Supplier 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

**12. Insurance Requirements**

**A. Insurance Term:** The Supplier shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.

**B. No Limitation:** The Supplier's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Supplier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

**C. Minimum Scope of Insurance:** The Supplier shall obtain insurance of the type and coverage described below:

Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. **The City of Anacortes shall be named as an additional insured** under the Supplier's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 04 13 or a substitute endorsement providing at least as broad coverage.

**D. Minimum Amounts of Insurance:** The Supplier shall maintain the following insurance limits:

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

**E. Other Insurance Provision:** The Supplier's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.

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

**G. Verification of Coverage:** The Supplier shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Supplier before goods, materials or supplies will be accepted by the City.

**H. Notice of Cancellation:** The Supplier shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

**I. Failure to Maintain Insurance:** Failure on the part of the Supplier to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Supplier to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Supplier from the City.

**J. City Full Availability of Supplier Limits:** If the Supplier maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella



liability maintained by the Supplier, irrespective of whether such limits maintained by the Supplier are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Supplier.

13. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

14. **Supplier is an Independent Supplier.** The parties intend that an independent Supplier relationship will be created by this PO. No agent, employee or representative of the Supplier shall be deemed to be an agent, employee or representative of the City for any purpose. Supplier shall be solely responsible for all acts of its agents, employees, representatives and Sub-Suppliers during the performance of this PO.

15. **Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against City on account of any alleged patent or copyright infringement arising out of the performance of this PO or out of the use of any material furnished or work or services performed hereunder, Supplier shall defend City against any such suit or claim and hold City harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

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

A. **Termination for Default:** If the Supplier defaults by failing to perform any of the obligations of the PO 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 Supplier in the U.S. mail, postage prepaid, terminate the PO, and at the City's option, obtain performance of the work elsewhere. If the PO is terminated for default, the Supplier shall not be entitled to receive any further payments under the PO until the Scope of Services under this PO 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 Supplier. The Supplier 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 Supplier 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 PO 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 PO is terminated in accordance with this paragraph, the Supplier shall be entitled to payment for actual work performed at unit PO prices for completed items of work through the date of termination. An equitable adjustment in the PO 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 PO by the City at any time during the term, whether for default or convenience, shall not constitute a breach of PO by the City.

17. **Changes/Additional Work.** The City may engage Supplier to perform services in addition to those listed in this PO, and Supplier 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 PO. 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 Supplier to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this PO is approved in writing by both parties.

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

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

20. **Disputes**

A. **General:** Differences between the Supplier and the City, arising under and by virtue of this PO 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 PO.

B. **Notice of Potential Claims:** The Supplier 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 City, or (2) the happening of any event or

occurrence, unless the Supplier 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 Supplier 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. Supplier 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 Supplier 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 Supplier 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.

D. **Dispute Resolution:** In the event of a dispute between the City and the Supplier arising out of this PO, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Supplier to have oversight over the administration of this PO. 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.

21. **Force Majeure.** Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice, but no more than two (2) working days after the event, of the impediment and its effect on the ability to perform; failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement 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 Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City

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

23. **Compliance with Laws.** The Supplier in the performance of this PO 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 PO to assure quality of services.

24. **Severability.** If any term or condition of this PO 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 PO are declared severable.

25. **Survival of PO Termination.** The provisions of the following paragraphs and the liability of the Supplier for default during the term of the PO shall survive, notwithstanding the termination or invalidity of this PO for any reason: The City's Right to Terminate PO; Governing Law; Disputes; Defense & Indemnity.

26. **Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes  
Tiffany Matson  
904 6<sup>th</sup> Street  
PO Box 547  
Anacortes, WA 98221

SUPPLIER:

Cummins, Inc.  
500 Jackson Street  
Columbus, IN 47201

## APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment,

unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.



## APPENDIX E

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

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



## City Council Agenda Bill

**Meeting Date:** March 28, 2022

**Agenda Item:** 6.i.

**Agenda Item Title:** One Washington Memorandum of Understanding Between Washington Municipalities Relating to the Allocation and Use of the Proceeds from Opioid Settlements #22-096-LEG-001

**Staff Contact(s):** DARCY SWETNAM

**Approved for Submittal to Council by**    **Action Type**

GREG FRANCIOCH

Contract Award

DARCY SWETNAM

**Item Summary:** The City Attorney asks Council to approve Agreement 22-096-LEG-001, authorizing the City of Anacortes and certain other Local Governments engaged in litigation and the other cities and counties in Washington to agree on a form of allocation for Opioid Funds they receive from entities within the Pharmaceutical Supply Chain. Outside counsel from Keller Rohrbach L.L.P. believe it is important for Washington jurisdictions to enter into this agreement so that Washington Local Governments can negotiate with the defendants (and the State) with one voice, and strongly recommend that the City approve this version.

**Background:**

The City was approached by Skagit County leaders to join a lawsuit against three of the main opioid narcotics producers in the United States to hold them responsible for the local costs of the the opioid epidemic. The basis of the lawsuit includes alleged violations of consumer protection laws, negligence, and RICO violations. The theory behind these causes of action is that these manufacturers misled prescribers and the public about the addictive nature of these products and supported misleading studies to encourage over-prescribing of opioid narcotics.

The increased prescription of opioid narcotics has led to a dramatic increase in opioid addiction, frequently leading to use of illegal drugs. This shift costs local communities, who are facing increased homelessness, law enforcement actions, drug-related medical emergencies, and crime rates. Cities and counties bear the burden of providing the resources to address these growing challenges.

The outside firm handling the case is Keller Rohrbach L.L.P. of Seattle, who have considerable experience in complex litigation and mass tort actions. The services provided are on a contingency fee basis, with a sliding scale starting at 22% of any award and going down from there. Outside counsel is not asking the City to pay any



costs associated with the litigation and do not anticipate that any will be required. A complaint was filed on January 25, 2018 on behalf of Skagit County, the City of Mount Vernon, the City of Sedro-Woolley, and the City of Burlington in U.S. District Court for the Western District of Washington, case number 2:18-cv-00120. On February 5, 2018, the City of Anacortes joined that action, adopting [Resolution 2009](#). On July 21, 2021, the litigating parties reached a series of National Settlement Agreements with Johnson & Johnson, and distributors AmerisourceBergen, Cardinal Health and McKesson as well as their subsidiaries, affiliates, officers, and directors.

**Budget Impact:**

N/A

**Previous Action:** On February 5, 2018 Council adopted [Resolution 2009](#), authorizing litigation against certain manufacturers of opioid narcotics.

**Recommended Motion:** I move that Council approve the One Washington Memorandum of Understanding Between Washington Municipalities Relating to the Allocation and Use of the Proceeds of Opioid Settlements.

**Alternative Actions:**

**Attachments (listed in order presented):**

1. 22-096-LEG-001

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

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

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

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

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

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

### **A. Definitions**

As used in this MOU:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **C. Regional Agreements**

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

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

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

2. Opioid Funds will be allocated, distributed and managed within each Allocation Region, as determined by its Regional Agreement as set forth below. If an Allocation Region does not have a Regional Agreement enumerated in this MOU, the default mechanism for allocation, distribution and management of Opioid Funds described in Section C.4.a will apply.

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

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

- a. Opioid Funds shall be allocated within each region by taking the allocation for a Participating County from Exhibit B and apportioning those funds between that Participating County and its Participating Cities and Towns. Exhibit B also sets forth the allocation to Participating Counties and the Participating Cities or Towns within the Counties based on a default allocation formula. As set forth above in B.3, to determine the allocation to a county, this formula utilizes: (1) the amount of opioids shipped to the county; (2) the number of opioid deaths that occurred in that county; and (3) the number of people who suffer opioid use disorder in that county. To determine the allocation within a county, the formula utilizes historical federal data showing how the specific Counties and the Cities and Towns within the Counties have made opioids epidemic-related expenditures in the past. This is the same methodology used in the National Settlement Agreements for county and intra-county allocations. A Participating County, and the Cities and Towns within it may enter into

a separate intra-county allocation agreement to modify how the Opioid Funds are allocated amongst themselves, provided the modification is in writing and agreed to by all Participating Local Governments in the County. Such an agreement shall not modify any of the other terms or requirements of this MOU.

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

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

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

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

f. A Local Government that chooses not to become a Participating Local Government will not receive a direct allocation of Opioid Funds. The portion of the Opioid Funds that would have been allocated to a Local Government that is not a Participating Local Government shall be redistributed to Participating Counties in the manner directed in C.4.a above.



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

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

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

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

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

- i. Overseeing distribution of Opioid Funds from Participating Local Governments to programs and services within the Allocation Region for Approved Purposes.
- ii. Annual review of expenditure reports from Participating Local Jurisdictions within the Allocation

Region for compliance with Approved Purposes and the terms of this MOU and any Settlement.

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

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

6. Nothing in this MOU should alter or change any Participating Local Government's rights to pursue its own claim. Rather, the intent of this MOU is to join all parties who wish to be Participating Local Governments to agree upon an allocation formula for any Opioid Funds

from any future binding Settlement with one or more Pharmaceutical Supply Chain Participants for all Local Governments in the State of Washington.

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

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

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

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

1. The Litigating Local Governments have incurred attorneys' fees and litigation expenses relating to their prosecution of claims against the Pharmaceutical Supply Chain Participants, and this prosecution has inured to the benefit of all Participating Local Governments. Accordingly, a Washington Government Fee Fund ("GFF") shall be established that ensures that all Parties that receive Opioid Funds contribute to the payment of fees and expenses incurred to prosecute the claims against the Pharmaceutical Supply Chain Participants, regardless of whether they are litigating or non-litigating entities.

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

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

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

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

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

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

8. The Parties anticipate that any Opioid Funds they receive will be subject to a common benefit “tax” imposed by the court in *In Re: National Prescription Opiate Litigation*, United States District Court for the Northern District of Ohio, Case No. 1:17-md-02804-DAP (“Common Benefit Tax”). If this occurs, the Participating Local Governments shall first seek to have the settling

defendants pay the Common Benefit Tax. If the settling defendants do not agree to pay the Common Benefit Tax, then the Common Benefit Tax shall be paid from the Opioid Funds and by both litigating and non-litigating Local Governments. This payment shall occur prior to allocation and distribution of funds to the Participating Local Governments. In the event that GFF is not fully exhausted to pay the Litigating Local Governments' private counsel's representation agreements, excess funds in the GFF shall be applied to pay the Common Benefit Tax (if any).

## **E. General Terms**

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

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

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

4. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Participating Local Governments approve the use of electronic signatures for execution of this MOU. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101, *et seq.* The Parties agree not to deny the legal effect or enforceability of the MOU solely because it is in electronic form or because an electronic record was used in its formation. The Participating Local Government agree not to object to the admissibility of the MOU in the form of an electronic record, or a paper copy

of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

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



**This One Washington Memorandum of Understanding Between Washington Municipalities is signed \_\_\_\_\_ by:**

\_\_\_\_\_  
**Name & Title**  Matt Miller, Mayor

**On behalf of**  City of Anacortes

4894-0031-1574, v. 2

# **EXHIBIT A**

# OPIOID ABATEMENT STRATEGIES

## PART ONE: TREATMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

|                      |
|----------------------|
| PART TWO: PREVENTION |
|----------------------|

**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

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

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

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

**G. PREVENT MISUSE OF OPIOIDS**

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

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

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

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

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

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

## PART THREE: OTHER STRATEGIES

### **I. FIRST RESPONDERS**

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

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

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

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

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

### **K. TRAINING**

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

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

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

**L. RESEARCH**

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

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

## EXHIBIT B

| County                       | Local Government     | % Allocation         |
|------------------------------|----------------------|----------------------|
| <b><u>Adams County</u></b>   |                      |                      |
|                              | Adams County         | 0.1638732475%        |
|                              | Hatton               |                      |
|                              | Lind                 |                      |
|                              | Othello              |                      |
|                              | Ritzville            |                      |
|                              | Washtucna            |                      |
|                              | <b>County Total:</b> | <b>0.1638732475%</b> |
| <b><u>Asotin County</u></b>  |                      |                      |
|                              | Asotin County        | 0.4694498386%        |
|                              | Asotin               |                      |
|                              | Clarkston            |                      |
|                              | <b>County Total:</b> | <b>0.4694498386%</b> |
| <b><u>Benton County</u></b>  |                      |                      |
|                              | Benton County        | 1.4848831892%        |
|                              | Benton City          |                      |
|                              | Kennewick            | 0.5415650564%        |
|                              | Prosser              |                      |
|                              | Richland             | 0.4756779517%        |
|                              | West Richland        | 0.0459360490%        |
|                              | <b>County Total:</b> | <b>2.5480622463%</b> |
| <b><u>Chelan County</u></b>  |                      |                      |
|                              | Chelan County        | 0.7434914485%        |
|                              | Cashmere             |                      |
|                              | Chelan               |                      |
|                              | Entiat               |                      |
|                              | Leavenworth          |                      |
|                              | Wenatchee            | 0.2968333494%        |
|                              | <b>County Total:</b> | <b>1.0403247979%</b> |
| <b><u>Clallam County</u></b> |                      |                      |
|                              | Clallam County       | 1.3076983401%        |
|                              | Forks                |                      |
|                              | Port Angeles         | 0.4598370527%        |
|                              | Sequim               |                      |
|                              | <b>County Total:</b> | <b>1.7675353928%</b> |



## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Clark County

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

### Columbia County

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

### Cowlitz County

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

### Douglas County

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

### Ferry County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Franklin County

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

### Garfield County

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

### Grant County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Grays Harbor County

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

### Island County

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

### Jefferson County

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

## EXHIBIT B

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Kitsap County

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

### Kittitas County

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

### Klickitat County

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

### Lewis County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Lincoln County

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

### Mason County

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

### Okanogan County

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

### Pacific County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Pend Oreille County

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

### Pierce County

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

### San Juan County

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



## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Skagit County

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

### Skamania County

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

### Snohomish County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Spokane County

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

### Stevens County

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

### Thurston County

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

### Wahkiakum County

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

## EXHIBIT B

| County | Local Government | % Allocation |
|--------|------------------|--------------|
|--------|------------------|--------------|

### Walla Walla County

|                      |                      |
|----------------------|----------------------|
| Walla Walla County   | 0.5543870294%        |
| College Place        |                      |
| Prescott             |                      |
| Waitsburg            |                      |
| Walla Walla          | 0.3140768654%        |
| <b>County Total:</b> | <b>0.8684638948%</b> |

### Whatcom County

|                      |                      |
|----------------------|----------------------|
| Whatcom County       | 1.3452637306%        |
| Bellingham           | 0.8978614577%        |
| Blaine               |                      |
| Everson              |                      |
| Ferndale             | 0.0646101891%        |
| Lynden               | 0.0827115612%        |
| Nooksack             |                      |
| Sumas                |                      |
| <b>County Total:</b> | <b>2.3904469386%</b> |

### Whitman County

|                      |                      |
|----------------------|----------------------|
| Whitman County       | 0.2626805837%        |
| Albion               |                      |
| Colfax               |                      |
| Colton               |                      |
| Endicott             |                      |
| Farmington           |                      |
| Garfield             |                      |
| LaCrosse             |                      |
| Lamont               |                      |
| Malden               |                      |
| Oakesdale            |                      |
| Palouse              |                      |
| Pullman              | 0.2214837491%        |
| Rosalia              |                      |
| St. John             |                      |
| Tekoa                |                      |
| Uniontown            |                      |
| <b>County Total:</b> | <b>0.4841643328%</b> |

## EXHIBIT B

| County                      | Local Government     | % Allocation         |
|-----------------------------|----------------------|----------------------|
| <b><u>Yakima County</u></b> |                      |                      |
|                             | Yakima County        | 1.9388392959%        |
|                             | Grandview            | 0.0530606109%        |
|                             | Granger              |                      |
|                             | Harrah               |                      |
|                             | Mabton               |                      |
|                             | Moxee                |                      |
|                             | Naches               |                      |
|                             | Selah                |                      |
|                             | Sunnyside            | 0.1213478384%        |
|                             | Tieton               |                      |
|                             | Toppenish            |                      |
|                             | Union Gap            |                      |
|                             | Wapato               |                      |
|                             | Yakima               | 0.6060410539%        |
|                             | Zillah               |                      |
|                             | <b>County Total:</b> | <b>2.7192887991%</b> |



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 7.a.

**Agenda Item Title:** Ordinance 4017: Authorization to Issue Bonds to Refund the 2012 Utility System Revenue Bonds

**Staff Contact(s):** STEVE HOGLUND

| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
|----------------------------------------------------|---------------------------|
| STEVE HOGLUND                                      | Ordinance                 |
| DARCY SWETNAM                                      |                           |

**Item Summary:** In 2012 the City issued bonds to fund construction of a new water treatment plant. This was the 2nd bond issue to fund the water treatment plant project; the first bond issue was in 2010, and those were refunded in 2020. The 2012 bond issue was the final debt instrument funding construction of the water treatment plant. This refunding bond will refund the remaining 10 years on the current bond with a new 10 year bond at a lower rate of interest.

**Budget Impact:**  
Not to exceed \$8.1M

**Previous Action:** Ordinance [2882](#) adopted July 12, 2012.

**Recommended Motion:** I move to adopt Ordinance 4017 authorizing the City Utility System refunding bond issue.

**Alternative Actions:** Do not approve, direct staff as to next steps.

**Attachments (listed in order presented):**

1. Schedule of Events
2. Piper Slide Presentation
3. Ordinance 4017

# City of Anacortes, Washington

## Utility System Revenue Refunding Bond, 2022

### Preliminary Schedule of Events

(As of February 14, 2022)

| February 2022        | March 2022           | April 2022           | May 2022             |
|----------------------|----------------------|----------------------|----------------------|
| S M T W T F S        | S M T W T F S        | S M T W T F S        | S M T W T F S        |
| 1 2 3 4 5            | 1 2 3 4 5            | 1 2                  | 1 2 3 4 5 6 7        |
| 6 7 8 9 10 11 12     | 6 7 8 9 10 11 12     | 3 4 5 6 7 8 9        | 8 9 10 11 12 13 14   |
| 13 14 15 16 17 18 19 | 13 14 15 16 17 18 19 | 10 11 12 13 14 15 16 | 15 16 17 18 19 20 21 |
| 20 21 22 23 24 25 26 | 20 21 22 23 24 25 26 | 17 18 19 20 21 22 23 | 22 23 24 25 26 27 28 |
| 27 28                | 27 28 29 30 31       | 24 25 26 27 28 29 30 | 29 30 31             |

Staff: City Staff  
 Council: City Council *[Meets first four Mondays of each month]*  
 PSC: Piper Sandler & Co. (Placement Agent)  
 BC: Stradling Yocca Carlson & Rauth (Bond Counsel)

| Date                 | Event                                                         | Participants          |
|----------------------|---------------------------------------------------------------|-----------------------|
| Feb. 8               | Kickoff call                                                  | Staff, PSC, BC        |
| Feb. 18              | Send term sheet data requirements to City                     | PSC                   |
| Feb. 18              | Distribute 1st draft Bond Ordinance for review                | BC                    |
| March 4              | Comments due on 1 <sup>st</sup> draft Bond Ordinance          | Staff, PSC, BC        |
| March 9              | Data requirements due                                         | Staff                 |
| March 11             | Distribute 2 <sup>nd</sup> draft Bond Ordinance for review    | BC                    |
| March 14             | Distribute draft 1 <sup>st</sup> Term Sheet for review        | PSC                   |
| March 18             | Comments due on 2 <sup>nd</sup> draft Bond Ordinance          | Staff, PSC, BC        |
| March 21             | Comments due on 1 <sup>st</sup> draft Term Sheet              | Staff, PSC, BC        |
| March 22             | Bond Ordinance due for Council packets                        | Staff, BC             |
| March 24             | Distribute draft 2 <sup>nd</sup> Term Sheet for review        | PSC                   |
| <b>March 28</b>      | <b>First reading of Bond Ordinance</b>                        | <b>All Parties</b>    |
| March 31             | Comments due on 2 <sup>nd</sup> draft Term Sheet              | Staff, PSC, BC        |
| <b>April 4</b>       | <b>Council approves Bond Ordinance</b>                        | <b>All Parties</b>    |
| April 5              | Term Sheet distributed to banks                               | PSC                   |
| <b>April 26</b>      | <b>Responses from banks due</b>                               |                       |
| <b>April 27</b>      | <b>Select purchaser, negotiate final terms, lock in rates</b> | <b>Staff, PSC, BC</b> |
| Week of May 2        | Distribute legal documents for review                         | BC                    |
| <b>Week of May 9</b> | <b>Closing and delivery of proceeds</b>                       | <b>Staff, PSC, BC</b> |
| <b>June 1</b>        | <b>Call date of Refunded Bonds</b>                            |                       |



# City of Anacortes

## Market Update and Refunding Opportunity

**Justin Monwai**

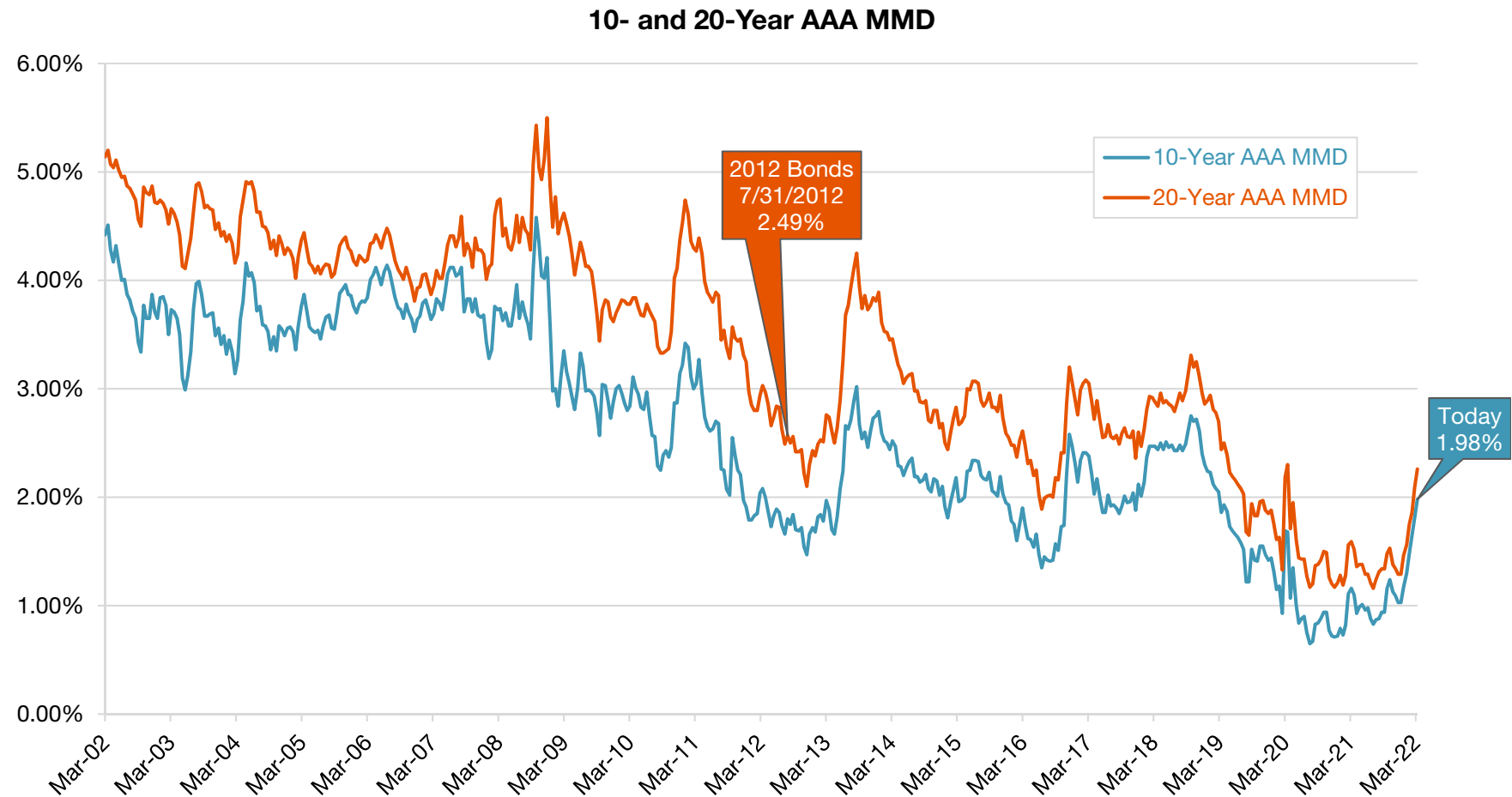
SENIOR VICE PRESIDENT

Tel: +1 206-628-2899

Email: [justin.monwai@psc.com](mailto:justin.monwai@psc.com)

## Short and Long-Term Interest Rates

Rates remain at historically low levels.





---

## Summary of Refunding Results<sup>(1)</sup>

Utility System Revenue Bonds, 2012

- Principal Amount of Callable Bonds: \$7,775,000
- Maturities: December 1, 2022 – 2032
- Average Coupon of 2012 Bonds: 3.41%
- Call Date and Price: June 1, 2022 @ par

| Summary of Refunding Results          | Private Placement | Public Sale      |
|---------------------------------------|-------------------|------------------|
| Average Annual Savings <sup>(2)</sup> | \$142,000         | \$134,000        |
| True Interest Cost (TIC)              | 2.10%             | 2.32%            |
| <b>Net PV Savings</b>                 | <b>\$477,745</b>  | <b>\$388,057</b> |
| <b>% Savings</b>                      | <b>6.14%</b>      | <b>4.99%</b>     |

(1) Rates as of March 15, 2022.

(2) Average annual savings from 2023-2032.

## Schedule of Events

Staff: City Staff  
 Council: City Council  
 PSC: Piper Sandler (Placement Agent)  
 BC: Stradling Yocca Carlson & Rauth (Bond Counsel)

| March 2022           | April 2022           | May 2022             |
|----------------------|----------------------|----------------------|
| S M T W T F S        | S M T W T F S        | S M T W T F S        |
| 1 2 3 4 5            | 1 2                  | 1 2 3 4 5 6 7        |
| 6 7 8 9 10 11 12     | 3 4 5 6 7 8 9        | 8 9 10 11 12 13 14   |
| 13 14 15 16 17 18 19 | 10 11 12 13 14 15 16 | 15 16 17 18 19 20 21 |
| 20 21 22 23 24 25 26 | 17 18 19 20 21 22 23 | 22 23 24 25 26 27 28 |
| 27 28 29 30 31       | 24 25 26 27 28 29 30 | 29 30 31             |

| Date                 | Event                                                         | Participants          |
|----------------------|---------------------------------------------------------------|-----------------------|
| <b>March 28</b>      | <b>First reading of Bond Ordinance</b>                        | <b>All Parties</b>    |
| March 31             | Comments due on 2nd draft Term Sheet                          | Staff, PSC, BC        |
| <b>April 4</b>       | <b>Council approves Bond Ordinance</b>                        | <b>All Parties</b>    |
| April 5              | Term Sheet distributed to banks                               | PSC                   |
| <b>April 26</b>      | <b>Responses from banks due</b>                               |                       |
| <b>April 27</b>      | <b>Select purchaser, negotiate final terms, lock in rates</b> | <b>Staff, PSC, BC</b> |
| Week of May 2        | Distribute legal documents for review                         | BC                    |
| <b>Week of May 9</b> | <b>Closing and delivery of proceeds</b>                       | <b>Staff, PSC, BC</b> |
| <b>June 1</b>        | <b>Call date of Refunded Bonds</b>                            |                       |

**CITY OF ANACORTES, WASHINGTON**

**ORDINANCE NO. 4017**

AN ORDINANCE relating to the combined utility system of the City; providing for the issuance of not to exceed \$8,100,000 principal amount utility system refunding revenue bonds, in one or more series, to provide the funds (i) to carry out a refunding of all or a portion of the City's outstanding Utility System Revenue Bonds, 2012, and (ii) to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding; appointing the City's designated representative to approve the Bond Sale Terms and establishing parameters for certain of those Bond Sale Terms; authorizing the sale in a manner to be selected by the City's designated representative; and providing for other related matters.

Passed March 28, 2022

This document prepared by

STRADLING YOCCA CARLSON & RAUTH, a Professional Corporation  
Seattle, Washington  
www.stradlinglaw.com | 206.829.3000

## TABLE OF CONTENTS

|                        |                                                                                       |    |
|------------------------|---------------------------------------------------------------------------------------|----|
| Section 1.             | Recitals and Findings.....                                                            | 1  |
| Section 2.             | Definitions.....                                                                      | 2  |
| Section 3.             | Authorization of Bonds.....                                                           | 10 |
| Section 4.             | Appointment of Designated Representative .....                                        | 10 |
| Section 5.             | Bond Registrar; Registration and Transfer of Bond .....                               | 11 |
| Section 6.             | Form and Execution of Bonds .....                                                     | 12 |
| Section 7.             | Payment of the Bond; Failure to Pay .....                                             | 12 |
| Section 8.             | Redemption and Purchase Provisions.....                                               | 13 |
| Section 9.             | Refunding or Defeasance of the Bond .....                                             | 14 |
| Section 10.            | Deposit of Bond Proceeds.....                                                         | 15 |
| Section 11.            | Refunding of the Refundable Bonds.....                                                | 15 |
| Section 12.            | Security for the Bond .....                                                           | 17 |
| Section 13.            | Flow of Funds; Priority of Expenditure of Gross Revenue .....                         | 17 |
| Section 14.            | The Utility System Bond Fund; Parity Obligation Debt Service Account<br>Created ..... | 18 |
| Section 15.            | Covenants.....                                                                        | 19 |
| Section 16.            | Future Parity Obligations.....                                                        | 20 |
| Section 17.            | Separate Utility Systems .....                                                        | 20 |
| Section 18.            | Contract Resource Obligations .....                                                   | 21 |
| Section 19.            | Rate Stabilization Fund.....                                                          | 21 |
| Section 20.            | Federal Tax Covenants .....                                                           | 22 |
| Section 21.            | Amendatory and Supplemental Ordinances.....                                           | 22 |
| Section 22.            | Defaults and Remedies .....                                                           | 25 |
| Section 23.            | Sale and Delivery of the Bonds; Official Statement; Continuing Disclosure.....        | 27 |
| Section 24.            | General Authorization and Ratification .....                                          | 29 |
| Section 25.            | Severability .....                                                                    | 29 |
| Section 26.            | Effective Date .....                                                                  | 29 |
| <b><u>Exhibits</u></b> |                                                                                       |    |
| Exhibit A              | Parity Conditions                                                                     |    |
| Exhibit B              | Parameters for the Bond Sale Terms                                                    |    |

## CITY OF ANACORTES, WASHINGTON

### ORDINANCE NO. 4017

AN ORDINANCE relating to the combined utility system of the City; providing for the issuance of not to exceed \$8,100,000 principal amount utility system refunding revenue bonds, in one or more series, to provide the funds (i) to carry out a refunding of all or a portion of the City's outstanding Utility System Revenue Bonds, 2012, and (ii) to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding; appointing the City's designated representative to approve the Bond Sale Terms and establishing parameters for certain of those Bond Sale Terms; authorizing the sale in a manner to be selected by the City's designated representative; and providing for other related matters.

**NOW THEREFORE**, the City Council of the City of Anacortes, Washington (the "City"), does ordain as follows:

**Section 1. Recitals and Findings.** The City Council makes the findings and determinations set forth below. Capitalized terms that are not defined have the meanings given in Section 2 of this ordinance.

**1.1 Utility System.** The City of Anacortes (the "City") now owns, operates and maintains a water supply and distribution system, a storm drainage system, garbage utility, and a sanitary sewage system. Pursuant to Ordinance No. 2763, passed and approved on May 21, 2007, these utilities were combined into a combined utility system (the "Utility System"), pursuant to RCW 35.67.320.

**1.2 Outstanding Parity Obligations.** Pursuant to the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance, the City issued its Utility System Revenue Refunding Bond, 2017, and Utility System Improvement and Refunding Revenue Bonds, 2020, respectively, which constitute a lien and charge upon the Net Revenue prior and superior to any other charges whatsoever, and will constitute a first priority lien and charge upon any Pledged ULID Assessments, and reserved the right to issue additional Utility System revenue bonds on a parity of lien under certain conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance.

**1.3 Parity Conditions Met.** As a condition of issuance and sale of the Bonds authorized herein, as set forth in Section 4 and Exhibit B (Parameters for the Bond Sale Terms), the City's Designated Representative must determine that the conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance for the issuance of additional Parity Obligations have been met and satisfied as of the date the Bonds are issued and delivered to the Purchaser.

**1.4 Sufficiency of Gross Revenue.** The City Council finds and determines that the Gross Revenue and benefits to be derived from the operation and maintenance of the System at the rates to be charged for services from the System will be more than sufficient to meet all Operations and Maintenance Costs and to permit the setting aside into the Bond Fund out of the Gross Revenue of amounts sufficient to pay the principal of and interest on the outstanding Parity Obligations (including the Bonds) when due. The City Council declares that in fixing the amounts to be paid into the Bond

Fund under this ordinance it has exercised due regard for Operations and Maintenance Costs and has not obligated the City to set aside and pay into the Bond Fund a greater amount of Gross Revenue of the System than in its judgment will be available over and above such Operations and Maintenance Costs.

1.5 **Findings with Respect to the Refunding of the 2012 Senior Lien Bonds.** Pursuant to the 2012 Senior Lien Bond Ordinance, the City previously issued Utility System Revenue Bonds, 2012 (the “2012 Senior Lien Bonds”) in the original aggregate principal amount \$12,320,000, in order to (i) pay part of the cost of carrying out a plan of additions relating to the water treatment plant and other water system facilities, (ii) make a deposit into a reserve account, and (iii) pay the costs of issuance and sale of the 2012 Senior Lien Bonds. In the 2012 Senior Lien Bond Ordinance, the City reserved the right to redeem the 2012 Senior Lien Bonds maturing on and after December 1, 2022 prior to their maturity at any time on or after June 1, 2022, at a price of par plus accrued interest to the date fixed for redemption.

1.6 **Refunding Plan.** Pursuant to chapter 39.53 RCW and other applicable State law, the City is authorized to carry out the Refunding Plan, and after due consideration, it appears to the City Council that, in order to achieve an overall debt service savings, it is in the best interest of the City and its ratepayers to issue and sell the combined utility system revenue bonds authorized in this ordinance, in order to refund the outstanding 2012 Senior Lien Bonds by carrying out the Refunding Plan (as defined herein). Further, to effect that refunding in the manner most advantageous to the City, the Council finds it necessary and advisable to purchase certain Acquired Obligations (as defined below), bearing interest and maturing at such time or times as may be necessary to accomplish the refunding, out of a portion of the proceeds of the Bond and other money of the City.

1.7 **Issuance of the Bonds.** For the purposes described herein, the City Council finds that it is in the best interests of the City and its ratepayers to issue and sell the Bonds to the Purchaser, pursuant to the terms set forth in the Bond Sale Terms, as approved by the City’s Designated Representative consistent with this ordinance.

**Section 2. Definitions.** As used in this ordinance the following words shall have the following meanings:

**“2012 Senior Lien Bond Ordinance”** means Ordinance No. 2882, passed on July 2, 2012, authorizing the issuance of the 2012 Senior Lien Bonds.

**“2012 Senior Lien Bonds”** means the City’s Utility System Revenue Bonds, 2012, issued in the original aggregate principal amount of \$12,320,000, pursuant to the 2012 Senior Lien Bond Ordinance.

**“2017 Parity Obligation”** means the City’s Utility System Revenue Refunding Bond, 2017 (Parity Obligation Lien), issued in the original principal amount of \$6,635,000 pursuant to the 2017 Parity Lien Ordinance.

**“2017 Parity Lien Ordinance”** means Ordinance No. 3015, passed on December 4, 2017, authorizing the issuance of the 2017 Parity Obligation.

**“2020 Parity Obligation”** means the City’s Utility System Improvement and Refunding Revenue Bonds, 2020, issued in the original principal amount of \$24,925,000 pursuant to the 2020 Parity Lien Ordinance.

**“2020 Parity Lien Ordinance”** means Ordinance No. 3075, passed on September 14, 2020, authorizing the issuance of the 2020 Parity Obligation.

**“Acquired Obligations”** means those United States Treasury Certificates of Indebtedness, Notes, and Bonds – State and Local Government Series or other Government Obligations, as identified in the Refunding Trust Agreement, which are purchased to accomplish the refunding of the Refundable Bonds as authorized by this ordinance.

**“Adjusted Net Revenue”** means Net Revenue, adjusted by adding (a) any amount on deposit in the Parity Obligation Debt Service Account on the last business day prior to the commencement of that calendar year, or (b) for current year calculations, the amount on deposit in such accounts as of a date not more than 30 days prior to the date of calculation.

**“Annual Debt Service”** for any calendar year means the sum of the amounts required in such calendar year to pay (a) the interest due in such calendar year on all Parity Obligations then outstanding, excluding interest to be paid from the proceeds of the sale of Parity Obligations or other bonds; (b) the principal of all Parity Obligations that are Serial Bonds coming due in such calendar year; and (c) the mandatory redemption payments scheduled for such calendar year in respect of Parity Obligations that are Term Bonds. For purposes of calculating and determining compliance with the Coverage Requirement, the Reserve Requirement and the conditions for the issuance of Future Parity Obligations, the following shall apply: (i) Annual Debt Service shall generally be calculated on a calendar year basis, beginning with the calendar year following the date of calculation; (ii) Annual Debt Service shall be reduced by the amount of all Tax Credit Subsidy Payments that are scheduled to be received by the City in respect of Tax Credit Subsidy Bonds; (iii) Annual Debt Service shall be reduced by the amount of Pledged ULID Assessments due in that calendar year and not delinquent; and (iv) Annual Debt Service shall be reduced by any amount provided to be paid from proceeds of bonds (including amounts in a refunding or defeasance escrow account), and by earnings from investments in any Parity Reserve Account.

**“Authorized Denomination”** means \$5,000 or any integral multiple thereof within a maturity.

**“Average Annual Debt Service”** means, as of its date of calculation, the sum of Annual Debt Service for all calendar years during which the applicable bonds are scheduled to remain outstanding, divided by the number of those calendar years (without regard to bond years).

**“Beneficial Owner”** means, with respect to any Parity Obligation at any time Outstanding, the owner of any beneficial interest in that Parity Obligation.

**“Bond Counsel”** means Stradling Yocca Carlson & Rauth, a Professional Corporation, or any firm of lawyers nationally recognized and accepted as bond counsel and so engaged by the City for that purpose.

**“Bond Purchase Contract”** means, in the case of a competitive sale, the winning bidder’s bid, together with the official notice of sale and a Pricing Certificate confirming the Bond Sale Terms. In the case of a negotiated sale, the Bond Purchase Contract may be in the form of a written offer to

purchase the Bonds presented by the Purchaser and accepted by the Designated Representative, acting on behalf of the City, setting forth the Bond Sale Terms. In the case of a direct placement, the Bond Purchase Contract may be in the form of a direct placement agreement, continuing covenant agreement, or other similar form of written agreement with a direct purchaser of the Bonds.

**“Bond Register”** means the books or records maintained by the Bond Registrar on which are recorded the names and addresses of the Registered Owner of each of the Parity Obligations.

**“Bond Registrar”** means, as determined by the City’s Designated Representative, the City’s Finance Director, the Fiscal Agent, or another agent qualified to serve as registrar and to maintain the Bond Register in accordance with the Registration Ordinance.

**“Bond Sale Terms”** means the terms and conditions for the sale of the Bonds approved by the City’s Designated Representative consistent with the parameters set forth in Exhibit B, including the amount, date or dates, denominations, interest rate or rates (or mechanism for determining the interest rate or rates), payment dates, final maturity, redemption rights, price and other terms, conditions or covenants. The Bond Sale Terms shall be set forth in a written Bond Purchase Contract, which, in the case of a competitive sale, may include a Pricing Certificate confirming the purchase price and Bond Sale Terms.

**“Bonds”** means the not to exceed \$8,100,000 aggregate principal amount Utility System Refunding Revenue Bonds, 2022, authorized to be issued by this ordinance.

**“Book-Entry Form”** means a fully registered form in which physical bond certificates are registered only in the name of the Securities Depository (or its nominee), as Registered Owner, with the physical bond certificates held by and immobilized in the custody of the Securities Depository (or its designee), where the system for recording and identifying the transfer of ownership interest of the Beneficial Owners in those bonds is neither maintained by nor the responsibility of the City or the Bond Registrar.

**“City”** means the City of Anacortes, Washington, a code city duly organized and existing under the laws of the State.

**“City Contribution”** means legally available money of the City from any source other than proceeds of sale of the Bonds that is allocated to carrying out the Refunding Plan.

**“City Council”** means the City Council of the City.

**“Code”** means the Internal Revenue Code of 1986, as amended, and applicable rules and regulations promulgated thereunder.

**“Common Reserve Bonds”** means any Series of Future Parity Obligations that may be designated by the City as a Common Reserve Bond, secured by the Common Reserve Account. The Bonds authorized by this ordinance are not designated as Common Reserve Bonds.

**“Common Reserve Account”** means an account to serve as a common reserve for all Common Reserve Bonds, created and maintained within the Utility System Bond Fund for the purpose of securing Future Parity Obligations that are designated as Common Reserve Bonds. The Common Reserve Account is a Parity Reserve Account.



***“Continuing Disclosure Agreement”*** means a written undertaking to provide continuing disclosure entered into pursuant to Section 23 of this ordinance, in connection with a public offering of the Bonds.

***“Contract Resource Obligation”*** means an obligation of the City that is designated as a Contract Resource Obligation and is entered into in accordance with Section 18.

***“Coverage Requirement”*** means that Adjusted Net Revenue in each calendar year must be equal to at least 1.25 times the Average Annual Debt Service on all then-outstanding Parity Obligations.

***“DTC”*** means The Depository Trust Company, New York, New York, or its nominee.

***“Designated Representative”*** means the officer or employee of the City appointed in Section 4 of this ordinance to serve as the City’s designated representative in accordance with RCW 39.46.040(2) for purposes of accepting, on behalf of the City, an offer to purchase the Bond on Bond Sale Terms consistent with this ordinance and the parameters set forth herein.

***“Event of Default”*** shall have the meaning assigned to that term in Section 22.

***“Finance Director”*** means the person who holds the office or has the official responsibilities of Treasurer of the City or successor office.

***“Fiscal Agent”*** means the fiscal agent of the State, as the same may be designated by the State from time to time.

***“Future Parity Obligation Ordinance”*** means any ordinance passed by the City Council providing for the issuance and sale of a series of Future Parity Obligations, and any other ordinance amending or supplementing the provisions of any such ordinance.

***“Future Parity Obligations”*** means all revenue bonds and other obligations of the City for borrowed money (including, without limitation, financing leases) issued or incurred after the date of the issuance of the Bonds authorized by this ordinance, the payment of which constitutes a lien and charge on the Net Revenue and Pledged ULID Assessments equal in rank with the lien and charge upon such revenue and assessments required to be paid into the Parity Obligation Debt Service Account to pay and secure the payment of the principal of and interest on the Bonds and other outstanding Parity Obligations.

***“Government Obligations”*** means, unless otherwise limited in the Bond Purchase Contract, those obligations described under the definition of government obligations in RCW 39.53.010(4), as it now reads or hereafter may be amended, and which are otherwise lawful investments for the City at the time of such investment.

***“Gross Revenue”*** means all of the earnings and revenues received by the City from the maintenance and operation of the Utility System from any source whatsoever, including but not limited to revenues from the sale, lease or furnishing of commodities, services, properties or facilities; all earnings from the investment of money in the Utility System Bond Fund; earnings from the investment of money in any maintenance fund or similar fund; all connection and capital improvement charges collected for the purpose of defraying the cost of capital facilities of the Utility System; and withdrawals from the Rate Stabilization Fund. However, the Gross Revenue shall not include: (a)

revenues from general ad valorem taxes; (b) principal proceeds of Parity Obligations or any other borrowings, or earnings or proceeds from any investments in a trust, defeasance or escrow fund created to defease or refund obligations relating to the Utility System (until commingled with other earnings and revenues included in the Gross Revenue) or held in a special account for the purpose of paying a rebate to the United States Government under the Code; (c) income and revenue which may not legally be pledged for revenue bond debt service; (d) improvement district assessments; (e) federal or state grants, and gifts from any source, allocated to capital projects; (f) payments under bond insurance or other credit enhancement policy or device; (g) insurance or condemnation proceeds used for the replacement of capital projects or equipment; (h) proceeds from the sale of System property; (i) earnings in any construction fund or bond redemption fund; (j) deposits to the Rate Stabilization Fund; or (k) revenue from any Separate System.

**“Independent Utility Consultant”** means a professional consultant experienced with municipal utilities of comparable size and character to the Utility System.

**“Issue Date”** means the date of initial delivery of the Bonds to the Purchaser.

**“Letter of Representations”** means the Blanket Issuer Letter of Representations between the City and DTC, substantially in the form on file with the City Clerk, as it may be amended from time to time, and any successor or substitute letter relating to the operational procedures of the Securities Depository.

**“MSRB”** means the Municipal Securities Rulemaking Board.

**“Maximum Annual Debt Service”** means, as of the date of calculation, the maximum amount of Annual Debt Service that will mature or come due in the current calendar year or any future calendar year with respect to the relevant bonds.

**“Net Revenue”** for any calendar year means the Gross Revenue for that calendar year less Operations and Maintenance Costs for that calendar year plus any withdrawals from the Rate Stabilization Fund made in accordance with Section 19 of this ordinance. In calculating Net Revenue, the City shall not take into account any non-cash gains or losses with respect to any real or personal property, investment or agreement that it may be required to recognize under generally accepted accounting principles, such as unrealized mark-to-market gains and losses.

**“Official Statement”** means an offering document or other disclosure document required to be provided to purchasers and potential purchasers in connection with an initial public offering of the Bonds in conformance with Rule 15c2-12 or other applicable regulation of the SEC.

**“Operations and Maintenance Costs”** means all reasonable expenses incurred by the City in causing the Utility System to be operated and maintained in good repair, working order and condition, including without limitation payments of premiums for insurance on the Utility System; costs incurred in connection with the acquisition of water or the securing of water rights; payments to any public or private entity for water service, sewage treatment and disposal service or other utility service in the event that the City combines such service into the combined utility system and enters into a contract for such service, including pro-rata budget allocations or charges for the City’s administration expenses where those represent a reasonable distribution and share of actual costs; and any State-imposed taxes. Operations and Maintenance Costs shall exclude depreciation, amortization or other similar recognitions of non-cash expense items made for accounting purposes only; taxes levied or imposed

by the City; payments-in-lieu-of-taxes paid to the City; capital additions and capital replacements to the Utility System.

**“Owner”** means, without distinction, the Registered Owner and the Beneficial Owner.

**“Parity Certificate”** means a certificate delivered for purposes of satisfying the Parity Conditions.

**“Parity Conditions”** means (a) with reference to issuance of the Bonds as Parity Obligations, the Parity Conditions set forth in the 2017 Parity Lien Ordinance and the 2020 Parity Lien Ordinance, and (b) with reference to the issuance of additional Future Parity Obligations, the conditions set forth in Exhibit A to this ordinance.

**“Parity Debt Service Account”** means that special fund or account created pursuant to Section 14 of the 2017 Parity Lien Ordinance within the established Utility System Bond Fund, to provide for the payment of principal of and interest on the Parity Obligations.

**“Parity Obligations”** means the 2017 Parity Obligation, the 2020 Parity Obligation, the Bonds, and any Future Parity Obligations.

**“Parity Reserve Account”** means any account within the Utility System Bond Fund that may be created in the future as a debt service reserve account securing payment of the principal of and/or interest on one or more series of Parity Obligations. The Common Reserve Account (if any) is a Parity Reserve Account.

**“Permitted Investments”** means investments that are legal investments for the City at the time of such investment.

**“Pledged ULID Assessments”** means all utility local improvement district assessments and installments thereof (including interest and penalties on assessments) collected in respect of a ULID created to finance improvements to the Utility System, which assessments are pledged to the payment of Parity Obligations.

**“Pricing Certificate”** means a certificate executed by the City’s Designated Representative as of the pricing date of a Series of the Bonds, confirming the Bond Sale Terms for the sale of that Series of the Bonds to the Purchaser thereof, in accordance with the parameters set forth in Exhibit B.

**“Purchaser”** means the corporation, firm, association, partnership, trust, bank, financial institution or other legal entity or group of entities selected by the Designated Representative to serve as purchaser in a direct placement, underwriter in a negotiated sale or awarded as the successful bidder in a competitive sale of a Series of the Bonds.

**“Rate Stabilization Fund”** means the fund described in Section 19 of this ordinance.

**“Rating Agency”** means Moody’s Investors Service Inc., S&P Global Ratings and/or Fitch Ratings, the recognized successors of any of the foregoing, or any other nationally-recognized securities rating agency or agencies then maintain a rating on any of the City’s then-outstanding Utility System Revenue Bonds at the request of the City.

**“Redemption Date”** means the date or dates as set forth in the Refunding Plan for the call, payment and redemption of the Refundable Bonds.

**“Record Date”** means, unless otherwise defined in the Bond Purchase Contract for the Series of the Bonds, in the case of each interest or principal payment date, the Bond Registrar’s close of business on the 15th day of the month preceding the interest or principal payment date. With regard to redemption of the Bonds prior to their maturity, the Record Date shall mean the Bond Registrar’s close of business on the day prior to the date on which the Bond Registrar sends the notice of redemption to the Registered Owners of the Bonds.

**“Refundable Bonds”** means the following currently outstanding maturities of the 2012 Senior Lien Bonds, the refunding of which is authorized by this ordinance:

| <b>Maturity<br/>(Dec. 1)</b> | <b>Principal<br/>Amount</b> | <b>Interest Rate</b> |
|------------------------------|-----------------------------|----------------------|
| 2022                         | \$ 590,000                  | 4.000%               |
| 2023                         | 610,000                     | 4.000                |
| 2024                         | 635,000                     | 4.000                |
| 2025                         | 660,000                     | 4.000                |
| 2026                         | 685,000                     | 3.000                |
| 2027                         | 705,000                     | 3.000                |
| 2028                         | 730,000                     | 3.125                |
| 2029                         | 750,000                     | 3.250                |
| 2032*                        | 2,410,000                   | 3.500                |

\*Term Bonds

**“Refunding Plan”** means the following plan for the refunding of the Refundable Bonds, as it may be further detailed in the Refunding Trust Agreement:

(a) The deposit with the Refunding Trustee of proceeds of the City Contribution, together with those proceeds of sale of the Bonds allocated to the Refunding Plan, in an amount sufficient to acquire the Acquired Obligations and establish a beginning cash balance;

(b) The purchase by the Refunding Trustee of the maturing principal of and interest on the Acquired Obligations and the application of such amounts, together with any other cash balance held by it on the Redemption Date, to the call payment and redemption of the Refundable Bonds at a price equal to 100% of the principal amount to be redeemed plus accrued interest to that date; and

(c) At the direction of the City’s Designated Representative, the payment of the costs of issuing the Bonds and the costs of carrying out the foregoing elements of the Refunding Plan.

**“Refunding Trust Agreement”** means a refunding trust agreement between the City and the Refunding Trustee providing for the carrying out of the Refunding Plan.

**“Refunding Trustee”** means the trustee, or any successor trustee, selected by the Designated Representative to serve as refunding trustee pursuant to Section 11.

**“Registered Owner”** means the person in whose name a Bond is registered on the Bond Register. If the Bond is in Book-Entry Form under the Letter of Representations, Registered Owner shall mean the Securities Depository.

**“Registration Ordinance”** means Ordinance No. 1944 establishing a system of registration for the City’s bonds and other obligations.

**“Reserve Requirement”** means (a) for each Series of the Bonds, zero dollars, unless a greater amount (not to exceed the maximum dollar amount permitted by the Code to be allocated to a debt service reserve fund from tax-exempt or tax-advantaged bond proceeds, without requiring such amounts to be invested at a restricted yield) is deemed necessary or convenient by the Designated Representative and agreed to in the Bond Sale Terms for such Series; (b) for any Future Parity Obligations that are designated as Common Reserve Bonds, an incremental amount to be added to the Common Reserve Account, determined as set forth in the Future Parity Obligation Ordinance, provided that the sum of the Reserve Requirements for all Common Reserve Bonds may not exceed the maximum dollar amount permitted by the Code to be allocated to a debt service reserve fund from tax-exempt or tax-advantaged bond proceeds, without requiring such amounts to be invested at a restricted yield; and (c) for any Future Parity Obligations other than those designated as Common Reserve Bonds, an amount determined as set forth in the ordinance authorizing such Series of Future Parity Obligations, which amount may be zero.

**“Reserve Security”** means any bond insurance, security, letter of credit, guaranty, surety bond or similar credit enhancement device providing for or securing the payment of all or part of the principal of and interest on the Parity Obligations, issued by an institution which has been assigned a credit rating at the time of issuance of the Reserve Security that is in one of the two highest rating categories of at least one nationally recognized rating agency, without regard to any gradations within a rating category.

**“Rule 15c2-12”** means Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934, as amended.

**“SEC”** means the United States Securities and Exchange Commission.

**“Securities Depository”** means DTC, any successor thereto, any substitute securities depository selected by the City (or the nominee of any of the foregoing). Any successor or substitute Securities Depository must be qualified under applicable laws and regulations to provide the services proposed to be provided by it.

**“Separate System”** means any water supply, sewage collection or treatment, stormwater or other utility service or facilities that may be created, acquired or constructed by the City as provided in Section 17 of this ordinance.

**“Serial Bonds”** means obligations maturing in specified years, which are not designated as Term Bonds and for which no mandatory redemption installments are scheduled.

**“Series of Bonds”** or **“Series”** means a series of Bonds issued pursuant to this ordinance.

**“Significant Wholesale Customer”** means any person, firm, corporation or municipal corporation under any executed contract for water or other utility service, the revenue from which contract comprises 10% or more of the Gross Revenue of the Utility System.

**“State”** means the State of Washington.

**“State Auditor”** means the office of the Auditor of the State or such other department or office of the State authorized and directed by State law to make audits.

**“Tax Credit Subsidy Bond”** means any bond that is designated by the City as a “build America bond” or other similar type of tax credit bond pursuant to the Code, and which is further designated as a “qualified bond” under Section 6431 of the Code (or a similar section of the Code), and with respect to which the City is eligible to receive a Tax Credit Subsidy Payment.

**“Tax Credit Subsidy Payment”** means the amounts which the City expects to receive as a tax credit payable by the United States Treasury to the City under Section 6431 of the Code (or a similar section of the Code), in respect of any bonds issued as Tax Credit Subsidy Bonds.

**“Term Bond”** means a Utility System Revenue Obligation that is subject to mandatory redemption prior to its scheduled maturity date or dates in mandatory redemption installments set forth in the Bond Purchase Contract or Pricing Certificate.

**“ULID”** means utility local improvement district.

**“Utility System”** or **“System”** means (a) the water supply and distribution system of the City, as it now exists and including all additions, betterments and extensions at any time made; (b) the sanitary sewage collection, treatment and disposal system, septic inspection and maintenance system of the City; (c) any storm and surface water drainage system of the City; (d) any garbage and refuse collection and disposal system; and (e) any other system or utility that may lawfully be combined with the foregoing. The Utility System shall not include any Separate System of the City.

**“Utility System Bond Fund”** means the special fund known as the Utility System Bond Fund, created pursuant to Section 10 of Ordinance No. 2763, passed on May 21, 2007, for the purpose of paying and securing the obligations of the Utility System of the City.

**“Utility System Revenue Obligations”** means the Parity Obligations (including the Bonds) and any other obligations that may be authorized in the future that are made payable solely from accounts within the Utility System Bond Fund.

**Section 3. Authorization of Bonds.** The City is authorized to issue the Bonds in one or more Series in an aggregate principal amount not to exceed \$8,100,000, for the purpose of providing the funds (a) to carry out a refunding of all or a portion of the City’s outstanding Utility System Revenue Bonds, 2012, and (b) to pay the costs of issuance of the Bonds and the administrative costs of carrying out the refunding.

**Section 4. Appointment of Designated Representative.** For purposes of this ordinance, the Finance Director and the Mayor are each, acting independently and within the parameters set forth in Exhibit B, appointed and authorized to act as the City’s Designated Representative pursuant to RCW 39.46.040(2), to conduct the sale of the Bonds in the manner and upon the terms deemed most

advantageous to the City, and to approve the Bond Sale Terms, with such additional terms and covenants, not inconsistent with Exhibit B, as the Designated Representative deems advisable.

## **Section 5. Bond Registrar; Registration and Transfer of Bond.**

5.1 **Registration of the Bond; Bond Registrar.** The Bonds shall be issued only in registered form as to both principal and interest and shall be recorded on the Bond Register. The Fiscal Agent is appointed to act as Bond Registrar for each Series of the Bonds, unless otherwise determined by the Designated Representative.

5.2 **Transfer and Exchange of Bonds.** The Bond Registrar shall keep, or cause to be kept, sufficient books for the registration and transfer of the Bonds, which shall be open to inspection by the City at all times. The Bond Register shall contain the name and mailing address of the Registered Owner of each Bond and the principal amount and number of each of Bond held by the Registered Owner. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver those Bonds transferred or exchanged in accordance with the provisions of the Bonds and this ordinance, to serve as the City's paying agent for the Bonds, and to carry out all of the Bond Registrar's powers and duties under this ordinance and the Registration Ordinance.

The Bond Registrar shall be responsible for its representations contained in the Bond Registrar's Certificate of Authentication on each Bond. The Bond Registrar may become an Owner with the same rights it would have if it were not the Bond Registrar and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as members of, or in any other capacity with respect to, any committee formed to protect the rights of Owners.

If a Bond is surrendered to the Bond Registrar, it may be exchanged for a Bond or Bonds in any Authorized Denomination of an equal aggregate principal amount and of the same interest rate, maturity and Series. The Bond may be transferred only if endorsed in the manner provided thereon and surrendered to the Bond Registrar. Any exchange or transfer shall be without cost to the Owner or transferee. The Bond Registrar shall not be obligated to exchange any Bond or transfer registered ownership during the period between the applicable Record Date and the next upcoming interest payment or redemption date.

5.3 **Securities Depository; Book-Entry Only Form.** Unless otherwise determined by the Designated Representative, the Bonds initially shall not be issued and registered in Book-Entry Form. The Bonds so registered shall be held fully immobilized in Book-Entry Form by the Securities Depository in accordance with the provisions of the Letter of Representations. Registered ownership of a Bond held in Book-Entry Form, or any portion thereof, may not be transferred except: (i) to any successor Securities Depository appointed by the City or such substitute Securities Depository's successor; (ii) to any substitute Securities Depository appointed by the City or such substitute Securities Depository's successor; or (iii) to any person if the Bond is no longer held in Book-Entry Form. Upon the resignation of the Securities Depository from its functions as depository, or upon a determination by the Finance Director to discontinue utilizing the then-current Securities Depository, the Finance Director may appoint a substitute Securities Depository. If the Securities Depository resigns from its functions as depository and no substitute Securities Depository can be obtained, or if the Director of Finance determines not to utilize a Securities Depository, then the Bonds shall no longer be held in Book-Entry Form and ownership may be transferred only as provided herein. Nothing herein shall prevent the Bond Sale Terms from providing that a Series of the Bonds shall be issued in certificated form without utilizing a Securities Depository, and that the Bonds of such Series shall be

registered as of their Issue Date in the name of the Owners thereof, in which case ownership may be transferred only as provided herein. Neither the City nor the Bond Registrar shall have any responsibility or obligation to participants of the Securities Depository or the persons for whom they act as nominees with respect to the Bonds regarding the accuracy of any records maintained by the Securities Depository or its participants of any amounts in respect of principal of or interest on the Bonds or any notice which is permitted or required to be given to Registered Owners hereunder (except such notice as is required to be given by the Bond Registrar to the Securities Depository). For so long as a Bond is held in Book-Entry Form, the Securities Depository shall be deemed to be the Registered Owner for all purposes hereunder and all references to Registered Owner shall mean the Securities Depository and shall not mean the Beneficial Owner.

**5.4 Lost or Stolen Bond.** In case any Bond shall be lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new bond or bonds of like amount, date, tenor, and effect to the Registered Owner(s) thereof upon the Registered Owner paying the expenses and charges of the City in connection therewith and upon filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such bond or bonds were actually lost, stolen or destroyed and of Registered Ownership thereof, and upon furnishing the City with indemnity satisfactory to both.

**5.5 DTC Letter of Representations.** If the Bonds are to be issued in Book-Entry Form and to the extent required to induce DTC to accept the Bonds as eligible for deposit at DTC, the City approves the Letter of Representations. If necessary, the Designated Representative is authorized and directed to execute the Letter of Representations, on behalf of the City, and to deliver it to DTC on or before the Issue Date.

**Section 6. Form and Execution of Bonds.** Each Bond shall be prepared in a form consistent with the provisions of this ordinance and State law. Each Bond shall be signed by the Mayor and City Clerk, either or both of whose signatures may be manual or in facsimile, and the seal of the City or a facsimile reproduction thereof shall be impressed or printed thereon. Only a Bond bearing a certificate of authentication in substantially the following form, manually signed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance: “This Bond is one of the fully registered City of Anacortes, Washington, Utility System Refunding Revenue Bonds, 2022 [Series XX], described in [this ordinance].” The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this ordinance. If any officer whose manual or facsimile signature appears on a Bond ceases to be an officer of the City authorized to sign bonds before the Bond bearing his or her manual or facsimile signature is authenticated by the Bond Registrar or issued or delivered by the City, that Bond nevertheless may be authenticated, issued and delivered and, when authenticated, issued and delivered, shall be as binding on the City as though that person had continued to be an officer of the City authorized to sign bonds. Any Bond also may be signed on behalf of the City by any person who, on the actual date of signing of the Bond, is an officer of the City authorized to sign bonds, although he or she did not hold the required office on the date of issuance of the Bond.

**Section 7. Payment of the Bond; Failure to Pay.**

**7.1 Payment.** Principal of and interest on each Bond shall be payable in lawful money of the United States of America on the dates and in the amounts provided in the Bond Purchase Contract. Principal of and interest on each Bond issued as a Parity Obligation shall be payable solely out of the



Parity Obligation Debt Service Account. The Bonds shall not be general obligations of the City. The Bonds may not be subject to acceleration under any circumstances.

**7.2 Bonds Held in Book-Entry Form.** Principal of and interest on each Bond held in Book-Entry Form is payable in the manner set forth in the Letter of Representations

**7.3 Bond Not Held in Book-Entry Form.** Interest on each Bond not held in Book-Entry Form is payable by electronic transfer on the interest payment date, or by check or draft of the Bond Registrar mailed on the interest payment date to the Registered Owner at the address appearing on the Bond Register on the Record Date. However, the City is not required to make electronic transfers except pursuant to a request by a Registered Owner in writing received on or prior to the Record Date and at the sole expense of the Registered Owner. Principal of each Bond not held in Book-Entry Form is payable upon presentation and surrender (unless waived by the City) of the Bond by the Registered Owner to the Bond Registrar.

**7.4 Failure to Pay the Bond.** If the principal of any Bond is not paid when the Bond is properly presented at its maturity or date fixed for redemption, the City shall be obligated to pay, solely from the Parity Obligation Debt Service Account, interest on that Bond at the same rate provided in the Bond from and after its maturity or date fixed for redemption until that Bond, both principal and interest, is paid in full or until sufficient money for its payment in full is on deposit in the Utility System Bond Fund, or in a trust account established to refund or defease the Bond, and the Bond has been called for payment by giving notice of that call to the Registered Owner.

## **Section 8. Redemption and Purchase Provisions.**

**8.1 Optional Redemption.** Any of the Bonds may be subject to redemption prior to their stated maturity dates at the option of the City at the times and on the terms set forth in the applicable Bond Purchase Contract.

**8.2 Mandatory Redemption.** Any of the Bonds may be designated as Term Bonds, subject to mandatory redemption on the dates and in the amounts as set forth and confirmed in the applicable Pricing Certificate. If not redeemed or purchased at the City's option prior to maturity, a Term Bond (if any) must be redeemed, at a price equal to one hundred percent of the principal amount to be redeemed, plus accrued interest, on the dates and in the years and amounts as set forth in the Pricing Certificate. If the City optionally redeems, defeases or purchases a Term Bond prior to maturity, the principal amount of that Term Bond that is so redeemed, defeased or purchased (irrespective of its redemption or purchase price) shall be credited against the remaining scheduled mandatory redemption installments in the manner as directed by the Finance Director. In the absence of direction by the Finance Director, credit shall be allocated to the remaining installments for that Term Bond on a *pro rata* basis.

**8.3 Partial Redemption; Selection of Bonds for Redemption.** If fewer than all of the outstanding Bonds of any Series are to be redeemed at the option of the City, the Finance Director shall select the Series and maturity or maturities to be redeemed. If less than all of the principal amount of a maturity of the selected Series is to be redeemed, if such Series is held in Book-Entry Form, the portion of such maturity to be redeemed shall be selected for redemption by the Securities Depository in accordance with the Letter of Representations, and if the Series is not then held in Book-Entry Form, the portion of such maturity to be redeemed shall be selected by the Bond Registrar using such method of random selection as the Bond Registrar shall determine. All or a portion of the principal amount of

any Bond that is to be redeemed may be redeemed in any applicable Authorized Denomination. If less than all of the outstanding principal amount of any Bond is redeemed, upon surrender of that Bond to the Bond Registrar there shall be issued to the Registered Owner, without charge, a new Bond (or Bonds, at the option of the Registered Owner) of the same Series, seniority, maturity, and interest rate in any Authorized Denomination in the aggregate principal amount to remain outstanding.

**8.4 Notice of Redemption.** If a Series of the Bonds are held in Book-Entry Form, notice of redemption shall be given in accordance with the Letter of Representations. Otherwise, unless waived by the Registered Owner or unless otherwise provided in the Bond Purchase Contract, notice of any intended redemption must be given not less than 20 nor more than 60 days prior to the date fixed for redemption by first-class mail, postage prepaid, to the Registered Owner of the Bond to be redeemed (or portion thereof) at the address appearing on the Bond Register on the Record Date. The requirements of the preceding sentence shall be deemed to have been fulfilled when notice has been mailed as so provided, whether or not it is actually received by the Owner of that Bond. In addition, the redemption notice shall be mailed or sent electronically within the same period to the MSRB (if required under any Continuing Disclosure Agreement), to each Rating Agency, and to such other persons and with such additional information as the Finance Director shall determine, but these additional mailings shall not be a condition precedent to the redemption of any Bond.

**8.5 Rescission of Optional Redemption Notice.** In the case of an optional redemption or an extraordinary redemption, the notice of redemption may state that the City retains the right to rescind the redemption notice and the redemption by giving a notice of rescission to the affected Registered Owners at any time on or prior to the date fixed for redemption. Any notice of optional redemption that is so rescinded shall be of no effect, and each Bond (or portion thereof) for which a notice of redemption has been rescinded shall remain outstanding.

**8.6 Effect of Redemption.** If notice of redemption is given as provided in this ordinance and is not rescinded (as provided in Section 8.5), that Bond (or portion thereof called for redemption) shall become due on the date fixed for redemption. Interest on that Bond (or portion thereof) shall cease to accrue on the date fixed for redemption unless that Bond (or portion thereof) is not paid when properly presented.

**8.7 Purchase by City.** The City reserves the right and option to purchase any or all of the Bonds available for purchase at any time at any price acceptable to the City plus accrued interest to the date of purchase.

**Section 9. Refunding or Defeasance of the Bond.** The City may issue refunding bonds pursuant to the laws of the State or use money available from any other lawful source to pay when due the principal of and interest on those Parity Obligations, or any portion thereof included in a refunding or defeasance plan (the “Defeased Bonds”), and to redeem and retire, refund or defease such Defeased Bonds and to pay the costs of such refunding or defeasance. If the City deposits irrevocably with an escrow agent money and/or Government Obligations sufficient in amount, together with the earnings thereon, sufficient to pay the principal of and premium, if any, on the Defeased Bonds, together with all interest accruing thereon to the due date or redemption date, and pays or makes provision for payment of all fees, costs and expenses of that escrow agent due or to become due with respect to the Defeased Bonds, all liability of the City and the Utility System with respect to the Defeased Bonds shall cease, the Defeased Bonds shall be deemed not to be outstanding hereunder and the registered owners of the Defeased Bonds shall be restricted exclusively to the money or Government Obligations so deposited, together with any earnings thereon, for any claim of whatsoever nature with respect to

the Defeased Bonds, and that escrow agent shall hold that money, Government Obligations and earnings in trust exclusively for those registered owners and that money, Government Obligations and earnings shall not secure any other Parity Obligations under this ordinance. After establishing such an escrow account, the City may apply any money in any other fund or account established for the payment or redemption of the Defeased Bonds to any lawful purposes as it shall determine, subject only to the rights of the owners of any other Parity Obligations then outstanding. Defeased Bonds shall be excluded from computation of the Coverage Requirements and other covenants under this ordinance.

#### **Section 10.     Deposit of Bond Proceeds.**

10.1     **Refunding Plan.** On the Issue Date, the City shall cause the proceeds of the Bonds that are allocated to carrying out the Refunding Plan to be deposited with the Refunding Trustee and used to carry out the Refunding Plan in accordance with Section 11 and the Refunding Trust Agreement.

10.2     **Costs of Issuance.** The portion of the proceeds allocable to payment of costs related to the sale, issuance, and delivery of the Bonds may be transferred to the Refunding Trustee to be used to pay such costs in accordance with an executed Refunding Trust Agreement, or may be retained by the City to be used to pay such costs directly, as the Finance Director may determine is most convenient.

10.3     **Remaining Proceeds (if any).** The proceeds of any Series of the Bonds remaining after the City makes all deposits described in this section shall be deposited into the Parity Obligation Debt Service Account to pay interest on that Series on the next interest payment date.

#### **Section 11.     Refunding of the Refundable Bonds.**

11.1     **Appointment of the Refunding Trustee; Selection of Refundable Bonds.** The Finance Director is authorized and directed to appoint a Refunding Trustee in accordance with chapter 39.53 RCW, and the Designated Representative is authorized to execute on behalf of the City a Refunding Trust Agreement providing for the carrying out of the Refunding Plan, as defined herein and as further detailed therein.

11.2     **Use of Bond Proceeds for Refunding Plan; Acquisition of Acquired Obligations.** On the Issue Date, bond proceeds allocated to carrying out the Refunding Plan (together with any City Contribution) shall be deposited with the Refunding Trustee and used to discharge the obligations of the City relating to the Refundable Bonds by carrying out that Refunding Plan in accordance with the Refunding Trust Agreement. The Acquired Obligations (if any) shall be listed and more particularly described in an exhibit attached to the Refunding Trust Agreement, shall conform to the requirements of the 2012 Senior Lien Bond Ordinance, and are subject to substitution as set forth below. Any Bond proceeds or other money deposited with the Refunding Trustee not needed to carry out the Refunding Plan (or to pay administrative costs and costs of issuance) shall be returned to the City for deposit in the Parity Obligation Debt Service Account to pay interest on the Bonds on the next upcoming interest payment date.

11.3     **Substitution of Acquired Obligations.** The City reserves the right at any time to substitute cash or other Government Obligations conforming to the requirements of the 2012 Senior Lien Bond Ordinance (“Substitute Obligations”) for any of the Acquired Obligations if the City obtains, (a) an opinion of Bond Counsel to the effect that the interest on the Bonds and the Refundable

Bonds will remain excluded from gross income for federal income tax purposes under Sections 103, 148 and 149(d) of the Code, and (b) a verification by a nationally recognized independent certified public accounting firm that such substitution will not impair the timely payment of the amounts required to be paid by the Refunding Plan. Any surplus money resulting from the sale, transfer, other disposition or redemption of the Acquired Obligations and the substitutions therefor shall be released from the trust estate and transferred to the City to be used for any lawful City purpose.

**11.4 Refunding Trust Agreement; Administration of Refunding Plan.** The Designated Representative is authorized to execute a Refunding Trust Agreement setting forth the duties, obligations and responsibilities of the Refunding Trustee in connection with the carrying out of the Refunding Plan. The Refunding Trust Agreement may, among other things, authorize and direct the Refunding Trustee to purchase the Acquired Obligations (or Substitute Obligations) and shall direct the Refunding Trustee to make the payments required to be made by the Refunding Plan. The money deposited with the Refunding Trustee (and Acquired Obligations or Substitute Obligations acquired therewith) and any income therefrom shall be held irrevocably, invested and applied in accordance with the provisions of the applicable 2012 Senior Lien Bond Ordinance, this ordinance, chapter 39.53 RCW and other applicable State law. All administrative costs (including without limitation all necessary and proper fees, compensation and expenses of the Refunding Trustee for the Bonds and all other costs incidental to the setting up of the escrow to accomplish the Refunding Plan) and costs of issuance of the Bonds may be paid out of the amounts deposited with the Refunding Trustee or other available money of the City, in accordance with the Refunding Trust Agreement.

**11.5 Call for Redemption of the Refundable Bonds.** The Finance Director is authorized to take all action necessary to call the Refundable Bonds for redemption on the Redemption Date in accordance with the 2012 Senior Lien Bond Ordinance and this ordinance. Such call for redemption shall identify the Refundable Bonds, the maturity dates, the Redemption Date and redemption price (expressed as a percentage of par, plus accrued interest), and shall be irrevocable after the Bonds are delivered to the Purchaser. The Finance Director is authorized and directed to give or cause to be given such notices as may be required, at the times and in the manner required pursuant to the applicable 2012 Senior Lien Bond Ordinance, and to take all other actions necessary to effect the redemption of the Refundable Bonds on the Redemption Date.

**11.6 Refunding Conditions and Findings Required.** The City Council finds and determines that upon the findings made by the Designated Representative pursuant to this subsection, the Refunding Plan will discharge and satisfy the obligations, pledges, charges, trusts, covenants and agreements of the City under the 2012 Senior Lien Bond Ordinance as to the Refundable Bonds, and the Refundable Bonds shall no longer be deemed to be outstanding under the 2012 Senior Lien Bond Ordinance immediately upon the deposit of the money specified in the Refunding Plan with the Refunding Trustee. Prior to approving the sale of the Bonds, the Designated Representative must determine in writing that, in his or her judgment, each of the following conditions are met:

(a) The Redemption Date is the earliest practical date on which the Refundable Bonds may be called for redemption.

(b) The savings that will be effected (as measured by the difference between the principal and interest cost over the life of the Bonds and the principal and interest cost over the life of the Refundable Bonds but for such refunding) shall be equal to at least the percentage savings set forth in Exhibit A. In making such determination, the Designated Representative shall give consideration to the fixed maturities (and scheduled mandatory principal redemptions) of the Bonds and the Refundable

Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the issuance and sale of the Bonds pending payment and redemption of the Refundable Bonds.

(c) The Refunding Plan to be effected by the issuance and sale of the Bonds will provide sufficient funds to discharge and satisfy the obligations of the City under the 2012 Senior Lien Bond Ordinance. In making such determination, the Designated Representative may rely upon a certification of the City's financial advisor or an independent verification agent.

## **Section 12. Security for the Bond.**

**12.1 Pledge of Net Revenue and Pledged ULID Assessments.** The Bonds shall be special limited obligations of the City payable from and secured solely by the Net Revenue and all Pledged ULID Assessments (if any) and money in the Parity Obligation Debt Service Account and any subaccounts created therein. The Bonds are not Common Reserve Bonds and are not secured by any amounts in a Parity Reserve Account or other debt service reserve account. The Net Revenue and Pledged ULID Assessments (if any) are pledged to make the payments into the Parity Obligation Debt Service Account required by this ordinance. This pledge constitutes a charge and lien upon such Net Revenue that is prior and superior to all other liens and charges whatsoever, and constitutes a first priority charge and lien upon the Pledged ULID Assessments. The Bond shall not constitute a general obligation of the City, the State or any political subdivision of the State or a charge upon any general fund or upon any money or other property of the City, the State, or any political subdivision of the State not specifically pledged by this ordinance.

**12.2 Lien Position.** The Bonds shall be issued on parity of lien with any Future Parity Obligations, without regard to date of issuance or authorization and without preference or priority of right or lien. The City further covenants that, for as long as any Parity Obligations remain outstanding, it will not issue any revenue obligations (or create any special fund or account therefor), which will have any priority over or which will rank on a parity with the payments required in respect of the Parity Obligations, and that it will issue Future Parity Obligations only accordance with the Parity Conditions. Nothing in this ordinance prevents the City from issuing revenue bonds or other obligations which are a charge or lien upon Net Revenue subordinate to the payments required to be made from Net Revenue into the Parity Obligation Debt Service Account and the subaccounts therein.

**Section 13. Flow of Funds; Priority of Expenditure of Gross Revenue.** The Gross Revenue shall be deposited as received in the combined Utility System Funds created for each component utility, and used for the following purposes only and applied in the following order of priority:

**13.1** To pay the Operations and Maintenance Costs;

**13.2** To make all payments required to be made into the Parity Obligation Debt Service Account in respect of the interest on and principal of all Parity Obligations when due;

**13.3** To make all payments required to be made into any Parity Reserve Account and to make payments due under any reimbursement agreement with the provider of a Reserve Security that requires those payments to be made on a parity with the payments to be made into a Parity Reserve Account;

13.4 To make when due the required payments to be made into any revenue bond, note warrant or other revenue obligation redemption fund, debt service account or reserve account created to pay and secure the payment of any revenue bonds, warrants, notes or other obligations of the Utility System having a charge upon the Net Revenue junior and inferior to the charge thereon for the payment of the principal of and premium (if any), and interest on the Parity Obligations, in any priority not inconsistent with this ordinance, that the City may hereafter establish by ordinance; and

13.5 Without priority, to any of the following purposes: to retire by redemption or purchase any outstanding revenue bonds or revenue obligations of the Utility System; to make necessary additions, betterments, improvements, repairs, extensions, and replacements of the Utility System; to pay City taxes or other payments in lieu of taxes payable from Gross Revenue; to make deposits to the Rate Stabilization Account; or for any other lawful purpose of the Utility System.

**Section 14. The Utility System Bond Fund; Parity Obligation Debt Service Account Created.** The Utility System Bond Fund was previously created within the City treasury by the Ordinance No. 2763, passed on May 21, 2007 (authorizing the issuance of the 2007 Senior Lien Bonds and creating accounts within that Fund securing payment of the principal of and interest the Senior Lien Bonds).

**14.1 Parity Obligation Debt Service Account Created.** For the sole purpose of paying and securing payment of the Parity Obligations, the 2017 Parity Lien Ordinance created the Parity Obligation Debt Service Account in the Utility System Bond Fund. The Finance Director may create additional sinking fund accounts or other subaccounts in the Parity Obligation Debt Service Account to pay or secure the payment of Future Parity Obligations, so long as the maintenance of such accounts does not conflict with the rights of the owners of Parity Obligations. The Finance Director may create Parity Reserve Accounts within the Utility System Bond Fund to additionally secure payment of Future Parity Obligations, in accordance with the ordinances authorizing their issuance.

**14.2 Required Payments into the Parity Obligation Debt Service Account.** So long as any Parity Obligation remains outstanding, the City obligates and binds itself to set aside and pay into the Parity Obligation Debt Service Account all Pledged ULID Assessments and, out of the Net Revenue, certain fixed amounts without regard to any fixed proportion, namely, on or before each debt service payment date an amount which, together with Pledged ULID Assessments and other money on deposit therein, will be sufficient to pay the principal of and interest on the Parity Obligations (including the Bonds) coming due and payable on such debt service payment date, including mandatory redemption amounts due on that date with respect to any Parity Obligation that is a Term Bond. If the City fails to set aside and pay into the Parity Obligation Debt Service Account the amounts set forth, the Registered Owner of an outstanding Parity Obligation may bring action against the City and compel the setting aside and payment.

**14.3 Investment of Money in Parity Obligation Debt Service Account and Parity Reserve Account(s) (if any).** All money in the Parity Obligation Debt Service Account and any Parity Reserve Account may be kept in cash or invested in Permitted Investments maturing not later than the date when needed (for investments in the Parity Obligation Debt Service Account) or the last maturity of any outstanding Parity Obligations (for investments in the Parity Reserve Account). In no event shall any money in the Parity Obligation Debt Service Account, any Parity Reserve Account or any other money reasonably expected to be used to pay principal of and/or interest on the Parity Obligations be invested at a yield which would cause any Series issued as tax-exempt Bonds or Tax Credit Subsidy Bonds to be arbitrage bonds within the meaning of Section 148 of the Code. Income from investments

in the Parity Obligation Debt Service Account shall be deposited in that account. Income from investments in any Parity Reserve Account shall be retained in that account until the amount therein is equal to the Reserve Requirement for all Parity Obligations secured by that account, and thereafter shall be deposited in the Parity Obligation Debt Service Account. Notwithstanding the provisions for deposit or retention of earnings in the Parity Obligation Debt Service Account or Parity Reserve Account, any earnings which are subject to a federal tax or rebate requirement may be withdrawn from such account for deposit in a separate fund or account for that purpose. If no longer required for such rebate, money in that separate fund or account shall be returned to the Parity Obligation Debt Service Account or Parity Reserve Account, as applicable.

**Section 15.** **Covenants.** The City covenants and agrees with the Owner of the Bond, as follows:

**15.1 Maintenance and Operation.** The City will pay all Operations and Maintenance Costs and will at all times maintain and keep the Utility System in good repair, working order and condition, and also will at all times operate such utility and the business in connection therewith in an efficient manner and at a reasonable cost.

**15.2 Rates and Charges.**

(a) **Debt Service Coverage.** The City will establish, maintain, revise as necessary, and collect such rates and charges for the services furnished by the Utility System (including those furnished under contract with wholesale customers) sufficient to produce Net Revenue that meets or exceeds the Coverage Requirement.

(b) **Significant Wholesale Customer Contracts.** The City will not reduce any rate or charge for services of the Utility System as is now established by the existing rate ordinance or ordinances of the City, or any contract with a Significant Wholesale Customer, if such change would substantially reduce the annual Net Revenue below that which would have been obtained before such change unless the City has on file a certificate from an Independent Utility Consultant, stating that after such change, the Net Revenue will remain sufficient to comply with all the covenants and requirements of this ordinance, including the Coverage Requirement.

(c) **No Free Service.** Except to aid the poor or infirm, to provide for resource conservation or to provide for the proper handling of hazardous materials, the City will not furnish or supply or permit the furnishing or supplying of any service or facility in connection with the operation of the Utility System free of charge to any person, firm or corporation, public or private, other than the City, so long as any Utility System Revenue Bond remain outstanding.

**15.3 Pledged ULID Assessments.** The City will collect promptly all Pledged ULID Assessments (if any). Such assessments may be used to pay the principal or interest on any Parity Obligations without those assessments being particularly allocated to the payment of principal or interest on any particular series of Parity Obligations.

**15.4 Restrictions on Sale or Disposition of Utility System.** The City will not sell, lease, mortgage or in any manner encumber or dispose of all the property of the Utility System unless provision is made for payment into the Utility System Bond Fund of a sum sufficient to pay the principal of and interest on all then-outstanding Utility System Revenue Bonds. Furthermore, it will not sell, lease, mortgage, or in any manner encumber or dispose of any part of the property of the

Utility System that is used, useful and material to its operation, unless provision is made (a) for the replacement of that portion of the Utility System, or (b) for the payment into the Utility System Bond Fund of an amount bearing the same ratio to the principal amount of then-outstanding Utility System Revenue Bonds as the amount of Net Revenue available for debt service derived during the preceding 12 month period from that portion of the Utility System bears to the total Net Revenue available for debt service for such bonds for the same period. Any such money so paid into the Utility System Bond Fund shall be used to retire Utility System Revenue Bonds at the earliest possible date and may be invested to the same extent and in the same manner as provided for the investment of money in the Utility System Bond Fund until so used.

**15.5 Books and Accounts.** The City will keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the Utility System. Upon request of any Registered Owner of a Utility System Revenue Bond, it also will furnish a copy of the most recently completed audit of the City's accounts by the State Auditor of Washington, or such other audit as is authorized by law in lieu thereof.

**15.6 Insurance.** The City will at all times carry fire and such other forms of insurance on such of the buildings, equipment, facilities and properties of the Utility System as are ordinarily carried on such buildings, equipment, facilities, and properties by utilities engaged in the operation of similar utility systems to the full insurable value thereof, and also will carry adequate public liability insurance (and war risk insurance if available at reasonable rates) at all times. The premiums on such insurance policies are declared to be a normal part of Operations and Maintenance Costs.

**Section 16. Future Parity Obligations.** The City reserves the right to issue Future Parity Obligations if the Parity Conditions are met and complied with at the time of the issuance of those Future Parity Obligations. If Future Parity Obligations are being issued for the sole purpose of refunding Utility System Revenue Bonds (including costs of issuance and providing for the Reserve Requirement, if any), no Parity Certificate is required if, as result of the issuance of those Future Parity Obligations, (a) the Annual Debt Service on the Future Parity Obligations to be issued is not increased by more than \$5,000 over the Annual Debt Service for that year of the Utility System Revenue Bonds being refunded, and (b) the final maturity of the Future Parity Obligations will not extend more than one year longer than the Utility System Revenue Bonds being refunded.

Nothing in this ordinance shall prevent the City from issuing Future Parity Obligations to refund maturing Utility System Revenue Bonds then outstanding, money for the payment of which is not otherwise available. Furthermore, nothing in this ordinance shall prevent the City from issuing revenue bonds or other obligations that are a charge upon the Gross Revenue of the Utility System subordinate to the payments required to be made into the Utility System Bond Fund for the payment of the Utility System Revenue Bonds, or from pledging the payment of ULID assessments into a bond redemption fund created for the payment of the principal of and interest on those subordinate bonds or obligations if such ULID assessments are levied for improvements constructed from the proceeds of those subordinate bonds.

**Section 17. Separate Utility Systems.** The City may create, acquire, construct, finance, own and operate one or more additional systems for water supply, sewer service, water, sewage or stormwater transmission, treatment or other commodity or utility service. The revenue of that Separate System, and any ULID assessments payable solely with respect to improvements to a Separate System, shall not be included in the Gross Revenue and may be pledged to the payment of revenue obligations issued to purchase, construct, condemn or otherwise acquire or expand the Separate System. The Net



Revenue may be pledged to the payment of any obligations issued to finance a Separate System only on a basis subordinate to the lien of the Parity Obligations.

**Section 18. Contract Resource Obligations.** The City may at any time enter into one or more Contract Resource Obligations for the acquisition, from facilities to be constructed or improved by the use of payments under such Contract Resource Obligations, of any water, wastewater, stormwater, solid waste or other utility commodity or service relating to the Utility System, as follows:

18.1 The City may determine that, and may agree under a Contract Resource Obligation to provide that, all payments under that Contract Resource Obligation (including payments prior to the time that water, wastewater, stormwater, solid waste or other utility service is being provided, or during a suspension or after termination of supply or service) shall be an Operations and Maintenance Cost if the payments required to be made under the Contract Resource Obligation are not subject to acceleration and the following additional requirements are met at the time such a Contract Resource Obligation is entered into:

(a) No event of default has occurred and is continuing under the terms of any debt obligation of the City in respect of the Waterworks Utility; and

(b) There is on file a certificate of an independent licensed professional engineer or engineering firm stating that in his, her or its professional opinion: (i) the payments to be made by the City in connection with the Contract Resource Obligation are reasonable for the supply or transmission rendered; (ii) the source of any new supply, and any facilities to be constructed to provide the supply or transmission, are sound from a water or other commodity supply or transmission planning standpoint, are technically and economically feasible in accordance with prudent utility practice, and are likely to provide supply, transmission or service no later than a date set forth in the independent licensed professional engineer's certification; and (iii) the Net Revenue of the Utility System will be sufficient to meet the Coverage Requirement for each of the five Fiscal Years following the Fiscal Year in which the Contract Resource Obligation is incurred, where the calculation of Net Revenue (A) takes into account the adjustments to Gross Revenue permitted in the Parity Certificate, and (B) adjusts the Operations and Maintenance Costs by the independent licensed professional engineer's estimate of the payments to be made in accordance with the Contract Resource Obligation.

18.2 Nothing in this section shall prevent the City from entering into other agreements for the acquisition of water supply, transmission or other commodity or service relating to the Waterworks Utility from existing facilities and from treating those payments as an Operations and Maintenance Cost.

18.3 Nothing in this section shall prevent the City from entering into other agreements for the acquisition of water, wastewater, stormwater, solid waste or other utility commodity or service relating to the Utility System from facilities to be constructed and from agreeing to make payments with respect thereto, such payments constituting a lien and charge on the Net Revenue subordinate to that of the Parity Obligations.

**Section 19. Rate Stabilization Fund.** There has been previously created and established in the City treasury a Rate Stabilization Fund. The City may at any time, as determined by the Finance Director and consistent with Section 13 of this ordinance, deposit into the Rate Stabilization Fund amounts from Gross Revenue and any other money received by the Utility System and available to be used for that purpose, excluding principal proceeds of any Future Parity Obligations. No deposit shall

be made into the Rate Stabilization Fund to the extent that such deposit would prevent the City from meeting the Coverage Requirement in the relevant calendar year.

The Finance Director may at any time, upon authorization by ordinance withdraw money from the Rate Stabilization Fund for inclusion in the Net Revenue for the current fiscal year of the Utility System, except that the total amount withdrawn from the Rate Stabilization Fund in any calendar year may not exceed the total debt service of the Utility System Revenue Bonds in that year. Such deposits or withdrawals may be made up to and including the date 90 days after the end of the calendar year for which the deposit or withdrawal will be reflected in the calculation of Net Revenue.

Earnings from investments in the Rate Stabilization Fund shall be deposited in that fund and shall not be included as Net Revenue unless and until withdrawn from that fund as provided in this section. The Finance Director may also deposit earnings from investments in the Rate Stabilization Fund into any System fund as authorized by ordinance, and such deposits shall be included as Net Revenue in the year of deposit.

## **Section 20. Federal Tax Covenants.**

**20.1 Preservation of Tax Exemption for Interest on the Bonds.** The City covenants that, for any Series of the Bonds that are designated as tax-exempt Bonds, it will take all actions necessary to prevent interest on the tax-exempt Bonds from being included in gross income for federal income tax purposes, and it will neither take any action nor make or permit any use of proceeds of the tax-exempt Bonds or other funds of the City treated as proceeds of the tax-exempt Bonds at any time during the term of the tax-exempt Bonds which will cause interest on the tax-exempt Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code is applicable to the tax-exempt Bonds, take all actions necessary to comply (or to be treated as having complied) with that requirement in connection with the tax-exempt Bonds, including the calculation and payment of any penalties that the City may elect to pay (if any) as an alternative to calculating rebatable arbitrage, and the payment of any other penalties if required under Section 148 of the Code to prevent interest on the tax-exempt Bonds from being included in gross income for federal income tax purposes.

**20.2 Post-Issuance Compliance.** The Finance Director is authorized and directed to review and update the City's written procedures to facilitate compliance by the City with the covenants in this ordinance and the applicable requirements of the Code that must be satisfied after the Issue Date to prevent interest on the Bonds from being included in gross income for federal tax purposes.

**Section 21. Amendatory and Supplemental Ordinances.** This ordinance may not be supplemented or amended in any respect subsequent to the Issue Date for so long as the Bonds remain outstanding, except in accordance with and subject to the provisions of this section.

**21.1 Amendments Without Bond Owner Consent.** From time to time and at any time, without the consent of or notice to any owners of any Parity Obligation, the City may supplement or amend this ordinance and the related bond documents for any of the purposes set forth in this subsection. Any such supplement or amendment may be passed, adopted, or otherwise approved by the City without requiring the consent of the registered owners of any Parity Obligations, but may become effective only upon receipt by the City of an opinion of Bond Counsel stating that such supplement or amendment is authorized or permitted by this ordinance and, upon the effective date thereof, will be valid and binding upon the City in accordance with its terms, and will not adversely

affect the exclusion from gross income for federal income tax purposes of interest on the affected Parity Obligations (if applicable). The types of supplements and amendments permitted under this subsection are as follows:

(a) To cure any formal defect, omission, inconsistency, or ambiguity in a manner not adverse to the owners of any Parity Obligations;

(b) To impose upon the Bond Registrar (with its consent) for the benefit of the owners of Parity Obligations any additional rights, remedies, powers, authority, security, liabilities, or duties which may lawfully be granted, conferred, or imposed and which are not contrary to or inconsistent with this ordinance as theretofore in effect;

(c) To add to the covenants and agreements of, and limitations and restrictions upon, the City in the bond documents, other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this ordinance as theretofore in effect;

(d) To confirm, as further assurance, any pledge under (and the subjection to any claim, lien, or pledge created or to be created by) this ordinance on any other money, securities, or funds;

(e) To alter the Authorized Denominations for any Parity Obligations and to make correlative amendments and modifications regarding exchangeability of the Bonds for different authorized denominations, redemptions of portions of Bonds in particular authorized denominations, and similar amendments and modifications of a technical nature;

(f) To comply with any future federal law or interpretation to preserve the exclusion of the interest on any Parity Obligations issued and sold as tax-exempt Bonds from gross income for federal income tax purposes, or to preserve the entitlement of the City to receive applicable Tax Credit Subsidy Payments in respect of any series of Parity Obligations issued and sold as Tax Credit Subsidy Bonds;

(g) To add to the covenants and agreements of (or limitations and restrictions upon) the City, such additional or alternative covenants, agreements, limitations, or restrictions to be observed by the City as the City may determine are necessary or convenient to accommodate a provider of Qualified Insurance or provider of a Reserve Security and which are not materially adverse to the owners of any Parity Obligations; and

(h) To modify, alter, amend or supplement the ordinance and related bond documents in any other respect which is not materially adverse to the owners of the Parity Obligations and which does not involve a change described in subsection 21.3.

**21.2 Amendments With Bond Owner Consent.** With the consent of registered owners of not less than 60% in aggregate principal amount of the Parity Obligations then outstanding, the City may pass, adopt, or otherwise approve any supplement or amendment (other than amendments requiring unanimous consent as set forth in subsection 21.3) that is deemed necessary or desirable by the City for the purpose of modifying, altering, amending, supplementing, or rescinding, in any particular, any of the terms or provisions contained in any ordinance authorizing the issuance of Parity

Obligations or the related bond documents other than those terms and provisions described in subsection 21.3.

**21.3 Amendments Prohibited Except Upon Unanimous Consent.** Unless approved in writing by or on behalf of the registered owner of each Parity Obligation then outstanding, nothing contained in this section shall permit, or be construed as permitting (a) a change in the times, amounts, or currency of payment of the principal of or interest on any outstanding Parity Obligation, (b) a reduction in the principal amount or redemption price of any outstanding Parity Obligation, (c) a change in the method of determining the rate of interest thereon (other than a conversion to a new interest rate made in accordance with the applicable ordinance and related documents), (d) a preference or priority of any Parity Obligation over any other Parity Obligation, or (e) a reduction in the percentage of the aggregate principal amount of the then-outstanding Parity Obligations required to effect a change under subsection 21.2.

**21.4 Notice to Bond Owners.** If at any time the City passes, adopts, or otherwise approves a supplement or amendment for any of the purposes of subsection 21.2 or 21.3, the Bond Registrar shall cause notice of the proposed supplement or amendment to be given by first class mail (a) to all registered owners of the then outstanding Parity Obligations, (b) to each provider of a Reserve Security (if any), and (c) to each Rating Agency then providing a rating on the Parity Obligations. Such notice shall briefly set forth the nature of the proposed supplement or amendment and shall state that a copy is on file at the office of the City Clerk for inspection by all owners of the then outstanding Parity Obligations.

**21.5 Effective Date; Consents.** Any supplement or amendment, substantially as described in the notice mailed pursuant to subsection 21.4, may go into effect upon delivery to the Bond Registrar of (a) the required consents, in writing, of registered owners of the Parity Obligations, and (b) an opinion of Bond Counsel stating that such supplement or amendment is authorized or permitted by this ordinance and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any tax-exempt Bonds. Upon the effective date thereof, such supplement or amendment will be valid and binding upon the City in accordance with its terms.

**21.6 Effect of Amendment.** If registered owners of not less than the percentage of Parity Obligations required by this section shall have consented to and approved such a supplement or amendment, no owner of any Parity Obligation shall have any right (a) to object to the passage, adoption, or approval of such supplement or amendment, (b) to object to any of the terms and provisions contained therein or the operation thereof, (c) in any manner to question the propriety of the passage, adoption, or approval thereof, (d) to enjoin or restrain the City from passing, adopting, or otherwise approving the same, or (e) to enjoin or restrain the City, any authorized official thereof, or the Bond Registrar from taking any action pursuant to the provisions thereof. It shall not be necessary to obtain approval of the particular form of any proposed supplement, but it shall be sufficient if the consent shall approve the substance thereof. Upon the effective date of any supplement or amendment, this ordinance or the related bond document shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City and all owners of Parity Obligations then outstanding shall thereafter be determined, exercised, and enforced in accordance with and subject in all respects to such modifications and amendments. All the terms and conditions of any such supplement or amendment shall be deemed to be a part of this ordinance and the bond documents for any and all purposes.

## **Section 22. Defaults and Remedies.**

**22.1 Events of Default.** Each of the following shall constitute an Event of Default with respect to the Bond:

(a) If a default is made in the payment of the principal of or interest on the Bond when the same shall become due and payable; or

(b) If the City defaults in the observance and performance of any other of the covenants, conditions and agreements on the part of the City set forth in this ordinance or in the Bonds, and such default or defaults have continued for a period of six months after the City has received from the Registered Owners of the Bonds (or a Bondowners' Trustee for the outstanding Parity Obligations, as defined in subsection 22.3) a written notice specifying and demanding the cure of such default. However, if the default in the observance and performance of any other of the covenants, conditions and agreements is one which cannot be completely remedied within the six months after written notice has been given, it shall not be an Event of Default with respect to the Bonds as long as the City has taken active steps within the six months after written notice has been given to remedy the default and is diligently pursuing such remedy.

**22.2 No Acceleration.** Nothing contained in this section shall, in any event or under any circumstance, be deemed to authorize the acceleration of the maturity of principal on the Parity Obligations, and the remedy of acceleration is expressly denied to the registered owners of the Parity Obligations under any circumstances including, without limitation, upon the occurrence and continuance of an Event of Default.

**22.3 Limitations on Remedies.** The City reserves the right to issue Future Parity Obligations limiting the remedies of the Owners of Parity Obligations (including the Bonds) upon an Event of Default, as follows:

(a) **Bondowners' Trustee.** If an Event of Default has occurred and has not been remedied, a bondowners' trustee (the "Bondowners' Trustee") may be appointed by the registered owners of 25% or more in principal amount of the then outstanding Parity Obligations, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners of the Parity Obligations or by their attorneys-in-fact duly authorized and delivered to such Bond Owners' Trustee, notification thereof being given to the City. That appointment shall become effective immediately upon acceptance thereof by the Bond Owners' Trustee. Any Bond Owners' Trustee appointed under the provisions of this subsection shall be a bank or trust company organized under the laws of the State of Washington or the State of New York or a national banking association. The bank or trust company acting as Bond Owners' Trustee may be removed at any time, and a successor Bond Owners' Trustee may be appointed, by the registered owners of a majority in principal amount of the Parity Obligations, by an instrument or concurrent instruments in writing signed and acknowledged by such registered owners of the Parity Obligations or by their attorneys-in-fact duly authorized. The Bond Owners' Trustee may require such security and indemnity as may be reasonable against the costs, expenses and liabilities that may be incurred in the performance of its duties. If, in the sole judgment of the Bond Owners' Trustee, any Event of Default is cured and the Bond Owners' Trustee furnishes to the City a certificate so stating, that Event of Default shall be conclusively deemed to be cured and the City, the Bond Owners' Trustee and the registered owners of the Parity Obligations shall be restored to the same rights and position which they would have held if no Event of Default had occurred. The Bond Owners' Trustee appointed in the manner herein provided, and each successor thereto, is declared

to be a trustee for the registered owners of all the Parity Obligations and is empowered to exercise all the rights and powers herein conferred on the Bond Owners' Trustee.

(b) **Suits at Law or in Equity.** Upon the occurrence of an Event of Default and during the continuance thereof, the Bond Owners' Trustee may, and upon the written request of the registered owners of not less than 25% in principal amount of the Parity Obligations outstanding shall, take such steps and institute such suits, actions or other proceedings, all as it may deem appropriate for the protection and enforcement of the rights of the registered owners of the Parity Obligations, to collect any amounts due and owing to or from the City, or to obtain other appropriate relief, and may enforce the specific performance of any covenant, agreement or condition contained in this ordinance or set forth in any of the Parity Obligations. Any action, suit or other proceedings instituted by the Bond Owners' Trustee hereunder shall be brought in its name as the Bond Owners' Trustee and all such rights of action upon or under any of the Parity Obligations or the provisions of this ordinance may be enforced by the Bond Owners' Trustee without the possession of any of those Parity Obligations and without the production of the same at any trial or proceedings relative thereto except where otherwise required by law. Any such suit, action or proceeding instituted by the Bond Owners' Trustee shall be brought for the ratable benefit of all of the registered owners of those Parity Obligations, subject to the provisions of this ordinance. The respective registered owners of the Parity Obligations, by taking and holding the same, shall be conclusively deemed irrevocably to appoint the Bond Owners' Trustee the true and lawful trustee of the respective registered owners of those Parity Obligations, with authority to institute any such action, suit or proceeding; to receive as trustee and deposit in trust any sums becoming distributable on account of those Parity Obligations; to execute any paper or documents for the receipt of money; and to do all acts with respect thereto that the registered owner himself or herself might have done in person. Nothing herein shall be deemed to authorize or empower the Bond Owners' Trustee to consent to accept or adopt, on behalf of any owner of the Parity Obligations, any plan of reorganization or adjustment affecting the Parity Obligations or any right of any registered owner thereof, or to authorize or empower the Bond Owners' Trustee to vote the claims of the registered owners thereof in any receivership, insolvency, liquidation, bankruptcy, reorganization or other proceeding to which the City is a party.

(c) **Application of Money Collected by Bond Owners' Trustee.** Any money collected by the Bond Owners' Trustee at any time pursuant to this section shall be applied in the following order of priority: (i) to the payment of the charges, expenses, advances and compensation of the Bond Owners' Trustee and the charges, expenses, counsel fees, disbursements and compensation of its agents and attorneys; (ii) to the payment to the persons entitled thereto of all installments of interest then due on the Parity Obligations in the order of maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference; and (iii) to the payment to the persons entitled thereto of the unpaid principal amounts of any Parity Obligations which shall have become due (other than Parity Obligations previously called for redemption for the payment of which money is held pursuant to the provisions of the applicable bond documents), whether at maturity or by proceedings for redemption or otherwise, in the order of their due dates and, if the amount available shall not be sufficient to pay in full the principal amounts due on the same date, then to the payment thereof ratably, according to the principal amounts due thereon to the persons entitled thereto, without any discrimination or preference.

(d) **Duties and Obligations of Bond Owners' Trustee.** The Bond Owners' Trustee shall not be liable except for the performance of such duties as are specifically set forth herein.

During an Event of Default, the Bond Owners' Trustee shall exercise such of the rights and powers vested in it hereby, and shall use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. The Bond Owners' Trustee shall have no liability for any act or omission to act hereunder except for the Bond Owners' Trustee's own negligent action, its own negligent failure to act or its own willful misconduct. The duties and obligations of the Bond Owners' Trustee shall be determined solely by the express provisions of this ordinance, and no implied powers, duties or obligations of the Bond Owners' Trustee shall be read into this ordinance. The Bond Owners' Trustee shall not be required to expend or risk its own funds or otherwise incur individual liability in the performance of any of its duties or in the exercise of any of its rights or powers as the Bond Owners' Trustee, except as may result from its own negligent action, its own negligent failure to act or its own willful misconduct. The Bond Owners' Trustee shall not be bound to recognize any person as a registered owner of any Parity Obligation until his or her title thereto, if disputed, has been established to its reasonable satisfaction. The Bond Owners' Trustee may consult with counsel and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel. The Bond Owners' Trustee shall not be answerable for any neglect or default of any person, firm or corporation employed and selected by it with reasonable care.

(e) **Suits by Individual Parity Obligation Owners Restricted.** No owner of any one or more Parity Obligations shall have any right to institute any action, suit or proceeding at law or in equity for the enforcement of same unless: (i) an Event of Default has happened and is continuing; (ii) a Bond Owners' Trustee has been appointed; (iii) such owner previously shall have given to the Bond Owners' Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted; (iv) the registered owners of 25% in principal amount of the Parity Obligations, after the occurrence of such Event of Default, have made written request of the Bond Owners' Trustee and have afforded the Bond Owners' Trustee a reasonable opportunity to institute such suit, action or proceeding; (v) there have been offered to the Bond Owners' Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby; and (vi) the Bond Owners' Trustee has refused or neglected to comply with such request within a reasonable time. No owner of any Parity Obligation shall have any right in any manner whatever by his or her action to affect or impair the obligation of the City to pay from Net Revenue the principal of and interest on such Parity Obligations to the respective registered owners thereof when due.

## **Section 23. Sale and Delivery of the Bonds; Official Statement; Continuing Disclosure.**

23.1 **Manner of Sale of Bonds; Delivery of Bonds.** The Designated Representative is authorized to sell each Series of Bonds by negotiated sale, direct placement or competitive sale, based on the assessment of the Designated Representative of market conditions, in consultation with appropriate City officials, staff, municipal advisors, Bond Counsel and other advisors. In determining the method of sale and accepting the Bond Sale Terms, the Designated Representative shall take into account those factors that, in the judgment of the Designated Representative, may be expected to result in the lowest true interest cost to the City.

23.2 **Procedure for Competitive Sale.** If the Designated Representative determines that a Series of Bonds are to be sold by competitive sale, the Designated Representative shall cause the preparation of an official notice of bond sale setting forth bid parameters that the Designated Representative deems appropriate consistent with this ordinance. Bids for the purchase of the Bonds shall be received at such time or place and by such means as the Designated Representative directs.

On the date and time established for the receipt of bids, the Designated Representative (or the designee of the Designated Representative) shall accept bids and shall cause the bids to be mathematically verified. The Designated Representative is authorized to award, on behalf of the City, the winning bid and to accept the winning bidder's offer to purchase the Bonds with such adjustments to the aggregate principal amount and principal amount per maturity as the Designated Representative deems appropriate consistent with the terms of this ordinance. The Designated Representative may reject any or all bids submitted and may waive any formality or irregularity in any bid or in the bidding process if the Designated Representative deems it to be in the City's best interest to do so. If all bids are rejected, the Bonds may be sold pursuant to negotiated sale or in any manner provided by law as the Designated Representative determines is in the best interest of the City, within the parameters set forth in this ordinance.

**23.3 Procedure for Negotiated Sale or Direct Placement.** If the Designated Representative determines that a Series of Bonds is to be sold by negotiated sale or direct placement, the Designated Representative shall select one or more Purchasers with which to negotiate such sale. The Bond Purchase Contract shall set forth the Bond Sale Terms. The Designated Representative is authorized to execute and deliver the Bond Purchase Contract on behalf of the City, so long as the terms provided therein are consistent with the terms of this ordinance.

**23.4 Preparation, Execution and Delivery of the Bonds.** The Bonds will be prepared at City expense and will be delivered to the Purchaser in accordance with the Bond Purchase Contract, together with the approving legal opinion of Bond Counsel regarding the Bonds.

**23.5 Official Statement.**

(a) **Preliminary Official Statement.** In connection with a public offering of the Bonds, the Designated Representative and other appropriate City officials are directed to cause the preparation of and review the form of a preliminary Official Statement in connection with each sale of one or more Series to the public. For the sole purpose of an underwriter's compliance with paragraph (b)(1) of Rule 15c2-12, if applicable, the Designated Representative is authorized to deem that preliminary Official Statement final as of its date, except for the omission of information permitted to be omitted by Rule 15c2-12. The City approves the distribution to potential purchasers of the Bonds of a preliminary Official Statement that has been deemed final in accordance with this subsection.

(b) **Final Official Statement.** In connection with a public offering of the Bonds, the City approves the preparation of a final Official Statement for the Bonds to be sold to the public in the form of the preliminary Official Statement that has been deemed final in accordance with subsection (a), with such modifications and amendments as the Designated Representative deems necessary or desirable, and further authorizes the Designated Representative to execute and deliver such final Official Statement to the Purchaser, if required under Rule 15c2-12. The City authorizes and approves the distribution by the Purchaser of the final Official Statement so executed and delivered to purchasers and potential purchasers of the Bonds.

**23.6 Agreement to Provide Continuing Disclosure.** In connection with a public offering of the Bonds, and if necessary to meet the requirements of paragraph (b)(5) of Rule 15c2-12, as applicable to the Purchaser acting as a participating underwriter for the Bonds, the Designated Representative is authorized to execute a written undertaking to provide continuing disclosure for the benefit of holders of the Bonds in a form acceptable to the Designated Representative.



**Section 24. General Authorization and Ratification.** The Designated Representative and other appropriate officers of the City are severally authorized to take such actions and to execute such documents as in their judgment may be necessary or desirable to carry out the transactions contemplated in connection with this ordinance, and to do everything necessary for the prompt delivery of the Bond to the Purchaser (including approving additional terms, conditions or covenants as set forth in Exhibit B) and for the proper application, use and investment of the proceeds of the Bonds. All actions taken prior to the effective date of this ordinance in furtherance of the purposes described in this ordinance and not inconsistent with the terms of this ordinance are ratified and confirmed in all respects.

**Section 25. Severability.** The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

**Section 26. Effective Date.** This ordinance shall take effect and be in force from and after its passage and five days following its publication as provided by law.

PASSED by the City Council of the City of Anacortes, Washington, at a regular open public meeting thereof on the 4th day of April, 2022, and signed in authentication of its passage this 4th day of April, 2022.

\_\_\_\_\_  
Mayor

AUTHENTICATED:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Bond Counsel

## **Exhibit A**

### **Parity Conditions**

The City may issue Future Parity Obligations only for lawful Utility System purposes and only if the following conditions are met and complied with at the time of the issuance of those Future Parity Obligations:

(a) There must be no deficiency in the Utility System Bond Fund and there must be no event of default, nor any event or condition that with notice and the passage of time would constitute an event of default, which shall have occurred and be continuing, nor may the issuance of those Future Parity Obligations in and of itself cause an event of default or an event or condition which with notice and the passage of time would constitute an event of default.

(b) The Future Parity Obligation Ordinance must provide that all Pledged ULID Assessments is to be paid directly into the Parity Obligation Debt Service Account.

(c) The Future Parity Obligation Ordinance must provide for the payment of the principal of and interest on such Parity Obligations out of the Parity Obligation Debt Service Account.

(d) If the Future Parity Obligations are to be secured by a Parity Reserve Account, the Future Parity Obligation Ordinance must provide for the deposit into the Reserve Account of any combination of Future Parity Obligation proceeds, Reserve Securities and other legally available money, in the amounts and at the times necessary to satisfy the Reserve Requirement for those Future Parity Obligations.

(e) There must be on file with the City a Parity Certificate, prepared by either:

(i) The City Finance Director, demonstrating that the Coverage Requirement was satisfied during any twelve consecutive calendar months out of the immediately preceding 24 calendar months, assuming that (A) those Future Parity Obligations were outstanding and that the debt service payable on those Future Parity Obligations in that 12 month period was equal to the Average Annual Debt Service on those Future Parity Obligations, and (B) any Parity Obligations to be refunded by those Future Parity Obligations are not outstanding; or

(ii) An Independent Utility Consultant, which may take into account the adjustments described below, stating that in his or her opinion (which opinion and underlying assumptions shall be set forth in the certificate), the Coverage Requirement will be satisfied (assuming that those Future Parity Obligations are outstanding and any Parity Obligations to be refunded by those Future Parity Obligations are not outstanding) (A) in each of the calendar years for the five calendar years next following the earlier of: (I) the year in which those Future Parity Obligations are issued (or, if interest is capitalized, the end of the period during which the interest on those Future Parity Obligations is fully capitalized), (II) the date on which substantially all new facilities or improvements financed in substantial part by those Future Parity Obligations are expected to commence operations; and (B) in the calendar year in which those Future Parity Obligations are issued and any subsequent year prior to but not included in the years for which certification is provided. In determining whether the City is able to comply with the terms of the Parity Conditions, the coverage certificate required above may take into account the following adjustments to the historical Net Revenue:

A. Any change in Utility System rates and charges that has taken place or been adopted by ordinance or contract may be reflected, including any changes in the rates charged to any Significant Wholesale Customer in effect and being charged, or expected to be charged in accordance with a program of specific levels or increase (or decreases) in overall revenue.

B. Revenue from customers added or projected to be added to the Utility System after the relevant 12 month period, including revenue from new Significant Wholesale Customers, may be adjusted to reflect one year's Net Revenue allocable to those new customers.

C. A full year's revenue may be included on a *pro forma* basis from any customer being served but who has not been receiving service for the full period of operation used as a basis for the certificate.

D. Actual or reasonably anticipated changes in the Operations and Maintenance Costs subsequent to the relevant 12 month period shall be added or deducted, as is applicable.

E. Net Revenue allocable to any person, firm, corporation or municipal corporation under any executed contract for water or other utility service, which revenue was not included in the historical Net Revenue, may be included in Net Revenue.

F. Transfers into or out of the Rate Stabilization Fund may be taken into account, and those amounts may be added to or deducted from Net Revenues, as applicable.

## **Exhibit B**

### **Parameters for the Bond Sale Terms**

- (a) **Principal Amount.** The Bonds may be issued in one or more Series. The aggregate principal amount of the Bonds shall not exceed \$8,100,000, and the refunding portion shall not exceed the amount necessary to carry out the refunding and pay the costs of issuance and administrative costs of carrying out the Refunding Plan.
- (b) **Date or Dates.** Each Series of the Bonds shall be dated its Issue Date, which date may not be later than December 31, 2022.
- (c) **Denominations, Name, etc.** Each Series of the Bonds shall be issued in Authorized Denominations and shall be numbered in such manner and shall bear such name and additional designation as deemed necessary or appropriate by the Designated Representative.
- (d) **Interest Rate(s).** Each Series of the Bonds shall bear interest at fixed or variable rates from the Issue Date or from the most recent date for which interest has been paid or duly provided for, whichever is later, as set forth in the Bond Purchase Contract for that Series. One or more rates of interest may be fixed for a Series of the Bonds. The rate of interest for any Bond may not exceed 5.00% and the true interest cost to the City may not exceed 4.00%.
- (e) **Payment Dates.** Interest shall be payable at least semiannually on dates acceptable to the Designated Representative as set forth in a Bond Purchase Contract. Principal payments shall commence on a date acceptable to the Designated Representative and shall be payable at maturity or in mandatory redemption installments on dates acceptable to the Designated Representative as set forth in a Bond Purchase Contract.
- (f) **Final Maturity.** The final maturity shall not extend beyond December 1, 2032.
- (g) **Redemption Rights.** The Designated Representative may approve in a Bond Purchase Contract provisions for the optional and mandatory redemption of Bonds, subject to the following:
- (1) Optional Redemption. The Designated Representative may designate any Bond as subject to optional redemption prior to its maturity. Any Bond

that is subject to optional redemption prior to maturity must be callable on at least one or more date(s) occurring not more than 10½ years after the Issue Date, consistent with Section 8.1.

(2) Mandatory Redemption. The Designated Representative may designate any Bond as a Term Bond, subject to mandatory redemption prior to its maturity on the dates and in principal payment amounts set forth in mandatory redemption payments, consistent with Section 8.2.

(h) **Price.**

The purchase price for any Series of the Bonds may not be less than 98% or more than 125% of the stated principal amount of that Series.

(j) **Other Terms and Conditions.**

(1) Satisfaction of Parity Conditions. The Designated Representative must determine that the Parity Conditions have been met or satisfied as of the Issue Date for each Series.

(2) Refunding Conditions. The Designated Representative must find that:

(a) The net present value savings that will be effected (as measured by the difference between the principal and interest cost over the life of the Bonds allocable to the Refunding Plan and the principal and interest cost over the life of the Refunded Bonds, but for such refunding) shall be at least equal to 2.00%. In making such determination, the Designated Representative shall give consideration to the fixed maturities of the Bonds and the Refunded Bonds, the costs of issuance of the Bonds and the known earned income from the investment of the proceeds of the Bonds pending redemption of the Refunded Bonds.

(b) The Refunding Plan will provide sufficient funds to discharge and satisfy the obligations of the City under the Refunded Bond Ordinance. In making such determination, the Designated Representative may rely upon a certification or verification by a nationally recognized independent certified public accounting firm or a certification provided by the City's municipal advisor.

4) Additional Credit Enhancement, Terms, Conditions and Agreements. The Designated

Representative may determine whether it is in the City's best interest to provide for a Reserve Requirement that is greater than zero, for bond insurance or other credit enhancement, or for the purchase of a Reserve Security; and may accept such additional terms, conditions, and covenants as he or she may determine are in the best interests of the City, consistent with this ordinance.



## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 7.b.

**Agenda Item Title:** City Council Ward Redistricting

**Staff Contact(s):** STEVE HOGLUND

|                                                    |                           |
|----------------------------------------------------|---------------------------|
| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
| STEVE HOGLUND                                      | Staff Report              |

**Item Summary:** State law requires public entities with elected officials review district voting boundaries (referred to as redistricting) after each federal census. The City of Anacortes due date for redistricting is November 15, 2022. The City contracted with Sammamish Data to conduct the data review against the City's existing Ward boundaries, and found the existing boundaries meet the intent of the law, in that each ward "be as nearly equal as possible".

**Budget Impact:**  
NA

**Previous Action:** NA

**Recommended Motion:** NA

**Alternative Actions:** NA

**Attachments (listed in order presented):**

1. City Council Ward Redistricting 2022
2. City of Anacortes Current Wards in 2020 Census
3. RCW 29A.76.010 redistricting requirements

# City Council Ward Redistricting

- State Law requires review of existing voter districts after each federal census
- Washington State Law that drives our requirement is RCW 29A.76.010

RCW 29A.76.010(1):

It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

- The most recent Census and data publication was impacted by Covid
  - The RCW was updated to require entities not holding elections in 2022 to have redistricting completed by November 15, 2022



# City Council Ward Redistricting

## All City requirements listed in the RCW

### RCW 29A.76.010

**Counties, municipal corporations, and special purpose districts. (Effective until January 1, 2023.)**

\*\*\* CHANGE IN 2022 \*\*\* (SEE 5583.SL) \*\*\*

(1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW 44.05.030 shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) Except as otherwise provided in chapter 301, Laws of 2018, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts:

(a) By December 31, 2021, if the jurisdiction is scheduled to elect members to its governing body in 2022; or

(b) By November 15, 2022, if the jurisdiction is not scheduled to elect members to its governing body in 2022.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. Before adopting the plan, the municipal corporation, county, or district must:

(a) Publish the draft plan and hold a meeting, including notice and comment, within ten days of publishing the draft plan and at least one week before adopting the plan; and

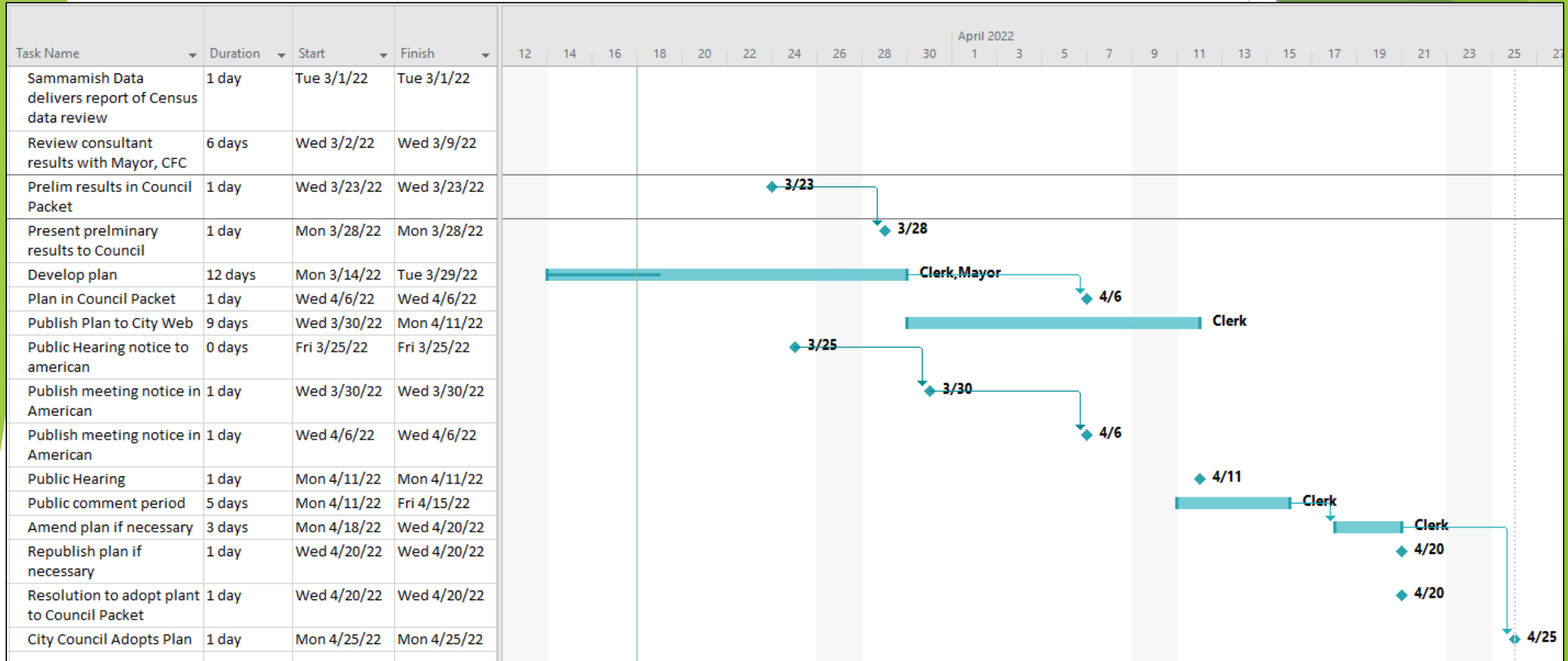
(b) Amend the draft as necessary after receiving public comments and resubmit any amended draft plan for additional written public comment at least one week before adopting the plan.

# City Council Ward Redistricting

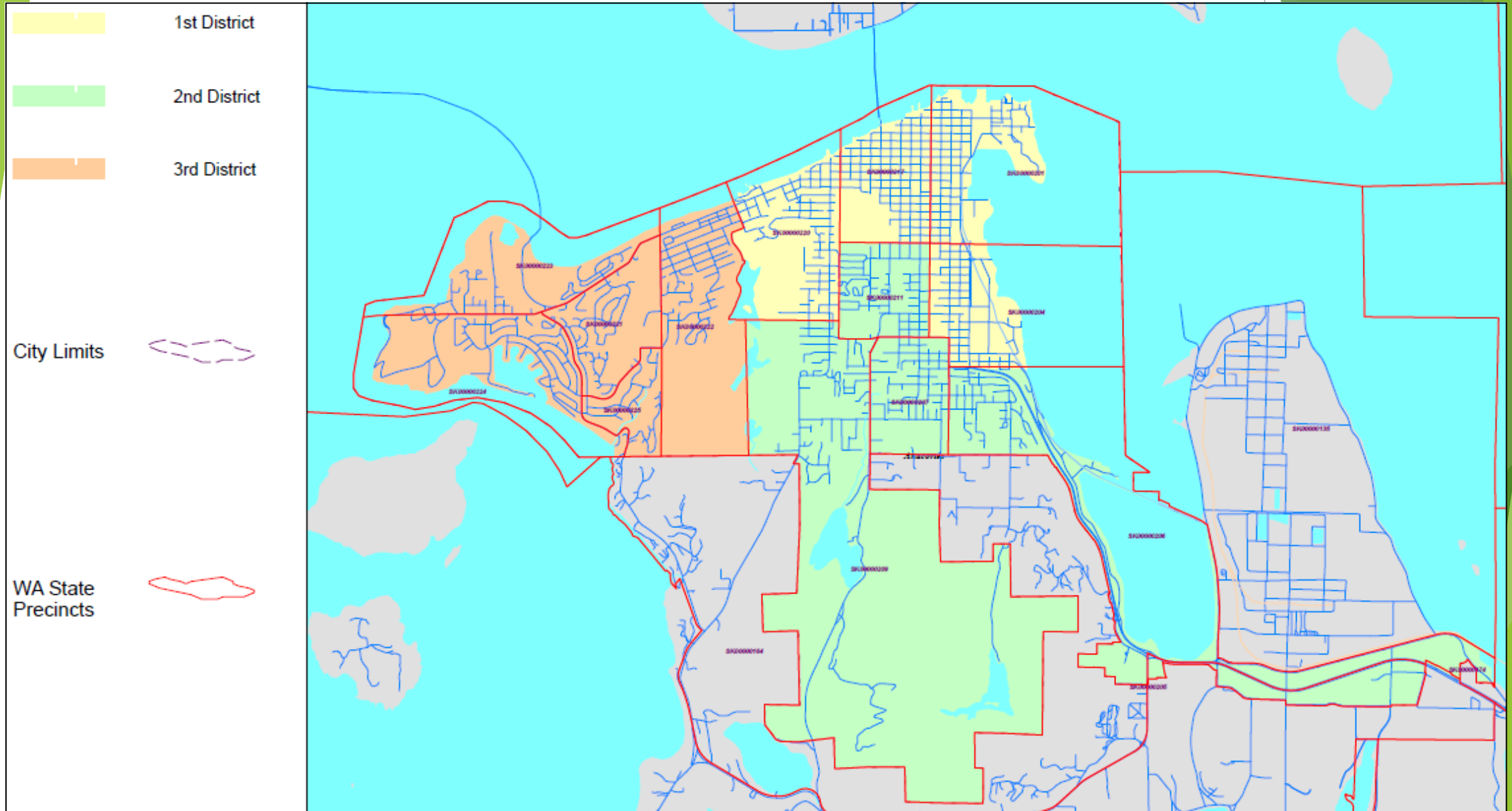
The Statute (RCW 29A.76.010) requires the City a number of things be done on for the redistricting plan, such as:

- Ensuring each ward be as nearly equal as possible
- As compact as possible
- Be geographically contiguous
- Population data not used for favoring or disfavoring any racial group or political party
- Coincide with natural boundaries and preserve existing communities
- Ensure full and reasonable public notice
- Ensure publication of the plan with public notice of the public meeting
- Allow public comment on the published plan
- Amend the plan as necessary after receiving public comment

# Redistricting Schedule



# Anacortes Council Wards



# Census Data Results

The City contracted with Sammamish Data to evaluate the impact of the Census data to the City's wards.



They have a strong background and strong references, including the Port of Anacortes.

- Established in 1979, they've done over 1,000 redistricting plans for a wide variety of governmental entities.

The contract was not to exceed \$2,000

- Actual cost was \$300

# Census Data Results

The statute requires wards to be as nearly equal as possible. It was suggested that within 10% variance across wards could be considered equal.

- The census showed a City population of 17,637
- Divided by 3 Wards gives an ideal population of 5,879 for each ward
- The existing ward boundaries show a variances of:
  1. .19% for Ward 1
  2. .15% for Ward 2
  3. .03% for Ward 3

## *City of Anacortes District Summary Report*

| Director<br>District<br>Number | Ideal<br>Population | Total<br>Population | Deviation<br>from<br>Ideal | %<br>Deviation<br>from<br>Ideal | White<br>Population | Hispanic<br>Origin<br>(of any race) | Non White<br>& Mixed |
|--------------------------------|---------------------|---------------------|----------------------------|---------------------------------|---------------------|-------------------------------------|----------------------|
| 1st                            | 5,879               | 5,868               | -11                        | -0.19                           | 4,846               | 449                                 | 1,022                |
| 2nd                            | 5,879               | 5,888               | 9                          | 0.15                            | 5,096               | 316                                 | 792                  |
| 3rd                            | 5,879               | 5,881               | 2                          | 0.03                            | 5,071               | 304                                 | 810                  |
| Totals.....                    |                     | <u>17,637</u>       | <u>0</u>                   |                                 | <u>15,013</u>       | <u>1,069</u>                        | <u>2,624</u>         |



# Census Data Results

The data below is from the Federal Data published from the Census.

This shows Race data by existing Wards:

City of Anacortes

Summary of Population by Race and Hispanic Origin

| District Number | Total Population | Total Population by Race |        |                        |                                   |       |                                            |            | Two or More Races | Hispanic Origin (of any race) |
|-----------------|------------------|--------------------------|--------|------------------------|-----------------------------------|-------|--------------------------------------------|------------|-------------------|-------------------------------|
|                 |                  | Single Race              |        |                        |                                   |       |                                            |            |                   |                               |
|                 |                  | Total                    | White  | Black African American | American Indian and Alaska Native | Asian | Native Hawaiian and Other Pacific Islander | Other Race | Total             |                               |
| 1st             | 5,868            | 5,264                    | 4,846  | 35                     | 77                                | 143   | 17                                         | 146        | 604               | 449                           |
| 2nd             | 5,888            | 5,447                    | 5,096  | 33                     | 51                                | 130   | 11                                         | 126        | 441               | 316                           |
| 3rd             | 5,881            | 5,398                    | 5,071  | 32                     | 33                                | 146   | 14                                         | 102        | 483               | 304                           |
| Totals.....     | 17,637           | 16,109                   | 15,013 | 100                    | 161                               | 419   | 42                                         | 374        | 1,528             | 1,069                         |

# Census Data Conclusion

- Next steps:
  - Develop and publish the City's redistricting plan.
  - Move forward with next steps as outlined in the statute and schedule reviewed earlier.
  - If Council agrees, the redistricting plan will be developed based on existing boundaries, and no changes will be proposed.
- Questions?



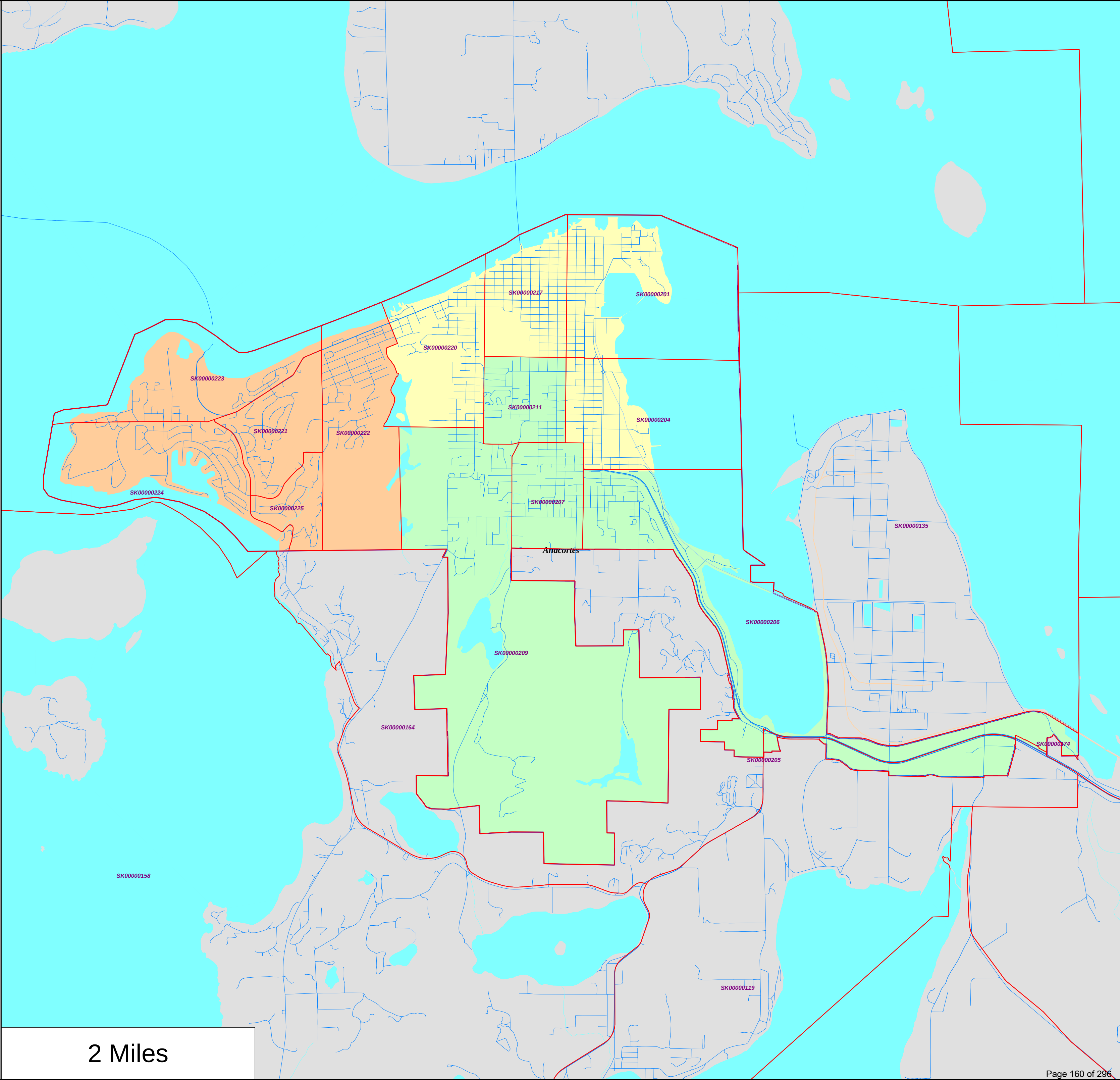
City of Anacortes - Current  
Wards as Approximated  
Using Census 2020  
Geography

- 1st District
- 2nd District
- 3rd District

City Limits



WA State  
Precincts



2 Miles

**City of Anacortes**  
**District Summary Report**

| Director<br>District<br>Number | Ideal<br>Population | Total<br>Population | Deviation<br>from<br>Ideal | %<br>Deviation<br>from<br>Ideal | White<br>Population | Hispanic<br>Origin<br>(of any race) | Non White<br>& Mixed |
|--------------------------------|---------------------|---------------------|----------------------------|---------------------------------|---------------------|-------------------------------------|----------------------|
| 1st                            | 5,879               | 5,868               | -11                        | -0.19                           | 4,846               | 449                                 | 1,022                |
| 2nd                            | 5,879               | 5,888               | 9                          | 0.15                            | 5,096               | 316                                 | 792                  |
| 3rd                            | 5,879               | 5,881               | 2                          | 0.03                            | 5,071               | 304                                 | 810                  |
| Totals.....                    |                     | <u>17,637</u>       | <u>0</u>                   |                                 | <u>15,013</u>       | <u>1,069</u>                        | <u>2,624</u>         |

**Summary of Population by Race and Hispanic Origin**

| District<br>Number | Total<br>Population | Total Population by Race |        |                              |                                         |       |                                                     |               | Two or More<br>Races | Hispanic<br>Origin<br>(of any race) |
|--------------------|---------------------|--------------------------|--------|------------------------------|-----------------------------------------|-------|-----------------------------------------------------|---------------|----------------------|-------------------------------------|
|                    |                     | Single Race              |        |                              |                                         |       |                                                     |               |                      |                                     |
|                    |                     | Total                    | White  | Black<br>African<br>American | American<br>Indian and<br>Alaska Native | Asian | Native<br>Hawaiian and<br>Other Pacific<br>Islander | Other<br>Race | Total                |                                     |
| 1st                | 5,868               | 5,264                    | 4,846  | 35                           | 77                                      | 143   | 17                                                  | 146           | 604                  | 449                                 |
| 2nd                | 5,888               | 5,447                    | 5,096  | 33                           | 51                                      | 130   | 11                                                  | 126           | 441                  | 316                                 |
| 3rd                | 5,881               | 5,398                    | 5,071  | 32                           | 33                                      | 146   | 14                                                  | 102           | 483                  | 304                                 |
| Totals.....        | 17,637              | 16,109                   | 15,013 | 100                          | 161                                     | 419   | 42                                                  | 374           | 1,528                | 1,069                               |

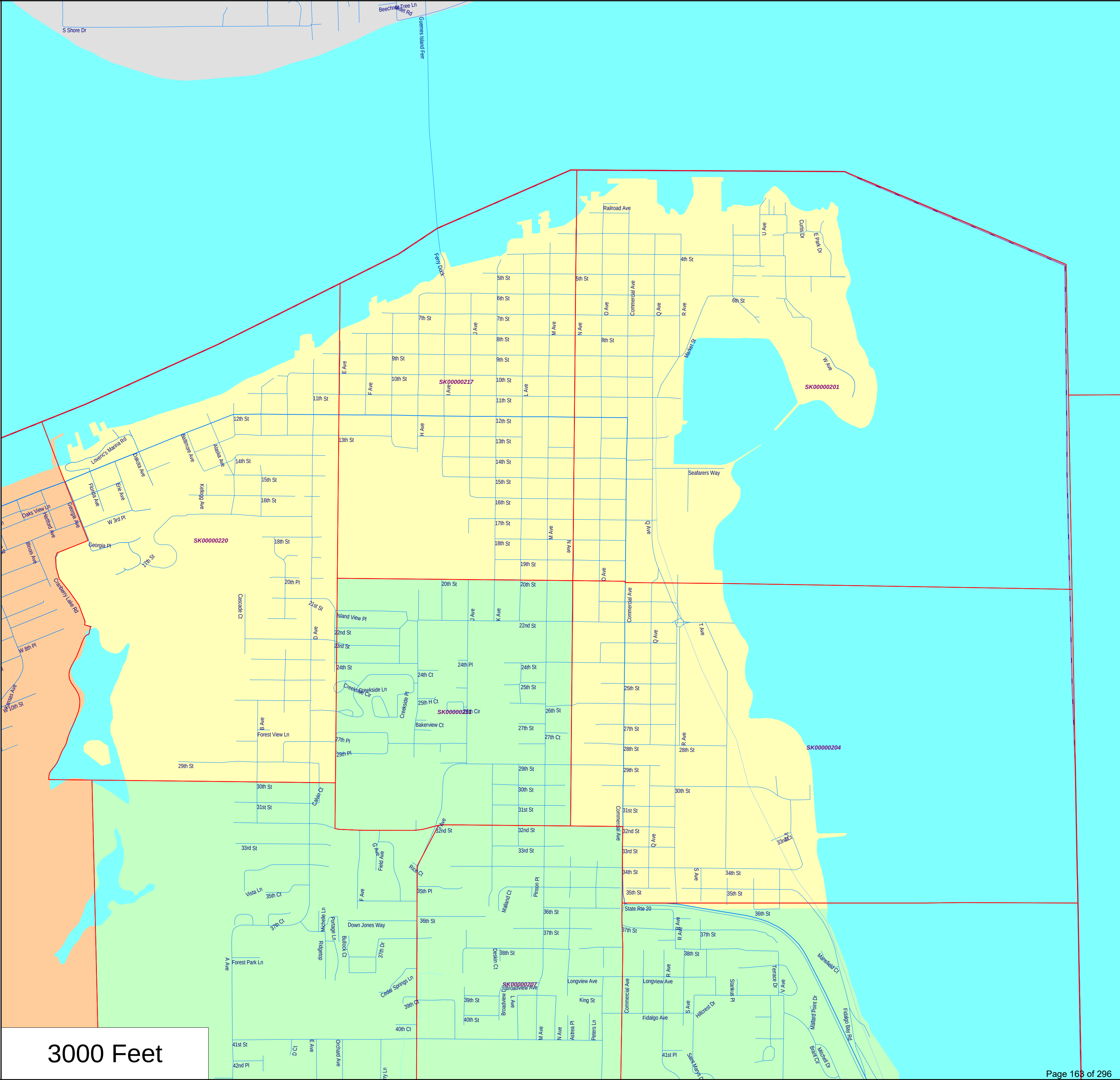
City of Anacortes - Current  
Wards as Approximated  
Using Census 2020  
Geography

- 1st District
- 2nd District
- 3rd District

City Limits

WA State  
Precincts

3000 Feet





City of Anacortes - Current  
Wards as Approximated  
Using Census 2020  
Geography

- 1st District
- 2nd District
- 3rd District

City Limits

WA State  
Precincts

2 Miles

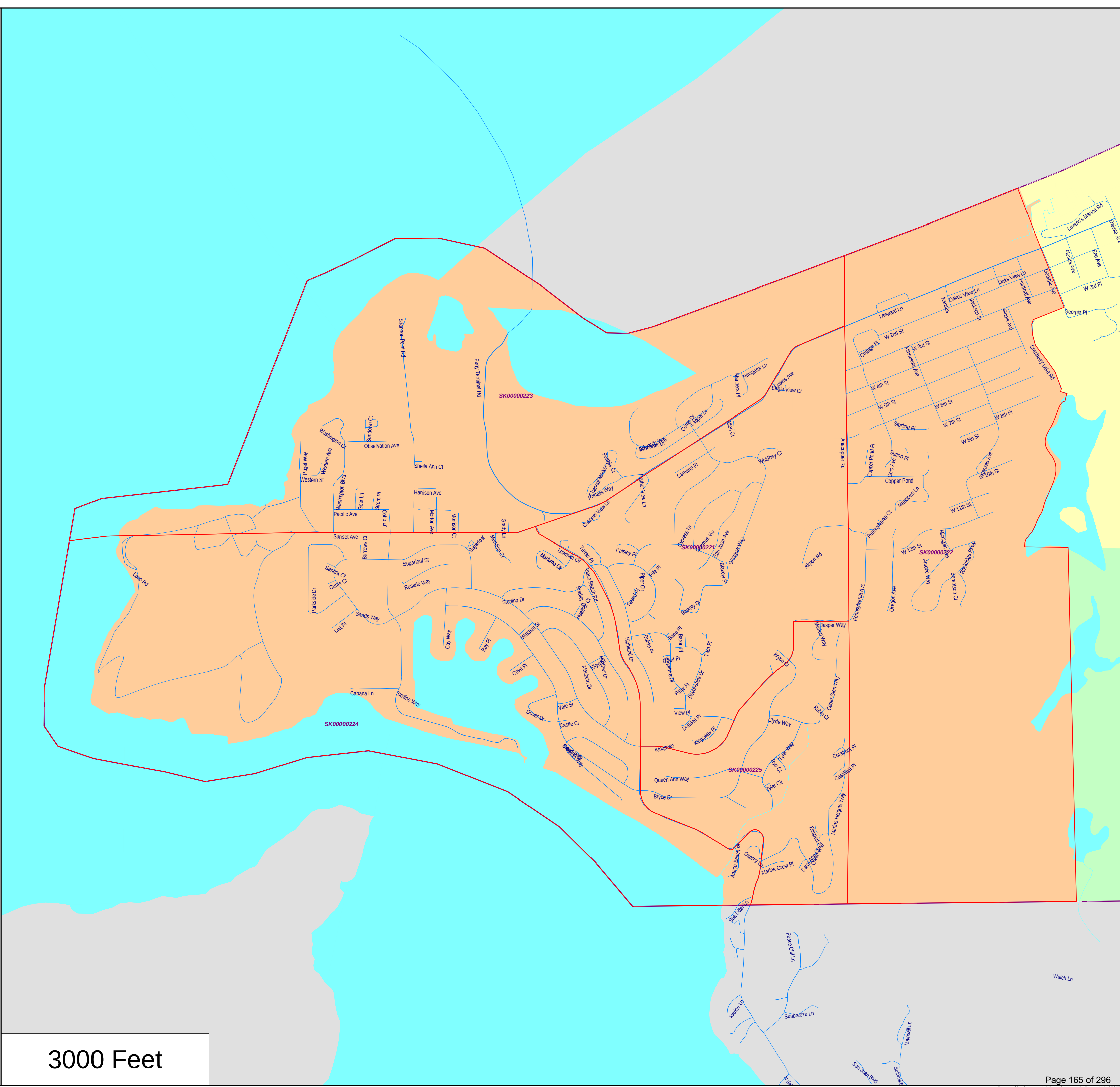
City of Anacortes - Current  
Wards as Approximated  
Using Census 2020  
Geography

- 1st District
- 2nd District
- 3rd District

City Limits

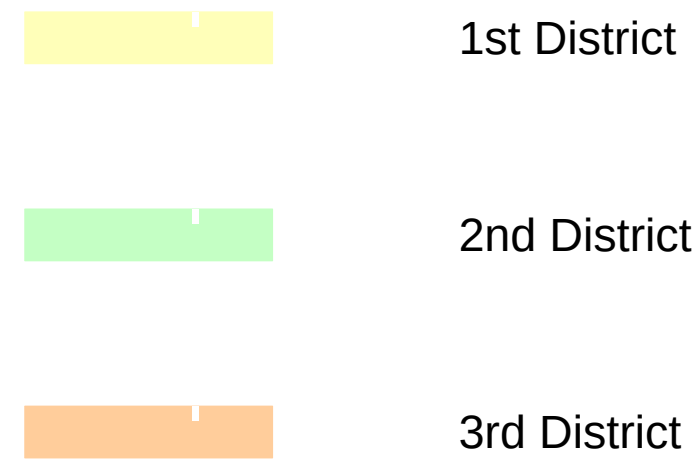
WA State  
Precincts

3000 Feet



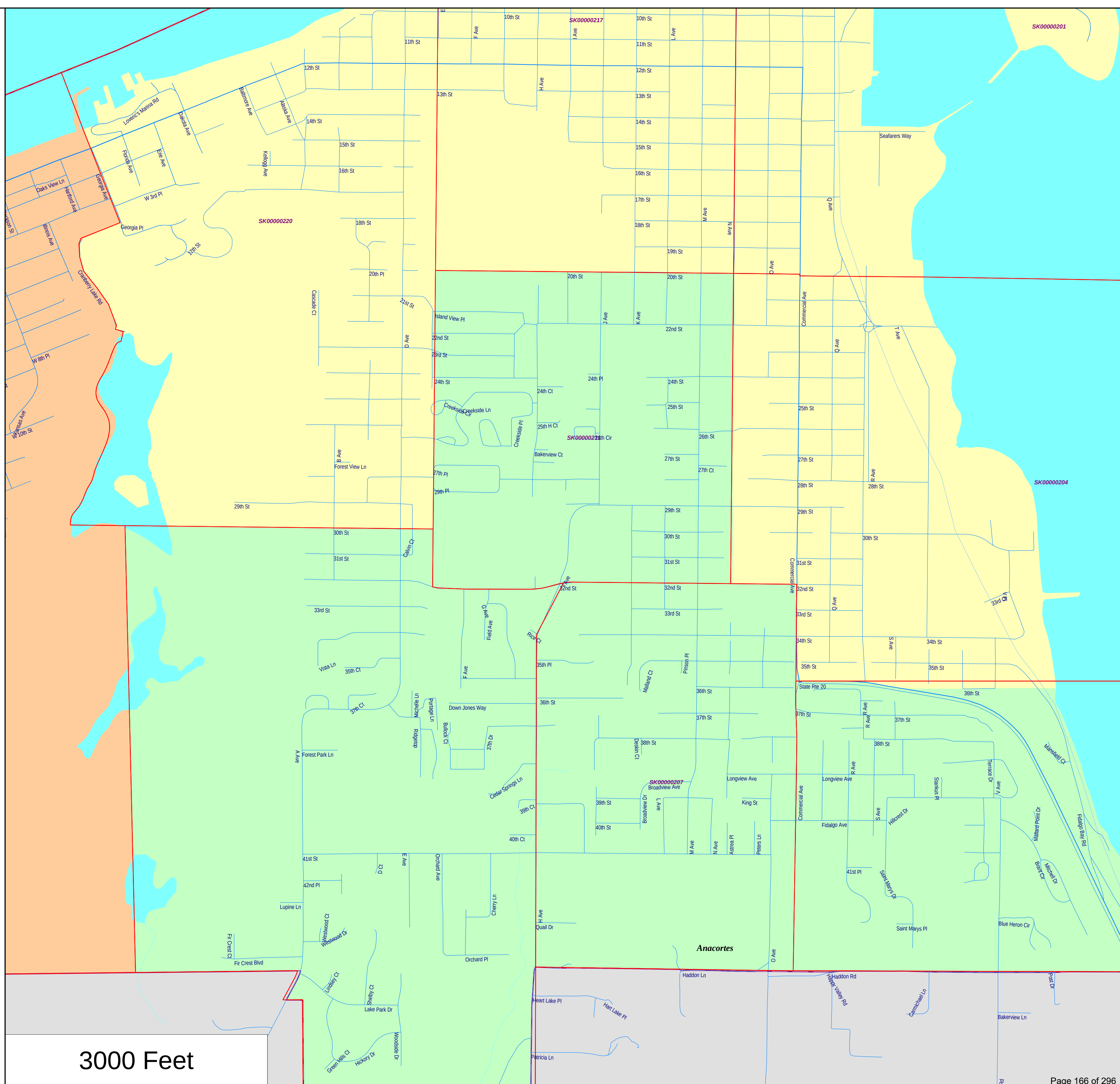


## City of Anacortes - Current Wards as Approximated Using Census 2020 Geography



## City Limits

## WA State Precincts



**RCW 29A.76.010****Counties, municipal corporations, and special purpose districts. (Effective until January 1, 2023.)**

\*\*\* CHANGE IN 2022 \*\*\* (SEE **5583.SL**) \*\*\*

(1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW **44.05.030** shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) Except as otherwise provided in chapter 301, Laws of 2018, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts:

(a) By December 31, 2021, if the jurisdiction is scheduled to elect members to its governing body in 2022; or

(b) By November 15, 2022, if the jurisdiction is not scheduled to elect members to its governing body in 2022.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. Before adopting the plan, the municipal corporation, county, or district must:

(a) Publish the draft plan and hold a meeting, including notice and comment, within ten days of publishing the draft plan and at least one week before adopting the plan; and

(b) Amend the draft as necessary after receiving public comments and resubmit any amended draft plan for additional written public comment at least one week before adopting the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within fifteen days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set



out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district.

[ **2021 c 173 § 1**; **2018 c 301 § 8**; **2011 c 349 § 26**; **2003 c 111 § 1901**. Prior: **1984 c 13 § 4**; **1983 c 16 § 15**; **1982 c 2 § 27**. Formerly RCW **29.70.100**.]

## NOTES:

**Effective date—2021 c 173 §§ 1 and 3:** "Sections 1 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 3, 2021]." [ **2021 c 173 § 7**.]

**Expiration date—2021 c 173 §§ 1 and 3:** "Sections 1 and 3 of this act expire January 1, 2023." [ **2021 c 173 § 5**.]

**Findings—Short title—2018 c 301:** See notes following RCW **36.32.051**.

**Effective date—2011 c 349:** See note following RCW **29A.04.255**.

**Contingent effective date—1983 c 16:** See RCW **44.05.900**.

## RCW **29A.76.010**

### **Counties, municipal corporations, and special purpose districts. (*Effective January 1, 2023.*)**

\*\*\* CHANGE IN 2022 \*\*\* (SEE **5583.SL**) \*\*\*

(1) It is the responsibility of each county, municipal corporation, and special purpose district with a governing body comprised of internal director, council, or commissioner districts not based on statutorily required land ownership criteria to periodically redistrict its governmental unit, based on population information from the most recent federal decennial census.

(2) Within forty-five days after receipt of federal decennial census information applicable to a specific local area, the commission established in RCW **44.05.030** shall forward the census information to each municipal corporation, county, and district charged with redistricting under this section.

(3) Except as otherwise provided in chapter 301, Laws of 2018, no later than November 15th of each year ending in one, the governing body of the municipal corporation, county, or district shall prepare a plan for redistricting its internal or director districts.

(4) The plan shall be consistent with the following criteria:

(a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.

(b) Each district shall be as compact as possible.

(c) Each district shall consist of geographically contiguous area.

(d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.

(e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

(5) During the adoption of its plan, the municipal corporation, county, or district shall ensure that full and reasonable public notice of its actions is provided. Before adopting the plan, the municipal corporation, county, or district must:

(a) Publish the draft plan and hold a meeting, including notice and comment, within ten days of publishing the draft plan and at least one week before adopting the plan; and

(b) Amend the draft as necessary after receiving public comments and resubmit any amended draft plan for additional written public comment at least one week before adopting the plan.

(6)(a) Any registered voter residing in an area affected by the redistricting plan may request review of the adopted local plan by the superior court of the county in which he or she resides, within fifteen days of the plan's adoption. Any request for review must specify the reason or reasons alleged why the local plan is not consistent with the applicable redistricting criteria. The municipal corporation, county, or district may be joined as respondent. The superior court shall thereupon review the challenged plan for compliance with the applicable redistricting criteria set out in subsection (4) of this section.

(b) If the superior court finds the plan to be consistent with the requirements of this section, the plan shall take effect immediately.

(c) If the superior court determines the plan does not meet the requirements of this section, in whole or in part, it shall remand the plan for further or corrective action within a specified and reasonable time period.

(d) If the superior court finds that any request for review is frivolous or has been filed solely for purposes of harassment or delay, it may impose appropriate sanctions on the party requesting review, including payment of attorneys' fees and costs to the respondent municipal corporation, county, or district.

[ **2021 c 173 § 2**; **2018 c 301 § 8**; **2011 c 349 § 26**; **2003 c 111 § 1901**. Prior: **1984 c 13 § 4**; **1983 c 16 § 15**; **1982 c 2 § 27**. Formerly RCW **29.70.100**.]

## NOTES:

**Effective date—2021 c 173 §§ 2 and 4:** "Sections 2 and 4 of this act take effect January 1, 2023." [ **2021 c 173 § 6**.]

**Findings—Short title—2018 c 301:** See notes following RCW **36.32.051**.

**Effective date—2011 c 349:** See note following RCW **29A.04.255**.

**Contingent effective date—1983 c 16:** See RCW **44.05.900**.



## City Council Agenda Bill

**Meeting Date:** March 28, 2022

**Agenda Item:** 7.c.

**Agenda Item Title:** Contract Award: 32nd Street and M Avenue Intersection Improvements Project #19-002-TRN-003

**Staff Contact(s):** FRED BUCKENMEYER

|                                                    |                           |
|----------------------------------------------------|---------------------------|
| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
| TIFFANY MATSON                                     | Contract Award            |
| TIFFANY MATSON                                     |                           |

**Item Summary:** City staff seeks City Council consent to award a contract in the amount of \$889,822.50 to Colacurcio Brothers, Inc. to perform the 32nd Street and M Avenue Intersection Improvements Project. The project provides for the construction of a single lane roundabout at the intersection of 32nd Street and M Avenue. Work will include traffic control; clearing; grubbing; grading; roadway excavation; installing an enclosed storm drainage system; placing gravel base and crushed surfacing top course; hot mix asphalt paving; concrete curb and gutters, curb ramps, and sidewalk, landscaping; a rectangular rapid flashing beacon system (RRFB) across each leg of the roundabout; pavement markings and signing; and other related items of work.

### **Background:**

1. **History:** In 2020, there was a call for Safety Projects from the Washington State Department of Transportation. An application was submitted identifying four intersections that met the grant requirements.
  - Commercial Avenue from 11th Street to 13th Street.
  - Commercial Avenue and 22nd Street.
  - Commercial Avenue and 32nd Street
  - M Avenue and 32nd Street.

The Washington State Department of Transportation selected M Avenue and 32nd Street from the list and awarded the City of Anacortes a \$1,050,000.00 grant. Additionally, the City received an additional federal funds for obligating grant funds by September 15, 2020. These funds will cover the entire cost of construction without any matching funds by the City of Anacortes.

## 2. Key Terms:

- Contract is for a fixed price of \$889,822.50.
- Physical completion shall be achieved within forty (40) Working days from the first day following the Notice to Proceed.

3. Competitive Bidding: On December 22, 2021 the City [solicited bids](#) for the subject project and on January 27, 2022 a bid opening was conducted and 6 bids were received. The apparent lowest bidder was determined to be nonresponsive because they did not provide a required form with their bid proposal. Colacurcio Brothers, Inc. was determined to be the lowest responsive, responsible bidder. The Engineer's Estimate for this project was \$1,200,000.

## **Budget Impact:**

|                            |                                     |
|----------------------------|-------------------------------------|
| Contractor                 | Colacurcio Brothers, Inc.           |
| Contract Amount            | \$889,822.50                        |
| Earmarked Funds            | WSDOT Safety Grant - \$1,480,265.00 |
| BARS #                     | 105.720.595.30.63                   |
| Budget Amendment Required? | No                                  |
| Start Date                 | Notice to Proceed                   |
| End Date                   | 40 working days                     |

**Previous Action:** Contract [19-002-TRN-001](#) for project design was fully executed on 6/5/19. [Modification 01](#) to extend the Period of Performance was executed on 10/25/19. [Modification 02](#) was approved at the [1/25/21](#) Council meeting. [Modification 03](#) was approved at the [12/13/21](#) meeting.

**Recommended Motion:** I move that City Council authorize the Mayor to sign contract 19-002-TRN-003 with Colacurcio Brothers, Inc. in the amount of \$889,822.50 to perform the 32nd Street and M Avenue Intersection Improvements Project.

**Alternative Actions:** Not approve the contract.

## **Attachments (listed in order presented):**

1. 32nd & M - Certified Bid Tab
2. 19-002-TRN-003
3. Colacurcio Brothers Construction Company, Inc.

|            |                                                                          |          |      |                     |               |                                                                                                    |               |                                                                                    |               |                                                                                   |               |                                                                               |               |                                                                                       |              |                                                                       |               |                                                  |                                                                |  |
|------------|--------------------------------------------------------------------------|----------|------|---------------------|---------------|----------------------------------------------------------------------------------------------------|---------------|------------------------------------------------------------------------------------|---------------|-----------------------------------------------------------------------------------|---------------|-------------------------------------------------------------------------------|---------------|---------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------|---------------|--------------------------------------------------|----------------------------------------------------------------|--|
| Called By: | City of Anacortes                                                        |          |      | Engineer's Estimate |               | 1<br>Oceanside Construction, Inc,<br>1511 Mt Baker Highway<br>Bellingham, WA 98226<br>360-933-1728 |               | 2<br>Colacurcio Brothers<br>3287 H Street Road<br>Blaine, WA 98230<br>360-332-4044 |               | 3<br>SRV Construction, Inc.<br>PO Box 5074<br>Anacortes, WA 98221<br>360-675-7100 |               | 4<br>Tiger Consturction LTD<br>PO Box 368<br>Everson, WA 98247<br>360966-7252 |               | 5<br>Larry Brown Construction<br>PO Box 29960<br>Bellingham, WA 98228<br>360-966-7206 |              | 6<br>WRS<br>2380 Grandview Road<br>Ferndale, WA 98248<br>360-366-3303 |               | Average<br>(Excluding<br>Engineer's<br>Estimate) | Standard<br>Deviation<br>(Excluding<br>Engineer's<br>Estimate) |  |
| For:       | 32nd Street/M Avenue Roundabout<br>904 6th Street<br>Anacortes, WA 98221 |          |      |                     |               |                                                                                                    |               |                                                                                    |               |                                                                                   |               |                                                                               |               |                                                                                       |              |                                                                       |               |                                                  |                                                                |  |
|            | CERTIFIED TABULATION OF BIDS RECEIVED                                    |          |      |                     |               |                                                                                                    |               |                                                                                    |               |                                                                                   |               |                                                                               |               |                                                                                       |              |                                                                       |               |                                                  |                                                                |  |
| By:        | Luis Ponce, P.E.                                                         |          |      |                     |               |                                                                                                    |               |                                                                                    |               |                                                                                   |               |                                                                               |               |                                                                                       |              |                                                                       |               |                                                  |                                                                |  |
| Date:      | January 27, 2022                                                         |          |      |                     |               |                                                                                                    |               |                                                                                    |               |                                                                                   |               |                                                                               |               |                                                                                       |              |                                                                       |               |                                                  |                                                                |  |
| Item No.   | Item Description                                                         | Quantity | Unit | Unit Price          | Amount        | Unit Price                                                                                         | Amount        | Unit Price                                                                         | Amount        | Unit Price                                                                        | Amount        | Unit Price                                                                    | Amount        | Unit Price                                                                            | Amount       | Unit Price                                                            | Amount        | Unit Price                                       | Amount                                                         |  |
| 1          | Minor Changes                                                            | 1        | EST  | \$ 15,000.00        | \$ 15,000.00  | \$ 15,000.00                                                                                       | \$ 15,000.00  | \$ 15,000.00                                                                       | \$ 15,000.00  | \$ 15,000.00                                                                      | \$ 15,000.00  | \$ 15,000.00                                                                  | \$ 15,000.00  | \$ 15,000.00                                                                          | \$ 15,000.00 | \$ 15,000.00                                                          | \$ 15,000.00  | \$ 15,000.00                                     | \$ -                                                           |  |
| 2          | Roadway Surveying                                                        | 1        | LS   | \$ 35,000.00        | \$ 35,000.00  | \$ 26,000.00                                                                                       | \$ 26,000.00  | \$ 15,000.00                                                                       | \$ 15,000.00  | \$ 16,250.00                                                                      | \$ 16,250.00  | \$ 15,790.00                                                                  | \$ 15,790.00  | \$ 17,500.00                                                                          | \$ 17,500.00 | \$ 10,000.00                                                          | \$ 10,000.00  | \$ 16,756.67                                     | \$ 4,759.58                                                    |  |
| 3          | ADA Features Survey                                                      | 1        | LS   | \$ 12,000.00        | \$ 12,000.00  | \$ 3,500.00                                                                                        | \$ 3,500.00   | \$ 15,000.00                                                                       | \$ 15,000.00  | \$ 3,400.00                                                                       | \$ 3,400.00   | \$ 3,295.00                                                                   | \$ 3,295.00   | \$ 3,700.00                                                                           | \$ 3,700.00  | \$ 4,000.00                                                           | \$ 4,000.00   | \$ 5,482.50                                      | \$ 4,262.44                                                    |  |
| 4          | Record Drawings (Minimum Bid \$3,000)                                    | 1        | LS   | \$ 3,000.00         | \$ 3,000.00   | \$ 3,000.00                                                                                        | \$ 3,000.00   | \$ 3,000.00                                                                        | \$ 3,000.00   | \$ 3,000.00                                                                       | \$ 3,000.00   | \$ 3,000.00                                                                   | \$ 3,000.00   | \$ 3,000.00                                                                           | \$ 3,000.00  | \$ 5,000.00                                                           | \$ 5,000.00   | \$ 3,333.33                                      | \$ 745.36                                                      |  |
| 5          | SPCC Plan                                                                | 1        | LS   | \$ 1,500.00         | \$ 1,500.00   | \$ 2,500.00                                                                                        | \$ 2,500.00   | \$ 1,000.00                                                                        | \$ 1,000.00   | \$ 250.00                                                                         | \$ 250.00     | \$ 252.00                                                                     | \$ 252.00     | \$ 345.00                                                                             | \$ 345.00    | \$ 600.00                                                             | \$ 600.00     | \$ 824.50                                        | \$ 793.33                                                      |  |
| 6          | Mobilization                                                             | 1        | LS   | \$ 150,000.00       | \$ 150,000.00 | \$ 49,000.00                                                                                       | \$ 49,000.00  | \$ 80,000.00                                                                       | \$ 80,000.00  | \$ 95,000.00                                                                      | \$ 95,000.00  | \$ 73,040.00                                                                  | \$ 73,040.00  | \$ 89,400.00                                                                          | \$ 89,400.00 | \$ 70,000.00                                                          | \$ 70,000.00  | \$ 76,073.33                                     | \$ 14,890.09                                                   |  |
| 7          | Project Temporary Traffic Control                                        | 1        | LS   | \$ 50,000.00        | \$ 50,000.00  | \$ 1,600.00                                                                                        | \$ 1,600.00   | \$ 30,000.00                                                                       | \$ 30,000.00  | \$ 14,000.00                                                                      | \$ 14,000.00  | \$ 15,975.00                                                                  | \$ 15,975.00  | \$ 28,200.00                                                                          | \$ 28,200.00 | \$ 12,000.00                                                          | \$ 12,000.00  | \$ 16,962.50                                     | \$ 9,718.04                                                    |  |
| 8          | Clearing and Grubbing                                                    | 1        | LS   | \$ 60,000.00        | \$ 60,000.00  | \$ 8,000.00                                                                                        | \$ 8,000.00   | \$ 5,000.00                                                                        | \$ 5,000.00   | \$ 4,500.00                                                                       | \$ 4,500.00   | \$ 2,375.00                                                                   | \$ 2,375.00   | \$ 2,520.00                                                                           | \$ 2,520.00  | \$ 3,000.00                                                           | \$ 3,000.00   | \$ 4,232.50                                      | \$ 1,947.51                                                    |  |
| 9          | Removal of Structures and Obstructions                                   | 1        | LS   | \$ 40,000.00        | \$ 40,000.00  | \$ 44,000.00                                                                                       | \$ 44,000.00  | \$ 9,000.00                                                                        | \$ 9,000.00   | \$ 25,000.00                                                                      | \$ 25,000.00  | \$ 32,075.00                                                                  | \$ 32,075.00  | \$ 60,000.00                                                                          | \$ 60,000.00 | \$ 20,000.00                                                          | \$ 20,000.00  | \$ 31,679.17                                     | \$ 16,580.05                                                   |  |
| 10         | Sawcutting                                                               | 700      | LF   | \$ 8.00             | \$ 5,600.00   | \$ 5.00                                                                                            | \$ 3,500.00   | \$ 11.00                                                                           | \$ 7,700.00   | \$ 6.75                                                                           | \$ 4,725.00   | \$ 3.25                                                                       | \$ 2,275.00   | \$ 4.25                                                                               | \$ 2,975.00  | \$ 3.00                                                               | \$ 2,100.00   | \$ 5.54                                          | \$ 2.74                                                        |  |
| 11         | Roadway Excavation, Incl. Haul                                           | 1,500    | CY   | \$ 40.00            | \$ 60,000.00  | \$ 15.00                                                                                           | \$ 22,500.00  | \$ 16.80                                                                           | \$ 25,200.00  | \$ 26.00                                                                          | \$ 39,000.00  | \$ 24.30                                                                      | \$ 36,450.00  | \$ 29.95                                                                              | \$ 44,925.00 | \$ 32.00                                                              | \$ 48,000.00  | \$ 24.01                                         | \$ 6.28                                                        |  |
| 12         | Potholing                                                                | 1        | EA   | \$ 1,000.00         | \$ 1,000.00   | \$ 500.00                                                                                          | \$ 500.00     | \$ 800.00                                                                          | \$ 800.00     | \$ 675.00                                                                         | \$ 675.00     | \$ 479.00                                                                     | \$ 479.00     | \$ 515.00                                                                             | \$ 515.00    | \$ 2,000.00                                                           | \$ 2,000.00   | \$ 828.17                                        | \$ 536.21                                                      |  |
| 13         | Shoring or Extra Excavation Class B                                      | 200      | SF   | \$ 1.00             | \$ 200.00     | \$ 1.00                                                                                            | \$ 200.00     | \$ 1.00                                                                            | \$ 200.00     | \$ 0.10                                                                           | \$ 20.00      | \$ 2.20                                                                       | \$ 440.00     | \$ 0.01                                                                               | \$ 2.00      | \$ 15.00                                                              | \$ 3,000.00   | \$ 3.22                                          | \$ 5.32                                                        |  |
| 14         | Crushed Surfacing Base Course                                            | 1,500    | TON  | \$ 40.00            | \$ 60,000.00  | \$ 30.00                                                                                           | \$ 45,000.00  | \$ 25.00                                                                           | \$ 37,500.00  | \$ 32.00                                                                          | \$ 48,000.00  | \$ 31.30                                                                      | \$ 46,950.00  | \$ 34.10                                                                              | \$ 51,150.00 | \$ 40.00                                                              | \$ 60,000.00  | \$ 32.07                                         | \$ 4.51                                                        |  |
| 15         | Crushed Surfacing Top Course                                             | 550      | TON  | \$ 50.00            | \$ 27,500.00  | \$ 40.00                                                                                           | \$ 22,000.00  | \$ 35.00                                                                           | \$ 19,250.00  | \$ 32.00                                                                          | \$ 17,600.00  | \$ 40.30                                                                      | \$ 22,165.00  | \$ 40.10                                                                              | \$ 22,055.00 | \$ 48.00                                                              | \$ 26,400.00  | \$ 39.23                                         | \$ 4.99                                                        |  |
| 16         | HMA Cl. 1/2 In. PG 64-22                                                 | 900      | TON  | \$ 170.00           | \$ 153,000.00 | \$ 128.00                                                                                          | \$ 115,200.00 | \$ 120.00                                                                          | \$ 108,000.00 | \$ 123.00                                                                         | \$ 110,700.00 | \$ 137.50                                                                     | \$ 123,750.00 | \$ 110.00                                                                             | \$ 99,000.00 | \$ 144.00                                                             | \$ 129,600.00 | \$ 127.08                                        | \$ 11.21                                                       |  |
| 17         | Planing Bituminuous Pavement                                             | 700      | SY   | \$ 10.00            | \$ 7,000.00   | \$ 12.00                                                                                           | \$ 8,400.00   | \$ 11.00                                                                           | \$ 7,700.00   | \$ 9.70                                                                           | \$ 6,790.00   | \$ 11.90                                                                      | \$ 8,330.00   | \$ 12.50                                                                              | \$ 8,750.00  | \$ 8.00                                                               | \$ 5,600.00   | \$ 10.85                                         | \$ 1.56                                                        |  |
| 18         | Cement Concrete Driveway, 4" Thick                                       | 85       | SY   | \$ 150.00           | \$ 12,750.00  | \$ 66.00                                                                                           | \$ 5,610.00   | \$ 82.00                                                                           | \$ 6,970.00   | \$ 76.50                                                                          | \$ 6,502.50   | \$ 67.70                                                                      | \$ 5,754.50   | \$ 67.00                                                                              | \$ 5,695.00  | \$ 135.00                                                             | \$ 11,475.00  | \$ 82.37                                         | \$ 24.23                                                       |  |
| 19         | Textured Cement Concrete Pavement                                        | 80       | CY   | \$ 160.00           | \$ 12,800.00  | \$ 765.00                                                                                          | \$ 61,200.00  | \$ 750.00                                                                          | \$ 60,000.00  | \$ 695.00                                                                         | \$ 55,600.00  | \$ 554.50                                                                     | \$ 44,360.00  | \$ 518.00                                                                             | \$ 41,440.00 | \$ 920.00                                                             | \$ 73,600.00  | \$ 700.42                                        | \$ 135.06                                                      |  |
| 20         | Textured Detectable Edge Treatment                                       | 365      | LF   | \$ 60.00            | \$ 21,900.00  | \$ 17.00                                                                                           | \$ 6,205.00   | \$ 15.00                                                                           | \$ 5,475.00   | \$ 8.40                                                                           | \$ 3,066.00   | \$ 41.30                                                                      | \$ 15,074.50  | \$ 43.65                                                                              | \$ 15,932.25 | \$ 65.00                                                              | \$ 23,725.00  | \$ 31.73                                         | \$ 19.92                                                       |  |
| 21         | Storm Sewer Pipe 12 In. Diam.                                            | 8        | LF   | \$ 150.00           | \$ 1,200.00   | \$ 140.00                                                                                          | \$ 1,120.00   | \$ 120.00                                                                          | \$ 960.00     | \$ 139.00                                                                         | \$ 1,112.00   | \$ 97.20                                                                      | \$ 777.60     | \$ 123.50                                                                             | \$ 988.00    | \$ 200.00                                                             | \$ 1,600.00   | \$ 136.62                                        | \$ 31.72                                                       |  |
| 22         | Storm Sewer Pipe 18 In. Diam.                                            | 42       | LF   | \$ 150.00           | \$ 6,300.00   | \$ 122.00                                                                                          | \$ 5,124.00   | \$ 90.00                                                                           | \$ 3,780.00   | \$ 145.00                                                                         | \$ 6,090.00   | \$ 110.50                                                                     | \$ 4,641.00   | \$ 96.25                                                                              | \$ 4,042.50  | \$ 120.00                                                             | \$ 5,040.00   | \$ 113.96                                        | \$ 18.09                                                       |  |
| 23         | Ductile Iron Storm Sewer Pipe, 12 In. Diam.                              | 70       | LF   | \$ 150.00           | \$ 10,500.00  | \$ 151.00                                                                                          | \$ 10,570.00  | \$ 100.00                                                                          | \$ 7,000.00   | \$ 168.00                                                                         | \$ 11,760.00  | \$ 116.50                                                                     | \$ 8,155.00   | \$ 117.00                                                                             | \$ 8,190.00  | \$ 110.00                                                             | \$ 7,700.00   | \$ 127.08                                        | \$ 24.10                                                       |  |
| 24         | Rectangular Solid Metal Cover                                            | 2        | EA   | \$ 400.00           | \$ 800.00     | \$ 505.00                                                                                          | \$ 1,010.00   | \$ 850.00                                                                          | \$ 1,700.00   | \$ 1,250.00                                                                       | \$ 2,500.00   | \$ 739.50                                                                     | \$ 1,479.00   | \$ 1,000.00                                                                           | \$ 2,000.00  | \$ 700.00                                                             | \$ 1,400.00   | \$ 840.75                                        | \$ 236.55                                                      |  |
| 25         | Circular Metal Frame and Cover                                           | 1        | EA   | \$ 400.00           | \$ 400.00     | \$ 630.00                                                                                          | \$ 630.00     | \$ 1,000.00                                                                        | \$ 1,000.00   | \$ 1,300.00                                                                       | \$ 1,300.00   | \$ 1,270.00                                                                   | \$ 1,270.00   | \$ 1,000.00                                                                           | \$ 1,000.00  | \$ 800.00                                                             | \$ 800.00     | \$ 1,000.00                                      | \$ 237.98                                                      |  |
| 26         | Catch Basin Type 1                                                       | 4        | EA   | \$ 1,700.00         | \$ 6,800.00   | \$ 1,900.00                                                                                        | \$ 7,600.00   | \$ 3,000.00                                                                        | \$ 12,000.00  | \$ 2,050.00                                                                       | \$ 8,200.00   | \$ 1,697.00                                                                   | \$ 6,788.00   | \$ 1,825.00                                                                           | \$ 7,300.00  | \$ 2,100.00                                                           | \$ 8,400.00   | \$ 2,095.33                                      | \$ 426.30                                                      |  |
| 27         | Catch Basin Type 2, 48 In. Diam.                                         | 4        | EA   | \$ 3,700.00         | \$ 14,800.00  | \$ 4,000.00                                                                                        | \$ 16,000.00  | \$ 5,000.00                                                                        | \$ 20,000.00  | \$ 4,900.00                                                                       | \$ 19,600.00  | \$ 3,865.00                                                                   | \$ 15,460.00  | \$ 7,185.00                                                                           | \$ 28,740.00 | \$ 5,000.00                                                           | \$ 20,000.00  | \$ 4,991.67                                      | \$ 1,085.67                                                    |  |
| 28         | Adjust Catch Basin to Finished Grade                                     | 4        | EA   | \$ 1,500.00         | \$ 6,000.00   | \$ 800.00                                                                                          | \$ 3,200.00   | \$ 1,000.00                                                                        | \$ 4,000.00   | \$ 650.00                                                                         | \$ 2,600.00   | \$ 702.50                                                                     | \$ 2,810.00   | \$ 800.00                                                                             | \$ 3,200.00  | \$ 200.00                                                             | \$ 800.00     | \$ 692.08                                        | \$ 245.67                                                      |  |
| 29         | Connection to Existing 8 In. Diam. Water Main                            | 1        | EA   | \$ 5,000.00         | \$ 5,000.00   | \$ 2,000.00                                                                                        | \$ 2,000.00   | \$ 1,000.00                                                                        | \$ 1,000.00   | \$ 2,100.00                                                                       | \$ 2,100.00   | \$ 3,531.00                                                                   | \$ 3,531.00   | \$ 1,715.00                                                                           | \$ 1,715.00  | \$ 4,000.00                                                           | \$ 4,000.00   | \$ 2,391.00                                      | \$ 1,042.27                                                    |  |
| 30         | Adjust Water Valve Box                                                   | 5        | EA   | \$ 800.00           | \$ 4,000.00   | \$ 300.00                                                                                          | \$ 1,500.00   | \$ 700.00                                                                          | \$ 3,500.00   | \$ 700.00                                                                         | \$ 3,500.00   | \$ 557.00                                                                     | \$ 2,785.00   | \$ 650.00                                                                             | \$ 3,250.00  | \$ 200.00                                                             | \$ 1,000.00   | \$ 517.83                                        | \$ 197.42                                                      |  |
| 31         | Resetting Existing Hydrant                                               | 1        | EA   | \$ 3,000.00         | \$ 3,000.00   | \$ 5,000.00                                                                                        | \$ 5,000.00   | \$ 2,000.00                                                                        | \$ 2,000.00   | \$ 3,300.00                                                                       | \$ 3,300.00   | \$ 3,288.00                                                                   | \$ 3,288.00   | \$ 1,815.00                                                                           | \$ 1,815.00  | \$ 2,500.00                                                           | \$ 2,500.00   | \$ 2,983.83                                      | \$ 1,066.58                                                    |  |
| 32         | Water Meter 3/4 In. service                                              | 1        | EA   | \$ 5,000.00         | \$ 5,000.00   | \$ 2,800.00                                                                                        | \$ 2,800.00   | \$ 7,500.00                                                                        | \$ 7,500.00   | \$ 2,775.00                                                                       | \$ 2,775.00   | \$ 2,783.00                                                                   | \$ 2,783.00   | \$ 2,000.00                                                                           | \$ 2,000.00  | \$ 2,500.00                                                           |               |                                                  |                                                                |  |

|                    |                                                                                               |       |    |                     |               |                                                                                                    |              |                                                                                    |              |                                                                                   |              |                                                                               |              |                                                                                       |              |                                                                       |              |                                                  |                                                                |
|--------------------|-----------------------------------------------------------------------------------------------|-------|----|---------------------|---------------|----------------------------------------------------------------------------------------------------|--------------|------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------------------|--------------|-------------------------------------------------------------------------------|--------------|---------------------------------------------------------------------------------------|--------------|-----------------------------------------------------------------------|--------------|--------------------------------------------------|----------------------------------------------------------------|
| Called By:<br>For: | City of Anacortes<br>32nd Street/M Avenue Roundabout<br>904 6th Street<br>Anacortes, WA 98221 |       |    | Engineer's Estimate |               | 1<br>Oceanside Construction, Inc,<br>1511 Mt Baker Highway<br>Bellingham, WA 98226<br>360-933-1728 |              | 2<br>Colacurcio Brothers<br>3287 H Street Road<br>Blaine, WA 98230<br>360-332-4044 |              | 3<br>SRV Construction, Inc.<br>PO Box 5074<br>Anacortes, WA 98221<br>360-675-7100 |              | 4<br>Tiger Consturction LTD<br>PO Box 368<br>Everson, WA 98247<br>360966-7252 |              | 5<br>Larry Brown Construction<br>PO Box 29960<br>Bellingham, WA 98228<br>360-966-7206 |              | 6<br>WRS<br>2380 Grandview Road<br>Ferndale, WA 98248<br>360-366-3303 |              | Average<br>(Excluding<br>Engineer's<br>Estimate) | Standard<br>Deviation<br>(Excluding<br>Engineer's<br>Estimate) |
|                    | CERTIFIED TABULATION OF BIDS RECEIVED                                                         |       |    |                     |               |                                                                                                    |              |                                                                                    |              |                                                                                   |              |                                                                               |              |                                                                                       |              |                                                                       |              |                                                  |                                                                |
| 50                 | Cement Conc. Pedestrian Curb                                                                  | 680   | LF | \$ 50.00            | \$ 34,000.00  | \$ 48.00                                                                                           | \$ 32,640.00 | \$ 50.00                                                                           | \$ 34,000.00 | \$ 55.00                                                                          | \$ 37,400.00 | \$ 33.60                                                                      | \$ 22,848.00 | \$ 32.80                                                                              | \$ 22,304.00 | \$ 50.00                                                              | \$ 34,000.00 | \$ 49.00                                         | \$ 1.00                                                        |
| 51                 | Cement Conc. Driveway Entrance Type 1                                                         | 220   | SY | \$ 150.00           | \$ 33,000.00  | \$ 76.00                                                                                           | \$ 16,720.00 | \$ 90.00                                                                           | \$ 19,800.00 | \$ 90.00                                                                          | \$ 19,800.00 | \$ 89.40                                                                      | \$ 19,668.00 | \$ 88.00                                                                              | \$ 19,360.00 | \$ 120.00                                                             | \$ 26,400.00 | \$ 83.00                                         | \$ 7.00                                                        |
| 52                 | Cement Conc. Driveway Entrance Type 3                                                         | 45    | SY | \$ 150.00           | \$ 6,750.00   | \$ 76.00                                                                                           | \$ 3,420.00  | \$ 90.00                                                                           | \$ 4,050.00  | \$ 90.00                                                                          | \$ 4,050.00  | \$ 89.40                                                                      | \$ 4,023.00  | \$ 88.00                                                                              | \$ 3,960.00  | \$ 125.00                                                             | \$ 5,625.00  | \$ 83.00                                         | \$ 7.00                                                        |
| 53                 | Adjust Monument Case and Cover                                                                | 1     | EA | \$ 1,000.00         | \$ 1,000.00   | \$ 300.00                                                                                          | \$ 300.00    | \$ 1,000.00                                                                        | \$ 1,000.00  | \$ 650.00                                                                         | \$ 650.00    | \$ 492.50                                                                     | \$ 492.50    | \$ 745.00                                                                             | \$ 745.00    | \$ 350.00                                                             | \$ 350.00    | \$ 650.00                                        | \$ 350.00                                                      |
| 54                 | Cement Concrete Sidewalk Ramp, Type Parallel A                                                | 4     | EA | \$ 3,500.00         | \$ 14,000.00  | \$ 3,000.00                                                                                        | \$ 12,000.00 | \$ 2,300.00                                                                        | \$ 9,200.00  | \$ 2,615.00                                                                       | \$ 10,460.00 | \$ 1,982.00                                                                   | \$ 7,928.00  | \$ 1,885.00                                                                           | \$ 7,540.00  | \$ 2,700.00                                                           | \$ 10,800.00 | \$ 2,650.00                                      | \$ 350.00                                                      |
| 55                 | Cement Concrete Sidewalk Ramp, Type Combination                                               | 4     | EA | \$ 4,000.00         | \$ 16,000.00  | \$ 3,000.00                                                                                        | \$ 12,000.00 | \$ 2,300.00                                                                        | \$ 9,200.00  | \$ 2,615.00                                                                       | \$ 10,460.00 | \$ 1,982.00                                                                   | \$ 7,928.00  | \$ 1,885.00                                                                           | \$ 7,540.00  | \$ 2,700.00                                                           | \$ 10,800.00 | \$ 2,650.00                                      | \$ 350.00                                                      |
| 56                 | Cement Concrete Sidewalk                                                                      | 430   | SY | \$ 150.00           | \$ 64,500.00  | \$ 74.00                                                                                           | \$ 31,820.00 | \$ 73.00                                                                           | \$ 31,390.00 | \$ 73.00                                                                          | \$ 31,390.00 | \$ 62.20                                                                      | \$ 26,746.00 | \$ 57.00                                                                              | \$ 24,510.00 | \$ 90.00                                                              | \$ 38,700.00 | \$ 73.50                                         | \$ 0.50                                                        |
| 57                 | Detectable Warning Surface                                                                    | 240   | SF | \$ 100.00           | \$ 24,000.00  | \$ 67.00                                                                                           | \$ 16,080.00 | \$ 66.00                                                                           | \$ 15,840.00 | \$ 64.50                                                                          | \$ 15,480.00 | \$ 62.40                                                                      | \$ 14,976.00 | \$ 54.95                                                                              | \$ 13,188.00 | \$ 150.00                                                             | \$ 36,000.00 | \$ 66.50                                         | \$ 0.50                                                        |
| 58                 | Mailbox Support Type 1                                                                        | 1     | EA | \$ 600.00           | \$ 600.00     | \$ 300.00                                                                                          | \$ 300.00    | \$ 1,000.00                                                                        | \$ 1,000.00  | \$ 550.00                                                                         | \$ 550.00    | \$ 570.50                                                                     | \$ 570.50    | \$ 1,020.00                                                                           | \$ 1,020.00  | \$ 520.00                                                             | \$ 520.00    | \$ 650.00                                        | \$ 350.00                                                      |
| 59                 | Rectangular Rapid Flashing Beacon System, Complete                                            | 1     | LS | \$ 100,000.00       | \$ 100,000.00 | \$ 65,000.00                                                                                       | \$ 65,000.00 | \$ 50,000.00                                                                       | \$ 50,000.00 | \$ 49,850.00                                                                      | \$ 49,850.00 | \$ 53,045.00                                                                  | \$ 53,045.00 | \$ 47,500.00                                                                          | \$ 47,500.00 | \$ 55,000.00                                                          | \$ 55,000.00 | \$ 57,500.00                                     | \$ 7,500.00                                                    |
| 60                 | Permanent Signing                                                                             | 1     | LS | \$ 20,000.00        | \$ 20,000.00  | \$ 20,000.00                                                                                       | \$ 20,000.00 | \$ 32,000.00                                                                       | \$ 32,000.00 | \$ 32,200.00                                                                      | \$ 32,200.00 | \$ 18,570.00                                                                  | \$ 18,570.00 | \$ 28,000.00                                                                          | \$ 28,000.00 | \$ 35,000.00                                                          | \$ 35,000.00 | \$ 26,000.00                                     | \$ 6,000.00                                                    |
| 61                 | Remove Pavement Markings                                                                      | 700   | LF | \$ 2.00             | \$ 1,400.00   | \$ 3.00                                                                                            | \$ 2,100.00  | \$ 5.50                                                                            | \$ 3,850.00  | \$ 1.20                                                                           | \$ 840.00    | \$ 3.25                                                                       | \$ 2,275.00  | \$ 1.05                                                                               | \$ 735.00    | \$ 1.00                                                               | \$ 700.00    | \$ 4.25                                          | \$ 1.25                                                        |
| 62                 | Paint Line                                                                                    | 3,050 | LF | \$ 3.00             | \$ 9,150.00   | \$ 0.65                                                                                            | \$ 1,982.50  | \$ 1.30                                                                            | \$ 3,965.00  | \$ 1.00                                                                           | \$ 3,050.00  | \$ 0.51                                                                       | \$ 1,555.50  | \$ 0.60                                                                               | \$ 1,830.00  | \$ 1.00                                                               | \$ 3,050.00  | \$ 0.98                                          | \$ 0.33                                                        |
| 63                 | Plastic Wide Edge Line                                                                        | 260   | LF | \$ 5.00             | \$ 1,300.00   | \$ 4.50                                                                                            | \$ 1,170.00  | \$ 1.10                                                                            | \$ 286.00    | \$ 3.50                                                                           | \$ 910.00    | \$ 4.15                                                                       | \$ 1,079.00  | \$ 3.15                                                                               | \$ 819.00    | \$ 2.50                                                               | \$ 650.00    | \$ 2.80                                          | \$ 1.70                                                        |
| 64                 | Plastic White Wide Dotted Entry Line                                                          | 105   | LF | \$ 5.00             | \$ 525.00     | \$ 8.20                                                                                            | \$ 861.00    | \$ 3.30                                                                            | \$ 346.50    | \$ 5.00                                                                           | \$ 525.00    | \$ 7.60                                                                       | \$ 798.00    | \$ 4.25                                                                               | \$ 446.25    | \$ 5.00                                                               | \$ 525.00    | \$ 5.75                                          | \$ 2.45                                                        |
| 65                 | Plastic Yield Line Symbol                                                                     | 52    | LF | \$ 10.00            | \$ 520.00     | \$ 27.00                                                                                           | \$ 1,404.00  | \$ 5.50                                                                            | \$ 286.00    | \$ 22.50                                                                          | \$ 1,170.00  | \$ 25.00                                                                      | \$ 1,300.00  | \$ 21.00                                                                              | \$ 1,092.00  | \$ 20.00                                                              | \$ 1,040.00  | \$ 16.25                                         | \$ 10.75                                                       |
| 66                 | Plastic Crosswalk Line                                                                        | 480   | SF | \$ 14.00            | \$ 6,720.00   | \$ 6.00                                                                                            | \$ 2,880.00  | \$ 8.80                                                                            | \$ 4,224.00  | \$ 4.00                                                                           | \$ 1,920.00  | \$ 6.20                                                                       | \$ 2,976.00  | \$ 3.70                                                                               | \$ 1,776.00  | \$ 4.50                                                               | \$ 2,160.00  | \$ 7.40                                          | \$ 1.40                                                        |
| 67                 | Plastic Traffic Letter                                                                        | 20    | EA | \$ 175.00           | \$ 3,500.00   | \$ 126.00                                                                                          | \$ 2,520.00  | \$ 85.00                                                                           | \$ 1,700.00  | \$ 67.00                                                                          | \$ 1,340.00  | \$ 116.50                                                                     | \$ 2,330.00  | \$ 65.00                                                                              | \$ 1,300.00  | \$ 80.00                                                              | \$ 1,600.00  | \$ 105.50                                        | \$ 20.50                                                       |
| 68                 | Plastic Bike Symbol                                                                           | 1     | EA | \$ 250.00           | \$ 250.00     | \$ 126.00                                                                                          | \$ 126.00    | \$ 330.00                                                                          | \$ 330.00    | \$ 135.00                                                                         | \$ 135.00    | \$ 116.50                                                                     | \$ 116.50    | \$ 125.00                                                                             | \$ 125.00    | \$ 250.00                                                             | \$ 250.00    | \$ 228.00                                        | \$ 102.00                                                      |
| 69                 | Plastic Sharrow Symbol                                                                        | 1     | EA | \$ 250.00           | \$ 250.00     | \$ 126.00                                                                                          | \$ 126.00    | \$ 330.00                                                                          | \$ 330.00    | \$ 200.00                                                                         | \$ 200.00    | \$ 116.50                                                                     | \$ 116.50    | \$ 190.00                                                                             | \$ 190.00    | \$ 350.00                                                             | \$ 350.00    | \$ 228.00                                        | \$ 102.00                                                      |
| Subtotal           |                                                                                               |       |    | \$ 1,380,615.00     |               | \$ 872,088.50                                                                                      |              | \$ 889,822.50                                                                      |              | \$ 896,369.25                                                                     |              | \$ 906,895.40                                                                 |              | \$ 911,603.50                                                                         |              | \$ 1,072,645.00                                                       |              |                                                  |                                                                |
| TOTAL              |                                                                                               |       |    | \$ 1,380,615.00     |               | \$ 872,088.50                                                                                      |              | \$ 889,822.50                                                                      |              | \$ 896,369.25                                                                     |              | \$ 906,895.40                                                                 |              | \$ 911,603.50                                                                         |              | \$ 1,072,645.00                                                       |              |                                                  |                                                                |

Math Error

11% DBE Goal

Nonresponsive Bid

\$ 95,929.74

\$ 97,880.48

\$ 98,600.62

\$ 99,758.49

\$ 100,276.39

\$ 117,990.95







THIS AGREEMENT, entered into on \_\_\_\_\_, between the City of Anacortes Washington, hereinafter called City, and Colacurcio Brothers, Inc., hereinafter called the Contractor.

**WITNESSETH:**

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

- I. **WORK.** The Contractor shall do all work and furnish all tools, materials, equipment, and transportation required for the **32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT**, in accordance with and as described in the Invitation for Bid entitled the same and dated December 22, 2021, Federal Aid No.HSIP-6210(004) Incorporated by reference, and made a part hereof, are the Invitation for Bid aforementioned, current Washington State Department of Transportation *Standard Specifications for Road, Bridge, and Municipal Construction M 41-10* and Amendments, except as modified by the Special Provisions included in this Invitation to Bid. Any changes to the work contracted herein shall be subject to contract modification signed by the Parties.

The City hereby promises and agrees with the Contractor to retain and does retain the Contractor to provide the materials and to do and cause to be done the above-described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of prices bid and hereto attached, at the time and in the manner and upon the conditions provided for in this contract.

The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.

- II. **PRICE.** The Total Contract Price is **Eight Hundred Eighty-Nine Thousand Eight Hundred Twenty-Two Dollars and Fifty Cents (\$889,822.50)**. The Contractor's bid schedule is incorporated by reference and attached hereto as Exhibit A.
- III. **TIME.** Unless otherwise stated in the Invitation for Bid, all physical construction activities shall be completed within 40 working days from the first working day following the Notice to Proceed. The Contractor shall supply the materials within the specified period of time after Notice to Proceed has been issued by the City.
- IV. **LIQUIDATED DAMAGES.** Under 1-08.9 of the current WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*, the City is entitled to liquidated damages for each and every calendar day said work remains uncompleted after expiration of the specified time.
- V. **INDEMNIFICATION/HOLD HARMLESS.** The Contractor 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 in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.



Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver 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 section shall survive the expiration or termination of this Agreement.

- VI. **INSURANCE.** The Contractor shall procure and maintain for the duration of the Agreement, 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 Contractor, their agents, representatives, employees or subcontractors.

Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

IN WITNESS WHEREOF the Contractor has executed this instrument on the day and year first below written and the Authorized Official has caused this instrument to be executed by and in the name of the City the day and year first above written.

COLACURCIO BROTHERS, INC.

CITY OF ANACORTES

\_\_\_\_\_

\_\_\_\_\_

Matt Miller, Mayor

\_\_\_\_\_

Title

\_\_\_\_\_

Date

\_\_\_\_\_

Date

CITY OF ANACORTES

Received this 27 day  
of 1, 2022  
at 1:23 AM / PM  
Erin W. [Signature]  
City Clerk



3287 H Street Road  
Blaine, Washington 98230  
PH. (360) 332-4044 FAX (360) 332-5079  
Contractor Reg. #COLACBI150P8

**TO:** City of Anacortes  
Attn: Steve Heglund, City Clerk  
904 6th St  
Anacortes WA 98221

Sealed Bid For: 32nd Street and M Avenue  
Intersection Improvements  
Project

PN#19-002-TRN-003 (Fed Aid #HSIP-6210(004))

THURSDAY JANUARY 27, 2022 1:30 PM

**32ND STREET AND M AVENUE  
INTERSECTION IMPROVEMENTS  
PROJECT**

**PART 1**

**BID DOCUMENTS**

## BID PROPOSAL

FOR

### 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT ANACORTES, WASHINGTON

Date: 1/27/22

TO: CITY OF ANACORTES

This certifies that the Undersigned has examined the location of the project site and the conditions of work, and has carefully read and thoroughly understands the contract documents entitled: **"32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT"**, in Anacortes, Washington including the "Bid Procedures and Conditions", "Specifications and Conditions", "Contract Forms", "Temporary Traffic Control", "Construction Plans", and "Appendix" governing the work embraced in this project and the method by which payment will be made for said work. The Undersigned hereby proposes to undertake and complete the work embraced in this project in accordance with said contract documents, and agrees to accept as payment for said work, the schedule of lump sum and unit prices as set forth in the "Bid" below.

The Undersigned acknowledges that payment will be based on the actual work performed and material used as measured or provided for in accordance with the said contract documents, and that no additional compensation will be allowed for any taxes not included in each lump sum or unit price, and that the basis for payment will be the actual work performed and measured or provided for in accordance with the said contract documents.

The Undersigned certifies that it is not currently disqualified from bidding on any public works contract under RCW 39.06.010 or RCW 39.12.065(3).



## BID SCHEDULE

### 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

**NOTE:** Unit prices for all items, all extensions, and the total amount bid must be shown. All entries must be typed or entered in ink.

| Item No. | Spec. Section | Item                                       | Unit  | Quantity | Unit Price | Total Amount |
|----------|---------------|--------------------------------------------|-------|----------|------------|--------------|
| 1        | 1-04.4 SP     | Minor Change                               | EST   | 1        | DOL        | \$15,000.00  |
| 2        | 1-05.4 SP     | Roadway Surveying                          | LS    | 1        | 15,000.00  | 15,000.00    |
| 3        | 1-05.4 SP     | ADA Features Surveying                     | LS    | 1        | 15,000.00  | 15,000.00    |
| 4        | 1-05.18 SP    | Record Drawings (Min. Bid \$3,000)         | LS    | 1        | 3,000.00   | 3,000.00     |
| 5        | 1-07.15 SP    | SPCC Plan                                  | LS    | 1        | 1,000.00   | 1,000.00     |
| 6        | 1-09.7 SP     | Mobilization                               | LS    | 1        | 80,000.00  | 80,000.00    |
| 7        | 1-10.5 SP     | Project Temporary Traffic Control          | LS    | 1        | 30,000.00  | 30,000.00    |
| 8        | 2-01.5 SP     | Clearing and Grubbing                      | LS    | 1        | 5,000.00   | 5,000.00     |
| 9        | 2-02.5 SP     | Removal of Structures and Obstructions     | LS    | 1        | 9,000.00   | 9,000.00     |
| 10       | 2-02.5 SP     | Sawcutting                                 | LF    | 700      | 11.00      | 7,700.00     |
| 11       | 2-03.5 SP     | Roadway Excavation, Incl. Haul             | CY    | 1,500    | 16.80      | 25,200.00    |
| 12       | 2-05.5 SP     | Potholing                                  | EA    | 1        | 800.00     | 800.00       |
| 13       | 2-09.5        | Shoring or Extra Excavation Class B        | SF    | 200      | 1.00       | 200.00       |
| 14       | 4-04.5        | Crushed Surfacing Base Course              | TON   | 1,500    | 25.00      | 37,500.00    |
| 15       | 4-04.5        | Crushed Surfacing Top Course               | TON   | 550      | 35.00      | 19,250.00    |
| 16       | 5-04.5 SP     | HMA Cl. 1/2" PG 64-22                      | TON   | 900      | 120.00     | 108,000.00   |
| 17       | 5-04.5        | Planing Bituminous Pavement                | SY    | 700      | 11.00      | 7,700.00     |
| 18       | 5-05.5 SP     | Cement Concrete Driveway, 4" Thick         | CY SY | 85       | 82.00      | 6,970.00     |
| 19       | 5-05.5 SP     | Textured Cement Concrete Pavement          | CY    | 80       | 750.00     | 60,000.00    |
| 20       | 5-05.5 SP     | Textured Detectable Edge Treatment         | LF    | 365      | 15.00      | 5,475.00     |
| 21       | 7-04.5 SP     | Storm Sewer Pipe 12 In. Diam.              | LF    | 8        | 120.00     | 960.00       |
| 22       | 7-04.5 SP     | Storm Sewer Pipe 18 In. Diam.              | LF    | 42       | 90.00      | 3,780.00     |
| 23       | 7-04.5 SP     | Ductile Iron Storm Sewer Pipe 12 In. Diam. | LF    | 70       | 100.00     | 7,000.00     |
| 24       | 7-05.5 SP     | Rectangular Solid Metal Cover              | EA    | 2        | 850.00     | 1,700.00     |
| 25       | 7-05.5 SP     | Circular Metal Frame and Cover             | EA    | 1        | 1,000.00   | 1,000.00     |
| 26       | 7-05.5 SP     | Catch Basin Type 1                         | EA    | 4        | 3,000.00   | 12,000.00    |
| 27       | 7-05.5 SP     | Catch Basin Type 2, 48 In. Diam.           | EA    | 4        | 5,000.00   | 20,000.00    |

Addendum #3

## BID SCHEDULE

### 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

**NOTE:** Unit prices for all items, all extensions, and the total amount bid must be shown. All entries must be typed or entered in ink.

| Item No. | Spec. Section | Item                                              | Unit  | Quantity | Unit Price | Total Amount |
|----------|---------------|---------------------------------------------------|-------|----------|------------|--------------|
| 28       | 7-05.5 SP     | Adjust Catch Basin to Finished Grade              | LS EA | 4        | 1,000.00   | 4,000.00     |
| 29       | 7-09.5 SP     | Connection to Existing 8 In. Diam. Water Main     | EA    | 1        | 1,000.00   | 1,000.00     |
| 30       | 7-12.5 SP     | Adjust Water Valve Box                            | EA    | 5        | 700.00     | 3,500.00     |
| 31       | 7-14.5        | Resetting Existing Hydrant                        | EA    | 1        | 2,000.00   | 2,000.00     |
| 32       | 7-15.5 SP     | Water Meter 3/4 In. Service                       | EA    | 1        | 7,500.00   | 7,500.00     |
| 33       | 7-15 SP       | Adjust Water Meter Box                            | EA    | 5        | 400.00     | 2,000.00     |
| 34       | 8-01.5        | Erosion Control and Water Pollution Prevention    | EST   | 1        | DOL        | \$7,500.00   |
| 35       | 8-01.5 SP     | ESC Lead                                          | LS    | 1        | 400.00     | 400.00       |
| 36       | 8-01.5 SP     | SWPP Plan Preparation                             | LS    | 1        | 1,500.00   | 1,500.00     |
| 37       | 8-01.5        | Street Cleaning                                   | HR    | 240      | 60.00      | 14,000.00    |
| 38       | 8-01.5        | Inlet Protection                                  | EA    | 8        | 100.00     | 800.00       |
| 39       | 8-01.5        | Silt Fence                                        | LF    | 300      | 6.00       | 1,800.00     |
| 40       | 8-02.5 SP     | Topsoil Type A                                    | CY    | 160      | 80.00      | 12,800.00    |
| 41       | 8-02.5 SP     | Landscape Restoration                             | EST   | 1        | DOL        | \$20,000.00  |
| 42       | 8-02.5        | Root Barrier                                      | LF    | 90       | 22.00      | 1,980.00     |
| 43       | 8-02.5 SP     | Delivered Plants                                  | LS    | 1        | 300.00     | 300.00       |
| 44       | 8-02.5        | Plant Selection Ginkgo Biloba (Maidenhair Tree)   | EA    | 3        | 550.00     | 1,650.00     |
| 45       | 8-02.5        | Sod Installation                                  | SY    | 220      | 20.00      | 4,400.00     |
| 46       | 8-03.5        | Irrigation System, Complete                       | LS    | 1        | 10,000.00  | 10,000.00    |
| 47       | 8-04.5        | Cement Conc. Traffic Curb and Gutter              | LF    | 785      | 36.00      | 28,260.00    |
| 48       | 8-04.5        | Roundabout Truck Apron Cem. Conc. Curb and Gutter | LF    | 355      | 40.00      | 14,200.00    |
| 49       | 8-04.5        | Roundabout Cement Concrete Curb and Gutter        | LF    | 720      | 40.00      | 28,800.00    |
| 50       | 8-04.5        | Cement Conc. Pedestrian Curb                      | LF    | 680      | 50.00      | 34,000.00    |
| 51       | 8-06 SP       | Cement Conc. Driveway Entrance Type 1             | SY    | 220      | 90.00      | 19,800.00    |
| 52       | 8-06 SP       | Cement Conc. Driveway Entrance Type 3             | SY    | 45       | 90.00      | 4,050.00     |
| 53       | 8-13          | Adjust Monument Case and Cover                    | EA    | 1        | 1,000.00   | 1,000.00     |

Addendum #3



## BID SCHEDULE

### 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

**NOTE:** Unit prices for all items, all extensions, and the total amount bid must be shown. All entries must be typed or entered in ink.

| Item No.                         | Spec. Section | Item                                               | Unit | Quantity | Unit Price | Total Amount      |
|----------------------------------|---------------|----------------------------------------------------|------|----------|------------|-------------------|
| 54                               | 8-14.5        | Cement Concrete Sidewalk Ramp, Type Parallel A     | EA   | 4        | 2,300.00   | 9,200.00          |
| 55                               | 8-14.5        | Cement Concrete Sidewalk Ramp, Type Combination    | EA   | 4        | 2,300.00   | 9,200.00          |
| 56                               | 8-14.5        | Cement Concrete Sidewalk                           | SY   | 430      | 73.00      | 31,390.00         |
| 57                               | 8-14.5 SP     | Detectable Warning Surface                         | SF   | 240      | 66.00      | 15,840.00         |
| 58                               | 8-18.5        | Mailbox Support Type 1                             | EA   | 1        | 1,000.00   | 1,000.00          |
| 59                               | 8-20.5 SP     | Rectangular Rapid Flashing Beacon System, Complete | LS   | 1        | 50,000.00  | 50,000.00         |
| 60                               | 8-21.5        | Permanent Signing                                  | LS   | 1        | 32,000.00  | 32,000.00         |
| 61                               | 8-22.5        | Remove Pavement Markings                           | LF   | 700      | 5.50       | 3,850.00          |
| 62                               | 8-22.5        | Paint Line                                         | LF   | 3,050    | 1.30       | 3,965.00          |
| 63                               | 8-22.5        | Plastic Wide Edge Line                             | LF   | 260      | 1.10       | 286.00            |
| 64                               | 8-22.5        | Plastic White Wide Dotted Entry Line               | LF   | 105      | 3.30       | 346.50            |
| 65                               | 8-22.5        | Plastic Yield Line Symbol                          | LF   | 52       | 5.50       | 286.00            |
| 66                               | 8-22.5        | Plastic Crosswalk Line                             | SF   | 480      | 8.80       | 4,224.00          |
| 67                               | 8-22.5        | Plastic Traffic Letter                             | EA   | 20       | 85.00      | 1,700.00          |
| 68                               | 8-22.5        | Plastic Bike Symbol                                | EA   | 1        | 330.00     | 330.00            |
| 69                               | 8-22.5        | Plastic Sharrow Symbol                             | EA   | 1        | 330.00     | 330.00            |
| <b>Total Bid Schedule Amount</b> |               |                                                    |      |          | <b>\$</b>  | <b>889,822.50</b> |

Addendum #3

**Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.**

### **NON-COLLUSION DECLARATION**

**I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:**

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

### **NOTICE TO ALL BIDDERS**

To report rigging activities call:

**1-800-424-9071**

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.



## Local Agency Certification for Federal-Aid Contracts

**The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:**

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

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

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

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

SR

DOT Form 272-040A EF  
07/2011

|                                                                            |
|----------------------------------------------------------------------------|
| City of Anacortes                                                          |
| City of Anacortes Engineering Dept.<br>P.O. Box 547<br>Anacortes, WA 98221 |

## Local Agency Subcontractor List

Prepared in compliance with RCW 39.30.060 as amended

To Be Submitted with the Bid Proposal

Project Name 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

Failure to list subcontractors with whom the bidder, if awarded the contract, will directly subcontract for performance of the work of structural steel installation, rebar installation, heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical, as described in Chapter 19.28 RCW or naming more than one subcontractor to perform the same work will result in your bid being non-responsive and therefore void.

Subcontractor(s) with whom the bidder will directly subcontract that are proposed to perform the work of structural steel installation, rebar installation, heating, ventilation and air conditioning, plumbing, as described in Chapter 18.106 RCW, and electrical as described in Chapter 19.28 RCW must be listed below. The work to be performed is to be listed below the subcontractor(s) name.

To the extent the Project includes one or more categories of work referenced in RCW 39.30.060, and no subcontractor is listed below to perform such work, the bidder certifies that the work will either (i) be performed by the bidder itself, or (ii) be performed by a lower tier subcontractor who will not contract directly with the bidder.

Subcontractor Name

Work to be performed

NO WORK - N/A

HVAC

Subcontractor Name

Work to be performed

NO WORK / N/A

PLUMBING

Subcontractor Name

Work to be performed

Electric West Inc.

ELECTRICAL

Subcontractor Name

Work to be performed

REBAR INSTALLATION

Subcontractor Name

Work to be performed

NO WORK - N/A

STRUCTURAL STEEL INSTALLATION

\* Bidder's are notified that it is the opinion of the enforcement agency that PVC or metal conduit, junction boxes, etc, are considered electrical equipment and therefore considered part of electrical work, even if the installation is for future use and no wiring or electrical current is connected during the project.

DOT Form 271-015A  
Revised 06/2020







## Instructions for Disadvantaged Business Enterprise Utilization Certification Form

Box 1: Name of Bidder (Proposal holder) submitting Bid.

Box 2: Name of the Project.

Column 1: Name of the Disadvantaged Business Enterprise (DBE). DBE firms can be found using the Diversity Management and Compliance System web page: <https://wsdot.diversitycompliance.com>. Repeat the name of the DBE for each Project Role that will be performed.

Column 2: The Project Role that the DBE will be performing as follows;

- Prime Contractor
- Subcontractor
- Subcontractor (Force Account)
  - Work sublet as Force Account must be listed separately.
- Manufacturer
- Regular Dealer
  - Work sublet to a Regular Dealer must be listed separately.
  - Regular Dealer status must be approved prior to Bid submittal by the Office of Equal Opportunity, Washington State Department of Transportation, on each Contract.
- Broker
  - Work sublet to a Broker must be listed separately.

List each project role to be performed by a single DBE individually on a separate row. The role is used to determine what portion of the amount to be subcontracted (Column 4) may be applied toward meeting the goal (column 5).

Column 3: Provide a description of work to be performed by the DBE. The work to be performed must be consistent with the Certified Business Description of the DBE provided at the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com>

- A Bidder subletting a portion of a bid item shall state "Partial" and describe the Work that is included.
  - For example; "Electrical (Partial) – Trenching".
- "Mobilization" will not be accepted as a description of Work.

Column 4: List the total amount to be subcontracted to each DBE for each Project Role they are performing.

Column 5: This is the dollar amount for each line listed in the certification that the prime intends to apply towards meeting the COA Contract goal. It may be that only a portion of the amount subcontracted to a DBE in Column 4 is eligible to be credited toward meeting the goal **See Note 1, Note 2, Note 3**. The Contracting Agency will utilize the sum of this column (Box 4) to determine whether or not the bidder has met the goal. In the event of an arithmetic error in summing column 5 or an error in making appropriate reductions in the amounts in column four, **See Note 1, Note 2, Note 3**, then the mathematics will be corrected and the total (Box 4) will be revised accordingly.

**Note 1:** For Work sublet as Force Account the bidder **may only claim 50%** of the amount subcontracted (Column 4) towards meeting the goal (Column 5). This information will be used to demonstrate that the DBE contract goal is met at the time that the bidder submits their bid. For example; amount sublet as force account = \$100,000 (Column 4) equates to  $(\$100,000 \times 50\%) = \$50,000$  (Column 5) to be applied towards the goal.

**Note 2:** For Work sublet to a Regular Dealer the bidder **may only claim 60%** of the cost of the materials or supplies (Column 4) towards meeting the goal (Column 5). For example; Material cost = \$100,000 (Column 4) equates to  $(\$100,000 \times 60\%) = \$60,000$  (Column 5) to be applied towards the goal.

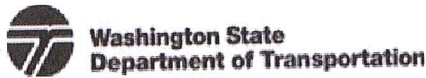
**Note 3:** For Work sublet to a Broker the bidder **may only claim the fees** paid to a Broker towards meeting the goal (Column 4). For example; amount sublet to a broker = \$100,000 (Column 4) equates to  $(\$100,000 \times \text{reasonable fee \%}) = \$$  (Column 5) to be applied towards the goal.

Box 3: Box 3 is the COA Contract goal which is the minimum required DBE participation. The goal stated in the Contract will be in terms of a dollar amount or a percentage in the Contract. When expressed as a percentage you must multiply the percentage times the sum total of all bid items as submitted in the Bidder's Proposal to determine the dollar goal and write it in Box 3. In the event of an error in this box, the Contracting Agency will revise the amount accordingly.

Box 4: Box 4 is the sum of the values in column 5. **This value must equal or exceed the COA Contract goal amount written in Box 3 or;**

Box 5: Check Box 5 if insufficient DBE Participation has been achieved and a good faith effort is required. Refer to the subsection titled, *Selection of Successful Bidder/Good Faith Efforts (GFE)* in the Contract.

**See the Disadvantaged Business Enterprise Participation specification in the Contract for more information.**



## Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: A Plus Construction Company certifies that the DBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named DBEs. (If necessary, use additional sheets.)

Box 2: US 395, Spokane City Limits to Stevens County Line - Paving and Safety

| Column 1<br>Name of DBE<br>(See instructions) | Column 2<br>Project Role<br>(See instructions) | Column 3<br>Description of Work<br>(See instructions)                                       | Column 4<br>Dollar Amount<br>Subcontracted<br>to DBE<br>(See instructions) | Column 5<br>Dollar Amount<br>to be Applied<br>Towards Goal<br>(See instructions) |
|-----------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| A Plus Construction Company                   | Prime                                          | Asphalt and concrete paving, asphalt milling, preleveling and pavement repair               | N/A                                                                        | 900,000                                                                          |
| In the Line Services, Inc.                    | Subcontractor (Force Account)                  | Crack sealing                                                                               | 20,000                                                                     | 10,000                                                                           |
| In the Line Services, Inc.                    | Subcontractor                                  | Guideposts, joint seal, pavement markers, temporary signage, construction sign installation | 200,000                                                                    | 200,000                                                                          |
| The Everything Guys, LLC                      | Regular Dealer                                 | Rental and sales of highway construction and related equipment and materials                | 100,000                                                                    | 60,000                                                                           |
| Optimus Prime Trucking, Inc.                  | Subcontractor                                  | Dump Trucking                                                                               | 50,000                                                                     | 50,000                                                                           |
| Metalheads, Inc.                              | Manufacturer                                   | Dowel Bars                                                                                  | 75,000                                                                     | 75,000                                                                           |
| Erosion Under Control Co.                     | Broker                                         | Erosion control blankets, straw bales and wattles, sand bags                                | 15,000                                                                     | 250                                                                              |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |
|                                               |                                                |                                                                                             |                                                                            |                                                                                  |

Disadvantaged Business Enterprise 356,968.16  
Condition of Award Contract Goal Box 3

Total DBE Commitment Dollar Amount 1,295,250  
Box 4

5 ☐ By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

DOT Form 272-056  
Revised 02/2018





Washington State  
Department of Transportation

**Disadvantaged Business Enterprise (DBE)  
Written Confirmation Document**

See Contract Provisions: *DBE Document Submittal Requirements*  
*Disadvantaged Business Enterprise Participation*

THIS FORM SHALL ONLY BE SUBMITTED TO A DBE THAT IS LISTED ON THE CONTRACTOR'S  
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE DBE.

**PART A: To be completed by the bidder**

The entries below shall be consistent with what is shown on the Bidder's Disadvantaged Business Enterprise  
Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

Bidder's Business Name: COLACURCIO BROTHERS, INC.

DBE's Business Name: ELECTRIC WEST, INC.

Description of DBE's Work: ELECTRICAL, PERMANENT SIGNING, IRRIGATION (PARTIAL) - ELECTRICAL  
CONDUIT

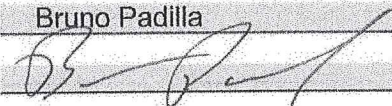
Dollar Amount to be Applied Towards DBE Goal: 79,850.00

Dollar Amount to be Subcontracted to DBE\*:   
\*Optional Field

**PART B: To be completed by the Disadvantaged Business Enterprise**

As an authorized representative of the Disadvantaged Business Enterprise, I confirm that we have been  
contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described  
above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in  
the project consistent with the information provided in Part A of this form.

Name (printed): Bruno Padilla

Signature: 

Title: President

Address: 817 N 6th Street  
Mt Vernon, WA 98273

Date: 1/27/2022

DOT Form 422-031  
Revised 07/2016



Washington State  
Department of Transportation

**Disadvantaged Business Enterprise (DBE)  
Written Confirmation Document**

See Contract Provisions: DBE Document Submittal Requirements  
Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A DBE THAT IS LISTED ON THE CONTRACTOR'S  
DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE DBE.

**PART A: To be completed by the bidder**

The entries below shall be consistent with what is shown on the Bidder's Disadvantaged Business Enterprise  
Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: 32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT

Bidder's Business Name: COLACURCIO BROTHERS, INC.

DBE's Business Name: LAND DEVELOPMENT ENGINEERING & SURVEYING, INC.

Description of DBE's Work: SURVEYING

Dollar Amount to be Applied Towards DBE Goal: 27,700.00

Dollar Amount to be Subcontracted to DBE\*:

\*Optional Field

**PART B: To be completed by the Disadvantaged Business Enterprise**

As an authorized representative of the Disadvantaged Business Enterprise, I confirm that we have been  
contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described  
above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in  
the project consistent with the information provided in Part A of this form.

Name (printed):

Yanni Ghulam

Signature:

Title:

Principal

Address:

5160 Industrial Pl.  
# 108  
Ferndale, WA 98248

Date:

1/27/2022





|                                                                 |  |                                                                                 |  |
|-----------------------------------------------------------------|--|---------------------------------------------------------------------------------|--|
| 1. Contract Number PW#19-002-TRN<br>FED AID NO. HSIP-6210(004)  |  | 2. Contract Name<br>32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT  |  |
| 3. Prime Contractor<br>COLACURCIO BROTHERS, INC.                |  | 4. Prime Contractor Representative Name<br>CHRIS COLACURCIO                     |  |
| 5. Prime Contractor Representative Phone Number<br>360-332-4044 |  | 6. Prime Contractor Representative Email<br>C.COLACURCIO@COLACURCIOBROTHERS.COM |  |

DOT Form 272-054  
Revised 09/2020



### Instructions for Disadvantaged Business Enterprise (DBE) Bid Item Breakdown Form

Box 1: Provide the Contract Number as stated in the project information webpage.

Box 2: Provide the Name of the project as stated in the project information webpage.

Box 3: Provide the Name of the bidder (Proposal holder) submitting Bid.

Box 4: Provide the name of the prime contractor's representative available to contact regarding this form.

Box 5: Provide the phone number of the prime contractor's representative available to contact regarding this form.

Box 6: Provide the email of the prime contractor's representative available to contact regarding this form.

Column 1: Provide the Name of the Disadvantaged Business Enterprise (DBE) Firm. DBE Firms can be found using the search tools under the Firm Certification section of the Diversity Management and Compliance System (DMCS) webpage <https://wsdot.diversitycompliance.com>.

Column 2: Provide the Bid Item Number (as it appears in the engineer's estimate bid check report) available on the project information webpage.

Column 3: If the DBE is performing only part of the bid item, mark "Partial". If the DBE is performing the entire bid item, mark "Complete".

Column 4: Provide the estimated quantity for the specific bid item. For trucking firms, use hour or another unit of measure.

Column 5: Provide a description of the work to be performed by the DBE.

Column 6: Provide the price per unit and specify the type of unit used. For trucking firms, use hour or another unit of measure.

Column 7: Provide the estimated total unit cost amount per bid item.

Column 8: Provide the amount of the bid item being used to fulfill the DBE goal. The work to be performed must be consistent with the Certified Business Description of the DBE provided in the DMCS webpage <https://wsdot.diversitycompliance.com>. Mobilization up to 10% is acceptable. If mobilization is more than 10% additional information and/or justification may be requested. The total amount shown for each DBE shall match the amount shown on the DBE Utilization Certification Form.

**Use Additional Sheets if necessary.**

DOT Form 272-054  
Revised 09/2020

NO DBE TRUCKING



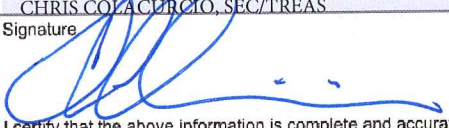
## Disadvantaged Business Enterprise (DBE) Trucking Credit Form

### PART A: TO BE COMPLETED BY THE BIDDER

This form is in support of the trucking commitment identified on the DBE Utilization Certification Form submitted with the proposal. Please note that DBE's must be certified prior to time of submittal.

|                                                                                                                       |                             |                                                                             |
|-----------------------------------------------------------------------------------------------------------------------|-----------------------------|-----------------------------------------------------------------------------|
| Federal Aid #<br>HSIP-6210(004)                                                                                       | Contract #<br>PW#19-002-TRN | Project Name<br>32ND STREET & M<br>AVENUE INTERSECTION IMPROVEMENTS PROJECT |
| If listing items by hours, or by lump sum amounts, please provide calculations to substantiate the quantities listed. |                             |                                                                             |
| Bid Item                                                                                                              | Item Description            |                                                                             |
|                                                                                                                       |                             |                                                                             |
|                                                                                                                       |                             |                                                                             |
|                                                                                                                       |                             |                                                                             |
|                                                                                                                       |                             |                                                                             |

Use additional sheets as necessary.

|                                                |                     |                                                                                                 |
|------------------------------------------------|---------------------|-------------------------------------------------------------------------------------------------|
| Bidder<br>COLACURCIO BROTHERS, INC.            |                     | Name/Title (please print)<br>CHRIS COLACURCIO, SEC/TREAS                                        |
| Phone<br>360-332-4044                          | Fax<br>360-332-5079 | Signature<br> |
| Address<br>3287 H STREET RD<br>BLAINE WA 98230 |                     | I certify that the above information is complete and accurate.                                  |
| Email<br>C.COLACURCIO@COLACURCIOBROTHERS.COM   |                     | Date<br>1/27/22                                                                                 |

### PART B: TO BE COMPLETED BY THE DBE TRUCKING FIRM

**Note:** DBE trucking firm participation may only be credited as DBE participation for the value of the hauling services, not for the materials being hauled unless the trucking firm is also recognized as a supplier of the materials used on the project and approved for this project as a regular dealer.

1. Type of Material expected to be hauled? \_\_\_\_\_
2. Number of fully operational trucks expected to be used on this project? \_\_\_\_\_ Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_
3. Number of trucks and trailers owned by the DBE that will be used on this project? \_\_\_\_\_ Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_
4. Number of trucks and trailers leased by the DBE that will be used on this project? \_\_\_\_\_ Tractor/trailers: \_\_\_\_\_ Dump trucks: \_\_\_\_\_

|                      |     |                                                                |
|----------------------|-----|----------------------------------------------------------------|
| DBE Firm Name        |     | Name/Title (please print)                                      |
| Certification Number |     |                                                                |
| Phone                | Fax | Signature                                                      |
| Address              |     | I certify that the above information is complete and accurate. |
| Email                |     | Date                                                           |

DOT Form 272-058  
Revised 09/2020

Submit this form to in accordance with section 1-02.9 of the Contract.

Instruction to Bidder: The Bidder shall complete and submit the Disadvantaged Business Enterprise (DBE) Trucking Credit Form in accordance with Section 1-02.9 of the Contract.

### INSTRUCTIONS

**Please note – All Fields are required**

#### **PART A: TO BE COMPLETED BY THE BIDDER**

**Federal Aid:** Include the project federal-aid number.

**County:** Specify the County where the project will take place.

**Contract #:** Specify the Project Contract Number which can be found in the Engineer's estimate bid check report.

**Bid Item:** Provide the Bid Item Number (as it appears in the engineer's estimate bid check report) for which trucking services will be utilized.

**Item Description:** Provide description of the bid item (as it appears in the engineer's estimate bid check report) for which trucking will be utilized.

**Bidder:** In this section, provide the bidder's legal name, title, Business address, Phone and email.

**The bidder's representative signature is required in addition to the date the form was signed.**

#### **PART B: TO BE COMPLETED BY THE DBE TRUCKING FIRM**

Question 1: Specify type of material that will be hauled (i.e. Sand, HMA, gravel)

Question 2: Specify the total number of operational trucks that will be used on the project.

Question 3: Specify the total number of operational trucks and trailers owned by the DBE that will be used on the project.

Question 4: Specify the total number of operational trucks and trailers leased by the DBE that will be used on the project.

**DBE Firm:** In this section, provide the DBE Firm's legal name, DBE Firm's representative legal name and title, certification Number (Found in the firm's OMWBE Profile page in the OMWBE directory), Business address, Phone, fax and email.

**The DBE Firm's representative signature is required in addition to the date the form was signed.**

### BIDDER IDENTIFICATION

The name of the Bidder submitting this proposal, the address and phone number to which all communications concerned with this proposal shall be made and the number which has been assigned indicating the Bidder is licensed to do business in the State of Washington are as follows:

Firm Name: COLACURCIO BROTHERS, INC.

Address: 3287 H STREET RD.

BLAINE WA 98230

Telephone: 360-332-4044

Email: C.COLACURCIO@COLACURCIOBROTHERS.COM

Contractor's Number: COLACBI150P8

The Firm submitting this proposal is a        Sole Proprietorship  
       Partnership  
  X   Corporation IN WASHINGTON STATE

The names and titles of the principal officers of the corporation submitting this proposal, or of the partnership, or of all persons interested in this proposal as principals are as follows:

DANIEL N. COLACURCIO JR., PRESIDENT \_\_\_\_\_

CHRIS COLACURCIO, SEC/TREAS \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

-----

NOTE: Signatures of this proposal must be identified above. Failure to identify the Signatories will be cause for considering the proposal irregular and for subsequent rejection of the bid.



## BID PROPOSAL SIGNATURE AND ADDENDUM ACKNOWLEDGMENT

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein. A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximation estimate of quantities at the above prices and in the form as indicated below, is attached hereto:

- ☐ CASH IN THE AMOUNT OF \_\_\_\_\_  
☐ CASHIER'S CHECK \_\_\_\_\_ DOLLARS  
☐ CERTIFIED CHECK (\$\_\_\_\_\_) PAYABLE TO THE CITY OF ANACORTES  
☒ PROPOSAL BOND IN THE AMOUNT OF 5% OF THE BID.

Receipt is hereby acknowledged by addendum(s) No.(s) 1, 2, & 3

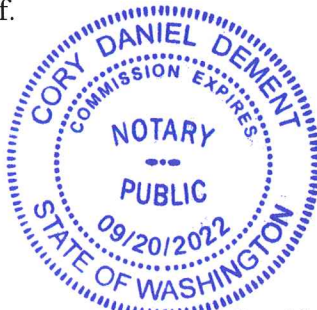
### SIGNATURE OF AUTHORIZED OFFICIAL(S)

(PROPOSAL MUST BE SIGNED)

  
SIGNATURE CHRIS COLACURCIO, SEC/TREAS  
COLACURCIO BROTHERS, INC.  
FIRM NAME

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

On this 27 day of JANUARY, 20 22, before me personally appeared CHRIS COLACURCIO to me personally known to be the person described in and who executed the above instrument and who acknowledged to me the act of signing thereof.



NOTARY PUBLIC, in and for the  
State of Washington, residing at:

Lynden, WA

My Commission Expires: 9/20/22

This proposal form is not transferable, and any alteration of the firm's name entered hereon without prior permission from the City of Anacortes will be cause for considering the proposal irregular and for subsequent rejection of the bid.



## BID BOND

KNOW ALL PEOPLE BY THESE PRESENTS:

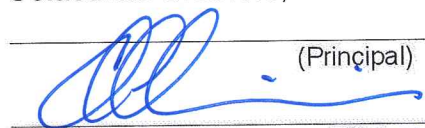
That I/we, Colacurcio Brothers, Inc., of  
3287 H Street Road, Blaine, WA 98230, as Principal and  
Fidelity and Deposit Company of Maryland, as Surety authorized to do business  
in the State of Washington, are held firmly bound unto the CITY OF ANACORTES (Owner), as Obligee, in  
the penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work  
hereinafter described, for the payment of which the Principal and the Surety bind themselves, their heirs,  
executors, administrators, successors and assigns, jointly and severally, by these presents.

\* PW#19-002-TRN-003 / Federal Aid #: HSIP-6210(004)

The condition of this obligation is such that if the Obligee shall make any award to the Principal for the  
\*  
**"32ND STREET AND M AVENUE INTERSECTION IMPROVEMENTS PROJECT"**, according to the terms  
of the proposal or bid made by the Principal therefore and the Principal shall duly make and enter into a  
contract with the Obligee in accordance with the terms of said proposal or bid and award and shall give  
bond for the faithful performance thereof, with Surety or Sureties approved by the Obligee; or if the Principal  
shall, in case of failure to do so, pay and forfeit to the Obligee the penal sum amount of the deposit specified  
in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force  
and effect the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the  
amount of this bond.

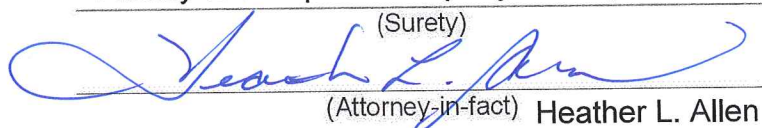
SIGNED, SEALED AND DATED THIS 20th day of January, 202<sup>2</sup>~~X~~

Colacurcio Brothers, Inc.

  
(Principal)

(Title) CHRIS COLACURCIO, SEC/TREAS

Fidelity and Deposit Company of Maryland

  
(Surety)  
(Attorney-in-fact) Heather L. Allen





**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Jim S. KUICH, Emma C. DOLESHEL, Heather L. ALLEN, Jim W. DOYLE, Julie M. GLOVER, Steven M. WAGNER, Michael A. MURPHY, Chad M. EPPLER, S. M. SCOTT, Andy D. PRILL, Danielle ENRIQUEZ, Sarah H. BEHRENS, Theresa A. LAMB of Bothell, Washington, EACH**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

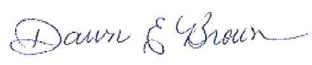
The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 11<sup>th</sup> day of November, A.D. 2021.



**ATTEST:**  
**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

  
By: **Robert D. Murray**  
Vice President

  
By: **Dawn E. Brown**  
Secretary

**State of Maryland  
County of Baltimore**

On this 11<sup>th</sup> day of November, A.D. 2021, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



  
Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2023

Authenticity of this bond can be confirmed at [bondvalidator.zurichna.com](http://bondvalidator.zurichna.com) or 410-559-8790



## INSTRUCTION TO BIDDERS

## INSTRUCTION TO BIDDERS

---

**Bidders must execute and submit the following documents with the Bid:**

**1. BID PROPOSAL (Includes Non-Collusion Declaration)**

- a. Bidders must bid on all bid items listed in the Proposal. Omitting or deleting any bid item will be considered non-responsive and cause for rejection of the bid.

**2. BID DEPOSIT**

If the bid deposit is in the form of a bond, the bidder and the surety must execute the bid bond provided in the bid documents.

**Documentation Required From Low Bidder within 24 Hours After Bid Opening:**

Within 24 hours after bid opening Low Bidder must submit the following documentation to the City to award a contract to the low responsive, responsible bidder:

- A completed Responsible Bidder Statement (form enclosed). The Owner reserves the right to determine bidder responsibility.
- A statement of the origin, composition and manufacturer of any of all materials to be used.
- A cost breakdown of lump sum items if requested
- List of Subcontractors
- Documentation that may be requested to demonstrate compliance with mandatory criteria per RCW 39.04.350(1) and RCW 39.06.020 as it applies to subcontractors

**Successful bidder must execute and submit the following documents within 5 Calendar days of the Notice of Award date:**

☐ **AGREEMENT**

☐ **CONTRACT PERFORMANCE AND PAYMENT BOND**

☐ **CERTIFICATE OF LIABILITY INSURANCE**

The Certificate of Liability Insurance with additional insured endorsement for the City of Anacortes in the amount of \$3,000,000.00 may be furnished on form CG2026, or similar supplied by insurance carrier. Insurance requirements are established in WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction* Section 1-07.18.

☐ **CITY OF ANACORTES BUSINESS LICENSE**

**An Intent to Pay Prevailing Wage approved by the Department of Labor & Industries is required before the City is authorized to make any payments(s).**

☐ **STATEMENT OF INTENT TO PAY PREVAILING WAGES**

The City of Anacortes will not make payment for the work performed under this contract until a copy of the approved form has been submitted to the City on behalf of the prime contractor and all sub-contractors. This statement has been approved by the Washington State Department of Labor and Industries. See the Washington State Department of Labor and Industries website for more information.

## RESPONSIBLE BIDDER STATEMENT

---

The City of Anacortes has a policy of awarding contracts to the lowest responsible bidder. For these purposes a Responsible Bidder is defined as follows:

### RESPONSIBLE BIDDER:

A bidder who has proven by experience or furnished information that current financial resources, production or service facilities, service reputation and experience that they can insure to make satisfactory delivery of (bid) quality supplies, equipment, or contractual services, and that they have not violated or attempted to violate any provisions of this policy.

### AWARD OF BID:

The City must award the bid to the "lowest responsible bidder," or reject all bids. It may not negotiate with any of the bidders. The following guidelines, in addition to price, may be taken into account by the City in determining the lowest responsible bidder:

Each Contractor bidding on work included in these Contract Documents shall prepare and submit the following data along with their bid.

- 1.) Name of Bidder: COLACURCIO BROTHERS, INC.
- 2.) Business Address: 3287 H STREET RD, BLAINE WA 98230
- 3.) Business Phone: 360-332-4044
- 4.) How many years have you been engaged in the contracting business under the present firm name? 36 Years 4 Months
- 5.) Character of work performed by your company as it directly relates to this project:

HEAVY CONSTRUCTION INCLUDING SITE WORK, ROADWAY CONSTRUCTION,  
AND UNDERGROUND UTILITY CONSTRUCTION.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- 6.) List of contracts for work of this type completed within last three years by your company, include approximate cost and contact person with phone number:

1) ROEDER AVE OVERLAY - CITY OF BELLINGHAM - \$ 2,179,886

CRAIG MUELLER, PE - 360-778-7922

2) DONOVAN WATERMAIN - CITY OF BELLINGHAM - \$2,062,413

CRAIG MUELLER, PE - 360-778-7922

3) SAMISH, MAPLE, ELLIS MULTIMODAL PROJECT - CITY OF BELLINGHAM

- \$884,319 - FREEMAN "FRITZ" ANTHONY, PE - 360-778-7924

4) 2019 CITYWIDE HUY SAFETY - CITY OF MARYSVILLE - STEVE MILLER

- \$619,357 - 360-363-8285

- 7.) The Project Field Supervisor will be. CHAD REID

This person will be on the job full time and directly supervising the work. Any change will require written approval by the Owner.

Project Field Supervisor experience:

1. Years of experience in this type of construction: 20

2. Years of supervisory experience: 10 Years 2 Months

3. Years employed with current firm: 8 Years 6 Months

4. Years employed with previous firm: 3 Years 7 Months

5. List References (include name, title, city or district, phone number):

CRAIG MUELLER - CITY OF BELLINGHAM - PE - 360-778-7922

KATY RADDER - CITY OF FERNDALE - PM - 360-685-2377

LIZ JAMIESON - STANWOOD-CANARD SCHOOL DISTRICT - PM - 360-629-1202



8.) List your major equipment. \_\_\_\_\_

INTERNATIONAL DUMP TRUCK, LAYMOORE SWEEPER, CAT 420  
BACKHOE, KUBOTA 040 MINI EXCAVATOR, FORD HEAVY DUTY  
FLAGGING TRUCK, PCMS BOARDS, CAT 320 EXCAVATOR, CAT CS533  
SMOOTHDRUM ROLLER

9.) Bank references with contact name and telephone number: \_\_\_\_\_

Peoples Bank - Adam Lervik - 360-354-7226

10.) State of Washington Registration Number 600-555-169

11.) Federal IRS Identification Number 91-1272138

12.) List your other projects currently in progress along with other bids or contracts awarded but not yet started:

SR9 + SR20 INTERSECTION - SEDRO-WOOLEY, SNOCO FDI7 STORAGE + TRAINING,

HEMICK RD RES PARKING + TRAIL, SAN JUAN OPS CENTER, FESTIVAL ST. - LAKE

STEVENS, FARM TO MARKET / JOSH WILSON ROUNDABOUT - SKAGIT COUNTY

2620 CITYWIDE INTERSECTION SAFETY - MARYSVILLE, HOWARD BOWEN RODEO - SUMAS

13.) Will contracts currently in progress, or hereafter obtained interfere with the timely performance of the City of Anacortes project? ☐ YES ☒ NO

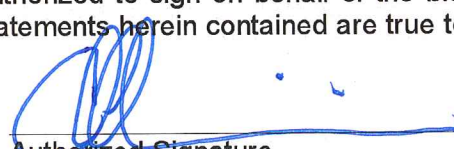
14.) Name, address and phone number of bonding and insurance company, including local contact person and telephone number:

Surety - Fidelity and Deposit Company of Maryland - 206-622-1101 - 800 5th Ave, Suite 3810, Seattle WA 98104  
General Liability, Auto, Umbrella Insurance - Alaska National Insurance Co. - 602-631-2300 - 7001 Jewel Lake Rd, Anchorage AK 99502  
Builders Risk Insurance - Travelers Property & Casualty Co. - 800-842-5075 - 1 Tower Sq. Hartford CT 06183  
Local Contact - HUB International Limited - Brittney Sturrock - 425-489-2111 - 12100 NE 195th St., Suite 200, Bothell WA 98011-5768

The undersigned certifies that he/she is authorized to sign on behalf of the bidder and further certifies under penalty of perjury that the statements herein contained are true to the best of his or her knowledge and belief.

COLACURCIO BROTHERS, INC.  
Company

CHRIS COLACURCIO, SEC/TREAS  
Title

  
Authorized Signature

1/27/22 BLAINE, WA  
Date and Place of Signing



## Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (December 22, 2021), the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

COLACURCIO BROTHERS, INC.

Bidder's Business Name

Signature of Authorized Official\*

CHRIS COLACURCIO

Printed Name

SEC/TREAS

Title

1/27/22

Date

BLAINE

City

WA

State or country

Check One:

Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☒

State of Incorporation, or if not a corporation, State where business entity was formed:

WASHINGTON STATE

If a co-partnership, give firm name under which business is transacted:

*\* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*



Phone: 360-332-4044  
Fax: 360-332-5079

### EVIDENCE OF AUTHORITY TO SIGN

This is evidence of authorization for Chris Colacurcio to sign on behalf of the Board of Directors of Colacurcio Brothers, Inc. and to execute this bid document for:

A handwritten signature in blue ink, appearing to read "Dan Colacurcio", is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail.

Dan Colacurcio, President





## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 7.d.

**Agenda Item Title:** Ordinance 4019: Creating a New Chapter 2.48, Lodging Tax Advisory Committee

**Staff Contact(s):** DON MEASAMER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, ANTHONY YOUNG

**Approved for Submittal to Council by**      **Action Type**

Joann Stewart  
DON MEASAMER  
STEVE HOGLUND  
DARCY SWETNAM

Ordinance

**Item Summary:** The City of Anacortes collects a 4% tax on lodging, as authorized by RCW Chapter 67.28, which may be spent only on tourism marketing, marketing and operations of special events and festivals to attract tourists, or on tourism-related facilities. For additional background, see the [City's Lodging Tax Advisory Committee webpage](#), which includes our lodging tax funding application and recent allocations.

RCW 67.28.1817 requires the City to establish a Lodging Tax Advisory Committee ("LTAC") to make recommendations about spending lodging tax revenue. The City has created such a committee, but the structure of LTAC has not been adopted by ordinance nor codified in AMC Title 2, Administration and Personnel, which is a best practice. In 2016, the City made several changes to the structure of LTAC to correct prior errors in application of the statute. This ordinance would make further changes to improve participation and codify the structure for easy reference.

This proposal has the following notable effects:

- Reduces the membership of number of people collecting the tax (e.g., hoteliers) and people eligible to receive the tax (e.g., event organizers) from 3 each to 2 each. Note that the statute requires at least two from each group, and that the numbers from each group be equal.
- Adds two additional LTAC members who do not fit those categories but that benefit from tourism promotion, with a preference for a local business.
- Addresses the likelihood of a conflict of interest on the committee.
- Clarifies what constitutes a quorum.

- Adds additional reporting and evaluation requirements for LTAC recommendations to council.
- Provides, consistent with a 2016 Attorney General Opinion, for how Council may revise allocations from the original LTAC recommendation.

The blue highlighted lines in the draft ordinance are explanatory text, or references to statutory constraints, that will not be adopted or codified in the final ordinance.

If Council agrees with the content of the proposal, it can move to have a final ordinance prepared and set on the next consent agenda, or returned for discussion at the next meeting.

Pursuant to the Council discussion at its February 28 meeting, staff has posted advertised for additional LTAC members. We recommend Council take up the matter of those appointments only after it has concluded work on the ordinance.

**Budget Impact:**

N/A

**Previous Action:**

- [Council-adopted Tourism Promotion Strategic Plan for 2016-2021](#)
- Council discussion of proposed LTAC appointments on 2/28/2022
- Legal notice published in 3/23/2022 Anacortes American

**Recommended Motion:** I move to set the final draft of the proposed ordinance on our next consent agenda.

**Alternative Actions:**

**Attachments (listed in order presented):**

1. LTAC Ordinance Draft 2022-03-23
2. Public Meeting Notice
3. Join LTAC

**Ordinance No. \_\_\_\_\_**

**An Ordinance Creating New Chapter 2.48, Lodging Tax Advisory Committee**

**Whereas \_\_\_\_\_;**

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

- Section 1. AMC Chapter 2.48 is created to read as shown in Attachment A.
- Section 2. The provisions of this ordinance supersede any conflicting provisions in Resolution 1973, adopting the City of Anacortes 2016-2021 Tourism Promotion Strategic Plan.
- Section 3. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage and publication.

**PASSED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2022.**

**CITY OF ANACORTES:**

\_\_\_\_\_  
Matt Miller, Mayor

**Attest:**

\_\_\_\_\_  
Steve Hoglund, City Clerk-Treasurer

**Approved as to Form:**

\_\_\_\_\_  
Darcy Swetnam, City Attorney

## Attachment A

|                                                                             |   |
|-----------------------------------------------------------------------------|---|
| Chapter 2.48 Lodging Tax Advisory Committee.....                            | 2 |
| 2.48.010 Established.....                                                   | 2 |
| 2.48.020 Membership.....                                                    | 2 |
| 2.48.030 Appointment. ....                                                  | 3 |
| 2.48.040 Duties and Authority. ....                                         | 3 |
| 2.48.050 Applications and Recommendations on Use of Lodging Tax Funds. .... | 3 |
| 2.48.060 Use of Lodging Tax Funds.....                                      | 4 |

### Chapter 2.48 Lodging Tax Advisory Committee

#### 12.48.010 Established.

Consistent with RCW 67.28.1817, a Lodging Tax Advisory Committee (“LTAC”) is established to provide recommendations on the funds collected per AMC Chapter 3.15 (“lodging tax funds”).

#### 22.48.020 Membership.

**i** RCW 67.28.1817 requires “at least two” representatives of entities collecting the tax, and “at least two” members involved in activities authorized to be funded by the tax, and those two numbers must be equal.

A. The Lodging Tax Advisory Committee shall consist of the following members:

1. A City Council member who, per RCW 67.28.1817(1), must serve as chair of LTAC;
2. Two representatives of businesses required to collect the tax under RCW Chapter 67.28;
3. Two representatives of non-profit organizations that engage in activities authorized to be funded by revenue received under RCW Chapter 67.28;

**i** Note paragraph (3) is a more limiting provision than the statute, which does not define a limit on what qualifies as a person involved in activities authorized to be funded by lodging tax.

4. Two residents of Anacortes who do not qualify for the other categories in this list, with a preference for at least one representative of a business with a physical presence in Anacortes that benefits from tourism.

B. To qualify as a representative of an entity described in subsection (A), an applicant for LTAC membership must submit a letter from the entity authorizing that representation.

- C. A person who is eligible for appointment under paragraph (A)(2) is not eligible for appointment under paragraph (A)(3), and vice versa. A person who is eligible for appointment under paragraph (A)(2) or (A)(3) is not eligible for appointment under paragraph (A)(4).

#### **32.48.030 Appointment.**

**i** Per RCW 67.28.1817(1), the City Council is the appointing authority for LTAC members and the City Council must review LTAC membership annually and make changes as appropriate.

- A. Each year, the City Council must appoint LTAC membership for the remainder of the calendar year by resolution.
- B. Appointments last for the remainder of the calendar year and automatically terminate at the end of the year.

#### **42.48.040 Duties and Authority.**

- A. LTAC has the authority to make recommendations to the City Council on lodging tax matters per RCW 67.28.1817(2) and on other subjects as the City Council may request.
- B. LTAC does not have authority to set City policy or authorize expenditures.
- C. LTAC members must comply with the Open Government Trainings Act, RCW 42.30.205.
- D. LTAC meetings must comply with the Open Public Meetings Act, RCW Chapter 42.56.
- E. An LTAC member must avoid a conflict of interest, and may not cast a vote on, nor participate in debate about, an allocation to an entity that LTAC member represents or has any pecuniary interest in.

#### **52.48.050 Applications and Recommendations on Use of Lodging Tax Funds.**

**i** We considered restricting application to non-profit organizations, so as to prevent gifts of public funds to for-profit entities, but find it may be too restrictive. We considered restricting applications to local entities, but we regularly award funding to the Skagit Tulip Festival and the NW Marine Trades Association, neither of which has a primary physical presence in Anacortes.

- A. Any individual or organization, including local government entities including the City of Anacortes itself, may make application to LTAC for use of lodging tax funds.

**i** RCW 67.28.1816(2) requires applicants to estimate how much and what kinds of tourism their proposed activity will attract.

**B.** An application for use of lodging tax funds must contain all of the following:

1. a fixed amount of lodging tax funds requested;
2. a budget for the proposed activity to be funded;
3. the estimates required by RCW 67.28.1816(2).

C. LTAC must consider the applications for proposed use of lodging tax funds and make recommendation on applicants and recommended amounts to the City Council. A quorum of 50% plus 1 of the LTAC membership must be present at a meeting to make a recommendation.

D. For each proposal, LTAC's recommendation must include all of the following:

**i** Paragraphs 1 and 2 are required by RCW 67.28.1816.

1. an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism in Anacortes;
2. the extent to which the recommended funding amount will affect the long-term stability of the lodging tax fund;
3. a calculation of the ratio of the recommended funding amount to the number of tourists that are estimated to be attracted to Anacortes;

**i** Reports on tourism generated are required by the statute and our contract templates.

4. evaluation of the consistency of the application with the statutory requirements;
5. history of the applicant's past compliance with requirements to report on the actual tourism generated.

#### **62.48.060 Use of Lodging Tax Funds.**

- A. Lodging tax funds may only be authorized for the uses described in RCW 67.28.1816(1).
- B. Any use of lodging tax funds must be authorized by the City Council by resolution, ordinance, or authorization of a contract.
- C. Per RCW 67.28.1817(2), a proposed use of lodging tax funds must be submitted to LTAC for review and comment at least 45 days before the City may authorize the use of funds.



**i** The procedures and limitations on Council revision of the recommended amounts are described in [this informal AGO](#) from 2016.

- D. If the City Council desires to authorize an allocation different from the amount recommended by LTAC, it may do so after providing LTAC up to 45 days to comment on the revised allocation.
- E. The City Council may not authorize an allocation to an entity that was not recommended for funding by LTAC.

# Legal Notices

EMAIL: CLASSIFIED@SKAGITADS.COM • PHONE: (360) 424-4567

LEGALS

Legals

**In the Superior Court of the State of Washington for the County of Skagit**

Keith C. McCraw, Plaintiff,

vs. No. 22-2-00081-29

Emily N. Hall, Defendant.

The State of Washington to the said Emily N. Hall.

You are hereby summoned to appear within sixty days after the date of the first publication of this summons, to wit, within sixty days after the 2nd day of March, 2022, and defend the above entitled action in the above entitled court, and answer the complaint of the plaintiff Keith C. McCraw, and serve a copy of your answer upon the undersigned attorneys for plaintiff Clare E. Bogdanowicz, at her office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which has been filed with the clerk of said court. This is a Declaratory Judgment and Partition matter pertaining to 203 N. 23rd Street, Mount Vernon, WA 98272.

Legals

Sincerely,  
Clare E. Bogdanowicz  
North City Law, PC  
17713 15th Avenue NE Suite 101  
Shoreline, WA 9815  
King County Washington  
Plaintiff's Attorneys.

Published  
March 2, 9, 16, 2022  
March 23 &  
April 6, 2022  
AA-206642

**IN THE SUPERIOR COURT OF THE STATE WASHINGTON IN AND FOR THE COUNTY OF SKAGIT**

In the Matter of the Estate of

Fern Leah Leopold, Deceased.

No. 22-4-00090-29  
PROBATE NOTICE TO CREDITORS

The Personal Representative named below has been appointed as Personal Representative of this Estate. Any person having a claim against the Decedent must, before the time the claim would be barred by any otherwise applicable statute of limitations, present the claim in the manner as provided in RCW 11.40.070 by serving on or mailing to the Personal Representative or the Personal Rep-

Legals

representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the Court. The claim must be presented within the later of: (1) Thirty days after the Personal Representative served or mailed the notice to the creditor as provided under RCW 11.40.020(3); or (2) four months after the date of first publication of the notice. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in RCW 11.40.051 and 11.40.060. This bar is effective as to claims against both the Decedent's probate and nonprobate assets.

**Date of First Publication:** March 9, 2022  
**Personal Representative:** Margaret Leopold  
**Attorney for the Personal Representative:** Justin Rothboeck  
**Address for Mailing or Service:** 1008 5th Street Anacortes, Washington 98221

Benner-Rothboeck Attorneys for Petitioner



Legals

1008 5th Street Anacortes, Washington 98221  
Dated this 3rd day of March 2022.  
By Justin Rothboeck  
WSBA #47458

Published  
March 9, 16, 23, 2022  
AA-210921



The following is a summary of an Ordinance passed by the Anacortes City Council on March 14, 2022.

**ORDINANCE NO. 4014**

**AN ORDINANCE AMENDING THE DEVELOPMENT REGULATIONS CONTAINED IN ANACORTES MUNICIPAL CODE TITLE 19, UNIFIED DEVELOPMENT CODE, TABLE 19.41.050 REMOVING SELF SERVICE STORAGE AS A PERMITTED USE IN THE COMMERCIAL USE ZONE**

A copy of the complete text of each ordinance is posted at the Anacortes City Hall, Anacortes Municipal Building, 6th Street and Q Avenue. Upon request to the City Clerk,

Legals

quest to the City Clerk's Office (360-293-1900) copies will be mailed.

Steven D. Hoglund  
City Clerk

Published  
March 23, 2022  
AA-214476



**Notice of Public Meeting**

Including written comment period, public meeting date

Publish Date: March 23, 2022

Proposal Name: Ordinance 4019 Creating a New Chapter 2.48, Lodging Tax Advisory Committee Documents Available at: <https://www.anacorteswa.gov/198/Anacortes-Municipal-Code-Updates>

Lead Agency: City of Anacortes Planning, Community & Economic Development Department

Contact Person  
Don Measamer, Director

Public Hearing Body:  
Anacortes City Council

Legals

Public Hearing Date:  
Monday, March 28, 2022, at 6:00 PM

**Proposal Description**  
The proposal would amend AMC to create a new chapter 2.48, Lodging Tax Advisory Committee.

How to Comment Email comments are preferred and must be sent to [don@cityofanacortes.org](mailto:don@cityofanacortes.org). Please include your comments in the body of your email message rather than as attachments.

**Paper comments may be mailed or delivered to:**  
City of Anacortes Planning, Community & Economic Development Department  
ATTN: Don Measamer  
P.O. Box 547 / 904 6th St. Anacortes, WA 98221

**Verbal comments** may be made at the Public Hearing. The public meeting will be held remotely and in person. Meeting access information can be found on the City Council agenda, posted Wednesday prior to the meeting here: <https://www.anacorteswa.gov/700/Meeting-Documents-and-Video>

Published  
March 23, 2022  
AA-215866

Snap Up a Deal  
in the Classifieds

Call or go online to browse, buy or sell!



Shop your local  
CLASSIFIEDS

Page 213 of 296







## City Council Agenda Bill

**Meeting Date:** March 28, 2022      **Agenda Item:** 7.e.

**Agenda Item Title:** Ordinance 4015: Critical Areas Regulation Amendments

**Staff Contact(s):** DON MEASAMER

| <b><u>Approved for Submittal to Council by</u></b> | <b><u>Action Type</u></b> |
|----------------------------------------------------|---------------------------|
| DON MEASAMER                                       | Ordinance                 |
| DARCY SWETNAM                                      |                           |

**Item Summary:** A legislative action to amend Critical Areas Regulations AMC Table 19.70.235 (B), increase required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat, with a score of eight or nine on the wetland rating form. Amend AMC 19.70.330 (C) to eliminate the allowance for stream buffer reductions. Amend AMC 19.70.330 (F) to eliminate the allowance for stream relocations. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer averaging.

**Budget Impact:**  
NA

**Previous Action:** At its [March 16, 2022 Public Hearing](#), the Planning Commission unanimously recommended approval to the City Council. One person spoke in favor of the amendments.

**Recommended Motion:** I move to approve Ordinance 4015 as presented.

**Alternative Actions:** Revise as needed

**Attachments (listed in order presented):**

1. Ordinance 4015 Critical Areas Amendments
2. Critical Areas Amendments 2022
3. PC Findings
4. Critical Areas Amendments Chapter 19 PWR PT
5. Notice of Public Hearing
6. SEPA

## Ordinance No. 4015

### An Ordinance Amending the Critical Area Regulations Contained in Anacortes Municipal Code Chapter 19.70, Table 19.70.235(B), Section 19.70.330(C) Section 19.70.330 (F) and Section 19.70.340

**Whereas**, on July 18, 2016, the City Council adopted Ordinance 2982 adopting a new Comprehensive Plan pursuant to the City's periodic Growth Management Act Comprehensive Plan amendment and update process; and

**Whereas**, the Anacortes Comprehensive Plan provides guidance for amending the Anacortes Municipal Code (AMC) development regulations and official zoning map to implement its land use, housing, economic development, transportation, environment and conservation, and other goals and policies; and

**Whereas**, the proposed amendments to the development regulations and official zoning map were initiated by the City in accordance with the requirements of the Growth Management Act and AMC 19.16.030(B), subsequent to the adoption of the 2016 Comprehensive Plan; and

**Whereas**, the City Council adopted Ordinance 3040 adopting new Development Regulations July 22, 2019; and

**Whereas**, the City Council adopted Ordinance 3064 updating the Critical Areas Regulations July 26, 2021; and

**Whereas**, the City Council desires to amend certain sections of the Critical Area regulations as depicted in attachment A;

**Whereas**, the amendments to the Critical Areas regulations are in the best interest of the City Of Anacortes residents; and

**Whereas**, the amendments to the Critical Area Regulations set forth herein have been processed, reviewed, considered, and adopted in material compliance with all applicable state and local procedural requirements, standards and requirements, standards, and criteria, including but not limited to the requirements of Chapter 36.70A RCW.

**Whereas**, a public comment opportunity was provided for certain changes to Critical Area Regulations Chapter 19.70 Table 19.70.235(B), Section 19.70.330(C), Section 19.70.330(F) and Section 19.70.340 at the March 16, 2022 Planning Commission meeting ; and

**Whereas**, the City Council considered the Planning Commission recommendation at a meeting on March 28, 2022 ;

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

**Section 1. Findings.** The above recitals are hereby adopted by reference as legislative findings in support of this ordinance. The City Council further enters the following findings:

**Section 2. Development Regulation Amendments Adopted.** The Anacortes Municipal Code Chapter 19.70 is amended as described in Attachment A.

**Section 3. Transmittal to State.** Pursuant to RCW 36.70A.106, a copy of this ordinance shall be submitted to the State Department of Commerce.

**Section 4. Severability.** If any section, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

**Section 5. Effective Date.** Consistent with RCW 35A.12.130, this ordinance takes effect 5 days after publication.

**Section 6.** PASSED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF ANACORTES:**

\_\_\_\_\_  
Matt Miller, Mayor

**Attest:**

\_\_\_\_\_  
Steve Hoglund, City Clerk-Treasurer

**Approved as to Form:**

\_\_\_\_\_  
Darcy James Swetnam, City Attorney

## Chapter 19.70

### CRITICAL AREAS

#### Sections:

#### Introduction – General Provisions

- 19.70.010 Purpose.
- 19.70.015 Applicability.
- 19.70.020 Identification, classification, and rating of critical areas.
- 19.70.025 Protection of critical areas.
- 19.70.030 Project evaluation.
- 19.70.035 Critical areas review.
- 19.70.040 Exempt activities.
- 19.70.045 Permitted alterations.
- 19.70.050 Reasonable use exception and critical area variance.

#### Article I. Critical Areas Review Procedures

- 19.70.110 Critical area identification form.
- 19.70.115 Critical area report.
- 19.70.120 Application requirements.
- 19.70.125 Mitigation requirements.
- 19.70.130 Mitigation plan requirements.
- 19.70.135 Title notification.
- 19.70.140 Field marking.
- 19.70.145 Construction plan review, monitoring, and inspection.
- 19.70.150 Financial guarantee requirements.
- 19.70.165 Unauthorized critical area alterations.
- 19.70.170 Final decision and appeals.

#### Article II. Wetlands

- 19.70.210 Description and purpose.
- 19.70.215 Designation and rating.
- 19.70.220 Mapping and delineation.
- 19.70.225 General development standards.
- 19.70.230 Specific wetland category development standards.
- 19.70.235 Required buffer areas.
- 19.70.240 Critical area report additional requirements.
- 19.70.245 Compensatory mitigation performance standards and requirements.



Article III. Fish and Wildlife Habitat Conservation Areas

- 19.70.310 Description and purpose.
- 19.70.315 Designation.
- 19.70.320 Mapping.
- 19.70.325 General development standards for all FWHCAs.
- 19.70.330 Specific standards for streams.
- 19.70.335 Specific standards for other FWHCAs.
- 19.70.340 Buffer width averaging.
- 19.70.345 Stormwater management facilities.
- 19.70.350 Critical area report additional requirements.
- 19.70.355 Mitigation performance standards and requirements.

Introduction – General Provisions

19.70.010 Purpose.

- A. The purpose of this chapter is to designate critical areas and to establish standards for the protection of their functions and values, in compliance with the provisions of the Washington State Growth Management Act of 1990 (Chapter [36.70A](#) RCW), and consistent with the goals and policies of the Anacortes comprehensive plan.
- B. By identifying and regulating development and alterations to critical areas and their buffers, this chapter seeks to accomplish the following goals:
1. Protect members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, or flooding;
  2. Protect, maintain and restore healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, including, but not limited to, ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve the biodiversity of plant and animal species;
  3. Direct activities not dependent on critical area resources to less environmentally sensitive sites and mitigate unavoidable impacts to critical areas by regulating alterations in and adjacent to critical areas;
  4. Prevent cumulative adverse environmental impacts to water quality, wetlands, and fish and wildlife habitat, and the overall net loss of wetlands, frequently flooded areas, and habitat conservation areas;

5. Alert owners, potential purchasers, real estate agents, appraisers, lenders, builders, developers and other members of the public to natural conditions that pose a hazard or may otherwise limit development;
6. Serve as a basis for exercise of the city's substantive authority under the State Environmental Policy Act (SEPA).

C. The regulations of this chapter are intended to protect critical areas in accordance with the Growth Management Act, through the application of best available science, as determined according to WAC [365-195-900](#) through [365-195-925](#), and in consultation with state and federal agencies and other qualified professionals.

D. This chapter is intended to be administered with limited flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property, or to prevent the provision of public facilities and services necessary to support existing development and that planned for by the community without decreasing current service levels below minimum standards.

E. The city's enactment or enforcement of this chapter must not be construed for the benefit of any individual person or group of persons other than the general public. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.015      Applicability.

A. Unless explicitly exempted, the provisions of this chapter apply to all land uses, development activity, and all structures and facilities within the city of Anacortes that are within the critical area, within the maximum buffer distance of, or likely to affect the functions and values of, one or more critical areas.

#### B. *Relationship to Other Regulations.*

1. Shorelines of the state and shorelands as defined in RCW [90.58.030](#), and critical areas occurring within the jurisdiction of shorelines of the state and shorelands ("shoreline jurisdiction"), are regulated and protected through the Anacortes shoreline master program (AMC Chapter [19.72](#)), as amended. Activities occurring within shoreline jurisdiction are reviewed through the shoreline permit review and issuance process; a separate critical areas permit is not required. The shoreline master program incorporates by reference portions of this chapter; however, certain provisions of this chapter that are not consistent with the Shoreline Management Act, Chapter [90.85](#) RCW and supporting Washington Administrative Code chapters do not apply in shoreline jurisdiction.
2. These critical areas regulations apply in addition to zoning and other regulations adopted by the city. Notwithstanding AMC [19.12.040\(E\)](#), in the event of any conflict between these regulations and any other regulations of the city, the regulations apply that provide greater protection to the critical areas' functions and values, as determined by the Director.

3. When any provision of this chapter or any existing easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas applies.
4. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, or local regulations and permit requirements that may be required. The applicant is responsible for complying with other agency requirements, apart from the process established in this chapter. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.020 Identification, classification, and rating of critical areas.

A. *Critical Areas Maps.* The general locations of many critical areas in Anacortes are displayed on the city of Anacortes' critical areas maps. The maps are used to alert the public of the potential location of critical areas in Anacortes. As new environmental information related to critical areas becomes available, the city is authorized to make changes as necessary to the critical areas maps. The city Geographic Information Systems office must maintain an interactive, publicly available online map containing the location of known and potential critical areas and must make PDF maps available to the public upon request.

B. *Actual Site Conditions.* Regardless of whether a critical area is shown on the critical areas map, the actual presence or absence of the features defined in this code as critical areas will govern. Prior to acting on any development permit the city may require an applicant to submit technical information to indicate whether critical areas actually exist on or adjacent to the applicant's site based on the definitions of critical areas in this code. This will be administered as a critical area identification form (AMC [19.70.110](#)) included with appropriate permit forms.

C. *Classification and Rating.* To promote consistent application of the standards and requirements of this chapter, critical areas within the city will be rated or classified using best available science according to their characteristics, function and value, and/or their sensitivity to disturbance.

1. Classification of critical areas will be determined by the city using the following tools:
  - a. Application of the criteria contained in these regulations;
  - b. Consideration of the critical area reports submitted by qualified professionals in connection with applications subject to these regulations; and
  - c. Review of maps and other resources adopted pursuant to this chapter.
2. Rating categories will not change due to illegal modifications. If the development proposal site contains or is within a critical area suspected of illegal modifications the rating will be based on pre-modification conditions of the critical area. Abatement of the unauthorized modification will be required prior to authorization of the current development proposal being processed for the subject site. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.025 Protection of critical areas.

- A. Critical areas and their required buffers may not be altered except as allowed by this chapter.
- B. Any action taken pursuant to this chapter must result in equivalent or greater functions and values of the critical areas associated with the proposed action, as determined by the best available science.
- C. All actions and development must be designed and constructed in accordance with mitigation sequencing per AMC [19.70.125](#) to achieve no net loss of critical area functions and values.
- D. Applicants must first demonstrate an actual inability to avoid or reduce impacts before restoration and compensation of impacts will be allowed.
- E. No activity or use may be allowed that results in a net loss of the functions or value of critical areas.
- F. Any individual critical area adjoined by another type of critical area must have the buffer and meet the requirements that provide the most protection to the critical areas involved.
- G. Violations of this chapter are subject to AMC Title [20](#), Civil Enforcement and Penalties. Where a violation occurs within a suspected protected critical area or as depicted on city mapping, the property owner must provide an appropriate critical area report to determine impacts. The report may be subject to third party review at the property owner's expense. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.030 Project evaluation.

- A. As part of the review, the city will:
  - 1. Verify the information submitted by the applicant;
  - 2. Evaluate the project area and vicinity for critical areas;
  - 3. Determine whether the proposed project is likely to impact the functions or values of critical areas; and
  - 4. Determine if the proposed project adequately addresses the impacts and avoids impacts to the critical area associated with the project.
- B. If the proposed project is within, adjacent to, or is likely to impact a critical area, the city will:
  - 1. Require a critical area report from the applicant that has been prepared by a qualified professional, to be reviewed and evaluated;

2. Determine whether the development proposal conforms to the purposes and performance standards of this chapter, including the criteria in AMC [19.70.035](#), Critical areas review;
3. Assess the potential impacts to the critical area and determine if they can be avoided or minimized; and
4. Determine if any mitigation proposed by the applicant is sufficient to protect the functions and values of the critical area and public health, safety, and welfare concerns consistent with the goals, purposes, objectives, and requirements of this chapter.

C. The city may require third party review of any critical area report, at the expense of the applicant. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.035 Critical areas review.

A. *When Required.* A proposal to modify any critical area and/or required buffer including, but not limited to, clearing, grading, draining, removal or alteration of vegetation, construction of structures, utilities and related infrastructure, must require a critical area permit unless it qualifies as an exemption, as provided in AMC [19.70.040](#). Except that, for within shoreline jurisdiction, administration of this chapter shall be through the shoreline master program and appropriate shoreline permit administration process.

B. *Best Management Practices.* All activities, including those allowed without critical areas review, must be conducted using the best management practices appropriate for that activity that result in the least amount of impact to the critical areas. Best management practices must be used for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and regulation of chemical applications. The use of best management practices is required to ensure that the activity does not result in degradation to the critical area. Appropriate BMP sources include Ecology's Construction Storm Water General Permit and NRCS Conservation Practices. Any incidental damage to, or alteration of, a critical area and/or buffer must be restored, rehabilitated, or replaced at the responsible party's expense.

C. *Modifications to Existing Nonconforming Structures and Uses.* In these provisions the burden of proof is on the applicant to bring evidence in support of their position. Existing structures, activities, and uses that were established legally but do not meet the current critical area, buffer, or buffer setback requirements may continue in accordance with AMC [19.49.040](#), and may be modified as follows:

1. Routine maintenance and repairs;
2. Structural modifications or additions that do not intensify the nonconformity of the structure or increase the area of hardscape lying within the critical area or buffer. The Director may require an updated critical area report to confirm location of buffers and that the addition is located entirely outside the critical area or buffer;

3. Vertical additions above the ground floor that do not encroach further into the critical area or buffer beyond the existing exterior walls, except that critical areas review is required for additions in landslide hazard areas or buffers;

4. Restoration or replacement of a structure that is damaged by fire, natural disaster or other calamity when:

a. A complete application for reconstruction or replacement is submitted within one year of the damage; and

b. The restoration or replacement is made to conform to the current critical areas regulations, or if such regulations cannot be physically met without reducing the size of the building, the restoration or replacement may not intensify any nonconformity that existed prior to the damage;

c. Except that critical areas review is required for restoration and replacement in landslide hazard areas or buffers;

5. *State Ferry Terminal*. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry terminal facility. Redevelopment may occur within the existing footprint only, provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.

D. *Demolition*. Demolition of structures located within critical areas or their buffers is permitted, excluding demolition of structures necessary to support or stabilize landslide hazard areas, and will be subject to approval of a stormwater pollution prevention plan consistent with the adopted stormwater management manual and clearing limits that will adequately protect the critical area. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.040 Exempt activities.

A. *General Requirements for All Exempt Activities*. Activities listed in this section are exempt from the rest of the provisions of this chapter only if they meet the specific terms of this section.

B. To be exempt from this chapter does not give permission to degrade a critical area or buffer or to ignore risk from natural hazards. All exempt activities must use reasonable methods to avoid potential impacts to critical areas and buffers. In every case, disturbance to the critical area must be minimized through best management practices and the use of low-impact equipment.

C. Any incidental damage to, or alteration of, a critical area or buffer that is not a necessary outcome of the exempted activity must be restored, rehabilitated, or replaced at the responsible party's expense.



D. This chapter may not exempt an activity from the provisions of other city permits such as clearing and grading for vegetation removal and ground disturbing activities, or agency permit requirements such as Washington Department of Fish and Wildlife hydraulic permit, or Army Corps of Engineers regulatory requirements.

E. *Burden of Proof.* The burden of proof is on the applicant to bring forth evidence that the activity meets the precise description of the exemption.

F. Table 19.70.040(A) describes activities that must meet the precise description to be allowed without following a critical area process. Activities are divided into the categories of permitted in the critical area and permitted in the buffer, marked by a yes or no in the appropriate column.

Table 19.70.040(A) Exempt Activities

| EXEMPT ACTIVITIES: (No review required, must strictly meet standards)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Critical Area | Buffer |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| <p><b>Emergencies.</b> Alterations in response to emergencies which threaten the public health, safety, and welfare or which pose an imminent risk of damage to private property, and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of this chapter, if the following requirements are met:</p> <ul style="list-style-type: none"> <li>a. Only the minimum intervention necessary to reduce the risk to public health, safety, or welfare and/or the imminent risk of damage to private property may be authorized by this exemption.</li> <li>b. The alteration undertaken must be reported to the Director no later than 30 days after the alteration has occurred. Once notified, the Director must confirm that an emergency existed and determine what, if any, additional applications and/or measures are required of the property owner to protect the critical area(s) consistent with the provisions of this chapter, and to repair any damage to a pre-existing resource.</li> <li>c. After the emergency, the person or agency undertaking the action must fully fund and conduct necessary site evaluations and critical area reports, mitigation plans, and restoration for any impacts to the critical area and buffers resulting from the emergency action. The person or agency undertaking the action must meet the review procedures contained herein. Mitigation activities must be initiated within one year of the date of the emergency or as directed by the Department.</li> <li>d. If the Director determines that the action taken, or any part of the action taken, was beyond the scope of an allowed emergency action, or any required mitigation, the Director may take action to enforce this chapter consistent with AMC Titles <a href="#">19</a> and <a href="#">20</a>.</li> </ul> | Yes           | Yes    |
| <p><b>Yard and garden activities.</b> Maintenance or repair activities including, but not limited to, cutting, mowing, weeding, hand removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and planting of noninvasive ornamental vegetation or indigenous native species to maintain the general condition and extent of such areas; provided, that such maintenance or repair activities are limited to legally existing landscaping improvements and do not further expand into critical areas or associated buffers, do not alter topography, do not destroy or clear native vegetation, do</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | No            | Yes    |

| EXEMPT ACTIVITIES: (No review required, must strictly meet standards)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Critical Area | Buffer |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| not remove non-hazard trees in the buffer or critical area, and do not diminish water quality or quantity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |               |        |
| <p>a. Native growth protection areas, mitigation sites, or other areas protected via permit conditions, conservation easements or similar restrictive covenants (as defined in AMC <a href="#">19.70.135</a>) are not covered by this exemption.</p> <p>b. If an activity has ceased for one year or more any future use of such land, building or structure must thereafter be in conformity with this chapter and the zone in which it is located.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |               |        |
| <b>Site Investigation.</b> Minimal site investigative work and studies necessary for preparing land use applications, including, but not limited to, surveys, soil logs and borings, percolation tests, water quality studies, scientific research, wildlife studies, and similar tests and investigations; provided, that such activities do not require clearing, fill, construction of new roads, or heavy equipment, and only minimal amounts of excavation and disturbed areas must be immediately restored.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Yes           | Yes    |
| <b>Outdoor Recreation Activities.</b><br>Outdoor recreation activities that do not involve modifying the land or vegetation, and that will not adversely affect the functions and values of critical areas.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Yes           | Yes    |
| EXEMPTIONS that require a letter of exemption be obtained from the Director prior to construction or initiation of activities. Subject to conditions by the Director to ensure compliance with this chapter.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Critical Area | Buffer |
| <b>Utility Operation, Maintenance, Repair, or Replacement.</b> Public water, electric, and natural gas distribution, public stormwater and sewer collection, cable communications, telephone, utility and related activities undertaken pursuant to city-approved best management practices, and best available science with regard to protection of threatened and endangered species, as follows:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Yes           | Yes    |
| <p>a. Normal and routine maintenance or repair of existing utility structures or rights-of-way; when the activity does not involve the expansion of facilities or improvements into a previously unimproved portion of critical areas or required buffers;</p> <p>b. Replacement, operation, repair, modification, installation or construction in an improved city road right-of-way or city-authorized private roadway of all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; to include relocation only when required by the city of Anacortes, which approves the new location of the facilities;</p> <p>c. Relocation of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication or telephone facilities, lines, pipes, mains, equipment or appurtenances, only when required by the city of Anacortes, which approves the new location of the facilities;</p> <p>d. Replacement, operation, repair, modification, relocation, installation or construction of public sewer or stormwater local collection, public water local distribution, natural gas, cable communication, or telephone facilities, lines, pipes, mains, equipment or appurtenances when such facilities are located within an improved public right-of-way</p> |               |        |

| EXEMPT ACTIVITIES: (No review required, must strictly meet standards)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Critical Area | Buffer |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| <p>or city-authorized private roadway;</p> <p>e. Repair and maintenance of existing private connections to public utilities and private stormwater management facilities;</p> <p>f. Regular maintenance of stormwater facilities that are within a segment of a regulated stream, such as conveyance ditches/swales within the right-of-way or within public drainage easements.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |               |        |
| <p><b>Transportation Infrastructure Operation, Maintenance, Repair, or Replacement.</b> Maintenance, operation, repair, modification, or replacement of publicly improved roadways or city-authorized private roadways, including the road prism and associated stormwater management systems; as long as any such alteration does not involve expansion of roadways or related improvements into previously unimproved rights-of-way or portions of rights-of-way, and does not alter a critical area or required buffer, or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater. Retention and replanting of native vegetation must occur whenever possible along the right-of-way improvement and resulting disturbance.</p>                                                                                                                                                                                                 | Yes           | Yes    |
| <p><b>Recreation Areas Operation, Maintenance, Repair, or Replacement.</b> Maintenance, operation, repair, modification, or replacement of existing trails, and existing facilities within publicly improved recreation areas, such as the Anacortes Community Forest Lands and public parks, may be performed subject to the following:</p> <p>a. The activity does not involve the expansion of facilities and disturbance to adjacent areas is minimized and disturbed areas must be immediately restored;</p> <p>b. Work is conducted using best management practices;</p> <p>c. Flow and circulation patterns and biological characteristics are not impaired and adverse impacts are minimized;</p> <p>d. Where trail relocation is the least impactful method of repair, trail relocation further away from the critical area is not to be considered a new trail but is included in the exemption for operation, maintenance, repair, or replacement.</p>                    | Yes           | Yes    |
| <p><b>Vegetation Management, including:</b></p> <p>1. Removal of noxious weeds or invasive vegetation, as identified by the Washington State or Skagit County Noxious Weed Control Board, in a wetland buffer, stream buffer, other fish and wildlife habitat conservation areas and buffers, is allowed when:</p> <p>a. Undertaken with hand labor, including handheld mechanical tools, and integrated pest management;</p> <p>b. Plants that appear on the Washington State or Skagit County Noxious Weed Control Board lists must be handled and disposed of in accordance with the best management practices appropriate to that species and approved by the city when permit review is applicable;</p> <p>c. Areas cleared by removal of noxious and/or invasive plant species must be revegetated with site-appropriate native species at natural densities and the site must be stabilized against erosion in accordance with the stormwater manual adopted by the city;</p> | Yes           | Yes    |

| EXEMPT ACTIVITIES: (No review required, must strictly meet standards)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Critical Area | Buffer |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| <p>d. All work performed is above the ordinary high water mark and above the top of a stream bank; and</p> <p>e. The following limits may not be exceeded: Within city-owned property, no more than 3,000 square feet of soil may be exposed at any one time; and within private property, not more than 500 square feet of area may be cleared, as calculated cumulatively, over one year, without a permit and critical area report prepared by a qualified professional.</p>                                                                                                                                                                                                                                                                                                              |               |        |
| <p>2. Vegetation management consistent with a previously approved critical area mitigation, restoration, remediation, or enhancement plan that requires ongoing maintenance and vegetation management beyond final inspection and the required monitoring period for the permitted project.</p> <p>3. Hazard Trees.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |        |
| <p>a. The felling of hazard trees may be permitted when necessary to:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |               |        |
| <p>i. Control fire; or</p> <p>ii. Halt the spread of disease or damaging insects consistent with Chapter <a href="#">76.09</a> RCW;</p> <p>iii. Avoid a threat to existing structures, above-ground utility lines or other facilities; or</p> <p>iv. Remove an actual threat to life or property from slope instability that would be caused by toppling.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                |               |        |
| <p>b. Unless there is an emergency pursuant to emergency exemptions above, the landowner must first obtain prior written approval from the Department. A tree risk assessment prepared by an ISA certified arborist must be submitted by the applicant to the Department that includes the following information:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |               |        |
| <p>i. Identification of the tree(s) proposed to be removed;</p> <p>ii. A conclusion that the condition constitutes an actual threat to life or property;</p> <p>iii. An assessment of whether a portion of the tree suitable for a snag for wildlife habitat may be safely retained;</p> <p>iv. If a tree to be removed provides priority habitat, such as an eagle perch or occupied nest, a description of timing and methods of removal that will minimize and mitigate impacts;</p> <p>v. If a tree to be removed is located within a landslide hazard area or buffer, an evaluation of potential impacts on slope stability must be completed by a qualified professional, including recommendations for replanting and other measures to avoid adverse impacts to slope stability.</p> |               |        |
| <p>c. All work must be done using handheld implements only, unless the property owner requests and the Director approves otherwise in writing.</p> <p>d. Any removed tree or vegetation must be replaced in-kind, with similar or appropriate native species, within one year in accordance with an approved restoration plan including species, size, and maintenance plan.</p>                                                                                                                                                                                                                                                                                                                                                                                                             |               |        |
| <p><b>Clearing, grading, and the construction of fences and arbors</b> are allowed within the</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | No            | Yes    |

| EXEMPT ACTIVITIES: (No review required, must strictly meet standards)                                      | Critical Area | Buffer |
|------------------------------------------------------------------------------------------------------------|---------------|--------|
| required 10-foot stream setback for a piped stream segment if no other critical area or buffer is present. |               |        |

(Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.045 Permitted alterations.

A. *Applicability.* An applicant may seek an alteration of a critical area and/or critical area buffer through a permitted alteration when application of the standards in this chapter would result in the denial of all reasonable and economically viable use of the property and the proposed development meets the specific terms of this section.

B. *General Requirements.* The actions in the permitted alteration table below must be considered permitted alterations, unless as otherwise specified under AMC [19.70.230](#), Specific wetland category development standards, and provided they are consistent with the general standards for mitigation sequencing and other applicable requirements established in this chapter.

#### C. *Review Process.*

1. A critical area permit must be required for all permitted alterations. Requests for such permits must be reviewed using the procedures outlined in AMC Chapter [19.20](#), Table 19.20.030-1, Review classification and process matrix. No permit must be issued unless it can be shown that the proposed development is fully consistent with the requirements of this chapter.
2. In addition to other project-related documents, all permitted alterations must require a critical area assessment report per AMC [19.70.115](#), Critical area report, to evaluate the permitted alteration. The report must include:
  - a. A description of the function and condition of the critical area and/or buffer that would be altered;
  - b. An analysis of the effect of the development proposal on the critical area and/or buffer;
  - c. A description of actions that can be taken to modify the development proposal to avoid or reduce the alteration of the critical area and/or buffer and a discussion of whether these modifications are practical and reasonable;
  - d. A mitigation plan as required by this chapter.
3. *Burden of Proof.* The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.

4. *Public Comment.* Consistent with AMC [19.20.030](#), Types of review, the city must ensure the opportunity for public comment, including that from appropriate federal, state, and tribal natural resource agencies, to ensure the use of best available science before deciding on approval.

D. *Decision Criteria.* A permit for alterations of a critical area and/or buffer width requirements of this chapter may only be issued if the applicant demonstrates that all of the following criteria are met:

1. Special circumstances applicable to the subject property, including size, shape, or topography, and the strict application of this chapter is found to deprive the subject property of rights and privileges enjoyed by other properties in the vicinity; provided, however, that the fact that those surrounding properties have been developed under regulations in force prior to the adoption of this chapter may not be the sole basis for granting approval;
2. The issuance of a variance to zoning requirements (setback, height, coverage, etc.) by itself will not provide sufficient relief to avoid the need for a permitted alteration to the critical area and/or buffer and other requirements for the critical areas regulated by this chapter;
3. Mitigation sequencing per AMC [19.70.125\(A\)](#), Mitigation Sequencing, has been applied;
4. The proposed alteration is supported by best available science; and
5. The proposed alteration allows for development of the subject parcel with the least impact on critical areas while providing a reasonable use of the property.

E. Conditions may be required. In granting any approval, conditions and safeguards may be prescribed as are necessary to secure adequate protection of critical areas from adverse impacts, protect adjacent property, and ensure conformity with this chapter.

F. Table 19.70.045 describes activities that must meet the precise description to be allowed following the prescribed critical area process. Activities are divided into the categories of permitted in the critical area and permitted in the buffer, marked by a yes or no in the appropriate column.

Table 19.70.045 Permitted Activities

| Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)                                                                                                                                                                                              | Critical Area | Buffer |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| <b>Buffer Modifications, including:</b> increased buffer width, buffer averaging, and buffer alterations as described specifically in this chapter.                                                                                                                                  | No            | Yes    |
| <b>Public Services.</b> To protect wetlands, streams, wildlife habitat and other sensitive critical areas while allowing services when the strict application of the standards in this chapter would otherwise unreasonably prohibit the provision of public services and amenities. | Yes           | Yes    |
| 1. “Public services” include, but are not limited to, water supply, sewer and stormwater management facility; electric power, telecommunication and natural gas lines; and                                                                                                           |               |        |



| Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Critical Area | Buffer |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| <p>public road and multimodal transportation corridors (e.g., the Tommy Thompson Trail and Guemes Channel Trail).</p> <p>2. Public services may be allowed to alter critical areas and buffers when:</p> <ul style="list-style-type: none"> <li>a. Mitigation sequencing per AMC <a href="#">19.70.125(A)</a> has been applied;</li> <li>b. The application of the critical areas regulations would unreasonably restrict the ability to provide public services;</li> <li>c. There is no other practical alternative to the proposed development with less impact on the critical area;</li> <li>d. The proposed development does not create a health or safety hazard on or off the development site, and must not be detrimental to the properties or improvements in the vicinity;</li> <li>e. Where feasible, development is located on existing road grades, utility corridors, or previously disturbed areas;</li> <li>f. Designs for crossings, boardwalks, bridges, and culverts are consistent with Washington Department of Fish and Wildlife and National Marine Fisheries Service best available science for the protection of fish and wildlife habitat. These structures shall not interfere with fish passage, the flow and circulation of water, or other wetland or stream processes, and shall be located at a 90-degree angle, or as close as possible thereto, to the stream, wetland, or buffer. In streams with salmonid habitat, bridges, bottomless culverts, or other alternatives that will allow for fish passage are required. Bridge piers or abutments may not be placed within wetlands, streams, or stream banks unless there is no feasible alternative;</li> <li>g. Construction of crossings will occur during work windows and time limits established by state and federal agencies with jurisdiction to decrease impacts to protected species;</li> <li>h. Any alterations permitted to the critical area and buffer are mitigated in accordance with AMC <a href="#">19.70.125</a>, Mitigation requirements, and relevant mitigation standards for the impacted critical areas(s) type;</li> <li>i. The proposal is consistent with the Anacortes comprehensive plan and other applicable regulations.</li> </ul> |               |        |
| <p>3. Conditions Authorized. Conditions may be established as necessary to mitigate impacts to critical areas and to conform to the standards required in this chapter.</p> <p>4. It will be a condition of any alteration granted a public agency and services exception that only the portion of the alteration that must be located in a critical area may be so located.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |               |        |
| <p><b>Conservation, Restoration, and Fish Habitat Enhancement Projects.</b> Conservation or restoration activities aimed at protecting or enhancing the soil, water, vegetation, or wildlife; including voluntary fish, wildlife, and wetland restoration or enhancement activities not required as project mitigation that have been approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department of Fish and Wildlife, or other appropriate local, state, federal, or tribal</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Yes           | Yes    |

| Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Critical Area | Buffer |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| jurisdiction and/or that meet the criteria of RCW <a href="#">77.55.181(1)</a> and that are reviewed and approved according to the provisions of RCW <a href="#">77.55.181</a> . A biological evaluation report is required to determine whether the proposal would conserve, preserve, or enhance critical area functions in the long term to minimize temporary environmental impacts.                                                                                                                                                                                                                         |               |        |
| <b>Chemical Applications.</b> The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary for the control of nuisance weeds and algae; except that their use will be restricted in accordance with the State Department of Ecology and State Department of Fish and Wildlife Management recommendations, and regulations of the State Department of Agriculture and the U.S. Environmental Protection Agency.                                                                                                                                 | Yes           | Yes    |
| <b>Recreational Areas/Facilities.</b> Low impact activities which are consistent with the purpose and function of the critical area buffer (not to include the ACFL) and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the critical area.                                                                                                                                                                                                                                                                                                                 | No            | Yes    |
| 1. Limited public park or public recreational access including trails, viewing platforms, fishing access (no wider than six feet), and foot bridges; provided, that all of the following are satisfied:                                                                                                                                                                                                                                                                                                                                                                                                          |               |        |
| <ul style="list-style-type: none"> <li>a. The area/facility is part of a public park that is dependent on its location for recreational function; and</li> <li>b. The area/facility is limited to the minimum necessary to accomplish the recreational function; and</li> <li>c. The removal of trees and native vegetation is minimized; and</li> <li>d. The balance of the development is consistent with other requirements of this chapter; and</li> <li>e. The project is identified in the Anacortes comprehensive plan or parks master plan.</li> </ul>                                                   |               |        |
| 2. Private pedestrian walkways and public trails must meet the following standards:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |               |        |
| <ul style="list-style-type: none"> <li>a. The trail is generally parallel to the perimeter of the critical area;</li> <li>b. The trail is located in the outer 25 percent of the buffer area and is designed to avoid removal of trees and native vegetation;</li> <li>c. The trail does not exceed six feet in width, and is limited to native soils or pervious surfaces. Raised boardwalks utilizing nontreated pilings may be acceptable; and</li> <li>d. The trail may be subject to closure during critical spawning, migration or breeding time periods of sensitive species that are present.</li> </ul> |               |        |
| 3. Informational Signs. Construction and placement of informational signs or educational demonstration facilities no more than nine square feet surface area and four feet high, as long as there is no permanent infringement on hydrology or stream flow and nontreated wood is used;                                                                                                                                                                                                                                                                                                                          |               |        |
| 4. Limited excavating and filling necessary for the repair and maintenance of piers,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |               |        |

| Permitted Alterations: (Critical Area Permit Required – Type 2 Administrative Decision)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Critical Area | Buffer |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|--------|
| walkways, observation decks, wildlife management shelters, boathouses, and other similar water related structures, provided they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the critical area.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |               |        |
| <b>Single-Family Residences and Normal Appurtenances.</b> New single-family dwellings on existing legal lots may intrude into critical areas or their buffers when all of the following conditions are met: <ol style="list-style-type: none"> <li>1. It is demonstrated that it is not feasible to avoid the critical area or buffer through avoidance or buffer averaging, or reconfiguration of lots in the same ownership at the date of adoption of this chapter, and the development is the minimum necessary to achieve reasonable use of the lot as determined by the decision-maker; and</li> <li>2. Alteration of critical areas and their buffers including all clearing, grading, structures, and appurtenances, has not and will not exceed cumulatively 2,800 square feet of disturbance; and</li> <li>3. This action does not allow critical areas or their buffers to be converted to lawn or residential landscaping beyond a minimal area needed to maintain an approved structure; and</li> <li>4. Mitigation sequencing provided in this chapter under AMC <a href="#">19.70.125</a> is applied and the proposal includes on-site mitigation to the extent feasible as determined by the critical area report.</li> <li>5. Normal appurtenances included in this provision include garages, decks, and walkways incidental to residential living and that do not constitute a special privilege.</li> </ol> | Yes           | Yes    |
| <b>Anacortes Community Forest Lands.</b> Given the unique qualities of the community forest, all properties designated as ACFL have been nominated as a regulated critical area. Any and all new uses and development of new facilities within the ACFL must meet the requirements of the conservation easements/deed restrictions of the land, Anacortes comprehensive plan, The ACFL comprehensive plan, this chapter, and AMC Chapter <a href="#">8.10</a> , Parks and the Anacortes Community Forest Lands.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes           | Yes    |
| <b>Critical Area Aquifer Recharge Areas.</b> All regulated activities listed under AMC <a href="#">19.70.515</a> , Applicability and hazardous materials questionnaire.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Yes           | Yes    |

(Ord. 3064 § 2 (Att. A), 2021)

## 19.70.050 Reasonable use exception and critical area variance.

A. *Applicability.* If the application of this chapter would result in denial of all reasonable and economically viable use of a property, and if such reasonable and economically viable use of the property cannot be obtained by consideration of a permitted alteration pursuant to AMC [19.70.045](#), then a landowner may seek a reasonable use exception from the standards of this chapter. Reasonable use exceptions are considered a

critical area variance and are intended as a last resort and only when a variance can meet the requirements of this chapter.

B. *General Requirements.* Reasonable use is a legal concept articulated by federal and state courts in regulatory takings cases. Within the context of these cases and for the purposes of this title, reasonable use means uses allowed by the underlying zoning designation and subdivision of property is not allowed. When no possible alternative exists, a reasonable use exception must be considered a critical area variance, provided they are consistent with the general standards for variances under AMC [19.38.040](#) and other applicable requirements established in this chapter.

C. *Procedures for Review.*

1. A variance permit must be required for all reasonable use exceptions. Requests for such permits must be reviewed using the procedures applicable to Type 3 Hearing Examiner decisions outlined in chapter AMC [19.20.030](#). A permit may not be issued unless it can be shown that the proposed development is fully consistent with the variance approval criteria enumerated in AMC [19.38.040](#) (variance criteria) as well as all of the requirements of this chapter.
2. In addition to other project related documents, all critical area variances must require a critical area assessment report per AMC [19.70.115](#) to evaluate the proposed disturbance. The report must include:
  - a. A description of the function and condition of the critical area and/or buffer that would be altered;
  - b. An analysis of the effect of the development proposal on the critical area and/or buffer;
  - c. A description of actions that can be taken to modify the development proposal to avoid or reduce the alteration of the critical area and/or buffer and a discussion of whether these modifications are practical and reasonable;
  - d. A mitigation plan as required by this chapter.
3. *Burden of Proof.* The burden of proof is on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application.
4. *Public Comment.* Consistent with AMC [19.20.030](#) the city must ensure the opportunity for public comment, including that from appropriate federal, state, and tribal natural resource agencies, to ensure the use of best available science before a decision is made.

D. *Variance Criteria.* A reasonable use exception may be granted only if the applicant demonstrates that all of the requested action is consistent with all of the variance approval criteria as set forth:

1. The application of this chapter would deny all reasonable economic use of the property and that there is no reasonable economically viable use with a lesser impact on the critical area than that proposed; and

2. Special conditions and circumstances exist that are peculiar to the land, the lot, or something inherent in the land, and that are not applicable to other lands subject to the provisions of this chapter; and
3. The inability of the applicant to derive reasonable use of the property is not the result of actions by the current or previous owner in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition, after the effective date of the ordinance codified in this chapter; and
4. Any proposed modification to a critical area will be evaluated through consideration of a critical area report and mitigation plan prepared by a qualified professional pursuant to the requirements of this chapter, and will be the minimum necessary to allow reasonable and economically viable use of the property. The critical area report and mitigation plan must be prepared utilizing best available science; and
5. Mitigation sequencing per AMC [19.70.125\(A\)](#) has been applied, and the proposal mitigates impacts on the critical area to the maximum extent possible, while still allowing reasonable use of the lot; and
6. The proposed development does not pose a threat to adjacent property or to the public health and safety; and
7. The applicant has demonstrated that the criteria in AMC [19.38.040](#) (variance criteria) are met; and
8. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances; and
9. The granting of the variance is consistent with the general purpose and intent of the Anacortes comprehensive plan, and planning policies.

E. *Conditions*. Conditions of approval may be included as part of the decision, including modifications to the size and placement of structures and facilities to minimize impacts to critical areas and associated buffers and mitigation requirements that ensure that all impacts are mitigated to the maximum extent feasible utilizing best available science.

F. *Variances – Geologically Hazardous Areas*. A variance must not authorize development within a geologically hazardous area or required setback or buffer from a geologically hazardous area unless a qualified professional has determined the development will not pose a threat to public safety or property. (Ord. 3064 § 2 (Att. A), 2021)

## Article I. Critical Areas Review Procedures

### 19.70.110 Critical area identification form.

Prior to the city's consideration of any proposed activity found not to be exempt under AMC [19.70.040](#), the applicant must submit to the Department a completed form identifying suspected critical areas on, and within 300 feet, of the site. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.115 Critical area report.

A. *Report Required.* When the Director determines a proposed development is within, abutting, or is likely to adversely affect a critical area or buffer pursuant to the provisions of this chapter, the Director may require a critical areas assessment report that is prepared by a qualified professional. The assessment of critical areas and analysis of impacts must be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity. This provision is not intended to expand or limit an applicant's other obligations under WAC [197-11-100](#).

B. *Third Party Review of Critical Area Reports.* The Director may require, at the applicant's expense, a third party review of a critical area report by a qualified professional under contract with or employed by the city in any of the following circumstances:

1. The project requires a critical area permit, or critical area variance; or
2. Third party review is specifically required by the provisions of this chapter for the critical area(s) or critical area buffer(s) potentially being impacted; or
3. When the Director determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter or other appropriate regulations.

C. *Critical Area Report Types or Sections.* Critical area report requirements may be met in stages through multiple reports or combined in one report. A critical area report must include one or more of the following sections or report types unless exempted by the Director based on the extent of the potential critical area impacts. The scope and location of the proposed project will determine which report(s) alone or combined are sufficient to meet the critical area report requirements for potentially impacted critical area type(s). The typical sequence of required sections or reports that will fulfill the requirements of this section include:

1. *Reconnaissance.* The existence, general location, and type of critical areas on, adjacent to, or likely to be impacted by activities on a project site. Determination of whether the project will adversely impact or

be at risk from the potential critical areas based on maximum potential buffers for the particular critical area type. Possible application of exemptions should also be addressed;

2. *Delineation.* The extent, boundaries, rating or classification, and applicable standard buffers of critical areas where the project area could potentially impact the critical area or its buffer including an assessment of the characteristics of or functions and values of the critical area and buffers identified;

3. *Analysis.* The proposal and impact assessment report documenting the potential project impacts to the critical area and buffers including a discussion of the efforts taken to avoid, minimize, and reduce potential impacts to those areas per AMC [19.70.125\(A\)](#);

4. *Mitigation.* The measures that prevent or compensate for the potential impacts of the project designed to meet the requirements of this chapter, AMC [19.70.130](#), Mitigation plan requirements, and the standards for the specific critical areas impacted. Mitigation includes, but is not limited to, adjustments to required buffer sizes, best practices to minimize impacts, and critical area or buffer enhancement, restoration, or preservation plans. Mitigation plans include but are not limited to habitat management plans, revegetation or replanting plans, and restoration plans;

5. *Maintenance and Monitoring.* The goals of the mitigation proposed, performance standards for success, monitoring methods and reporting schedule, and contingency actions. Maintenance and monitoring plans must be consistent with the mitigation performance standards and requirements of this chapter, including the specific mitigation plan requirements outlined in each critical area type section.

D. *Minimum Report Requirements.* At a minimum, critical area reports must contain the following information:

1. The names and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
  2. A description of the proposal, proposal location including address and parcel number(s), and a vicinity map for the project;
  3. Identification and characterization of all critical areas, water bodies, shorelines, and buffers on or within 300 feet of the proposed project area. The Director may require critical area and buffer dimensions be accurately surveyed, depending on the scope of the project;
  4. Documentation of any fieldwork performed on the site, including field data sheets, for delineations, rating system forms, baseline hydrologic data, site photos, etc.;
  5. A statement specifying the accuracy of the report and all assumptions made and relied upon;
  6. A description of methodologies used to conduct the critical areas investigation, including references;
  7. A scaled drawing of critical areas and buffers identified in the report including buffers for off-site critical areas that extend onto the project site.
-



E. *Existing Reports.* Critical areas assessment reports must generally be valid for a period of five years. Unless otherwise provided, a critical area report may incorporate, be supplemented by, or composed of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Director. At the discretion of the Director, reports previously compiled or submitted as part of a proposal for a development may be used as a critical area report to the extent that the requirements of this section and the requirements for each specific critical area type are met. Supplemental critical area report(s) may be required to provide information or analysis to address changes to the project scope, potential impacts to or changes to applicable regulations that have been made subsequent to existing, valid critical area reports, or other circumstances.

F. *Modifications to Report Requirements.* The applicant may consult with the Director, prior to or during preparation of the critical area report, to obtain approval of modifications to the required contents of the report where, in the judgement of a qualified professional, more or less information is required to adequately address the potential critical area impacts and required mitigation.

1. In some cases, such as when it is determined that no specific critical area is present, a full report may not be necessary to determine compliance with the critical area regulations, and in those cases a letter or reconnaissance-only report may be required.
2. *Limitations to Study Area.* The Director may limit the required geographic area of the critical area report as appropriate if:
  - a. The applicant, with assistance from the city of Anacortes, cannot obtain permission to access properties adjacent to the project area; or
  - b. The proposed activity will affect only a limited part of the project site. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.120 Application requirements.

A. A complete application for a permitted alteration permit or reasonable use exception/variance permit must include the following information and materials on a form provided by the Director. For the purpose of this section, a complete application includes:

1. The name and contact information of the applicant;
2. Adequate information to determine compliance with the requirements of the critical area regulations, including a critical area report, impact and hazard assessment, and mitigation requirements specific to each critical area type, as indicated in the corresponding sections of this chapter;
3. Identification of the development permit(s) requested and all other local, state, and/or federal critical area-related permits required for the project;

4. Site plan, a scaled drawing of the development proposal including:
  - a. Property and project site boundaries;
  - b. An accurate depiction of all critical areas, including off-site critical areas and buffers that extend onto the project site; a desk survey is acceptable when access to the adjacent property has been denied;
  - c. The development proposal, including grading and clearing limits and areas of proposed impacts to critical areas and/or buffers (include square footage estimates);
  - d. A scaled depiction and description of the proposed stormwater pollution prevention plan consistent with the adopted stormwater manual, for the development and consideration of impacts to critical areas due to drainage alterations;
  - e. An assessment of probable impacts to the critical areas resulting from the proposed development of the site based upon identified findings;
  - f. A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC [19.70.125](#), Mitigation requirements, to avoid, minimize, and mitigate impacts to critical areas; and
  - g. Plans for mitigation required to offset any critical areas impacts, in accordance with AMC [19.70.130](#), Mitigation plan requirements, and the corresponding mitigation performance standards sections of this chapter, including a discussion of the applicable development standards and cost estimates for determination of financial guarantee requirements.

B. *Additional Requirements.* The Director may require additional information to be included in the critical areas permit submittal when determined to be necessary to the review of the proposed activity in accordance with this chapter. Additional information that may be required includes, but is not limited to:

1. Historical data, including original and subsequent mapping, historical aerial photographs, data compilations and summaries, and available reports and records relating to the site or past operations at the site;
2. Grading and stormwater management plans; and
3. Information specific to the type, location, and nature of the critical area. (Ord. 3064 § 2 (Att. A), 2021)

## 19.70.125 Mitigation requirements.

Mitigation must be sufficient to restore impacted functions and values, or compensate for the impacted functions and values, of the critical area and to prevent risk from a hazard posed to a critical area by the

---

proposed activity. Mitigation must not be implemented until after the decision-maker has provided approval of a critical area report that includes a mitigation plan.

A. *Mitigation Sequencing.* This section applies to mitigation required with all critical areas reviews, approvals, and enforcement pursuant to this chapter. This section is supplemented with specific measures under parts for particular critical area types. Mitigation for specific development proposals may include a combination of the measures below and must be designed and constructed in accordance with the provisions of this section. Before impacting any critical areas, an applicant must demonstrate that the following actions have been taken in the following sequential order:

1. Avoiding the impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment or by restoring or stabilizing the critical area through natural, engineering, or other methods;
4. Reducing or eliminating the impacts or hazard over time by preservation and maintenance operations during the life of the action;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or
6. Monitoring, measuring and reporting the impact to the decision-maker and taking appropriate corrective measures.

B. Applicants must first demonstrate an inability to avoid or reduce impacts before the use of actions to mitigate potential impacts will be allowed. No activity or use may be allowed that results in a net loss of the functions or values of a critical area.

C. *Type, Location and Timing of Mitigation.* Unless it is demonstrated that higher levels of ecological functioning or greater reduction of hazard risk would result from an alternative approach or as otherwise allowed in this chapter, mitigation for adverse impacts must be based on best available science and must be in-kind, on site, and prior to the activities that will disturb the critical area. Mitigation measures that cannot be implemented prior to the critical area impacts must be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects must be timed to reduce impacts to existing fisheries, wildlife, and flora.

1. The decision-maker may authorize a one-time temporary delay in completing construction or installation of the mitigation when the applicant provides a written explanation from a qualified professional as to the rationale for the delay and satisfactory financial guarantee that the installation will occur. An appropriate rationale would include identification of the environmental conditions that could

produce a high probability of failure or significant construction difficulties (e.g., project delay lapses past a fisheries window, or installing plants should be delayed until the dormant season to ensure greater survival of installed materials). The delay must not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay must not be injurious to the health, safety, or general welfare of the public.

2. *Alternative Mitigation Approaches.* If the applicant can demonstrate that off-site concurrent or advance mitigation would provide a higher level of ecological function or a greater reduction of hazard risk, off-site mitigation that occurs on Fidalgo Island will be considered by the decision-maker. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.130 Mitigation plan requirements.

When mitigation is required, the applicant must submit for approval by the city a mitigation plan as part of the critical area report. The mitigation plan must include:

A. *Environmental Goals and Objectives.* The mitigation plan must identify environmental goals and objectives of the mitigation proposed and including:

1. A description of the anticipated impacts to the critical areas, the mitigating actions proposed, and the purposes of the compensation measures, including the site selection criteria; identification of compensation goals; identification of resource functions; and dates for beginning and completion of site compensation construction activities. The goals and objectives must be related to the functions and values of the impacted critical area; and
2. A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed.

B. *Performance Standards.* The mitigation plan must include measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained at the end of the required monitoring period and whether or not the requirements of this chapter have been met.

C. *Detailed Construction Plans.* In order to convey proposed construction techniques and anticipated final outcome, the mitigation plan must include written specifications, descriptions, and drawings of the mitigation proposed, including:

1. The proposed construction sequence, timing, and duration;
2. Best management practices including erosion and sediment control features to be implemented;
3. Site plans showing grading and excavation details, slope gradient, and final grade elevations with minimum two-foot contour intervals;

4. Cross-sectional drawings;
5. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
6. Measures to protect and maintain plants until established.

D. *Monitoring Program and Contingency Plan.* A monitoring and contingency plan is required for all projects requiring mitigation.

1. The mitigation plan must include a monitoring program to be implemented by the applicant to determine the success of the mitigation project and any necessary corrective actions. This program must determine if the original goals and objectives of the mitigation plan are being met.
2. A contingency plan must be established for indemnity in the event that the mitigation project is inadequate or fails. Contingency plans include identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met. Corrective measures must be taken when the qualified professional indicates, in a monitoring report, that the contingency actions are needed to ensure project success by the end of the monitoring period. A performance and maintenance bond, or other acceptable financial guarantee, is required to ensure the applicant's compliance with the terms of the mitigation agreement consistent with AMC [19.70.150](#), Financial guarantee requirements.
3. Monitoring programs prepared to comply with this section must include the following requirements:
  - a. Best available scientific procedures must be used to establish the success or failure of the project. A protocol outlining the schedule for site monitoring (for example, monitoring must occur in years zero (as-built), one, three, and five after site construction), and how the monitoring data will be evaluated to determine if the performance standards are being met.
  - b. For vegetation determinations, permanent sampling points must be established.
  - c. The monitoring program must include measurable specific criteria, or performance standards, for evaluating whether or not the goals and objectives of the mitigation plan have been successfully attained.
  - d. A monitoring report must be submitted as needed to document milestones, successes, problems, and contingency actions of the mitigation project. Monitoring reports on the current status of the mitigation project must be submitted, consistent with subsection [\(D\)\(3\)\(e\)](#) of this section, to the city on the schedule identified in the monitoring plan, but not less than every other year. The reports are to be prepared by a qualified professional and reviewed by the city, or a qualified professional retained by the city, and should include monitoring information on wildlife, vegetation, water quality, water flow, stormwater storage and conveyance, and existing or potential degradation, as applicable.

- e. Monitoring programs must be established for a period necessary to establish that performance standards have been met, but not for less than a minimum of five years without approval from the decision-maker. A longer monitoring period may be required depending on the mitigation goals.
- f. If necessary, failures in the mitigation project must be corrected.
- g. Dead or undesirable vegetation must be replaced with appropriate plantings.
- h. Damage caused by erosion, settling, or other geomorphological processes must be repaired.
- i. The mitigation project must be redesigned (if necessary) and the new design must be implemented and monitored, as in subsection [\(D\)\(3\)\(d\)](#) of this section.
- j. Correction procedures must be approved by the decision-maker; the decision-maker may request review by a qualified professional.
- k. If the mitigation goals are not obtained within the initial monitoring period, the applicant remains responsible for restoration of the impacted values and functions or hazard risk reduction until the mitigation goals agreed to in the mitigation plan are achieved.

E. *Monitoring Reports.* Monitoring reports must be submitted to the city consistent with the approved monitoring plan.

1. The as-built report, required prior to final inspection, must, at a minimum, include documentation of the following:
  - a. Departures from the original approved plans;
  - b. Construction supervision provided by the qualified professional;
  - c. Approved project goals and performance standards;
  - d. Baseline data for monitoring per the approved monitoring methods;
  - e. Photos from established photo points; and
  - f. A site plan showing final mitigation as constructed or installed, monitoring points, and photo points.
2. Subsequent monitoring reports must, at a minimum, include:
  - a. Monitoring visit observations, documentation, and analysis of monitoring data collected;
  - b. Photos from established photo points;
  - c. Determination whether performance standards are being met; and

d. Maintenance and/or contingency action recommendations to ensure success of the project at the end of the monitoring period.

3. The applicant is responsible for reimbursement of the cost of review of monitoring reports and site inspections during the monitoring period which are completed by the city or a qualified professional under contract with or employed by the city.

F. *Cost Estimates.* The mitigation plan must include cost estimates that will be used by the city to calculate the amounts of financial guarantees, if necessary, to ensure that the mitigation plan is fully implemented. Financial guarantees ensuring fulfillment of the compensation project, monitoring program, and any contingency measures must be posted in accordance with AMC [19.70.150](#), Financial guarantee requirements.

G. *Approved Mitigation Projects – Signature.* On completion of construction, an as-built report for any approved mitigation project must be prepared and signed off by the applicant’s qualified professional and approved by the city. Signature of the qualified professional on the required as-built report and approval by the Director indicates that the construction has been completed as planned. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.135 Title notification.

A. *Generally.* A critical area notice on title is required, as a condition of permit issuance or project approval, when a permit or development application is submitted for development on any property containing a critical area or buffer. The purpose is to inform subsequent purchasers of real property of the existence of critical areas.

1. The title notice requirement can be met through recording of a title notice on forms prepared by the city, establishment of a critical area tract, or recording of a native growth protection area easement, consistent with subsections [\(B\)](#) through [\(D\)](#) of this section, as applicable.
2. The following must be noted on all critical area title notice documents:
  - a. Identification of ownership and long-term maintenance responsibility of critical areas, buffers, and permanent field markings (e.g., fencing, signage);
  - b. Restrictions on development, vegetation removal, and application of hazardous substances (pesticides, herbicides, fertilizers) within the critical areas and buffers;
  - c. The right of the city to enforce the terms of the restrictions.

B. *Title Notice.* The title notice applicable to the property must be approved by the decision-maker and City Attorney for compliance with this provision and be filed by the property owner, at their expense, with the Skagit County Auditor’s Office. The title holder will have the right to challenge this notice and to have it extinguished if the critical area designation no longer applies. However, the titleholder is responsible for



completing a critical area report, subject to approval by the decision-maker, before the notice on title can be extinguished. The title notice runs with the land.

C. *Critical Area Tract*. Subdivisions, short subdivisions, and binding site plans must establish a separate critical area tract as a permanent protective measure for wetlands, fish and wildlife habitat conservation areas, and geological hazard areas and their buffers. The plat or binding site plan for the project must note the long-term ownership/maintenance responsibility as well as clearly depict the critical area tract, including all of the subject critical area, any required buffer, and any additional lands included voluntarily as part of the project. Should the critical area tract include several types of critical areas, separate critical area tracts must be identified.

D. *Native Growth Protection Easements (NGPE)*. NGPE easements are required on a property where no subdivision, short subdivision, or binding site plan is proposed or required. Unless otherwise required in this chapter, NGPE easements must be recorded on title for all affected parcels prior to approval of a development application or building permit, when two or more dwelling units and/or nonresidential developments are proposed on one parcel, to delineate and protect critical areas and their buffers. The easement to be recorded must clearly depict the critical area(s), required buffer(s) and the limits of the NGPE easement. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.140 Field marking.

A. *Temporary Field Marking During Construction*. The outer perimeter of the critical area buffer and the clearing limits identified by an approved permit or authorization must be marked in the field with temporary “clearing limits” fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the Director prior to the commencement of permitted activities. This temporary marking and fencing must be maintained throughout construction and may not be removed until permanent fencing and/or signs, if required, are in place.

B. *Permanent Field Marking*. The decision-maker may require installation of permanent signs, markers, and fencing along the outer perimeter of a critical area or its buffer when it is determined necessary to protect the critical areas’ functions and values. Permanent markings must be installed prior to final project approval or occupancy, as determined by the decision-maker.

1. *Signs*. All critical areas, tracts, easements, and dedications should be clearly marked on the site using permanent markings, as follows:

- a. Signs must be placed at least every 50 feet, with a minimum of one per lot, which include the following text, or similar, as approved by the decision-maker:

City of Anacortes Designated Critical Area. Activities, including clearing and grading, removal of vegetation, pruning, cutting of trees or shrubs, planting of nonnative species, and other alterations may be

---

prohibited. Help protect and care for this area. Please contact the City of Anacortes with questions or concerns.

b. Signs must be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability.

2. *Fencing*. Permanent fencing should be designed so as not to interfere with species migration or wildlife movement, unless exclusion fencing is more pertinent, and constructed in a manner that minimizes impacts to the critical areas and buffers. Proposed fencing type and materials will be determined on a case-by-case basis and must be approved by the decision-maker prior to installation.

C. *Maintenance and Replacement*. It is the responsibility of the landowner, successors, or as otherwise assigned to maintain in perpetuity and replace, if necessary, all permanent fencing and field markings. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.145 Construction plan review, monitoring, and inspection.

A. The Director may require project building and construction plans be reviewed by a qualified professional for confirmation of consistency with the critical area report and recommendations prior to approval of construction plans.

B. The Director may require monitoring by a qualified professional during site alteration activities within, or adjacent to, critical areas or buffers, and/or a final inspection report by the qualified professional stating that construction has or has not implemented the design recommendations provided in the project critical area report, and evaluation of any deviation from the recommendations.

C. When the Director determines that such services are necessary to demonstrate compliance with the standards and guidelines of this chapter, they will be at the applicant's expense. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.150 Financial guarantee requirements.

When determined necessary by the Director, bonds, and other financial guarantees, and associated performance agreements or maintenance/defect/monitoring agreements are required for projects with required mitigation or restoration of impacts to critical areas or critical area buffers consistent with the following:

A. A performance agreement and bond, or other acceptable financial guarantees, are required from the applicant when mitigation required pursuant to a development proposal is not completed prior to final permit

approval, such as final plat approval or final building inspection. The amount of the performance bond(s) must equal 125 percent of the cost of the mitigation project.

B. A performance agreement and bond, or other acceptable financial guarantees, are required from the applicant when restoration is required for remediation of a critical area violation. The amount of the performance bond(s) must equal 125 percent of the cost of the mitigation project.

C. A maintenance/defect/monitoring agreement and bond, or other acceptable financial guarantees, are required to ensure the applicant's compliance with the conditions of the approved mitigation plan pursuant to a development proposal or restoration plan for remediation of a violation. The amount of the maintenance bond(s) must equal 125 percent of the cost of the mitigation project in addition to the cost for monitoring for a minimum of five years. The monitoring portion of the financial guarantee may be reduced in proportion to work successfully completed over the period of the bond. The bonding period must coincide with the monitoring period. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.165 Unauthorized critical area alterations.

A. When a critical area or its buffer has been altered in violation of this chapter, all work must stop and the critical area and buffer must be restored. The Director may issue a stop work order to cease all work, and order restoration measures at the owner's or other responsible party's expense to remediate the impacts of the violation of the provisions of this chapter. The city may take formal enforcement action under AMC Title [20](#), Civil Enforcement and Penalties, to ensure the violation is abated.

B. *Requirement for Restoration Plan.*

1. All work must remain stopped until a restoration plan is provided by the responsible party and approved by the city. Such a plan must be prepared by a qualified professional using the best available science and must describe how the actions proposed meet the minimum requirements described in subsection [\(C\)](#) of this section.
2. The Director may, at the responsible party's expense, seek expert advice, including but not limited to third party review by a qualified professional under contract with or employed by the city, in determining if the plan meets the minimum performance standards for restoration.
3. Submittal, review, and approval of required restoration plans for remediation of violations of this chapter must be completed through a site development permit application process, either after the fact for regulated activities, or as a restoration permit for activities not allowed under these provisions.

C. *Minimum Performance Standards for Restoration.*

1. For alterations to critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards must be met for the restoration:
  - a. The pre-violation function and values of the affected critical areas and buffers must be restored, including but not limited to hydrologic, water quality and habitat functions;
  - b. The pre-violation soil types and configuration must be replicated;
  - c. The critical area and buffers must be replanted with a native vegetation community that reproduces the structure, species content and condition of the pre-violation vegetation community. Based on the historical or pre-violation vegetation community, native plant species must be replaced at minimum of a five-to-one ratio or installed at a density of five-feet-on-center unless approved by the decision-maker. The pre-violation functions and values should be replicated at the location of the alteration; and
  - d. Information demonstrating compliance with the requirements in AMC [19.70.130](#), Mitigation plan requirements, and the applicable mitigation sections for the affected type(s) of critical area(s) and their buffer(s) must be submitted to the decision-maker with a complete site development permit application.
  - e. These standards may be modified by the decision-maker when it can be demonstrated that greater functional and habitat values can be obtained.
2. For alterations to special flood hazard and geologically hazardous areas, the following minimum performance standards must be met for the restoration of a critical area:
  - a. The hazard must be reduced to a level equal to, or less than, the pre-violation hazard;
  - b. Any risk of personal injury resulting from the alteration must be eliminated or minimized; and
  - c. The hazard area and buffers must be replanted with native vegetation sufficient to minimize the hazard.
  - d. These standards may be modified by the decision-maker if the violator can demonstrate that greater safety can be obtained.

D. *Site Investigation.* The Director is authorized to take such actions as are necessary to enforce this chapter. The Director (or Director's authorized representative) must present proper credentials and obtain permission before entering onto private property.

E. *Penalties.* Any responsible party violating the provisions of this chapter may be subject to applicable penalties per AMC Title [20](#), Civil Enforcement and Penalties, plus the following:

1. A square footage cost of \$3.00 per square foot of impacted critical area buffer; and a square footage cost of \$15.00 per square foot of impacted critical area; and

2. A per-tree penalty in the amount of \$3,000 per nonsignificant tree and \$9,000 per significant tree, for trees removed, or otherwise damaged, within a critical area or buffer in violation of the provisions of this chapter. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.170 Final decision and appeals.

A. *Completion of the Critical Area Review.* The city's determination regarding critical areas pursuant to this chapter is final concurrent with the final decision to approve, condition, or deny the underlying permit for the development proposal or other activity involved.

B. *Appeals.* Any decision to approve, condition, or deny a development activity proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedure for the underlying permit or approval involved. (Ord. 3064 § 2 (Att. A), 2021)

### Article II. Wetlands

#### 19.70.210 Description and purpose.

It is the purpose of this chapter to protect the functions and values of wetlands, which serve many important ecological and environmental functions and help to protect public health, safety, and welfare by providing flood storage and conveyance, and erosion control, while also providing fish and wildlife habitat, recreation, water quality protection, water storage, education, scientific research opportunities and other public benefits. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.215 Designation and rating.

A. *Designation.* All areas meeting the definition of a wetland and the wetland identification criteria pursuant to this chapter, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter.

B. *Rating.* Wetlands must be rated by a qualified professional according to the Washington State Department of Ecology Wetland Rating System for Western Washington – 2014 Update (Ecology Publication No. 14-06-029, October 2014), or as revised. Wetland rating categories will be applied as the wetland exists on the

date of adoption of the rating system by the city, as the wetland naturally changes in accordance with permitted activities.

1. *Category I.* Category I wetlands are those that represent unique or rare wetland types, are more sensitive to disturbance than most wetlands, are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or provide a high level of functions. The following types of wetlands are Category I:
  - a. Relatively undisturbed estuarine wetlands larger than one acre;
  - b. Wetlands of high conservation value identified by scientists of the Washington Natural Heritage Program/Department of Natural Resources (DNR);
  - c. Bogs;
  - d. Mature forested wetlands larger than one acre;
  - e. Wetlands in coastal lagoons; and
  - f. Wetlands that perform many functions well and have a total score of 23 points or more in the wetland rating.
2. *Category II.* Category II wetlands are those wetlands that are difficult, though not impossible, to replace, and provide high levels of some functions. The following types of wetlands are Category II:
  - a. Estuarine wetlands smaller than one acre or disturbed estuarine wetlands larger than one acre;
  - b. Wetlands with a moderately high level of functions and a total score of 20 to 22 points in the wetland rating;
  - c. Wetlands in coastal lagoons that are relatively undisturbed and equal to or smaller than one-tenth acre (4,350 square feet).
3. *Category III.* Category III wetlands are those with a moderate level of functions, generally have been disturbed in some ways, can often be adequately replaced with a well-planned mitigation project, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands. The following types of wetlands are Category III:
  - a. Wetlands with a moderate level of functions with a total score of 16 to 19 points in the wetland rating.
4. *Category IV.* Category IV wetlands have the lowest levels of functions and are often heavily disturbed, with a total score of 15 points or less in the wetland rating. The functions provided by Category IV wetlands are generally easier to replace, and in some cases can be improved. However, experience has

shown that replacement of functions cannot be guaranteed in any specific case. These wetlands may provide some important functions that need to be protected.

C. *Illegal Modifications.* When a violation occurs wetland rating categories do not change due to illegal modifications or alterations. A wetland's category must be based on the pre-violation condition of the wetland. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.220 Mapping and delineation.

A. *Mapping.* The approximate location and extent of potential wetlands are shown in the wetland data layer maintained in the city of Anacortes geographic information system (GIS). In addition, the following maps and inventories, that depict areas of hydric soils and potential wetland areas, are hereby adopted by reference as amended:

1. Soils maps produced by the U.S. Department of Agriculture, National Resources Conservation Service; and
2. The National Wetlands Inventory, produced by the U.S. Fish and Wildlife Service.

B. *Reference Only.* The maps and resources cited above are to be used as a guide for the Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation.

C. *Identification and Delineation.* Identification of wetlands and delineation of their boundaries pursuant to this chapter must be done in accordance with the adopted federal wetland delineation manual and applicable regional supplements per WAC [173-22-035](#). The exact location of a wetland's boundary must be determined through the performance of a field investigation by a qualified professional. Evidence documenting the results of the boundary survey, including evidence of a lack of wetland indicators if no wetlands are identified, must be submitted to the city. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.225 General development standards.

A. All development activities and uses are prohibited in wetlands and wetland buffers, unless administered through the permit procedures above, and the performance standards described herein, and only when it is demonstrated that the activity will not result in a loss of the functions and values of the wetland through the application of mitigation sequencing in AMC [19.70.125](#), Mitigation requirements.

B. *Exemptions.* Exemptions to this chapter are listed in the provisions established in AMC [19.70.050](#), Exempt activities.



C. *Subdivisions*. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

1. Land that is located wholly within a wetland and/or its buffer may not be subdivided; and
2. Land that is located partially within a wetland and/or its buffer may be subdivided; provided each lot will meet all zoning standards in AMC Chapter [19.42](#) without encroaching into the wetland or buffer.  
(Ord. 3064 § 2 (Att. A), 2021)

### 19.70.230 Specific wetland category development standards.

A. *Category I Wetlands*. Development activities and uses that result in alteration of Category I wetlands and their associated buffers are prohibited, unless the denial will prevent all reasonable economic use of the property. The development may be permitted through a critical area variance if it is determined to be the minimum impact possible and a reasonable use as prescribed in AMC [19.70.050](#), Reasonable use exception and critical area variance.

B. *Category II, III and IV Wetlands*. Development activities that result in alteration of Category II, III or IV wetlands may be permitted upon demonstration, through a critical area report meeting the requirements of this chapter, that:

1. Mitigation sequencing has been applied per AMC [19.70.125\(A\)](#);
2. The proposed alteration will not degrade the quantitative and qualitative functioning of the wetland, or that any degradation can be adequately mitigated to protect or compensate for the wetland functions that are lost;
3. *Small, Hydrologically Isolated Category IV Wetlands (Less Than 1,000 Square Feet)*. The decision-maker may allow small, hydrologically isolated Category IV wetlands to be exempt from the requirement to avoid impacts (AMC [19.70.125\(A\)\(1\)](#), Mitigation requirements) and allow alteration of such wetlands if all of the following conditions are met:
  - a. The remaining mitigation sequencing actions of AMC [19.70.125\(A\)\(2\)](#) through [19.70.125\(A\)\(6\)](#) are followed;
  - b. The wetland is less than 1,000 square feet in area;
  - c. The wetland does not have unique characteristics that would be difficult to replace through standard compensatory mitigation practices;
  - d. The wetland is a low-quality Category IV wetland with a habitat score of less than five points in the adopted rating system;

- e. The wetland does not provide significant suitable breeding habitat for native amphibian species. Suitable breeding habitat may be indicated by adequate stable and seasonal inundation that is persistent from February to at least through April and presence of thin-stemmed emergent vegetation and/or clean water;
- f. The wetland does not contain habitat identified as essential for local populations of priority species identified by the Washington Department of Fish and Wildlife or species of local importance which are regulated as fish and wildlife habitat conservation areas in Part 3 FWHCA;
- g. The wetland is not associated with shorelines of the state or their associated buffers;
- h. The wetland is not associated with riparian areas or buffers;
- i. The wetland is not part of a wetland mosaic; and
- j. A mitigation plan to replace lost wetland functions and values is developed, approved, and implemented consistent with AMC [19.70.130](#), Mitigation plan requirements.
- k. In order to verify that the wetland meets these exemption conditions, a critical area report for wetlands meeting the requirements in this chapter must be submitted;

4. *Small, Hydrologically Isolated Category IV Wetlands (Less Than 1,000 Square Feet)*. Wetlands less than 1,000 square feet that meet the criteria in subsection [\(B\)\(3\)](#) of this section and that do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter. In order to verify that the wetland meets this exemption, a critical area report for wetlands meeting the requirements in this chapter must be submitted. (Ord. 3064 § 2 (Att. A), 2021)

## 19.70.235 Required buffer areas.

A. *Buffer Requirements*. Wetland buffers must be established to protect the integrity, functions and values of the wetland. The standard buffer widths in Tables 19.70.235(B), 19.70.235(C) and 19.70.235(D) have been established in accordance with the best available science. The buffer widths must be determined based on the category of wetland, surrounding land use intensity, and the habitat score as assigned by a qualified wetland professional using the most up-to-date version of the Washington State Wetland Rating System for Western Washington.

1. *Measurement of Wetland Buffers*. All buffers must be measured horizontally from the edge of the wetland boundary as surveyed in the field. The width of the wetland buffer must be determined according to Tables 19.70.235(B), (C) and (D).
2. *Buffer Standards*. The buffer standards required by this chapter presume the existence of a dense vegetation community in the buffer adequate to protect the wetland functions and values. When a buffer

lacks adequate vegetation, the decision-maker may increase the standard buffer, require buffer planting or other enhancements, and/or deny a proposal for buffer reduction or buffer averaging.

B. For the purposes of buffer determination below, land use intensity rating is as follows:

Table 19.70.235(A)

|                                    |                                                                                                                                                                                                                                                                                 |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>High Land Use Intensity</b>     | Land use that includes the following uses or activities: commercial, industrial, institutional, retail sales, nonresidential use in zones where the primary intent is residential, residential, high-intensity recreation (such as golf courses, ball fields), and hobby farms. |
| <b>Moderate Land Use Intensity</b> | Land use that includes the following uses or activities: moderate-intensity open space (parks, paved trails, and logging roads).                                                                                                                                                |
| <b>Low Land Use Intensity</b>      | Land use that includes the following uses or activities: forestry (cutting of trees only), low-intensity open space (such as outdoor recreation activities and natural resources preservation), unpaved trails.                                                                 |

C. There are three sets of buffer standards, based on these parameters:

1. Buffer widths for wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of eight or nine points on the wetland rating form:

Table 19.70.235(B)

| Wetland Category | Buffer Width (feet) |                    |                   |
|------------------|---------------------|--------------------|-------------------|
|                  | High Intensity      | Moderate Intensity | Low Intensity     |
| Category I       | 300                 | 225                | 150               |
| Category II      | 300                 | 225                | 150               |
| Category III     | <del>150</del> 300  | <del>110</del> 225 | <del>75</del> 150 |
| Category IV      | 50                  | 40                 | 25                |

2. Buffer widths for wetlands that have a moderate level of function for wildlife habitat as indicated by a habitat function score of six or seven points on the wetland rating form:

Table 19.70.235(C)

| Wetland Category | Buffer Width (feet) |                    |               |
|------------------|---------------------|--------------------|---------------|
|                  | High Intensity      | Moderate Intensity | Low Intensity |
| Category I       | 150                 | 110                | 75            |
| Category II      | 150                 | 110                | 75            |
| Category III     | 150                 | 110                | 75            |
| Category IV      | 50                  | 40                 | 25            |

3. Buffer widths for wetlands that have a low level of function for wildlife habitat as indicated by a habitat function score of three to five points on the wetland rating form:

Table 19.70.235(D)

| Wetland Category | Buffer Width (feet) |                    |               |
|------------------|---------------------|--------------------|---------------|
|                  | High Intensity      | Moderate Intensity | Low Intensity |
| Category I       | 100                 | 75                 | 50            |
| Category II      | 100                 | 75                 | 50            |
| Category III     | 80                  | 60                 | 40            |
| Category IV      | 50                  | 40                 | 25            |

D. *Reducing Buffer Widths.*

1. For wetlands that score six points or more for habitat function, buffer widths for high intensity may be reduced to moderate intensity if both of the following criteria are met:

- a. A relatively undisturbed, vegetated corridor at least 100 feet wide is protected between the wetland and any other relatively undisturbed area, as defined in the 2014 wetland rating system, or any other priority habitat as defined by the Washington State Department of Fish and Wildlife. The latest definitions of priority habitats and their locations are available on the WDFW web site at: <http://wdfw.wa.gov/hab/phshabs.htm>.
- b. The corridor must be protected for the entire distance between the wetland and the relatively undisturbed area or priority habitat by some type of legal protection such as a conservation easement. Presence or absence of a nearby habitat must be confirmed by a qualified biologist.

2. The measures in Table 19.70.235(E) are implemented, where applicable, to minimize the impacts of the adjacent land uses.

3. For wetlands that score three to five habitat points, only the measures in Table 19.70.250(E) are required for the use of moderate intensity buffer widths.
4. If an applicant chooses not to apply the mitigation measures in Table 19.70.250(E), or is unable to provide a protected corridor where available, then high intensity buffer widths must be used.

Table 19.70.235(E)

| Disturbance                                                                                                                          | Required Measures to Minimize Impacts                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lights                                                                                                                               | <ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                          |
| Noise                                                                                                                                | <ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source</li> <li>• For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot heavily vegetated buffer strip immediately adjacent to the outer wetland buffer</li> </ul> |
| Toxic runoff                                                                                                                         | <ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 feet of wetland</li> <li>• Apply integrated pest management</li> </ul>                                                                                                                                                                                               |
| Stormwater runoff                                                                                                                    | <ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized flow from lawns that directly enters the buffer</li> <li>• Use low intensity development techniques (for more information refer to the stormwater manual)</li> </ul>                                                                                                                                         |
| Change in water regime (increase or decrease in the frequency, duration, timing, extent, depth or variability of water in a wetland) | <ul style="list-style-type: none"> <li>• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns</li> </ul>                                                                                                                                                                                                                                                                                                                  |
| Pets and human disturbance                                                                                                           | <ul style="list-style-type: none"> <li>• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion</li> <li>• Place wetland and its buffer in a separate tract or protect with a conservation easement</li> </ul>                                                                                                                                                                  |
| Dust                                                                                                                                 | <ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>                                                                                                                                                                                                                                                                                                                                                                            |

E. *Increasing Buffer Widths.* Buffer widths may be increased, on a case-by-case basis, as determined by the decision-maker. This determination must be supported by appropriate documentation showing that it is necessary to protect wetland functions and values. Documentation must include, but is not limited to, any of the following:

1. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored, or documented priority species or habitats, or the wetland is essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
2. The adjacent land has slopes greater than 15 percent and is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
3. The adjacent land has minimal vegetative cover on slopes greater than 30 percent. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, development and implementation of a wetland buffer restoration/enhancement plan in accordance with AMC [19.70.245](#), Compensatory mitigation performance standards and requirements, may be substituted.

F. *Averaging Buffer Widths.* The decision-maker may allow averaging of wetland buffer widths on a case-by-case basis when the critical area report demonstrates that the following criteria are met:

1. There is not a feasible alternative to the site design that could be accomplished without buffer averaging;
2. The buffer averaging improves the functions or values of the wetland, either through preservation of total buffer area or enhancement of buffer areas including the creation of connectivity and corridors;
3. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer;
4. The wetland contains variation in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrow buffer in other places;
5. The buffer width at its narrowest point is not reduced to less than 75 percent of the standard width, for Category I and II. For Category III and Category IV is no less than 75 percent unless for the purpose of creating connectivity and corridors, in which case no less than 50 percent.

G. *Measurement of Wetland Buffers.* All buffers must be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as a compensation for approved wetland alterations must be the same as the buffer required for the category of the created, restored, or enhanced wetland.

H. *Buffers on Mitigation Sites.* Buffer widths must be applied to mitigation sites consistent with the wetland ratings and buffer requirements of this chapter for subsequent development proposals based on expected category of the wetland once the mitigation actions are taken. Only fully vegetated buffers with predominantly native plants will be included in the new buffer area. Lawns, walkways, driveways, and other mowed or paved areas will not count towards the required buffer calculations.

I. *Buffer Maintenance.* Except as otherwise specified or allowed in accordance with this chapter, wetland buffers must be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond.

J. *Buffer Impacts.* When buffer impacts occur, compensatory mitigation must be provided at a minimum ratio of one-to-one for the area impacted. The mitigation must occur on the same site when feasible or within the same wetland system preferably. The mitigation must ensure that the wetland functions and values are not diminished due to the buffer impacts.

K. *Stormwater Management Facilities.* Stormwater management facilities may be allowed in Category III and IV wetland buffers if they meet all of the criteria identified below:

1. The wetland is classified as a Category III or a Category IV wetland with a habitat score of three to five points or less; and
2. There will be “no net loss” of functions and values of the wetlands; and
3. The wetland does not contain a breeding population of any native amphibian species; and
4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, and 5 of Chart 4 and questions 2, 3, and 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach” (available here: <http://www.ecy.wa.gov/biblio/0906032.html>); or the wetland is part of a priority restoration plan that achieves restoration goals identified in a shoreline master program or other local or regional watershed plan; and
5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
6. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and
7. Modifications will require permits. Existing functions and values that are lost would have to be compensated/replaced through an approved mitigation plan.

L. *Setbacks From Buffers.* Buildings, structures, paving, and other hard surfacing must be set back a minimum distance of 10 feet from the edge of the wetland buffer, or edge of the wetland if no buffer is required, unless otherwise determined by the decision-maker that a smaller distance would meet the intent of this subsection. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are



in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer:

1. Landscaping;
2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;
3. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided, that it is engineered as a permeable pavement system as defined in this chapter. Such improvements may be subject to the requirements in AMC Chapter [19.76](#), Stormwater.

M. *Functionally Separated and Isolated Buffers.* Consistent with the definition of “buffer” in this chapter, areas that are functionally isolated and physically separated from a wetland due to existing, legally established roadways, railroads or other legally established structures or paved areas eight feet or more in width that occur between the area in question and the wetland must be considered physically isolated and functionally separated buffer. Once determined by the Director, based on a submitted critical area report, to be a physically separated and functionally isolated wetland buffer, development proposals are allowed in these areas. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.240 Critical area report additional requirements.

A. *Additional Report Contents for Wetlands.* In addition to the minimum report contents required per AMC [19.70.115](#), Critical area reports, wetland reports must also include:

1. For each wetland identified on site and off site within 300 feet of the project site provide: the wetland rating, including a description of and score for each function, per wetland ratings (AMC [19.70.215](#)) required buffers (AMC [19.70.235](#)); hydrogeomorphic classification; wetland acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlets/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site;
2. A discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project;
3. A description of the proposed actions, including an estimation of acreages of impacts to wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative;

4. An assessment of the probable cumulative impacts to the wetlands and buffers resulting from the proposed development;
5. A description of reasonable efforts made to apply mitigation sequencing pursuant to AMC [19.70.125](#), Mitigation requirements, to avoid, minimize, and mitigate impacts to critical areas and a discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land-use activity;
6. A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions; and
7. An evaluation of the functions of the wetland and adjacent buffer. Include reference for the method used and data sheets.

B. *Additional Information.* When appropriate due to the proposed impacts or the project area conditions, the Director may also require the critical area report to include:

1. A request for consultation with the Washington State Department of Fish and Wildlife (DFW), Washington State Department of Ecology (Ecology), local Native American tribes, and/or other appropriate agency;
2. Copies of the Joint Aquatic Resource Permit Application (JARPA) and related approvals, such as a Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW), when applicable to the project; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 3064 § 2 (Att. A), 2021)

## 19.70.245 Compensatory mitigation performance standards and requirements.

A. *Compensatory Mitigation Plan.* When a project involves wetland and/or buffer impacts, a compensatory mitigation plan must be included as part of the required critical area report. Compensatory wetland mitigation plans must meet the minimum requirements of AMC [19.70.125](#), Mitigation requirements, and demonstrate compliance with AMC [19.70.130](#), Mitigation plan requirements. Full guidance can be found in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised). The mitigation plan must meet the following additional standards:

1. Description of the existing wetland and buffer areas proposed to be impacted. Include acreage (or square footage), water regime, vegetation, soils, landscape position, surrounding land uses, and functions. Also describe impacts in terms of acreage by Cowardin classification, hydrogeomorphic classification, and wetland rating, based on wetland ratings (AMC [19.70.215\(B\)](#));

2. Description of the compensatory mitigation site, including location and rationale for selection. Include an assessment of existing conditions: acreage (or square footage) of wetlands and uplands, water regime, sources of water, vegetation, soils, landscape position, surrounding land uses, and functions. Estimate future conditions in this location if the compensation actions are not undertaken (i.e., how would this site progress through natural succession);
3. A description of the proposed actions for compensation of wetland and upland areas affected by the project. Include overall goals of the proposed mitigation, including a description of the targeted functions, hydrogeomorphic classification, categories of wetlands, and mitigation ratios applied (if ratio approach used);
4. A description of the proposed mitigation construction activities, construction/installation notes, and timing of activities;
5. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs (for remaining wetlands and compensatory mitigation wetlands);
6. Proof of establishment of notice on title for the wetlands and buffers on the project site, including the compensatory mitigation areas; and
7. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
  - a. An accurate depiction of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions;
  - b. Existing topography, ground-proofed, at two-foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Also existing cross-sections of on-site wetland areas that are proposed to be impacted and cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation;
  - c. Surface and subsurface hydrologic conditions, including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Also, illustrations of how data for existing hydrologic conditions were used to determine the estimates of future hydrologic conditions;
  - d. Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes;
  - e. Required wetland buffers for existing wetlands and proposed compensation areas. Also, identify any zones where buffers are proposed to be reduced or enlarged outside of the standards identified in this chapter;

f. A plant schedule for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, typical plant installation details and notes, total number of each species by community type, timing of installation; and

g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring plan, contingency plan, and maintenance schedule, and actions. Standards for success must be established based on the performance standards identified and the functions and values being mitigated based on the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised).

*B. Requirements for Compensatory Mitigation.*

1. Compensatory mitigation for alterations to wetlands may be used only for impacts that cannot be avoided or minimized, except as otherwise exempted in AMC [19.70.230](#), Specific wetland category development standards, and must achieve equivalent or greater biologic functions. Compensatory mitigation plans must be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised).
2. Mitigation ratios must be consistent with subsection [\(J\)](#) of this section.
3. Mitigation requirements may also be determined using the credit/debit tool described in “Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report March 2012” (Ecology Publication No. 10-06-011, March 2012, or as revised) consistent with subsection [\(H\)](#) of this section.

*C. Compensating for Lost or Impacted Wetland Functions.* Compensatory mitigation must address the functions and values affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions and values. The goal for the compensatory mitigation must be to provide similar wetland functions and values as those lost, except when either:

1. The lost wetland provides minimal functions and values, and the proposed compensatory mitigation action(s) will provide equal or greater functions and values or will provide functions and values shown to be limited within a watershed through a formal Washington State watershed assessment plan or protocol; or
2. Out-of-kind replacement of wetland type or functions and values will best meet watershed goals formally identified by the city, such as replacement of historically diminished wetland types.

*D. Preference of Mitigation Actions.* Methods to achieve compensation for wetland functions and values must be approached in the following order of preference:

1. *Restoration.* The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. Restoration of wetlands includes reestablishment and rehabilitation.
  - a. *Reestablishment.* Returning natural or historic functions to a former wetland. Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.
  - b. *Rehabilitation.* Repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.
2. *Creation.* Creation (establishment) of wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of nonnative species. This should be attempted only when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive to the wetland community that is anticipated in the design.
3. *Enhancement.* Enhancement of significantly degraded wetlands in combination with restoration or creation. Enhancement alone will result in a loss of wetland acreage and is less effective at replacing the functions and values lost. Enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.
4. *Preservation.* Preservation of high-quality, at-risk wetlands as compensation is generally acceptable when done in combination with restoration, creation, or enhancement; provided, that a minimum of one-to-one acreage replacement is provided by reestablishment or creation. Preservation of high-quality, at-risk wetlands and habitat may be considered as the sole means of compensation for wetland impacts when the following criteria are met:
  - a. Proposed wetland impacts will not have a significant adverse impact on habitat for listed fish, or other ESA-listed species;
  - b. There is no net loss of habitat functions within the watershed or basin;
  - c. Mitigation ratios for preservation as the sole means of mitigation must generally start at 20-to-one. Specific ratios should depend upon the significance of the preservation project and the quality of the wetland resources lost;
  - d. The impact area is small (generally less than one-half acre) and/or impacts are occurring to a low-functioning system (Category III or IV wetland); and
  - e. All preservation sites must include buffer areas adequate to protect the habitat and its functions from encroachment and degradation.

5. *Wetland Bank or Advanced Wetland Mitigation.* For future use since no current banks have a service area in Anacortes.

E. *Type and Location of Compensatory Mitigation.* Unless it is demonstrated that a higher level of ecological functioning would result from an alternative mitigation approach, compensatory mitigation for ecological functions should be either in-kind and on site, or in-kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions must be conducted within the same sub-basin or on the site of the alteration, except when the following apply:

1. The conditions in subsection (B) of this section are met.
2. There are no reasonable opportunities on site or within the sub-basin (e.g., on-site options would require elimination of high-functioning upland habitat), or opportunities on site or within the sub-basin do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include:
  - a. Anticipated replacement ratios for wetland mitigation;
  - b. Buffer conditions and proposed widths;
  - c. Available water to maintain anticipated hydrogeomorphic classes of wetlands when restored;
  - d. Proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
  - e. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland;
  - f. Off-site locations must be in the same sub-basin, unless watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the city and strongly justify location of mitigation at another site; and
  - g. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing, seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which would require the construction of berms to hold the water.

F. *Wetland Mitigation Banks*. Credits from a wetland mitigation bank certified under Chapter [173-700](#) WAC may be used to compensate for impacts located within the service area specified in the mitigation bank instrument, if:

1. The proposal would provide appropriate compensation for the proposed impacts;
2. The impact site is located in the service area of the bank;
3. The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
4. Replacement ratios using bank credits are consistent with replacement ratios specified in the certified mitigation bank instrument.

G. *In-Lieu Fee Mitigation*. Credits from an approved in-lieu fee (ILF) program may be used when all of the following apply:

1. The decision-maker determines that it would provide environmentally appropriate compensation for the proposed impacts.
2. The proposed use of credits is consistent with the terms and conditions of the approved ILF program instrument.
3. Projects using ILF credits must have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the ILF program.
4. The impacts are located within the service area specified in the approved ILF instrument.

H. *Permittee-Responsible Mitigation*. This type of mitigation is defined in [33](#) CFR [332](#) as “an aquatic resource restoration, establishment, enhancement and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.” The permittee performs the mitigation either before the project impact occurs and before any project impact permit is issued (advance permittee-responsible mitigation) or at the same time as the project impact is occurring after the project impact permit is issued (concurrent permittee-responsible mitigation). The permittee is ultimately responsible for implementation and success of the mitigation. For advance mitigation, the permittee generates mitigation credits that may be used to compensate for future wetland or buffer impacts. Only the permittee may use the advance mitigation credits. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed. Permittee-responsible mitigation must be used only if the applicant's qualified wetland professional demonstrates to the decision-maker's satisfaction that the proposed approach is ecologically preferable to use of a bank or ILF program, consistent with the criteria in this section.



I. *Alternative Mitigation Plan.* The decision-maker may approve an alternative wetland mitigation plan that is based on best available science. Proposed alternative mitigation plans must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

1. The following will be considered in the approval of an alternative mitigation plan:
  - a. The plan uses a watershed approach consistent with [Selecting Wetland Mitigation Sites Using a Watershed Approach \(Western Washington\)](#) (Ecology Publication No. 09-06-032, Olympia, WA, December 2009).
  - b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual small habitat areas.
  - c. Mitigation according to subsection (D) of this section is not feasible due to site constraints including but not limited to parcel size, stream type, wetland category, or geologically hazardous areas.
  - d. There is a clear potential for success of the proposed compensation at the identified site.
  - e. The plan must contain clear and measurable standards for achieving compliance with the specific provisions of the plan, consistent with AMC [19.70.130](#), Mitigation plan requirements.
  - f. The plan must be reviewed and approved as part of the overall approval of the proposed use.
  - g. A wetland of a different type may be justified based on regional needs or functions and values; the replacement ratios may not be reduced or eliminated unless the reduction results in a preferred environmental alternative.
  - h. Mitigation guarantees must meet the minimum requirements as outlined in AMC [19.70.150](#), Financial guarantee requirements.
  - i. Qualified professionals in each of the critical areas addressed must prepare the plan.
  - j. The city may consult with agencies with expertise and jurisdiction over the critical areas during the review to assist with analysis and identification of appropriate performance measures that adequately safeguard critical areas.

J. *Wetland Mitigation Ratios.* The ratios below are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

---

Table 19.70.245 Wetland Mitigation Ratios

| Category and Type of Wetland              | Creation or Reestablishment | Rehabilitation Only                           | Re-Est or Creation (R/C) and Rehab (RH) | Re-Est or Creation (R/C) and Enhancement (E) | Enhancement Only |
|-------------------------------------------|-----------------------------|-----------------------------------------------|-----------------------------------------|----------------------------------------------|------------------|
| Category I Mature Forested                | 6:1                         | 12:1                                          | 1:1 R/C & 10:1 RH                       | 1:1 R/C & 20:1 E                             | 24:1             |
| Category I – based on score for functions | 4:1                         | 8:1                                           | 1:1 R/C & 6:1 RH                        | 1:1 R/C & 12:1 E                             | 16:1             |
| Category I Natural Heritage Site          | Not allowed                 | 6:1 Rehabilitation of a Natural Heritage Site | Not allowed                             | Not allowed                                  | Case-by-case     |
| Category I Bog                            | Not allowed                 | 6:1 Rehabilitation of a bog                   | Not allowed                             | Not allowed                                  | Case-by-case     |
| Category I Estuarine                      | Case-by-case                | 6:1 Rehabilitation of an estuarine wetland    | Case-by-case                            | Case-by-case                                 | Case-by-case     |
| Category II                               | 3:1                         | 6:1                                           | 1:1 R/C & 4:1 RH                        | 1:1 R/C & 8:1 E                              | 12:1             |
| Category III                              | 2:1                         | 4:1                                           | 1:1 R/C & 2:1 RH                        | 1:1 R/C & 4:1 E                              | 8:1              |
| Category IV                               | 1.5:1                       | 3:1                                           | 1:1 R/C & 1:1 RH                        | 1:1 R/C & 2:1 E                              | 6:1              |

K. *Buffer Mitigation Ratios.* Impacts to buffers must be mitigated at a one-to-one ratio. Compensatory buffer mitigation must replace those buffer functions lost from development.

L. *Mitigation Performance Standards.* Wetland mitigation plans must be consistent with AMC [19.70.125](#), Mitigation requirements, and AMC [19.70.130](#), Mitigation plan requirements, and Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Ecology Publication No. 06-06-011a), or as amended, and best available science.

M. *Minimum Standards.* The design standards in this section must be incorporated into mitigation plans submitted to the city for impacts to wetlands and/or wetland buffers. The following standards apply to any mitigation proposed within Category I, II, III and IV wetlands and their buffers. Modifications to these design standards consistent with the guidance in Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1) (Ecology Publication No. 06-06-011b, March 2006, or as revised) may be considered for approval by the decision-maker as alternatives to the following standards:

1. Plants native to the region (not introduced, nonnative or exotic species) must be used.
2. Plant species selection must be consistent with the existing or projected hydrologic regime, including base water levels and stormwater event fluctuations.
3. Plant species selection must be consistent with the site environmental conditions such as slope, aspect, soils and exposure to sun, wind and rain.
4. Plants should be commercially available or available from local sources.
5. Native plant species high in food and cover value for fish and wildlife should be prioritized, as appropriate for the site.
6. Plant selection must be approved by a qualified professional.
7. The following standards apply to wetland design and construction:
  - a. For wetland creation sites, preliminary investigations of existing hydrology at the site must be completed to confirm that the site has adequate source hydrology (e.g., high groundwater, precipitation or riverine flooding) to support wetland conditions.
  - b. Water depth in areas of seasonal or occasional inundation must not exceed three feet (0.914 meters), unless the proposed mitigation is compensating for impacts to unvegetated/open water areas.
  - c. If creating or rehabilitating a slope wetland, the grade or slope within the wetland must not exceed six percent, unless otherwise approved by the decision-maker.
  - d. Slopes within the wetland contributing basin and the buffer zone must not be steeper than three-to-one (horizontal to vertical).
  - e. The wetland (excluding the buffer area) should not contain more than 20 percent unvegetated/open water areas as measured at the seasonal high water mark, unless the mitigation is compensating for vegetated.
  - f. Site soils must be free of contamination and/or hazardous materials, and must have adequate organic content and porosity to support the proposed native plant community.

- g. Planting densities and placement of plants should be determined by a qualified professional and shown on the design plans.
- 8. The planting plan must be approved by the city.
- 9. Stockpiling soil and construction materials should be confined to upland areas and contract specifications should limit stockpiling of earthen materials to durations in accordance with city clearing and grading standards, unless otherwise approved by the city.
- 10. Planting instructions must be submitted which describe placement, diversity, and spacing of seeds, tubers, bulbs, rhizomes, sprigs, plugs, and transplanted stock.
- 11. Controlled release fertilizer (if required) must be used in upland areas only (buffers and other nonwetland areas) and must be installed into the planting hole only at the time of planting. No fertilizer must be applied to the ground surface.
- 12. An irrigation system must be installed or watering afforded by trucks or hoses to provide water for installed plants and seeded areas to supplement rainfall to ensure that plants receive approximately one-half inch of water per week during the dry season of the first two years after plant installation.
- 13. All construction specifications and methods must be approved by a qualified professional and the city.
- 14. Construction management provided must be provided by a qualified professional. Ongoing work on site must be inspected by the city. (Ord. 3064 § 2 (Att. A), 2021)

### Article III. Fish and Wildlife Habitat Conservation Areas

#### 19.70.310 Description and purpose.

- A. Fish and wildlife habitat conservation areas are lands managed for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. In addition to their intrinsic value, certain species of fish and wildlife represent important historic, cultural, recreational and economic resources.
- B. It is the purpose of this chapter to protect fish and wildlife populations and their associated habitats and provide special consideration to conservation or protection measures necessary to preserve or enhance anadromous species. (Ord. 3064 § 2 (Att. A), 2021)

## 19.70.315 Designation.

### A. Fish and wildlife habitat conservation areas (FWHCAs) are designated as follows:

1. Critical saltwater habitats, which include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association;
2. Naturally occurring ponds under 20 acres with submerged aquatic beds that provide fish or wildlife habitat as further defined in WAC [365-190-130\(4\)\(e\)](#);
3. Waters of the state, including streams as classified in WAC [222-16-030](#), including but not limited to Whistle Creek, Happy Valley Stream, Ace of Hearts Creek, Beaver Brook, Cranberry Creek, Clyde Creek, Anaco Bourn, Morrison Run, Cedar Springs, Weaverling Rill, Miller Creek, Aqua Creek, Howard Creek, Summit Creek, and March's Run;
4. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
5. Areas with which anadromous fish species have a primary association;
6. State natural area preserves, natural resource conservation areas, and state wildlife areas as established by Washington State Department of Natural Resources;
7. Areas of rare plant species and high-quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program in Chapter [79.70](#) RCW;
8. State priority habitats and areas associated with state priority species defined and listed by the State Department of Fish and Wildlife in the Priority Habitats and Species List, Updated January 2019. Priority habitats and species known to be identified and mapped by WDFW (<http://apps.wdfw.wa.gov/phsontheweb/>) in Anacortes include, but may not be limited to, the following:
  - a. Biodiversity areas;
  - b. Bald eagle habitat protected pursuant to the Federal Bald and Golden Eagle Protection Act;
  - c. Chinook/fall chinook salmon;
  - d. Coho salmon;
  - e. Great blue heron nest sites and breeding areas;
  - f. Osprey nest sites;
  - g. Peregrine falcon nest sites and breeding areas;

- h. Purple martin breeding areas;
  - i. Resident coastal cutthroat trout;
  - j. Winter steelhead trout;
  - k. Water fowl concentrations.
9. The following habitats and species of local importance have been designated by the city:
- a. The Anacortes Community Forestlands.
  - b. The March Point Heronry.
  - c. The one and one-half acre “Park Reserve” at Cap Sante bounded by Third Street, East Park Drive, and Curtis Drive.
  - d. Ship Harbor Wetland.
  - e. Cannery Pond Wetland.
  - f. Category II wetlands within the watersheds of Little Cranberry Lake, Whistle Lake, and Hearth Lake and with seasonal surface water connections.
  - g. Smiley’s Bottom Wetland.

B. In addition to the FWHCAs identified in subsection [\(A\)\(9\)](#) of this section, additional habitats and species of local importance may be designated by the city using the following process:

1. *Designation Process.* The city may consider nominations for habitat areas and species to be designated as locally important on an annual basis as part of the annual comprehensive plan and development regulation update process, based on the following criteria:
- a. Local populations of native species that are in danger of extirpation based on existing trends, likely to become endangered, or are vulnerable or declining;
  - b. The habitat represents either a high-quality native habitat, or the habitat has a high potential to recover to a suitable condition and which is of limited availability, is highly vulnerable to alteration, or provides landscape connectivity which contributes to the integrity of the surrounding landscape;
  - c. The species or habitat has recreation, commercial, game, tribal, or other intrinsic value;
  - d. Long-term persistence of a species is dependent on protection, maintenance, and/or restoration of the nominated habitat;
  - e. Protection by other county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat; and

- f. Without protection, there is a likelihood that the species or habitat will be diminished.
  2. The nomination must indicate whether specific habitat features are to be protected (for example, nest sites, breeding areas, and nurseries) or whether the habitat or ecosystem is being nominated in its entirety.
  3. The nomination may include management strategies for the species or habitats, which must be supported by best available science. Where restoration of habitat is proposed, a specific plan for restoration must be provided.
- C. All areas within the city meeting one or more of these criteria, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of this chapter. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.320 Mapping.

A. *Mapping.* The approximate location and extent of some FWHCAs are shown in the data layers maintained in the city of Anacortes geographic information system (GIS). In addition, the following maps and inventories are hereby adopted by reference, as amended:

1. [Washington Department of Fish and Wildlife Priority Habitat and Species maps](#);
2. Washington Department of Natural Resources, [Official Water Type Reference maps](#);
3. Washington Department of Natural Resources [Puget Sound Intertidal Habitat Inventory maps](#);
4. Washington Department of Natural Resources [Shore Zone inventory](#);
5. Washington Department of Natural Resources [Natural Heritage Program mapping data](#);
6. Washington Department of Health Annual [Inventory of Shellfish Harvest Areas](#);
7. Anadromous and resident fish distribution maps contained in the habitat limiting factors reports published by the Washington Conservation Commission and others;
8. Washington Department of Natural Resources State Natural Area Preserves and Natural Resource Conservation Area maps; and
9. NOAA Northwest Region Critical Habitat Mapper or equivalent source:  
<http://www.nmfs.noaa.gov/pr/species/criticalhabitat.htm>.

B. *Reference Only.* The maps and resources cited above are to be used as a guide for the city of Anacortes Planning, Community and Economic Development Department, project applicants, and/or property owners and may be continuously updated as new critical areas are identified. They are a reference and do not provide a final critical area designation. (Ord. 3064 § 2 (Att. A), 2021)



### 19.70.325 General development standards for all FWHCAs.

A. All new development activities and uses are prohibited from habitat conservation areas and their buffers except in accordance with this chapter unless within shoreline jurisdiction and hereby regulated by AMC Chapter [19.72](#), Shorelines. Alterations of FWHCAs or their buffers is prohibited except as otherwise allowed by this chapter and may occur only if the proposed alteration of the habitat and any associated mitigation proposed does not degrade the functions and values of the habitat.

B. *Exemptions.* Exemptions to this chapter are listed in the provisions established in AMC [19.70.040](#), Exempt activities.

C. *Approvals and the Best Available Science.* Any approval of alterations or impacts to an FWHCA area must be supported by the best available science as described in the required critical area report.

D. *Approvals of Activities May Be Conditioned.* The decision-maker may condition approvals of activities allowed within or adjacent to a fish and wildlife habitat conservation area as necessary to minimize or mitigate any potential adverse impacts. Conditions will be based on the best available science and may include, but are not limited to, the following:

1. Establishment of buffers;
2. Preservation of important vegetation and/or habitat features such as snags and downed wood specific to the priority wildlife species in the fish and wildlife habitat conservation area;
3. Limitation of access to the habitat area, including fencing to deter unauthorized access;
4. Seasonal restriction of construction activities;
5. Establishment of a duration and timetable for periodic review of mitigation activities; and
6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

E. *Seasonal Restrictions.* When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

F. *Subdivisions.* The subdivision and short subdivision of land in FWHCAs and associated buffers is subject to the following:

1. Land that is located wholly within an FWHCA or its buffer may not be subdivided;
2. Land that is located partially within an FWHCA may be subdivided only if an accessible and contiguous portion of each new lot that meets the minimum lot size requirements for the zone is located outside of the FWHCA and its buffer;

3. Access roads and utilities serving a proposed subdivision may be permitted within the FWHCA and associated buffers only if the applicant's qualified professional(s) demonstrate, and the decision-maker determines, that no other feasible alternative exists, all unavoidable impacts are fully mitigated, and the use is consistent with this chapter;

4. This subsection does not authorize new access roads and utilities in FWHCAs and associated buffers for existing subdivisions.

G. *Nonindigenous Species*. No plant, wildlife, or fish species not indigenous to Fidalgo Island may be introduced to an FWHCA unless authorized by a state or federal permit approval. (Ord. 3064 § 2 (Att. A), 2021)

### 19.70.330 Specific standards for streams.

A. *Typing*. Stream types must be classified according to WAC [222-16-030](#). Stream classifications must include the following:

1. Type F streams are those that provide fish habitat;
2. Type Np streams are perennial waters that do not contain fish habitat; and
3. Type Ns streams are seasonal waters that do not contain fish habitat, but are physically connected by an above-ground channel system to Type F or Np waters.
4. In the case that available information on stream typing is unclear, stream typing will be performed by a qualified professional, provided by the applicant, using a site visit, mapping, and all available information.

B. *Required Buffer Areas*. Protective riparian buffers must be required to preserve stream/riparian functions and values. The purpose of riparian buffers is to protect riparian functions that influence in-stream and near-stream habitat quality.

1. *Measurement of Stream Buffers*. Stream buffers are measured from the ordinary high water mark (OHWM), or the top of the bank if the OHWM cannot be determined. Buffers must be measured with rounded ends where streams enter or exit piped segments. Piped stream setbacks should be measured from the centerline of the pipe.
2. *Standard Stream Buffer Widths*. Buffer widths must reflect the sensitivity of the stream type, the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the stream area. The following standard buffers are established for streams:

Table 19.70.330 Stream Buffers

| <b>DNR Water Type</b><br>(WAC <a href="#">222-16-030</a> )                                                                                                                                                                                                       | <b>Standard Buffer Width</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| <b>Type F</b><br>Streams that are known to be used by fish, or meet the physical criteria to be potentially used by fish.                                                                                                                                        | 50 feet                      |
| <b>Type Np</b><br>Streams that have year-round flow and do not meet the physical criteria of a Type F. This also includes streams that have been proven not to contain fish using methods described in Forest Practices Board Manual Section 13.                 | 50 feet                      |
| <b>Type Ns</b><br>Streams that do not have surface flow during at least some portion of the year, and do not meet the physical criteria of a Type F stream.                                                                                                      | 50 feet                      |
| <b>Piped Streams and Roadside Ditched Segments</b><br>Those segments of streams, regardless of their type, that are fully enclosed in an underground pipe or culvert, or conveyed through a public roadside ditch as part of the city stormwater infrastructure. | 10 feet                      |

3. *Increased Stream Buffer Widths.* The stream buffer widths may be increased by the decision-maker as follows:

- a. When the qualified professional determines that the minimum width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area as a result of a habitat assessment required pursuant to AMC [19.70.350](#), Critical area report additional requirements;
- b. When the frequently flooded area exceeds the minimum stream buffer width, the stream buffer must extend to the outer edge of the frequently flooded area;
- c. When a channel migration zone is present, the stream buffer must extend to the outer edge of the channel migration zone;
- d. When the habitat area is in an area of high blowdown potential, the stream buffer width must be expanded an additional 50 feet on the windward side;
- e. When the habitat area is within an erosion or landslide hazard area, or buffer, the stream buffer width must be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

*C. Buffer Reduction Standards.* The decision-maker may allow the reduction of buffer widths on a case-by-case basis when the critical area report demonstrates the following criteria are met:

1. There is no feasible alternative to the site design that could be accomplished without buffer reduction;
2. The total buffer width is not reduced to less than 35 feet in stretches of natural stream channel with intact native vegetation within the buffer, and the buffer reduction does not reduce the functions or values of the stream or buffer;
3. The total buffer width is not reduced to less than 25 feet in stretches of modified stream channel with little to no intact native vegetation within the buffer, and the buffer reduction plan must include an enhancement plan to increase the functions or values of the stream or buffer;
4. A buffer enhancement plan is proposed to improve the overall function of the buffer.

**D. C.** *Building Setbacks From Stream Buffers.* Buildings, structures, paving, and other hard surfacing must be set back a minimum distance of 10 feet from the edge of the stream buffer unless determined by the decision-maker that a smaller distance would meet the intent of this subsection. This setback is to avoid conflicts with tree branches and/or critical root zones of trees that are in the buffer or will be planted in the buffer. The following may be allowed in the building setback from the buffer if they do not cause damage to the critical root zone of trees in the buffer:

1. Landscaping;
2. Uncovered decks, roof eaves and overhangs, unroofed stairways and steps;
3. Pervious ground surfaces, such as driveways, patios, and parking may be allowed; provided, that they are engineered as a permeable pavement system as defined in AMC [19.12.020](#), Definitions. Such improvements may be subject to the requirements in AMC Chapter [19.76](#), Stormwater.

**E D.** *Functionally Separated and Isolated Stream Buffers.* Consistent with the definition of “buffers” in this chapter, areas that are functionally isolated and physically separated from a stream due to existing, legally established public roadways, railroads or other legally established structures or paved areas eight feet or more in width that occur between the area in question and the stream must be considered physically isolated and functionally separated stream buffers. Once determined by the decision-maker, based on a submitted critical area report, to be a physically separated and functionally isolated stream buffer, development proposals are allowed in these areas.

**F. E.** *Additional Allowed Activities in Streams.* Activities, uses and alterations of streams are prohibited unless otherwise listed as exempt or allowed according to the provisions of AMC [19.70.040](#), [19.70.045](#), and [19.70.050](#). No alteration to a stream buffer may be permitted unless consistent with the provisions of this section and the specific standards for development outlined below.

1. *When Allowed.* Relocation of Type F, Np, and Ns streams may be permitted only when the proposed relocation is part of an approved rehabilitation/restoration plan and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. The applicant must demonstrate proper mitigation sequencing.

**2.1.** *Stream Crossing.* Crossing of streams may be permitted and is required to be designed to allow fish passage based on state and federal fish passage criteria.

**G. F.** *Piped Watercourses and Roadside Ditches.* It is recognized that within the urban environment many historical streams have been substantially modified to accommodate development. Many of the regulated and mapped streams within the city of Anacortes pass through natural reaches, modified reaches, piped reaches, and sometimes along manmade roadside ditches.

1. Development along piped watercourses and roadside ditched segments of regulated streams are subject to a 10-foot setback from the centerline of the stream course and are subject to the recording of a utility easement granted to the city for access and maintenance of the watercourse infrastructure.
2. The voluntary opening and restoration or rehabilitation of previously channelized, culverted, or piped streams is highly encouraged and may be approved by the decision-maker, when the following is demonstrated within a critical area report:
  - a. The restoration will result in a net gain in FWHCA functions, including an improvement in water quality and ecological functioning;
  - b. Opened channels must be designed to support fish and wildlife habitat and uninhibited fish access, unless demonstrated to be infeasible;
  - c. A reduction to the standard buffer is allowed to a minimum of 25 feet, or as recommended by a qualified professional in the critical area report. Measured from the ordinary high water mark (OHWM) and which includes habitat improvements, and measures to prevent erosion, landslide and water quality impacts;
  - d. The proposal will not significantly increase the threat of erosion, flooding, slope stability or other hazards on the site or on adjacent properties;
  - e. The proposal must demonstrate that their conveyance will maintain the flow capacity and not create flooding elsewhere in the drainage basin.

**H. G.** *Stream Enhancement Measures.* Only those enhancement measures deemed most applicable and/or appropriate for stream channel or buffer enhancement projects will be considered in a buffer modification proposal, and must be supported by best available science and a critical area report. These include, but are not limited to:

1. Removal of fish barriers to restore accessibility to fish;
2. Enhancement of fish habitat using log structures incorporated as part of a fish habitat enhancement plan;

3. Enhancement of fish and wildlife habitat structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, rootwads/stumps, birdhouses, and heron nesting areas;
4. Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value; or
5. Creation of a surface channel where a stream was previously underground, in a culvert or pipe. Surface channels which are “daylighted” must be located within a buffer area and must be designed with energy dissipating functions or channel roughness features such as meanders and rootwads to reduce future bank failures or nearby flooding;
6. Removal or modification of existing stream culverts (such as road crossings) to improve fish passage, stream habitat, and flow capacities; or
7. Upgrading of retention/detention facilities or other stormwater management facilities beyond required levels. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.335 Specific standards for other FWHCAs.

A. *Endangered, Threatened, and Sensitive Species.* Fish and wildlife habitat conservation areas or buffers with state or federally endangered, threatened, or sensitive species or anadromous fish species have a primary association are subject to the following:

1. No development is allowed within a fish and wildlife habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.
2. Whenever activities are proposed adjacent to a fish and wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area must be protected through the application of protection measures in accordance with a critical area report prepared by a qualified professional and approved by the city. Approval for alteration of the fish and wildlife habitat conservation area or its buffer may not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

B. *Other Priority Habitats and Species.* Fish and wildlife habitat conservation areas or buffers with species that are not state or federally listed as endangered, threatened, or sensitive species, and are not anadromous fish species are subject to the following:

1. Development activities and uses that result in unavoidable impacts are prohibited except as otherwise allowed by this chapter and may occur in priority species habitat areas and associated buffers only if the proposed alteration of the habitat does not degrade the functions and values of the habitat in accordance with an approved critical area report with habitat assessment/management plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the loss of acreage and functions of habitat and buffer areas must be provided in compliance with the mitigation performance standards and requirements of these regulations.

C. *City-Designated Habitats and Species of Local Importance.*

1. *Anacortes Community Forest Lands.*

a. *Purpose.* The Anacortes Community Forest Lands include three lakes and their watersheds, numerous wetlands, rock bluffs, old growth forests, grassy knolls, windswept hilltops, sheltered caves, and a variety of other habitats and microclimates that provide a unique and irreplaceable habitat for both imperiled and commonplace species. This land has been dedicated by the city for the preservation of forest lands and species, as described in the conservation easement documents, the ACFL comprehensive plan, and in AMC Title [12](#).

b. *Recreation and Recreation-Related Facilities.* Construction of public recreation-related facilities such as trails, benches, interpretive displays, and viewing platforms may be allowed in fish and wildlife habitat conservation areas or buffers.

c. Proposed alterations must be consistent with the adopted Anacortes Community Forest Lands comprehensive plan, as amended.

d. *Noxious and Invasive Plants.* The Skagit County noxious weed ordinance and the ACFL invasive plant control program must be carefully considered in any adjacent development decision. Nonnative plants known to be invasive into the ACFL must be prohibited in landscaping plans of adjacent developments. Where such developments have CC&Rs, reference to this requirement must be included therein.

e. *Right-of-Way Vacations.* In the case of street or alley vacations contiguous with an ACFL boundary, the half of the area vacated which is adjacent to the ACFL must be incorporated into the ACFL and subject to all ACFL-related requirements.

f. *Private Access to ACFL.* No new accesses will be established to the ACFL without prior request for such access to the Parks and Recreation Department and the forest advisory board and approval by the City Council.

g. *Burning.* No burn piles or outdoor fires must ever be left unattended while ignited and in the event sparks or flames come within 300 feet of the ACFL, the fire must immediately be brought under control or extinguished.



h. *Boundary Identification.* City staff will work closely with property owners and developers to ensure that survey lines adjacent to the ACFL boundary are clearly and correctly marked before any timber and/or vegetation is removed from adjacent property. The forest manager will be involved in the final inspection of boundary lines.

i. *ACFL Buffers.* City staff will work closely with builders to secure 30-foot ACFL buffers using all available incentives.

2. March Point Heronry:

a. *Purpose.* Because Skagit County is home to the greatest concentration of nesting great blue heron in the Salish Sea, March Point being the largest, the city has identified the March Point Heronry as a habitat of local importance.

b. Proposed development activities within 1,000 feet, or that are likely to impact the colony, must provide a critical areas assessment report and habitat management plan that follows at a minimum the guidelines provided by WDFW's Management Recommendations for Washington's Priority Species (March 2012) [https://wdfw.wa.gov/publications/00026/abbreviated\\_great\\_blue\\_heron.pdf](https://wdfw.wa.gov/publications/00026/abbreviated_great_blue_heron.pdf).

c. Buffers will be implemented as described in the buffer section below.

d. Colony protection is required for minimum 10 years after abandonment.

D. Required buffer for nonstream FWHCAs:

1. *Marine FWHCAs Buffers.* Buffers for all designated fish and wildlife habitats or species within marine shorelines must be regulated by AMC Chapter [19.72](#) shoreline regulations and the shoreline master program.

2. *All Other Nonstream FWHCA Buffers.* Buffers from fish and wildlife habitat conservation areas must be established to protect the functions and values of the critical area from the impacts of proposed adjacent activities.

a. Buffer widths for fish and wildlife habitat areas must be based on consideration of the following factors: species-specific recommendations of the Washington State Department of Fish and Wildlife; recommendations contained in a habitat management plan submitted by a qualified professional; and the nature and intensity of land uses and activities occurring on the land adjacent to the site. Buffers must:

i. Consist of an undisturbed area of native vegetation, or areas identified for restoration, sufficient to protect the integrity, functions, and values of the affected habitat;

ii. Reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby;

- iii. Be consistent with the applicable species-specific management recommendations issued by the Washington Department of Fish and Wildlife.
- b. Nesting bald eagles and bald eagle habitats must be protected consistent with the U.S. Fish and Wildlife Service (USFWS) national bald eagle management guidelines, or the state or federal regulations in place at the time of application. Whenever activities are proposed adjacent to a confirmed nest territory or communal roost, a bald eagle habitat management plan must be developed by a qualified professional. Activities are adjacent to managed bald eagle sites when they are within 660 feet of a nest or within one-half mile (2,640 feet) of a shoreline foraging area. Approval of the activity must not occur prior to consultation with the state or federal agency with authority on bald eagle pairs and their nest.
- c. *Great Blue Heron Nesting and Breeding Areas.* Development near a verified heron breeding habitat including nesting colony areas, former nesting colonies:
  - i. A year-round urban buffer of 197 feet,
  - ii. For unusually loud activities that occur during breeding season (February through September) a seasonal buffer of 656 feet, and a blasting buffer of 1,320 feet,
  - iii. For properties without an existing and approved management plan, a management plan developed by a qualified professional to follow, at a minimum, WDFW's Management Recommendations for Washington's Priority Species (March 2012) and that identifies the nesting and breeding site as well as pre-nesting staging area, and breeding season foraging habitat,
  - iv. For the March Point colony, given the observed and documented sensitivity of this mega-colony to human intrusion and the fact that the colony is in a rare, isolated, but tight location, a year-round buffer of 984 feet. (Ord. 3064 § 2 (Att. A), 2021)

#### **19.70.340 — Buffer width averaging.**

**A. *Approval Criteria.*** The decision-maker may allow the averaging of FWHCA buffer widths for FWHCAs other than those designated by the city as habitats and species of local importance, when the critical area report demonstrates the following:

1. In-stream or buffer habitat functions will be increased or maintained where native buffer vegetation is generally intact, or increased where existing buffer vegetation is inadequate to protect functions and values; and
2. The buffer averaging does not reduce the functions or values of the stream or FWHCA buffer; and

3. The total area contained in the buffer area after averaging on the development proposal site is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be parallel to the FWHCA buffer; and
4. The stream or FWHCA buffer contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and
5. The buffer width is not reduced in any location to less than 50 percent of the standard width or 35 feet, whichever is greater, on a case-by-case basis as a result of a habitat assessment pursuant to AMC 19.70.350(B)(4); and
6. The buffer has not been reduced in accordance with this section. Buffer averaging is not allowed if the buffer has been reduced; and
7. There were no feasible alternatives to the site design without buffer averaging; and
8. Buffer enhancement will be provided; and
9. The buffer width reduction will not be located within another critical area or associated buffer; and
10. Only those portions of the FWHCA buffer within the project area or subject parcel may be considered in the total buffer area for buffer averaging. (Ord. 3064 § 2 (Att. A), 2021)

19.70.345 19.70.340 Stormwater management facilities.

Establishment of low-impact stormwater management facilities, such as stormwater dispersion outfalls and bioswales, may be allowed within fish and wildlife habitat conservation area buffers consistent with the adopted stormwater manual; provided, that:

- A. No other location is feasible; and
- B. There will be “no net loss” of functions and values of the fish and wildlife habitat conservation area; and
- C. The critical area lies in the natural routing of the runoff, and the discharge follows the natural routing; and
- D. Stormwater dispersion outfalls, bioswales, bioretention facilities, and other low-impact facilities consistent with the adopted stormwater manual may be allowed within the outer 25 percent of the buffer when determined by a qualified professional that the location of the facilities will enhance the buffer area and protect the stream; and
- E. Such facilities are designed consistent with the requirements of AMC Chapter 19.76. (Ord. 3064 § 2 (Att. A), 2021)

## 19.70.350 Critical area report additional requirements.

A. *Additional Report Contents for FWHCAs.* In addition to the minimum report contents required per AMC [19.70.115](#), Critical area report, FWHCA reports must also include:

1. Documentation of any fieldwork performed on the site, including field data sheets for delineations, water typing and other habitat conservation area classification, baseline hydrologic data, site photos, etc.;
2. A description of the methodologies used to conduct the delineations, classifications, or impact analyses, including references;
3. A discussion of the potential impacts to the critical area or buffer associated with the proposed development including an assessment of cumulative impacts.

B. *Habitat Assessment/Management Plan.* A habitat assessment/management plan is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical area report for a fish and wildlife habitat conservation area must contain an assessment of habitats including the following site- and proposal-related information at a minimum:

1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;
2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;
3. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
4. A detailed discussion of the direct and indirect potential impacts on habitat by the project, including potential impacts to water quality;
5. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing habitats and restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with AMC [19.70.125](#), Mitigation requirements;
6. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

C. *Additional Technical Information Requirements for Streams.* If no project impacts are anticipated and standard stream buffer widths are retained, a stream delineation report, general critical area report or other reports, alone or in combination, may be submitted as consistent with the specific requirements of this section. In addition to the general critical area report requirements for fish and wildlife habitat conservation areas

provided in subsections (A) through (D) of this section, technical information on streams must include the following information at a minimum:

1. A written assessment and accompanying maps of the stream and associated hydrologic features on and off site within 300 feet of the project area, including the following information at a minimum:
  - a. Stream survey showing the field delineated ordinary high water mark(s);
  - b. Standard stream buffer boundary as determined by AMC [19.70.330](#), Specific standards for streams;
  - c. Boundary for proposed stream buffers averaging, if applicable;
  - d. Vegetative, faunal, and hydrologic characteristics;
  - e. Soil and substrate conditions; and
  - f. Topographic elevations, at two-foot contours;
2. A detailed description and functional assessment of the stream channel and stream buffer under existing conditions pertaining to the protection of stream functions, fish habitat and, in particular, potential anadromous fisheries;
3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and stream functions;
4. Proposed buffer enhancement, if needed, including a written assessment and accompanying maps and planting plans for buffer areas to be enhanced, including the following information at a minimum:
  - a. A description of existing buffer conditions;
  - b. A description of proposed buffer conditions and how proposed conditions will increase buffer functions in terms of stream and fish habitat protection;
  - c. Performance standards for measuring enhancement success through a monitoring period of at least five years;
  - d. Provisions for monitoring and submission of monitoring reports documenting buffer conditions, as compared to performance standards, for enhancement success; and
  - e. A discussion of ongoing management practices that will protect stream functions and habitat value through maintenance of vegetation density within the stream buffer.

*D. Additional Technical Information for Heron Habitat.*

1. The report must identify the heron management area (HMA). An HMA consists of the nesting colony, year-round and seasonal buffer, foraging habitat, and, when present, a pre-nesting congregation area.
2. All survey activity such as nest tree identification and flagging should occur in the nonbreeding season (mid-September to mid-February), and preferably right after breeding season ends.
3. Identify the nesting colony's boundary. To do this, flag all nest trees at the colony's outer perimeter. Mark each of these trees on a map. If a nest tree's canopy overlaps the canopy of an adjacent tree, flag the adjacent tree and consider this to be a nest tree. The outermost nest trees will be used to map the nesting colony boundary.
4. Map outer perimeter of the 197-foot year-round buffer. Using the buffer radius, draw a circle around each peripheral nest tree.
5. Map seasonal buffer if any unusually loud activities will occur during breeding season (February through September). Measure the seasonal buffer starting at the outer edge of the year-round buffer.
6. Locate potential foraging habitat by mapping all waterbodies within a one-and-nine-tenths mile radius of the colony. The perimeter and shallow portions are especially important for foraging.

E. *Additional FWHCA Information.* When appropriate, due to the type of habitat or species present, or the project area conditions, the decision-maker may also require the critical area report to include:

1. A request for consultation with the Washington State Department of Fish and Wildlife (DFW), Washington Department of Ecology (Ecology), local Native American tribes or other appropriate agency;
2. Copies of the joint aquatic resource permit application (JARPA) and related approvals, such as a hydraulic project approval (HPA) from the WDFW, when applicable to the project; and
3. Detailed surface and subsurface hydrologic features both on and adjacent to the site. (Ord. 3064 § 2 (Att. A), 2021)

#### 19.70.355 Mitigation performance standards and requirements.

Compensatory mitigation for FWHCAs must follow the plan requirements described under AMC [19.70.130](#), Mitigation plan requirements. (Ord. 3064 § 2 (Att. A), 2021)



**Anacortes Planning Commission  
Recorded Motion Regarding an Amendment to the  
Development Regulations**

|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Proposal Description:</b> | The proposed non-project legislative action is to amend the Critical Areas Regulations AMC Table 19.70.235(B), increase required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat. Amend AMC 19.70.330 (C) to eliminate the allowance for stream buffer reductions. Amend AMC 19.70.330 (F) to eliminate the allowance for stream relocations. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging. |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Public hearing body:</b>  | Anacortes Planning Commission                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Public hearing date:</b>  | March 16, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>PC deliberations:</b>     | March 16, 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendations to the Anacortes City Council.

## **A. Findings of Fact**

### **Procedural & Public Engagement**

1. The proposed amendments to the Critical Areas Regulations was initiated by the City based on concerns from the public that certain regulations may not have been supported by best available science and did not provide appropriate mitigation.
2. The Planning Commission held a public hearing on March 16, 2022 to review the proposed amendment, take public comment, deliberate and make a recommendation to City Council. The meeting was broadcast on Channel 10 and streamed live on the City's website.
3. The proposed amendments were transmitted to the Washington State Department of Commerce for state agency expedited review in accordance with RCW 36.70A.106 on



February 28, 2022, and have met the Growth Management notice to state agency requirements.

4. A State Environmental Policy Act (SEPA) Determination of Exemption based on RCW 43.21C.450 (3)(A)(C) , Amendments result in Increased protection of critical Areas.
5. Timely and sufficient notice of public hearings and written comment periods was provided in accordance with AMC 19.16.070, including publishing notice on the project website on March 2, 2022, and publishing a paid notice in the March 2, 2022, Anacortes American. The notice was also posted in City Hall, and the Public Library.

A Public hearing was held before the Planning Commission on March 16, 2022. There were no public comments at the meeting. One person spoke at the Public Hearing in favor of the proposed amendments.

6. The written comment period ended on March 16, 2022. No written comments were received, over the course of the project process.
7. The Planning Commission deliberated on the proposal on March 16, 2022.

### Criteria for Approval

8. The proposed amendments are legislative actions under AMC Chapter 19.16, which applies to adoption and amendment of implementing critical area regulations.
9. AMC 19.16.080(B) provides the elements that the Planning Commission must consider in making its recommendation to City Council. These elements are:

**a. Public hearing testimony and written comment received during any public comment period;**

The public engagement process undertaken is outlined in the Procedural and Public Engagement section of these findings. Written public comments received were compiled by city staff and transmitted to the Planning Commission.

**b. Staff recommendations and analysis;**

Throughout the Planning Commission meeting, based on feedback received during the meeting, the project team provided recommendations containing analysis and potential options for Planning Commission consideration and direction. The discussions were helpful to the Planning Commission in refining their recommendation.

**c. Legal advice;**

The Planning Commission has considered the advice of the City Attorney's office in making these findings.

The City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the proposal to assure that proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

#### **d. Consistency of the proposal with the Comprehensive Plan.**

The Development Regulation amendment objective is to implement key goals and policies of the 2016 Anacortes Comprehensive Plan. The goals and policies provide guidance and policy direction in the establishment of said regulations.

The Planning Commission finds and concludes that the Development Regulation Amendment proposed in attachment A is consistent with the Comprehensive Plan goals and policies as detailed below.

### **Consistency with the Anacortes Comprehensive Plan**

10. The proposal integrates strategic updates to improve organization and usability, clarity, and new content to implement the 2016 Comprehensive Plan, which is supported by the following Comprehensive Plan policies:

***EC-6. Surface water, Maintain or improve the functional integrity of watercourses, wetlands, bodies of water and their shores.***

***EC-6.2 Streams and wetlands should be maintained in their existing natural condition, or restored where appropriate.***

***EC-4.9 Strive for no net loss of wetland acreage, function, and value within each drainage basin over the long term.***

***EC-5.4 With the exception of habitat improvements, stream alterations should only occur when absolutely necessary and should minimize adverse impacts to aquatic life.***

## **B. Reasons for Action**

Having made the Findings set forth above, the Planning Commission makes the following conclusions:

1. The proposed Critical Areas Regulation amendments were reviewed through the review process as required by AMC 19.16 Legislative Actions. The Planning Commission is responsible for reviewing and making a recommendation to City Council on development regulations.
2. The Planning Commission determined that the proposed amendments are consistent with the:
  - Anacortes Comprehensive Plan

- Anacortes Municipal Code (Chapter 19.16 Legislative Actions)

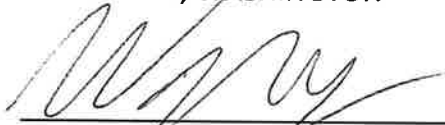
## C. Recommendation

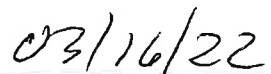
The Planning Commission recommends that the City Council:

1. Approve the proposed amendment to the development regulations as presented in **Attachment A**.
2. **This recorded motion** approved March 16, 2022:

| Commission Vote       | Support | Oppose | Absent | Abstain |
|-----------------------|---------|--------|--------|---------|
| Ward MacKenzie, Chair | X       |        |        |         |
| Jeffery Graf          |         |        | X      |         |
| Sarah Ruether         | X       |        |        |         |
| Linda Martin          | X       |        |        |         |
| Frank Jeretzky        | X       |        |        |         |
| Jack Curtis           | X       |        |        |         |
| Gary Molyneaux        | X       |        |        |         |
| Total                 | 6       | 0      | 1      | 0       |

ANACORTES PLANNING COMMISSION  
ANACORTES, WASHINGTON

  
Ward MacKenzie, Planning Commission Chair

  
Date

# Proposed Critical Areas Amendments

- ▶ Chapter 19.70

1. Amend AMC Table 19.70.235(B) to increase the required buffer widths consistent with Department of Ecology guidelines for a Category III wetlands with a high level of function for wildlife habitat. Page 37

| Wetland Category | Buffer Width (feet) |                    |                   |
|------------------|---------------------|--------------------|-------------------|
|                  | High Intensity      | Moderate Intensity | Low Intensity     |
| Category I       | 300                 | 225                | 150               |
| Category II      | 300                 | 225                | 150               |
| Category III     | <del>150</del> 300  | <del>110</del> 225 | <del>75</del> 150 |
| Category IV      | 50                  | 40                 | 25                |

1. Buffer widths for wetlands that have a high level of function for wildlife habitat as indicated by a habitat function score of eight or nine points on the wetland rating form:

## 2. Amend AMC 19.70.330(C ) To eliminate the allowance for stream buffer reductions. Renumber as needed. Page 58/59

- ◆ ~~C. *Buffer Reduction Standards.* The decision maker may allow the reduction of buffer widths on a case-by-case basis when the critical area report demonstrates the following criteria are met:~~
- ◆ ~~1. There is no feasible alternative to the site design that could be accomplished without buffer reduction;~~
- ◆ ~~2. The total buffer width is not reduced to less than 35 feet in stretches of natural stream channel with intact native vegetation within the buffer, and the buffer reduction does not reduce the functions or values of the stream or buffer;~~
- ◆ ~~3. The total buffer width is not reduced to less than 25 feet in stretches of modified stream channel with little to no intact native vegetation within the buffer, and the buffer reduction plan must include an enhancement plan to increase the functions or values of the stream or buffer;~~
- ◆ ~~4. A buffer enhancement plan is proposed to improve the overall function of the buffer.~~

### 3. Amend AMC 19.70.330 (F) To eliminate the allowance for stream relocations. Renumber as needed. Page 59

- ◆ ~~1. *When Allowed.* Relocation of Type F, Np, and Ns streams may be permitted only when the proposed relocation is part of an approved rehabilitation/restoration plan and will result in equal or better habitat and water quality, and will not diminish the flow capacity of the stream. The applicant must demonstrate proper mitigation sequencing.~~



# Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging. Renumber as needed. Page 64/65

## ◆ ~~19.70.340~~ ~~Buffer width averaging.~~

◆ ~~A. *Approval Criteria.* The decision maker may allow the averaging of FWHCA buffer widths for FWHCAs other than those designated by the city as habitats and species of local importance, when the critical area report demonstrates the following:~~

- ◆ ~~1. In stream or buffer habitat functions will be increased or maintained where native buffer vegetation is generally intact, or increased where existing buffer vegetation is inadequate to protect functions and values; and~~
- ◆ ~~2. The buffer averaging does not reduce the functions or values of the stream or FWHCA buffer; and~~
- ◆ ~~3. The total area contained in the buffer area after averaging on the development proposal site is no less than that which would be contained within the standard buffer, and all increases in buffer dimension for averaging must be parallel to the FWHCA buffer; and~~
- ◆ ~~4. The stream or FWHCA buffer contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation; and~~
- ◆ ~~5. The buffer width is not reduced in any location to less than 50 percent of the standard width or 35 feet, whichever is greater, on a case-by-case basis as a result of a habitat assessment pursuant to AMC 19.70.350(D)(4); and~~
- ◆ ~~6. The buffer has not been reduced in accordance with this section. Buffer averaging is not allowed if the buffer has been reduced; and~~
- ◆ ~~7. There were no feasible alternatives to the site design without buffer averaging; and~~
- ◆ ~~8. Buffer enhancement will be provided; and~~
- ◆ ~~9. The buffer width reduction will not be located within another critical area or associated buffer; and~~
- ◆ ~~10. Only those portions of the FWHCA buffer within the project area or subject parcel may be considered in the total buffer area for buffer averaging. (Ord. 2064 § 2 (Am. A), 2021)~~



## Notice of Public Hearing

Including written comment period and public hearing date

Publish Date: March 2, 2022  
Proposal Name: Critical areas regulations amendments  
Documents Available at: <https://www.anacorteswa.gov/198/Anacortes-Municipal-Code-Updates>  
Lead Agency: City of Anacortes Planning, Community & Economic Development Department  
Contact Person: Don Measamer, Director  
Public Hearing Body: Anacortes Planning Commission  
Public Hearing Date: Wednesday, March 16, 2022, at 6:00 PM

### Proposal Description

The proposal would make amendments to Anacortes Municipal Code Chapter 19.70 Critical Areas, as follows:

1. Amend AMC Table 19.70.235(B) to increase the required buffer widths consistent with Department of Ecology guidelines for Category III wetlands with a high level of function for wildlife habitat.
2. Amend AMC 19.70.330(C) to eliminate the allowance for stream buffer reductions.
3. Amend AMC 19.70.330(F) to eliminate the allowance for stream relocations.
4. Amend AMC 19.70.340 to eliminate the allowance for fish and wildlife habitat conservation buffer width averaging.

The complete text of the proposed changes can be reviewed at the website address above.

### SEPA Threshold Determination

The City of Anacortes has determined that this nonproject action is exempt from the requirements of RCW 43.21C pursuant to RCW 43.21C.450(3).

### How to Comment

Email comments are preferred and must be sent to [don@cityofanacortes.org](mailto:don@cityofanacortes.org) by Wednesday, March 16, 2022 at 3:00 PM.

Paper comments may be mailed or delivered to:

City of Anacortes  
Planning, Community & Economic Development Department  
ATTN: Don Measamer  
P.O. Box 547 / 904 6<sup>th</sup> St.  
Anacortes, WA 98221

Verbal comments may be made at the Public Hearing. Due to the COVID-19 pandemic, the public hearing will be held remotely. Meeting access information can be found on the Planning Commission agenda, posted Thursday prior to the meeting here: <https://www.anacorteswa.gov/700/Meeting-Documents-and-Video>

**Measamer, Don**

---

**From:** Grage, Libby  
**Sent:** Thursday, February 24, 2022 4:13 PM  
**To:** Measamer, Don  
**Subject:** sepa exemption?

What do you think of this exemption for the settlement agreement amendments to the CAO:

**43.21C.440 << 43.21C.450 >> 43.21C.460**

## **RCW 43.21C.450**

### **Nonproject actions exempt from requirements of chapter.**

The following nonproject actions are categorically exempt from the requirements of this chapter:

(1) Amendments to development regulations that are required to ensure consistency with a plan that was previously subjected to environmental review pursuant to this chapter and the impacts of the plan were previously subjected to environmental review;

(2) Amendments to development regulations that are required to ensure consistency with a master program that was previously subjected to environmental review pursuant to this chapter and the impacts of the program were previously subjected to environmental review;

(3) Amendments to development regulations that, upon implementation of a project action:

(a) Increased protections for critical areas, such as enhanced buffers or setbacks;

(b) Increased vegetation retention or decreased impervious surface areas in shoreline jurisdictions;

(c) Increased vegetation retention or decreased impervious surface areas in critical areas;

(4) Amendments to technical codes adopted by a county, city, or town to ensure consistency with:

(a) Building codes required by chapter 19.27 RCW;

(b) Energy codes required by chapter 19.27A RCW; and

(c) Electrical codes required by chapter 19.28 RCW.

**[ 2012 1st sp.s. c 1 § 307.]**

**Libby Grage** | City of Anacortes  
Planning, Community & Economic Development Department  
Planning Manager  
P.O. Box 547 | 904 6th Street | Anacortes, WA 98221  
360.299.1986 (work) | 360-661-3505 (work cell)  
[libbyb@cityofanacortes.org](mailto:libbyb@cityofanacortes.org) | [www.cityofanacortes.org](http://www.cityofanacortes.org)

My incoming and outgoing email messages are subject to public disclosure requirements per RCW 42.56.