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- 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 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

May 15, 2023
6:00 PM

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

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Finance Committee (Report)
 - b. Housing Affordability and Community Services Committee (Report)
 - c. Public Works Committee (Report)
 - d. Skagit County Law and Justice Council (Report)
 - e. Public Safety Committee (Report)
 - f. Personnel Committee (Report)
 - g. Information Technology Committee (Report)
 - h. Fiber Committee (Report)
4. **Public Comment**
5. **Consent Agenda**
 - a. Minutes of May 8, 2023 (Action)
 - b. Approval of claims in the amount of \$1,176,494.66 (Action)
 - c. Contract Award: Sewer Man Hole Repair Project #23-152-SEW-001 (Action)
 - d. Contract Award: 2023 Mauldin 1560 Commercial Paver Purchase #23-162-ERR-001 (Action)
6. **Other Business**
 - a. Contract Award: Former Water Treatment Plant Demolition Project #22-204-WTR-001 (Discussion/Action)
 - b. Interlocal Agreement with Skagit County for the Management Control Agreement for

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.

Criminal Justice Functions #23-151-APD-001 (Action)

- c. * Ordinance 4051: Title 9 Update - Drug Possession (Discussion)

7. **Adjournment**

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Anacortes City Council Minutes - May 8, 2023

Call to Order

Mayor Matt Miller called to order the Anacortes City Council meeting of May 8, 2023 at 6:00 p.m. Councilmembers Ryan Walters, Carolyn Moulton, Bruce McDougall and Amanda Hubik were present. Councilmembers Jeremy Carter and Christine Cleland-McGrath participated in the meeting remotely via Zoom. Councilmember Anthony Young was absent.

Mr. Carter moved, seconded by Ms. Hubik, to excuse the absence of Mr. Young. The motion carried unanimously by voice vote.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor Miller shared an update on a water leak in City Hall over the weekend, the Veterans of Foreign Wars effort to lay mulch at Causland Park, and a meeting with County Prosecutor, Rich Weyrich, regarding the *Blake* decision and pending legislation to address drug possession.

Planning Committee

Mr. Walters reported from the Planning Committee meeting held earlier in the evening. The topics discussed included the potential acquisition of a parcel on Commercial Avenue as a stormwater park, an environmental impact statement for the Guemes Channel Trail, and the future housing options ordinance in light of recent legislation passed by the state legislature.

Public Safety Committee

Ms. Hubik reported from the Public Safety Committee meeting held on May 2, 2023. The topics discussed included the *Blake* decision and possible next steps, an update on police and fire staffing levels, an update from Northsound Accountable Community of Health on the social navigator program with the Anacortes Family Center, and the emergency response plan.

Confirmation of John Coleman as Planning, Community, and Economic Development Director

Human Resources Director, Reilly Wynn, introduced the prospective Planning, Community, and Economic Development Director, John Coleman. Mr. Coleman addressed the Council.

Mr. Walters moved, seconded by Ms. Cleland-McGrath, to confirm the appointment of John Coleman as Planning, Community, and Economic Development Director. The motion carried unanimously by voice vote.

Solarize Skagit Presentation

Planning Manager, Libby Grage, introduced Bob Raymond, Mary Wohleb and Greg Whiting of Solarize Skagit, who presented an informational briefing to the Council on their organization's activities, referring to a slide presentation that was included in the packet materials for the meeting. Ms. Wohleb asked that the City of Anacortes share the information with citizens via social media. The Council and Lori Halvorson of Anacortes asked questions. Discussion topics included installer discounts, federal (effective until 2032) and state sales tax waivers, and the organization's website.

Public Comment

Mayor Miller invited the public to comment on any item not on the agenda.

Public comment was given as follows:

Pinky Vargas of Bellingham, representing Republic Services, addressed sustainability relative to the request for

Anacortes City Council Minutes - May 8, 2023

proposal for solid waste handling.

Consent Agenda

Ms. Moulton moved, seconded by Ms. Hubik, to approve the following Consent Agenda items. The motion carried unanimously by voice vote.

a. Minutes of May 1, 2023

b. Approval of claims in the amount of \$1,022,102.81

The following vouchers/checks were approved for payment:

EFT numbers: 106187 through 106233, total \$924,302.06

Check numbers: 106234 through 106248, total \$91,871.72

Wire transfer numbers: 106234 through 106248, total \$5,929.03

c. Contract Award: Multi-Function Grader Purchase #23-148-ERR-001

d. Contract Award: Wastewater Treatment Plant (WWTP) Aeration Basin Mixer Replacement #23-139-SEW-001

Other Business

Contract Award: Dedicated Internet Access (DIA) Service #23-121-FBR-001

Administrative Services Director, Emily Schuh, introduced the proposed contract for Dedicated Internet Access Service #23-121-FBR-001.

RYAN WALTERS moved, seconded by BRUCE MCDOUGALL, to approve contract #23-121-FBR-001 as presented. Vote: Ayes - JEREMY CARTER, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed

Adjournment

There being no further business, at approximately 6:35 p.m. the Anacortes City Council meeting of May 8, 2023 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 May 15, 2023 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
324361	6/30/2021	25092	WICKLANDER-ZULAWSKI & ASSOC	TRAINING REG FEE FROM 2021	\$ 1,480.00	apd
324350	1/1/2023	9170251924	SCHINDLER ELEVATOR CORPORATION	MONTHLY ELEVATOR SERVICE - JANUARY 2023	\$ 983.56	pw1
324355	1/26/2023	2710	NORTHWEST CORROSION	WATER TRANSMISSION PIPELINE CATHODIC PROTECTION SYSTEM UPGRADE - DESIGN	\$ 3,749.54	dwtpt
323962	1/30/2023	S202110222	SUPERIOR SYSTEMS, INC	WWTP HEAT EXCHANGER DUCTING REPAIR	\$ 6,934.65	dwwtpt
324351	2/1/2023	9170252233	SCHINDLER ELEVATOR CORPORATION	MONTHLY ELEVATOR SERVICE - FEBRUARY 2023	\$ 983.56	pw1
323929	2/28/2023	4423	STRANDBERG CONSTRUCTION, LLC	TOMMY THOMPSON TRAIL TRESTLE RESTORATION - CONSTRUCTION	\$ 43,968.69	parks1
324352	3/1/2023	21355TC	NW SAFETY SIGNS INC	SR 20 FLAGGING WATER DEPARTMENT	\$ 12,960.76	dwtpt
324364	3/6/2023	P0001-78	QCC QUALITY CONTROLS CORP.	ON CALL PROFESSIONAL SERVICES AT WWTP - FEBRUARY 2023	\$ 1,577.00	dwwtpt
324373	3/6/2023	P0001-80	QCC QUALITY CONTROLS CORP.	ON CALL PROFESSIONAL SERVICES AT WWTP - SPARE POWERFLEX 523 VFDS	\$ 1,908.35	dwwtpt
324233	3/16/2023	9642322722	GRAINGER	MAINTENANCE SUPPLIES - INCINERATOR	\$ 164.72	dwwtpt
324017	3/17/2023	P0002-63	QCC QUALITY CONTROLS CORP.	ON-CALL PROFESSIONAL SERVICES AT THE WTP - FEBRUARY 2023	\$ 855.00	dwtpt
324348	3/31/2023	0187342	GEOENGINEERS, INC.	COMMERCIAL AVE CORRIDOR PLAN - 11TH-13TH ST GEOTECH ENGINEERING - 1/1/23-3/24/23	\$ 1,431.00	pw1
323822	3/31/2023	09-0323ANCTWQAP-P2	CONFLUENCE ENGINEERING GROUP L	WATER QUALITY ASSESSMENT AND PLANNING - MARCH 2023	\$ 14,957.29	dwtpt
324249	3/31/2023	20070 - OC-10	H W LOCHNER, INC	ON-CALL PROFESSIONAL PLAN REVIEW CONSULTANT SERVICES - 3/4/23-3/31/23	\$ 3,527.11	pw1

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324247	3/31/2023	20070 - WO01-05	H W LOCHNER, INC	ON-CALL PROFESSIONAL PLAN REVIEW CONSULTANT SERVICES - R AVE GRANT FUNDING	\$ 1,421.60	pw1
324349	4/1/2023	9170252808	SCHINDLER ELEVATOR CORPORATION	MONTHLY ELEVATOR SERVICE - APRIL 2023	\$ 983.56	pw1
323821	4/6/2023	FB34812	CAROLLO ENGINEERS, INC.	WATER SYSTEM PLAN UPDATE - THRU 03/31/2023	\$ 9,346.50	dwtp
324360	4/10/2023	7609	MATERIALS TESTING & CONSULTING	32ND ST AND M AVE ROUNDABOUT PROJECT - MATERIALS TESTING/SPECIAL INSPECTIONS	\$ 547.50	pw1
324343	4/13/2023	16184	ANCHOR QEA, LLC	FORMER WTP MATTER NO. 96 - THROUGH 3/31/23	\$ 6,956.50	legal
324374	4/14/2023	1698	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - BOILERS	\$ 3,811.26	pw1
323793	4/14/2023	P0002-64	QCC QUALITY CONTROLS CORP.	ON-CALL PROFESSIONAL SERVICES AT THE WTP - MARCH 2023	\$ 2,717.00	dwtp
323359	4/17/2023	1200516187	HDR ENGINEERING, INC	WATER MODELING SUPPORT AND ROCK RIDGE BOOSTER PS EVALUATION - 02/26 - 04/01/23	\$ 1,679.08	dwtp
323360	4/17/2023	90243	RH2 ENGINEERING, INC	WATER METER ANTENNA DESIGN - THRU APRIL 2, 2023	\$ 570.93	dwtp
324347	4/18/2023	20-117	NORTHWIND FENCE CO, LLC	OPERATIONS SHOP FENCE REPAIR AND RECONFIGURATION	\$ 12,811.20	pw1
324250	4/18/2023	6751	AXIOM DIVISION 7 INC SEATTLE	LIBRARY ROOF CLEANING & MINOR REPAIR	\$ 9,684.29	pw1
324172	4/19/2023	45993	SKAGIT PUBLISHING LLC	PUBLISH AA-358765	\$ 44.66	finance
324405	4/19/2023	LNW-106461	LITHTEX NW	LITHTEX NW PRINTING	\$ 25,279.68	executive
324342	4/21/2023	ESA001306-1	SONSRAY MACHINERY, LLC	USED BOMAG BW 120 SL-5 ASPHALT ROLLER	\$ 22,984.18	pw1
324346	4/21/2023	GC0010540	CODE PUBLISHING, LLC	CODIFICATION SERVICES	\$ 408.00	legal
324371	4/24/2023	0589	FIDALGO CLEANING	APD CLEANING & SUPPLIES 4/24-5/7/23	\$ 800.00	apd
324402	4/24/2023	B16762328	SHI INTERNATIONAL CORP.	IDRAC LICENSE	\$ 638.09	infosys
323917	4/25/2023	19250	GIFFORD INDUSTRIES	BASKETBALL BACKBOARD HEIGHT ADJUSTER	\$ 380.80	pkrec
324239	4/26/2023	20581499	MCKESSON MEDICAL-SURGICAL	PHARMA: EPI	\$ 66.31	medic
324173	4/26/2023	33614	SKAGIT PUBLISHING LLC	PUBLISH AA-361389	\$ 44.66	finance
324174	4/26/2023	33615	SKAGIT PUBLISHING LLC	PUBLISH AA-361760	\$ 60.90	legal

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
324176	4/26/2023	33616	SKAGIT PUBLISHING LLC	PUBLISH AA-363229	\$ 117.74	plan
324178	4/26/2023	33617	SKAGIT PUBLISHING LLC	PUBLISH AA-363265	\$ 117.74	plan
324240	4/26/2023	400003794213	PUGET SOUND ENERGY INC	ANALYSIS FEE FOR POLE ATTACHMENTS	\$ 360.75	fiber
324019	4/26/2023	9933521598	VERIZON WIRELESS	WTP SCADA 3/2-4/26/23	\$ 936.68	dwtp
324359	4/27/2023	10896	LISSER & ASSOCIATES	ELEVATION BENCHMARKS FOR WTP RESERVOIRS	\$ 1,255.75	pw1
324358	4/28/2023	0188139	GEOENGINEERS, INC.	COMMERCIAL AVE CORRIDOR PLAN - 11TH-13TH ST GEOTECH ENGINEERING:3/25/23-4/21/23	\$ 1,905.00	pw1
324229	4/28/2023	0300660-IN	REISNER DISTRIBUTOR INC	INCINERATOR FUEL	\$ 653.64	dwwtp
324356	4/28/2023	19207	TRANSPORTATION SOLUTIONS INC	TRANSPORTATION CONCURRENCY MANAGEMENT - 3/20/23-4/15/23	\$ 5,205.50	pw1
324404	4/28/2023	21308 - 2	H W LOCHNER, INC	KANSAS AVENUE STORM WATER QUALITY REPORT - 4/1/23-4/28/23	\$ 4,789.76	pw1
324031	4/28/2023	234366	INFOSEND, INC.	APRIL 2023 PROCESSING	\$ 3,989.70	finance
324113	4/28/2023	9933594278	VERIZON WIRELESS	City Cell Phones 4/1-4/28/23	\$ 12,244.92	finance
324179	4/28/2023	PWTF-258477	WASHINGTON STATE DEPARTMENT	CONTRACT PR09-951-009	\$ 46,718.75	finance
324181	4/28/2023	PWTFNT-246273	WASHINGTON STATE DEPARTMENT	CONTRACT PC12-951-072	\$ 538,157.90	finance
324175	4/30/2023	11792	PETDATA, INC	PETDATA LICENSING FEES APR	\$ 500.00	finance
324390	4/30/2023	12463	NATIONAL TESTING NETWORK, INC	CPAT FOR KYLE ISAKSON	\$ 145.00	medic
324345	4/30/2023	2023.4	BAYVIEW CONSULTING, LLC	FORMER WTP DEMOLITION PROJECT: SPECIAL PROJECT MANAGER - APRIL 2023	\$ 3,358.50	dwtp
323825	4/30/2023	22-009-03	HLN ENGINEERING	WASHINGTON PARK RESTROOM: DESIGN - APRIL 2023	\$ 2,503.00	parks1
324398	4/30/2023	34171	ORCA INFORMATION, INC	BACKGROUND CHECKS - NEW HIRES	\$ 444.00	hr
324182	4/30/2023	46330	PACIFIC SECURITY	SECURITY DETAIL	\$ 140.00	court
324108	4/30/2023	CL58882	REISNER DISTRIBUTOR INC	VEHICLE FUEL - APRIL 2023	\$ 28,497.96	finance
324242	4/30/2023	FB-2138	CITY OF MOUNT VERNON	DARK FIBER	\$ 350.00	fiber
324245	4/30/2023	IN950901	NOANET	MUNICIPAL FIBER NETWORK COORDINATED SERVICES - APRIL 2023	\$ 8,913.00	fiber

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324230	4/30/2023	PS-INV104606	WHITNEY EQUIPMENT CO INC	MAINTENANCE SUPPLIES - PUMP STATIONS	\$ 5,218.05	dwwtp
324231	4/30/2023	PS-INV104641	WHITNEY EQUIPMENT CO INC	MAINTENANCE SUPPLIES - PUMP STATIONS	\$ 108.47	dwwtp
324241	5/1/2023	1000351	WBE TECHNOLOGIES LLC	TOOL TO STRIP CABLES	\$ 666.41	fiber
324232	5/1/2023	10624	PORT OF ANACORTES	MOORAGE FOR MARINE 29	\$ 397.73	medic
324028	5/1/2023	1396243-0043-8	WASTE MANAGEMENT	APRIL 2023 CONTRACTED SERVICES	\$ 141,811.33	finance
324109	5/1/2023	1498326	FERGUSON ENTERPRISES, INC	PVC UNIONS	\$ 67.16	dwtp
324251	5/1/2023	190-1840-00	CITY OF ANACORTES	WWTP 4/1- 4/30/23	\$ 6,794.47	dwwtp
324110	5/1/2023	200012505505	PUGET SOUND ENERGY INC	WTP 4/1-4/30/23	\$ 62,042.31	dwtp
323927	5/1/2023	248 984 6277 5	CASCADE NATURAL GAS CORP.	WTP 3/30-4/28/23	\$ 5,898.31	dwtp
324403	5/1/2023	2749	NORTHWEST CORROSION	WATER TRANSMISSION PIPELINE CATHODIC PROTECTION SYSTEM UPGRADE - DESIGN	\$ 1,509.48	dwtp
324357	5/1/2023	2756	NORTHWEST CORROSION	WTP FWST #2 INTERIOR TANK COATING INSPECTIONS	\$ 3,884.16	dwtp
324026	5/1/2023	300000006951	PUGET SOUND ENERGY INC	STREET LIGHTS: 3/31- 4/28/23	\$ 1,121.68	dshop
324025	5/1/2023	300000290043	PUGET SOUND ENERGY INC	STREET LIGHTS 3/03- 4/03/23	\$ 21,005.43	dshop
324024	5/1/2023	300000325005	PUGET SOUND ENERGY INC	STREET LIGHTS: 3/09- 04/07/23	\$ 95.21	dshop
324023	5/1/2023	300000340004	PUGET SOUND ENERGY INC	STREET LIGHTS: 3/31- 04/28/23	\$ 88.71	dshop
324365	5/1/2023	301523	ANACORTES ANIMAL HOSPITAL	BOARD & DISTRAINER; APRIL 2023	\$ 66.76	apd
323931	5/1/2023	5067242964	RICOH USA, INC	S/N C86180481 PARKS 2/1-4/30/23	\$ 18.04	parks1
324369	5/1/2023	5067243760	RICOH USA, INC	S/N C86146548 APD PATROL OFFICE 2/1-4/30/23	\$ 136.24	apd
324370	5/1/2023	5067243910	RICOH USA, INC	S/N C86138599 APD FRONT OFFICE COPIES 4/1-4/30/23	\$ 39.90	apd
324027	5/1/2023	773089	REECE, STORMIE	DEPOT JANITORIAL SERVICE APRIL 2023	\$ 1,254.00	parks1
324183	5/1/2023	806	SPORTSITES, INC.	ANNUAL SUBSCRIPTION 5/1/23-4/30/23	\$ 5,000.00	parks1
324394	5/2/2023	0075666-IN	REISNER DISTRIBUTOR INC	PUMP STATION FUEL	\$ 1,635.05	dwwtp
324378	5/2/2023	1323201	LIFE ASSIST, INC	HYPOTHERMIA BLANKET, EXAM GLOVES, OB	\$ 3,263.34	medic
324416	5/2/2023	200000666863	PUGET SOUND ENERGY INC	LIBRARY 10TH STREET LED 04/04 - 05/02/2023	\$ 11.72	publib

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324417	5/2/2023	20000667218	PUGET SOUND ENERGY INC	LIBRARY 10TH & M ST 04/04 - 05/02/2023	\$ 24.38	publib
324022	5/2/2023	220025931985	PUGET SOUND ENERGY INC	CHERRY LN & ORCHARD AVE ST LIGHTS: 4/04- 05/02/23	\$ 8.83	dshop
324021	5/2/2023	220030712800	PUGET SOUND ENERGY INC	STREET LIGHTS: 4/04- 5/02/23	\$ 4.82	dshop
324354	5/2/2023	2375	THE CLEAN TEAM	2023 JANITORIAL SERVICES - SENIOR CENTER/CITY HALL AS NEEDED CLEANINGS	\$ 4,320.00	pw1
324353	5/2/2023	2377	THE CLEAN TEAM	2023 JANITORIAL SERVICES - APRIL 2023	\$ 4,776.00	pw1
324236	5/2/2023	7291658689	CARDINAL HEALTH 110, INC.	PHARMA: AMIODARONE, NITRO	\$ 948.60	medic
324114	5/2/2023	8498 30 017 0319913	COMCAST	LIBRARY INTERNET ACCESS 5/9- 6/8/23	\$ 185.23	fiber
324228	5/2/2023	INV18046	FIELD INSTRUMENTS & CONTROLS	MAINTENANCE SUPPLIES - LEVEL SENSOR	\$ 3,515.43	dwwtp
324177	5/3/2023	1275	SKAGIT COUNTY PUBLIC HEALTH	1ST QTR CITY SHARE OF LIQUOR TAX	\$ 6,721.29	finance
324362	5/3/2023	23B064	HUTCH'S POLYGRAPH SERVICES	PRE-EMPLOYMENT POLYGRAPH;	\$ 220.00	apd
324238	5/3/2023	9331976205	GRAYBAR ELECTRIC COMPANY, INC	SPLICE CASES & TRAYS	\$ 6,983.68	fiber
324018	5/3/2023	cpls	DEPARTMENT OF LICENSING	CPLS TO D.O.L.; APRIL 2023	\$ 564.00	apd
324171	5/4/2023	112957	WALTON BEVERAGE COMPANY, INC	CITY HALL BREAK ROOM SUPPLIES	\$ 350.00	finance
324248	5/4/2023	112962	WALTON BEVERAGE COMPANY, INC	WTP BREAKROOM SUPPLIES	\$ 57.50	dwwtp
323049	5/4/2023	1195869	FERGUSON ENTERPRISES, INC	SOUTH FIDALGO EXPANSION - RESOLUTION 3036	\$ 12,139.90	wdist
324243	5/4/2023	1990553	MILES SAND & GRAVEL CO.	CSTB & CSBC- STREET DEPT	\$ 489.60	dshop
324235	5/4/2023	7292301258	CARDINAL HEALTH 110, INC.	PHARMA: KETAMINE	\$ 68.16	medic
324237	5/4/2023	9331997056	GRAYBAR ELECTRIC COMPANY, INC	SUPPORT FOR CIENA EQUIPMENT	\$ 99.68	fiber
324187	5/5/2023	040-1020-02	MCEWEN, BOYD	UB Refund Cst #059846	\$ 286.00	finance
324184	5/5/2023	052-1480-00	ANSTED, PATRICIA	UB Refund Cst #039825	\$ 125.74	finance
324185	5/5/2023	140-1620-00	LARSEN, SUE & THOMAS	UB Refund Cst #056187	\$ 110.39	finance
324410	5/5/2023	177759	SKAGIT SOILS, INC.	WA PARK MAINTENANCE SUPPLIES	\$ 431.69	parks1
324186	5/5/2023	440-0890-02	HART, LOIS	UB Refund Cst #058743	\$ 121.86	finance
324384	5/5/2023	AFD 23	ISLAND HOSPITAL	APRIL AMBULANCE SUPPLIES	\$ 2,489.24	medic
324392	5/5/2023	U2316016687	ICONIX WATERWORKS INC	PIPE- N & 37TH ST	\$ 582.53	dshop
324367	5/6/2023	00005W5A83183	UNITED PARCEL SERVICE, INC	UPS SHIPPING; WEEK ENDING 5-6-23	\$ 13.36	apd
324420	5/7/2023	75854717	INGRAM LIBRARY SERVICES, LLC	ADULT BOOKS	\$ 1,433.95	publib

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324418	5/7/2023	75854718	INGRAM LIBRARY SERVICES, LLC	CHILDREN'S BOOKS	\$ 63.89	publib
324419	5/7/2023	75854719	INGRAM LIBRARY SERVICES, LLC	CHILDREN'S REPLACEMENT BOOKS	\$ 417.05	publib
324484	5/8/2023	104041	MCCULLOUGH HILL PLLC	70312-0001 - CITY OF ANACORTES - WATER TREATMENT PLANT	\$ 172.50	legal
324409	5/8/2023	220013286525	PUGET SOUND ENERGY INC	HEART OF ANACORTES 4/7-5/5/23	\$ 114.16	finance
324414	5/8/2023	220021901958	PUGET SOUND ENERGY INC	TSUNAMI SIREN SKYLINE 4/6 TO 5/5/23	\$ 10.89	dwwtp
324234	5/8/2023	Ref000324234	MILLER, DALE & LINDA	PERMIT CANCELED by homeowner	\$ 1,115.86	bldg
324380	5/9/2023	22-133-WTR-0041	POTELCO, INC.	RETAINAGE RELEASE	\$ 3,947.81	pw1
324411	5/9/2023	ANA-1219499	ANACORTES AMERICAN	WTP	\$ 71.55	dwwtp
324400	5/9/2023	INV2644981	COPIERS NORTHWEST, INC	CANON/IRC5560I FINANCE/OPS/WWTP 4/8-5/7/23	\$ 348.66	finance
324413	5/9/2023	RefundHerd	HERD, AMELIA	DEPOT EVENT REFUND	\$ 715.00	parks1
324412	5/9/2023	RefundReggiatore	REGGIATORE, MARY	WA PARK REFUND	\$ 27.00	parks1
324389	5/19/2023	23-109-FAC-0011	NORTHWIND FENCE CO, LLC	RETAINAGE RELEASE	\$ 1,177.50	pw1
324386	5/26/2023	23-068-SEW-0011	SUPERIOR SYSTEMS, INC	RETAINAGE RELEASE	\$ 637.38	pw1
324383	6/5/2023	22-135-ERR-0011	N C POWER SYSTEMS CO	RETAINAGE RELEASE	\$ 446.37	pw1
Total					\$ 1,176,494.66	



City Council Agenda Bill

Meeting Date: May 15, 2023 **Agenda Item:** 5.c.

Agenda Item Title: Contract Award: Sewer Man Hole Repair Project #23-152-SEW-001

Staff Contact(s): Henry Hash

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 \$115,000.00 to Tonka Ground Work to perform the Sewer Manhole Repair Project.

Background:

1. **History:** The project provides much needed improvement to multiple manholes located within the city. Some manholes for example have no bottom channeling or are severely damaged. Work includes excavating existing lines and regrading for proper flow, channelizing bottoms of structures, installing preformed channels, as well as replacing old concrete inside drops with proper PVC drops with access for the camera to video the lines.
2. **Key Terms:**
 - Contract is on a time and materials basis not-to-exceed \$115,000.00.
 - The Contractor shall complete the work by December 31, 2023.
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 Tonka Ground Work.

Budget Impact:

Contractor	Tonka Ground Work
Contract Amount	\$115,000.00
Earmarked Funds	\$1,500,000.00

BARS #	440.760.594.35.62
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	12/31/2023

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-152-SEW-001 with Tonka Ground Work in the amount of \$115,000.00 to perform the Sewer Manhole Repair Project.

Alternative Actions: Not award the contract.

Attachments (listed in order presented):

1. 23-152-SEW-001



CONTRACT 23-152-SEW-001
AGREEMENT WITH
TONKA GROUND WORK

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and Tonka Ground Work, a private contractor at 1215 41st St, Anacortes, WA 98221 (herein after referred to as "Contractor").

PROJECT
SEWER MANHOLE REPAIR PROJECT

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to perform repairs on sewer manholes at the following locations:

- a. E-073 Down Jones way and H Ave
- b. S-023 K Ave between 7th and 8th
- c. U2-111 Hartford and W 2nd
- d. S7-009 Edwards Way
- e. S-014 H Ave between 6th and 7th
- f. Q-010 N Ave between 5th and 6th
- g. P-002 Commercial Ave and 3rd
- h. H-022 M Ave and 26th
- i. E-061 36th

Work includes excavating existing lines and regrading for proper flow, channelizing bottoms of structures, installing preformed channels, as well as replacing old concrete inside drops with proper PVC drops with access for the camera to video the lines. Work is subject to the City of Anacortes Engineering Standards which are hereby incorporated by reference and made a part hereof.

2. **Contract Price:** The Contractor will perform the scope of work above on a time and materials basis not-to-exceed **One Hundred Fifteen Thousand Dollars (\$115,000.00)**. This includes all mobilization, demobilization, labor, materials, standard freight, 8.8% sales tax, and administrative overhead 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 by December 31, 2023.

5. **Project Management.** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager, John Norris (360) 770-4664.

6. **Contract Requirements:** As detailed in the General Provisions, Contractor must have a valid contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsements; 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 and the City of Anacortes Engineering Standards 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 they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Mayor

Date

Contractor:

Tonka Ground Work

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 inquiries 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://secure.lni.wa.gov/wagelookup/>. 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 City, located at 904 6th Street, Anacortes, WA. Upon request, the City 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 Washington Department of Revenue, Washington Employment Security Department, and the Washington 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 Washington Department of Revenue, Washington Employment Security Department, and the Washington 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:

- a. All liens placed against the project have been released.
- b. For projects over \$35,000, releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries have been received.

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 Washington Department of Revenue, Washington Employment Securities Department, and the Washington Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

4. Final Acceptance. Final Acceptance is defined as the date on which the City accepts the Work as complete, as indicated by notice issued by the City. For the purposes of the retainage statute (RCW 60.28.011), "completion of all contract work" is the same as the date of Final Acceptance. The following events must occur before the City will issue Final Acceptance:

- a. The physical Work on the project must be complete and accepted by the Project Manager; and
- b. The Contractor must submit to the City, and secure City approval of, all documentation required by the Contract and required by law, including but not limited to:
 - i. Invoices for all Work;
 - ii. Copies of the "Affidavit of Prevailing Wages Paid" as approved by L&I for the Contractor and all Subcontractors; and
 - iii. Any additional documentation required by the Contract.

5. Penalties for Noncompliance. If Contractor does not provide "Affidavit of Prevailing Wages Paid" to the City, the City may withhold any or all payments until required documentation is received. In addition, failure to provide "Intent to Pay Prevailing Wage" or "Affidavit of Wages Paid" may result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

6. Subcontracts. The Contractor shall not subcontract the Scope of Work ("Work") unless the Project Manager approves in writing. If the Project Manager requests, the Contractor shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. "Subcontractor" means an individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor. Each request to subcontract shall include the following information (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, (v) identification of the percentage of work to be performed by subcontract. Approval of subcontract shall not:

- a. Relieve the Contractor of any responsibility to carry out the Contract,
- b. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond,
- c. Create any contract between the City and the Subcontractor, or
- d. Convey to the Subcontractor any rights against the City.

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. Contractor remains fully responsible for obligations, services, and functions performed by its subcontractors to the same extent as if such obligations, services, and functions were performed by Contractor's employees, and for purposes of the Agreement such work will be deemed work performed by Contractor. 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.

If dissatisfied with any part of the subcontracted Work, the Project Manager may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

7. 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.

8. 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.

9. 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. 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.

10. 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.

11. 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.

12. 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 their 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 their obligations or responsibilities under the Contract.

13. 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.

14. 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.

15. 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.

16. 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 **within 10 days of contract execution and 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. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

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.

17. 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.

18. 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.

19. 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.

20. 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 Subcontractors during the performance of this Agreement.

21. 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.

22. 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.

23. 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.

24. 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.

25. Covenant Against Contingent Fees. The Contractor warrants that they have 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 they have 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.

26. 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.

27. 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; pandemics; 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 of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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:

Tonka Ground Work
Lloyd Watson
1215 41st St
Anacortes, WA 98221

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: May 15, 2023 **Agenda Item:** 5.d.

Agenda Item Title: Contract Award: 2023 Mauldin 1560 Commercial Paver Purchase #23-162-ERR-001

Staff Contact(s): Henry Hash, WIL LUDEMANN

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 \$174,063.68 to Calder Brothers Corporation for the 2023 Mauldin 1560 Commercial Paver Purchase. The contract piggybacks on HGAC contract #SM10-20.

Background:

1. History: Public Works has in the last few years taken on more and much larger paving jobs, tripling in the last couple years. Our current paver works well but is more suitable for smaller jobs. We are looking to purchase a larger paver to help us accomplish even more paving. This new paver is the same make so it will be a simple adjustment for the crew to learn. Performing these paving jobs in house saves a considerable amount of money and helps our paving budget go even further to provide great roads for our City. We will be trading in our old paver for \$20,000 to reduce the purchase cost and have the least impact on the budget.

2. Key Terms:

- Total contract price of \$174,063.68 which includes \$14,078.68 in sales tax.

3. Competitive Bidding: The City has a cooperative purchasing agreement with HGACBuy and is procuring this purchase through contract [SM10-20](#).

Budget Impact:

Vender	Calder Brothers Corporation
Contract Amount	\$174,063.68
BARS #	501.790.594.48.60

Earmarked Funds	2.4 million in bars #
Budget Amendment Required?	No

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-162-ERR-001 with Calder Brothers Corporation in the amount of \$174,063.68 for the 2023 Mauldin 1560 Commercial Paver Purchase.

Alternative Actions: Not approve the contract.

Attachments (listed in order presented):

1. 23-162-ERR-001
2. 1560-Asphalt-Paver-Literature



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

PURCHASE ORDER 23-162-ERR-001 2023 Mauldin 1560 Commercial Paver Purchase

VENDOR: Calder Brothers Corporation
Royal Cole
450 East Warehouse Court
Taylors, SC 29687

Email: rcole@calderbrothers.com
Phone: 864-244-4800 EXT 4810

Date: May 15, 2023

Contact: WiL Ludemann
Department: Public Works Department
Equipment Rental
(360) 293-1921
ludemannw@cityofanacortes.org

Item	Qty	DESCRIPTION	U/M	Unit Price	Amount
1	1	2023 Mauldin 1560 Commercial Paver and accessories as detailed in Exhibit A.	EA	\$173,785.00	\$173,785.00
2	1	Trade-in: Mauldin 550 Paver sn 531-O-55TK04Y1-03531	EA	-\$20,000.00	-\$20,000.00
This Purchase Order is subject to: - Exhibit A, Contract Pricing Worksheet dated 5/4/23 - Exhibit A Special Provisions - Exhibit B, HGAC contract #SM10-20 All Exhibits are hereby incorporated by reference and made a part hereof.					
Sum Total					\$153,785.00
Freight					\$6,200.00
Sales Tax @ 8.8%					\$14,078.68
Total Price					\$174,063.68

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 they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

CALDER BROTHERS CORPORATION

CITY OF ANACORTES

Matt Miller, Mayor

Date

Date

EXHIBIT A

HGACBuy		CONTRACT PRICING WORKSHEET For Standard Equipment Purchases		Contract No.:	SM10-20	Date Prepared:	5/4/23
<i>This Form must be prepared by Contractor and given to End User. End User issues PO to Contractor, and MUST also fax a copy of PO, together with completed Pricing Worksheet, to H-GAC @ 713-993-4548. Please type or print legibly.</i>							
Buying Agency:	City of Anacortes			Contractor:	Calder Brothers Corporation		
Contact Person:	Wil Ludemann			Prepared By:	Royal Cole		
Phone:	(360) 293-1921			Phone:	864-244-4800 EXT 4810		
Fax:				Fax:			
Email:	ludemannw@cityofanacortes.gov			Email:	rcole@calderbrothers.com		
Product Code:	SM2024E	Description:	1560-T-Paver 2023 yr model				
A. Product Item Base Unit Price Per Contractor's H-GAC Contract:							\$167,900
B. Published Options - Itemize below - Attach additional sheet if necessary - Include Option Code in description if applicable (Note: Published Options are options which were submitted and priced in Contractor's bid.)							
Description		Cost	Description		Cost		
SCD Slope Meter		\$561					
SCD Augers Severe Duty		\$754					
PVR Independent Hopper Wing		\$2,990					
			Subtotal From Additional Sheet(s):		\$0		
			Subtotal B:		\$4,305		
C. Unpublished Options - Itemize below - Attach additional sheet if necessary (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)							
Description		Cost	Description		Cost		
PDI		\$1,080					
Training		\$500					
			Subtotal From Additional Sheet(s):				
			Subtotal C:		\$1,580		
Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).				For this transaction the percentage is:		1%	
D. Total Cost before any other applicable Charges, Trade-Ins, Allowances, Discounts, Etc. (A+B+C)							
Quantity Ordered:	1	X Subtotal of A + B + C:	\$173,785	=	Subtotal D:	\$173,785	
E. Other Charges, Trade-Ins, Allowances, Discounts, Etc.							
Description		Cost	Description		Cost		
Freight from factory		\$4,200					
Freight to Customer		\$2,000					
Trade in Mauldin 550 Paver sn 531-O-55TK04Y1-03531		-\$20,000					
			Subtotal E:		-\$13,800		
Delivery Date:		7/21/2023	F. Total Purchase Price (D+E):		\$159,985		



**PURCHASE ORDER #23-162-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. 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. **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 their obligations or responsibilities under the PO.

8. **Warranty.** All warranty requirements of H-GAC Contract SM10-20 shall apply to this purchase. 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.

9. **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.

10. **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 Commercial General Liability insurance that 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.

A.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. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Supplier's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

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.

11. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Supplier, 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.

12. **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.

13. **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.

14. **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.

15. **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.

16. **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.

17. **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.

18. **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.

B. 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.

19. 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; pandemics; 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 of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. 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 Supplier shall have no recourse against the City.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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

SUPPLIER:

Calder Brothers Corporation
Royal Cole
450 East Warehouse Court
Taylors, SC 29687

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).

1560 COMMERCIAL PAVER

- **FREEDOM-FOUR Screed™ with Patented Extension Matching System**
- **Four Auger Material Feed System with Extending Extension Augers Feeds to 14' with Ease**
- **Thermostatically Controlled Electric Heated Screed**
- **Direct Driven Generator for Maximum Efficiency**
- **Fully Enclosed Engine with No Muffler Exhaust System**
- **74 HP Tier IV Final Turbocharged Diesel Engine**
- **Two-Speed Polyurethane Crawler Track Drive System**
- **Night Operating Light Kit**



1560 COMMERCIAL PAVER

DIMENSIONS		TRANSMISSION	
Length	11'4"	Type	Tandem Hydrostatic
Width, Hopper In	8'6"	OPERATION	
Width, Hopper Out	10'		
Height	5'4"		
Truck Clearance	23"		
WEIGHT		HOPPER	
Crawler Track	12,500 lbs	Capacity	6.5 tons (US)
CRAWLER TRACK SUSPENSION		Double Conveyor, Width	60"
Length, per side	72"	SCREED	
Tensioner	Automatic/Hydraulic	FREEDOM-4 SCREED™	
Drive	Planetary, Sprocket	Type	Free Floating Vibratory
Track Rollers (Bottom)	(8) Oil Filled, Metal Faced	Screed Plate	1/4" x 14" Bolt on
Idle Rollers (Top)	(2) Oil Filled, Metal Faced	Paving Depth	0-6"
ENGINE		Standard Length	8'
Manufacturer	Cummins	Full Extended Width	14'
Fuel Type	Diesel	Vehicle Lift	10'
HP (SAE/1349)	74	Crown/Invert Adjustment	2"
Kilowatts	55	Material Auger Diameter	9"
Type and Cooling	4 Cylinder, Water	Auger System	(2) Fixed Main Screed
Electrical System	12 volt	Electric Heating	(2) Extendable
CAPACITIES		Heating Elements	Main (4), Extensions (2)
Fuel Tank	13 gal	OPTIONAL EQUIPMENT	
Hydraulic Tank	15.5 gal	Truck Hitch	Seat(s)
Wash down	13 gal		M-Brella Sunshade

Calder Brothers Corporation reserves the right to make changes in engineering, design and specifications; add improvements; or discontinue manufacture at any time without notice or obligation.

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Tailors, SC 29687
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Fax (864) 244-5007
www.CalderBrothers.com



City Council Agenda Bill

Meeting Date: May 15, 2023 **Agenda Item:** 6.a.

Agenda Item Title: Contract Award: Former Water Treatment Plant Demolition Project #22-204-WTR-001

Staff Contact(s): Henry Hash, 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 \$6,946,148.31 to 3 Kings Environmental, Inc. to perform the Former Water Treatment Plant Demolition Project. This contract includes the implementation of the soil cleanup and demolition of the decommissioned Anacortes Former Water Treatment Plant (FWTP) located in Mount Vernon, Washington. The FWTP facilities to be demolished include an administration building, a sedimentation basin, a filtration basin, and a clear well. The work will be performed in compliance with the requirements of the Final Cleanup Action Plan adopted for the project by the Washington State Department of Ecology (Ecology), as well as associated health and safety plans and quality assurance protocols. This project will be completed adjacent to the operating water treatment plant which will remain in continuous operation throughout the construction. Measures to be taken to monitor air quality and to protect the active operations and the surrounding environment.

Background:

1. **History:** During decommissioning activities in 2015, contaminants were found in FWTP building materials and in shallow soils immediately adjacent to the FWTP structures. Between 2016 and 2020, the City conducted remedial investigations and a feasibility study under Ecology's oversight. In July 2021, Ecology issued a Final Cleanup Action Plan and Consent Decree requiring the City to take action to remove the building materials and shallow soils with contaminants. Upon completion of this work, all contaminants above Ecology's cleanup levels will be removed from the site and it will be restored for future use.
2. **Key Terms:**
 - Contract is for a fixed price of \$6,946,148.31 which includes \$550,063.31 in 8.6% sales tax.
 - Work will be substantially completed within 210 calendar days from the

date of the Notice to Proceed and physically completed within 240 calendar days.

3. Competitive Bidding: On February 1, 2023 the City [solicited bids](#) for the subject project and on March 8, 2023 a bid opening was conducted and the City did not receive any responsive bids. Per RCW [35.23.352](#) the City was then able to “enter into a contract without any further call”.

Budget Impact:

Contractor	3 Kings Environmental, Inc.
Contract Amount	\$6,946,148.31
Earmarked Funds	\$12,500,000.00
BARS #	401.730.594.34.63
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	240 calendar days

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 22-204-WTR-001 with 3 Kings Environmental, Inc. in the amount of \$6,946,148.31 to perform the Former Water Treatment Plant Demolition Project.

Alternative Actions: Not award the contract.

Attachments (listed in order presented):

1. 22-204-WTR-001



CONTRACT 22-204-WTR-001
AGREEMENT WITH
3 KINGS ENVIRONMENTAL, INC.

This Contract is by and between the City of Anacortes, a Municipal Corporation, hereinafter called Owner, and 3 Kings Environmental, Inc., hereinafter called Contractor. Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein and in accordance with and as described in the Invitation to Bid entitled the same and dated February 1, 2023, Project No. 22-204-WTR-001, with the Section 01 22 00 replaced with Revised Section 01 22 00 which is which is attached hereto and incorporated by reference.

ARTICLE 2. PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **Former Water Treatment Plant Demolition Project.**

This project generally consists of the activities involved in demolition of inactive Water Treatment Plant buildings and structures, including the following:

- Demolition of the former administration/pump room building, including structures coated with polychlorinated biphenyl (PCB) bulk product waste
- Demolition of portions of the former filtration basin, clear well, and sedimentation basin, which contain PCBs or are coated with PCB bulk product waste
- Removal of PCB-impacted soils
- Processing clean concrete debris for onsite reuse
- Backfill of clearwell structure and portions of the sedimentation basin
- Grading and restoration
- Transportation and disposal of wastes
- Payment of all associated taxes and fees

The work will be done adjacent to an operating water treatment plant. The water treatment plant must remain in continuous operation throughout construction. All demolition and materials handling operations shall be performed in a manner that minimizes the potential for particulate/dust generation and be in full compliance with the air monitoring action levels detailed in the Specifications.

ARTICLE 3. ENGINEER

The Project has been designed by Anchor QEA, LLC, 1605 Cornwall Avenue, Bellingham, Washington 98225, who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4. CONTRACT TIMES

4.1 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and Final Completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2. Days to Achieve Substantial Completion and Final Payment.

- A. The Work will be substantially completed within 210 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General

Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 240 calendar days after the date when the Contract Times commence to run.

- B. Unless otherwise approved in writing by the Owner, the Contractor must schedule and achieve the following milestones:
 - 1. Item 2A on the Schedule of Values (Section 01 29 73, dated May 5, 2023) must be completed by July 21, 2023.
 - 2. Items 3A through 3J on the Schedule of Values (Section 01 29 73, dated May 5, 2023), related to pre-demolition activities, must be completed by August 25, 2023.

4.3. Liquidated Damages

- A. Owner and Contractor recognize that time is of the essence of this Contract and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. The parties also recognize the delays, expense, and loss suffered by the Owner are difficult and impractical to ascertain. Accordingly, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner liquidated damages, as calculated by the formula below for each day that expires after the time specified in Paragraph 4.2 for Substantial Completion, including progress milestones, until the Work is substantially complete.

Accordingly, the Contractor agrees to the following:

- 1. To pay (according to the following formula) liquidated damages for each working day beyond the number of working days established for physical completion
- 2. To authorize the Engineer to deduct these liquidated damages from any money due or coming to the Contractor

LIQUIDATED DAMAGES FORMULA

$$LD = \frac{0.15C}{T}$$

where:

<i>LD</i>	=	liquidated damages per working day (rounded to the nearest dollar)
<i>C</i>	=	original contract amount
<i>T</i>	=	original time for physical completion

When the contract work has progressed to the extent that the Owner has full use and benefit of the facilities, both from the operational and safety standpoints, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains to physically complete the total contract, the Engineer may determine the contract work is substantially complete. The Engineer will notify the Contractor in writing of the substantial completion date. For overruns in Contract Time occurring after the date so established, the formula for liquidated damages shown above will not apply. For overruns in Contract Time occurring after the substantial completion date, liquidated damages shall be assessed on the basis of direct engineering and related costs assignable to the project until the actual physical completion date of all the contract work. The Contractor shall complete the remaining work as promptly as possible. Upon request by the Owner, the Contractor shall furnish a written schedule for completing the physical work on the contract. Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire contract.

ARTICLE 5. CONTRACT PRICE

- 5.1. The total Contract Price is **Six Million Nine Hundred Forty-Six Thousand One Hundred Forty-Eight Dollars and Thirty-One Cents (\$6,946,148.31)**, which includes \$550,063.31 in 8.6% sales tax. The Contractor's completed Schedule of Values (Section 01 29 73, dated May 5, 2023) is incorporated by reference and attached hereto.

ARTICLE 6. PAYMENT PROCEDURES

The Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by the Owner as provided in the General Conditions.

- 6.1 Progress Payments; Retainage. Owner shall make monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by the Engineer, during construction as provided in Paragraphs 6.1.A and 6.2 below. All such payments will be measured by the schedule of values established in Paragraph 2.05 of the General Conditions (and, in the case of Unit Price Work, based on the number of units completed).
- A. Pursuant to the Revised Code of Washington (RCW) 60.28.010, the Owner will retain 5% of all progress payments as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor, or materialman who performs any labor upon the contract or work hereunder, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for carrying out such work, and the State of Washington with respect to taxes imposed pursuant to RCW Title 82, which may be due from such Contractor. In the event that, during the performance of the Contract and prior to the expiration of the claim period as provided in RCW Chapter 60.28, the amount retained is reduced to any amount below 5%, then the Owner shall retain additional sums from monies earned by the Contractor so as to maintain at all times a 5% retained trust fund unless otherwise reduced or excused by provisions of RCW Chapter 60.28.
1. Monies reserved under provisions of RCW Chapter 60.28.011(4) shall be retained in a fund by the Owner and not subject to withdrawal until after final acceptance of all Work or a portion thereof as may be approved by the Owner.
- 6.2. Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, the Owner shall pay the remainder of the Contract Price as provided in said Paragraph 15.06. Payment of Retainage shall comply with RCW Chapter 60.28.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

- 7.1. To induce the Owner to enter into this Contract, the Contractor makes the following representations:
- A. The Contractor has thoroughly examined and carefully studied the Contract Documents (including the addenda listed in Article 8) and the other related data identified in the Bidding Documents.
- B. The Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.
- C. The Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the Work.
- D. The Contractor accepts the determination set forth in the General and Supplementary Conditions of the extent of the "technical data" contained in such reports and Drawings upon which the Contractor is entitled to rely as provided in Paragraph 3.01 of the General Conditions.

- E. The Contractor acknowledges that such reports and Drawings are not Contract Documents and may not be complete for the Contractor's purposes. The Contractor acknowledges that Owner and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site.
- F. The Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
- G. The Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- H. The Contractor has correlated the information known to the Contractor; information and observations obtained from visits to the site; reports and Drawings identified in the Contract Documents; and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- I. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies in the Contract Documents and the written resolution thereof by the Engineer through issued addendum, or addenda is acceptable to the Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. When said conflicts, etc., have not been resolved through interpretation or clarification by the Engineer, because of insufficient time or otherwise, the Contractor has included in the Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost, and said greater cost is included in the Contract Price.
- J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Execution of this Agreement by the Contractor is a recognition that the Contract Documents are sufficient to have enabled the Contractor to determine the costs of the Work, to enter into this Agreement, and to accomplish the Work for an amount not in excess of the Contract Price within the Contract Time provided for in the Contract Documents. THE FAILURE OF THE CONTRACTOR FULLY TO ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS OR OTHER MATTER SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND FOR THE CONTRACT PRICE AND WITHIN THE CONTRACT TIME PROVIDED FOR IN THE CONTRACT DOCUMENTS.

ARTICLE 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire Contract between the Owner and the Contractor concerning the Work consist of the following:
 - 1. This Contract
 - 2. Performance, Payment, and other Bonds

3. Notice to Proceed
4. General Conditions
5. Supplemental Conditions
6. Specifications as listed in Table of Contents of the Bidding and Construction Documents
7. Appendices to the Specifications
8. Drawings consisting of a cover sheet and sheets with each sheet bearing the following general title: "Former Water Treatment Plant Demolition Project"
9. Contractor's completed Section of Values (Section 01 29 73, dated May 5, 2023)
10. The following, which may be delivered or issued after the Effective Date of the Contract and are not attached thereto:
 - a. All written amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraph 3.04 of the General Conditions.
 - b. The documents listed in Paragraphs 8.1., et seq., above, are attached to this Contract (except as expressly noted otherwise above).
 - c. There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

8.2 Precedence of Documents

- A. To the extent of any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority:
 1. This Contract
 2. Invitation to Bid entitled the same and dated February 1, 2023, Project No. 22-204-WTR-001

ARTICLE 9. MISCELLANEOUS

9.1 Terms

- A. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and, unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. Successors and Assigns

- A. The Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4. Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the Owner and Contractor have signed this Contract. One counterpart each has been delivered to the Owner, Contractor, and Engineer. All portions of the Contract Documents have been signed, initialed, or identified by the Owner and Contractor or identified by the Engineer on their behalf.

CITY OF ANACORTES

3 KINGS ENVIRONMENTAL, INC.

By _____
Matt Miller, Mayor

By _____

Date _____

Date _____

Contractor: 3 Kings Environmental, Inc.

Date: 05-May-23

Former Water Treatment Plant Demolition Project

City of Anacortes

Section 01 29 73 Schedule of Values - Bid Item Details

Item and Subitem Nos.	Item Description	Unit Basis	Estimated Units	Unit Price	Bid Total
1	Mobilization/Site Preparation/Demobilization				
1A	Mobilization	Lump Sum	1	\$ 465,000.00	\$ 465,000.00
1B	Preparation and Review of Submittals	Lump Sum	1	\$ 48,000.00	\$ 48,000.00
1C	Project Meetings	Lump Sum	1	\$ 68,000.00	\$ 68,000.00
1D	Permits obtained by Contractor	Lump Sum	1	\$ 38,000.00	\$ 38,000.00
1E	Temporary Services, Facilities, and Controls	Lump Sum	1	\$ 188,000.00	\$ 188,000.00
1F	Temporary Staging Area(s)	Lump Sum	1	\$ 50,000.00	\$ 50,000.00
1G	Decontamination Pad	Lump Sum	1	\$ 68,000.00	\$ 68,000.00
1H	Temporary Erosion and Sediment Controls	Lump Sum	1	\$ 136,000.00	\$ 136,000.00
1I	Dust Protection Measures for WTP Structures	Lump Sum	1	\$ 48,000.00	\$ 48,000.00
1J	Survey and Excavation Control	Lump Sum	1	\$ 12,000.00	\$ 12,000.00
1K	Well Decommissioning	Lump Sum	1	\$ 28,200.00	\$ 28,200.00
1L	Demobilization	Lump Sum	1	\$ 50,000.00	\$ 50,000.00
2	PCB-impacted Soil Removal				
2A	Excavation and Management PCB-impacted Soil	CY	175	\$ 225.00	\$ 39,375.00
3	Pre-Demolition Activities				
3A	Utility Disconnections and Terminations	Lump Sum	1	\$ 57,000.00	\$ 57,000.00
3B	Asbestos Abatement	Lump Sum	1	\$ 67,000.00	\$ 67,000.00
3C	Regulated Materials Removal	Lump Sum	1	\$ 90,000.00	\$ 90,000.00
3D	Loose Paint Removal - Sedimentation Basin	Man Day	20	\$ 1,000.00	\$ 20,000.00
3E	Loose Paint Removal - Filtration Basin/Admin Building	Man Day	20	\$ 1,000.00	\$ 20,000.00
3F	Remove Non-coated Equipment and Residuals from Sedimentation Basin Interior	Lump Sum	1	\$ 50,000.00	\$ 50,000.00
3G	Remove PCB- Bulk Product Painted Metal (railings, mixers) - Sedimentation Basin	Lump Sum	1	\$ 98,000.00	\$ 98,000.00
3H	Remove Media-Filtration Basin/Residuals Clearwell	Lump Sum	1	\$ 68,000.00	\$ 68,000.00
3I	Remove Non-coated Equipment from Filtration Basin	Lump Sum	1	\$ 72,000.00	\$ 72,000.00
3J	Remove PCB- Bulk Product Painted Metal (railings, pumps, pipes) - Filtration Basin	Lump Sum	1	\$ 73,000.00	\$ 73,000.00

Former Water Treatment Plant Demolition Project

Schedule of Values

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Former Water Treatment Plant Demolition Project
City of Anacortes
Section 01 29 73 Schedule of Values - Bid Item Details

Item and Subitem Nos.	Item Description	Unit Basis	Estimated Units	Unit Price	Bid Total
4	Sedimentation Basin Demolition				
4A	TSCA Demolition	Lump Sum	1	\$ 360,000.00	\$ 360,000.00
4B	Non-TSCA Demolition	Lump Sum	1	\$ 160,000.00	\$ 160,000.00
4C	Management of Demolition Debris	Lump Sum	1	\$ 112,000.00	\$ 112,000.00
4D	Cleaning following TSCA Demolition	Man Day	15	\$ 1,000.00	\$ 15,000.00
4E	Fracture Floor of Sedimentation Basin	Lump Sum	1	\$ 25,000	\$ 25,000.00
5	Filtration Basin, Pipe Gallery, Administration Building, Pump Room and Clear Well Demolition				
5A	TSCA Demolition	Lump Sum	1	\$ 689,000.00	\$ 689,000.00
5B	Non-TSCA Demolition	Lump Sum	1	\$ 150,000.00	\$ 150,000.00
5C	Management of Demolition Debris	Lump Sum	1	\$ 115,000.00	\$ 115,000.00
5D	Clean floor following TSCA Demolition	Man Day	15	\$ 1,000.00	\$ 15,000.00
5E	Fracture Clearwell Floor Slabs	Lump Sum	1	\$ 25,000.00	\$ 25,000.00
6	Water Management				
6A	Water Management System Mob/Demob	Lump Sum	1	\$ 28,000.00	\$ 28,000.00
6B	Water Management System Operations	Month	6	\$ 32,870.00	\$ 197,220.00
7	Earthwork, Grading, and Restoration				
7A	Excavation to Support Subsurface Demolition				
7A.1	<i>Sedimentation basin - Excavate soil for demolition</i>	<i>Lump Sum</i>	<i>1</i>	<i>\$ 20,000</i>	<i>\$ 20,000.00</i>
7A.2	<i>Filtration Basin - Excavate soil for demolition</i>	<i>Lump Sum</i>	<i>1</i>	<i>\$ 20,000</i>	<i>\$ 20,000.00</i>
7B	Earthwork - Placing and Compacting Final Fill				
7B.1	<i>Place and Compact Contractor-generated excavated soil</i>	<i>CY</i>	<i>500</i>	<i>\$ 31.00</i>	<i>\$ 15,500.00</i>
7B.2	<i>Excavate, Grade and Compact existing soil</i>	<i>CY</i>	<i>950</i>	<i>\$ 31.00</i>	<i>\$ 29,450.00</i>
7B.3	<i>Transport, place and compact Owner-provided Fill</i>	<i>CY</i>	<i>5000</i>	<i>\$ 31.00</i>	<i>\$ 155,000.00</i>
7B.4	<i>Place and Compact Contractor-generated Filter basin media and other reclaimed materials</i>	<i>CY</i>	<i>310</i>	<i>\$ 31.00</i>	<i>\$ 9,610.00</i>
7B.5	<i>Place and Compact Import Gravel Borrow material (includes purchase and delivery)</i>	<i>CY</i>	<i>4700</i>	<i>\$ 60.00</i>	<i>\$ 282,000.00</i>
7C	Site Restoration				
7C.1	<i>Crushed Stone surfacing (include purchase, delivery, place and compact)</i>	<i>CY</i>	<i>260</i>	<i>\$ 65.00</i>	<i>\$ 16,900.00</i>
7C.2	<i>Seed and Mulch - Hydroseed (includes purchase, delivery, and placement)</i>	<i>SF</i>	<i>35000</i>	<i>\$ 0.40</i>	<i>\$ 14,000.00</i>

Former Water Treatment Plant Demolition Project
City of Anacortes
Section 01 29 73 Schedule of Values - Bid Item Details

Item and Subitem Nos.	Item Description	Unit Basis	Estimated Units	Unit Price	Bid Total
8	Waste and Recyclable Material Movement, Transportation, and Disposition				
8A	T&D TSCA Material	Tons	4485	\$ 400	\$ 1,794,000.00
8B	T&D Non-TSCA Material	Tons	20	\$ 198	\$ 3,960.00
8C	T&D MTCA Soil (Non-TSCA)	Tons	315	\$ 198	\$ 62,370.00
8D	Nonhazardous Liquids	Gallons	50000	\$ 2.77	\$ 138,500.00
8E	Universal Waste	LS	1	\$ 90,000	\$ 90,000.00
8F	Scrap Recycling (assume credit to Owner)	Tons	0	\$ -	\$ -
9	As-Built (removed from scope)				
9A	MTCA Soil Removal Survey	LS	0	\$ 25,000	\$ -
9B	Demolition and Final Grading Survey	LS	0	\$ 25,000	\$ -

Subtotal \$ 6,396,085.00
Tax (8.6%) \$ 550,063.31
Total with Tax \$ 6,946,148.31

Notes:

1. Refer to Section 01 22 00 Measurement and Payment
2. Man Day is based on an 8-hour day.

Contractor: 3 Kings Environmental, Inc.

Date: 05-May-23

Former Water Treatment Plant Demolition Project

City of Anacortes

Section 01 29 73 Schedule of Values - Contingency Measures Unit Costs

Unit Rate Item No.	Unit Rate Item Description	Unit Basis	Unit Price
Asbestos-Containing Material (ACM) not included in Pre-Demolition Survey for ACM and not visible during pre-bid site visit. Unit rates must include all costs (including disposal) associated with the removal of the ACM. ^{Note 1}			
U-1	Window Caulking & Glazing Compound	Linear Foot	\$ 6.5
U-2	Door Caulking & Glazing Compound	Linear Foot	\$ 6.5
U-3	Roof/Equipment/Drains/Structural Elements Flashing and Tar/Mastic (all layers down to roof substrate including mastic/tar on substrate)	Square Foot	\$ 10.0
U-4	Built-up Roofing (all layers down to roof substrate including mastic/tar on substrate)	Square Foot	\$ 10.0
U-5	Miscellaneous Caulking/Sealant (including expansion joint) other than windows and doors	Linear Foot	\$ 6.5
U-6	Cove Base	Linear Foot	\$ 2.5
U-7	Cove Base Mastic	Linear Foot	\$ 2.5
U-8	Electrical Insulator Blocks	Each	\$ 10.0
U-9	Electrical Wire Wrap	Linear Foot	\$ 4.5
U-10	Vinyl Floor Tiles / Covering	Square Foot	\$ 4.5
U-11	Floor Tile Mastic	Square Foot	\$ 4.5
U-12	Mastic (adhered to pipes, pipe fittings, tanks, concrete, other features)	Square Foot	\$ 4.5
U-13	Cement Asbestos Board	Square Foot	\$ 6.0
U-14	Pipe Gaskets associated with flanges, valves, connection points, transitional points	Each	\$ 45.0

Notes:

1. All rates shall include the labor, materials, management, health and safety, personal protective equipment, dust control, decontamination, containers, containerization, transportation, and disposal.

Contractor: 3 Kings Environmental, Inc.

Date: 05-May-23

Former Water Treatment Plant Demolition Project

City of Anacortes

Section 01 29 73 Schedule of Values - Standby Operations Unit Costs

Item No.	Unit Rate Item Description	Unit Basis	Unit Price
Standby Operations			
Pre-Demolition Work Tasks			
S-1	Standby Rate - hourly rate to be provided when the Contractor is already working and is directed to shutdown work activities prior to their normal end of day due to a variety of reasons (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Hourly	\$95.89/ Man Hour
S-2	Standby Rate - daily rate to be provided when the Contractor has not mobilized to the site for the day's work activities and is directed to not commence work activities for the day (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Daily	\$ 1,200.00
Demolition Work Tasks			
S-3	Standby Rate - hourly rate to be provided when the Contractor is already working and is directed to shutdown work activities prior to their normal end of day due to a variety of reasons (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Hourly	\$113.56/ Man Hour
S-4	Standby Rate - daily rate to be provided when the Contractor has not mobilized to the site for the day's work activities and is directed to not commence work activities for the day (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Daily	\$ 6,200.00
Post-Demolition Work Tasks			
S-5	Standby Rate - hourly rate to be provided when the Contractor is already working and is directed to shutdown work activities prior to their normal end of day due to a variety of reasons (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Hourly	\$113.56/ Man Hour
S-6	Standby Rate - daily rate to be provided when the Contractor has not mobilized to the site for the day's work activities and is directed to not commence work activities for the day (inclement weather as directed by Owner, Owner-directed shutdown, etc.)	Daily	\$ 3,500.00
Other			
S-7	Demobilize/Remobilize Due to a 2 to 4 week Shutdown	Week	\$8,000.00 Each Way
S-8	Demobilize/Remobilize Due to a 1 to 6 month Shutdown	Month	\$38,000.00 Each Way

**REVISED SECTION 01 22 00
MEASUREMENT AND PAYMENT**

PART 1 - GENERAL

1.01 SUMMARY

- A. The bid items described below are the same items listed in the Bid Form (Section 00 41 13 Proposal) and constitute all pay items for completing the project. No direct or separate payment will be made for providing miscellaneous temporary or accessory works, services, field offices, surveys, project signs, sanitary services, testing, safety provisions/devices, submittals, record drawings, supplies, power and fuel, traffic maintenance, removal of waste, security, coordination, information technology (including hardware, software, and services) required during construction, insurance, or other requirements of the Contract between the Owner and the Contractor. Compensation for all services, items, materials, and equipment shall be included in the prices stipulated for lump sum and unit price pay items listed herein and included in the Contract.
- B. The bid item descriptions and Bid Form establish the Owner's requirements regarding the organization and presentation of the Contractor's Proposal for this project. The Contractor is responsible for all labor, equipment, materials, subcontractor services and fees, taxes, and all other activities and costs necessary to fully complete the Work identified in the Contract. The Bid Form includes lump sum bid items and unit price bid items. Each lump sum and unit bid price shall include an amount considered by the Contractor to be adequate to cover its overhead and profit. The Bid Form also identifies the payment items and corresponding pricing mechanism for each item.
- C. Compensation for all services, items, materials, and equipment must be included in the prices stipulated for lump sum and unit price pay items listed herein and included in the Contract. Payment for unit price items shall only be paid for actual quantities measured by either survey or weight tickets as described in Units of Measurement (Part 1.02).
- D. The bid item descriptions are provided to assist the Contractor in understanding the general scope, contents, and type of activities to be included in each Bid Item. The descriptions are general and do not necessarily include all activities associated with a given Bid Item. The costs assigned to each Bid Item, once accepted by the Owner, shall remain in effect for the duration of the project unless formally modified pursuant to the process established in the Contract.
- E. Nothing contained in the bid item descriptions and Bid Form shall be construed or interpreted by the Contractor to prompt a change in the scope of the project, alter the design, or otherwise alleviate the Contractor of its responsibilities for fully completing the Work in accordance with the Contract Documents. It is the Contractor's responsibility to ensure all costs incurred by the Contractor and any subcontractors necessary to fully complete the Work identified in the Contract are accounted for in the bid items below.
- F. Payment for completed work will be made at the prices stated in the Bid Form and Schedule of Values (Section 01 29 73). Requests for partial payments may be submitted by the Contractor as the job progresses and based on actual work completed at the Site, as reviewed by the Owner and Engineer. No payment will be made for work performed by the Contractor to replace defective work, for work that is not stated or necessary for completing the Work, or that is outside the limits shown or directed.

REVISED SECTION 01 22 00 MEASUREMENT AND PAYMENT

- G. The Schedule of Values (Section 01 29 73) also includes Contingency Measures that are on a unit price basis. These Contingency Measure bids represent items that may be required during the execution of the demolition activities but were not visible or quantifiable for Bidders during the pre-bid Site visit. The completed Schedule of Values must be submitted with the Contractor's Proposal.

1.02 UNITS OF MEASUREMENT

Units of measurement are defined as follows:

A. Lump Sum

Lump sum items will be measured as a job and do not indicate a quantity value. Payment requests for lump sum bid items must be accompanied by an updated progress schedule that includes an estimate to complete the Work.

B. Linear Feet

All items measured by the linear foot, such as pipe, ditches, trenches, etc., shall be measured along or parallel to the centerline and/or base upon which such items are placed or constructed, unless specified otherwise on the Drawings or otherwise expressly set forth in these Specifications. Incidentals such as fittings, geotextiles, backfill, overlaps at connections, or joining materials shall be included in the overall measurements. Payment requests for bid items measured on a linear foot basis must be accompanied by progress or as-built surveys.

C. Surface Area

Surface area, when used in these Specifications, shall mean the actual area of exposed surface, taking into account lengths and widths measured as slope distances. Adjustments for waste, overruns, or overlap are not included. Payment requests for bid items measured on a surface area basis must be accompanied by progress or as-built surveys.

D. Plane Area

Plane area, when used in these Specifications, shall mean the area of a projection of the surface area on a horizontal plane. For the purpose of ascertaining quantities, the planimeter shall be considered an instrument of sufficient precision adapted to the measurement of areas. Adjustments for waste, overruns, or overlap are not included. Unless otherwise noted, any reference to a unit of measure for area shall be interpreted to mean plane area. Payment requests for bid items measured on a plane area basis must be accompanied by progress or as-built surveys.

E. Weight

When weight is used as the measurement standard, certified tickets, invoices, or tags for such items shall be furnished to the Engineer. The term "ton" means the short ton consisting of 2,000 pounds. Payment requests for bid items measured on a weight basis must be accompanied by weight tickets for all imported aggregate materials and for waste materials received at landfill and recycling facilities.

**REVISED SECTION 01 22 00
MEASUREMENT AND PAYMENT**

F. Volumes

All items measured by the cubic foot or cubic yard, such as regions consisting of excavations and fill placements, shall be measured in their final position using initial and final surveyed cross-sectional measurements and the end-area method for calculating volume. Adjustments for swell, compaction, or settling are not included. Payment requests for bid items measured on a volume basis must be accompanied by progress or as-built surveys.

1.03 VARIATION IN ESTIMATED QUANTITIES

- A. Payment to the Contractor will be made only for the actual quantities of Work performed and accepted in conformance with the Contract. When the accepted quantity of Work performed under a unit item varies from the original Contractor's Proposal quantity, payment will be at the unit Contract price for all Work, unless the total accepted quantity of any Contract item, adjusted to exclude added or deleted amounts included in change orders accepted by both parties, increases or decreases by more than 25% from the original Contractor's Proposal quantity and if the total extended bid price for that item at time of award is $\geq 10\%$ of the total Contract price at time of award. In that case, payment for Contract work may be adjusted as described herein:
- B. The adjusted final quantity shall be determined by starting with the final accepted quantity measured after all Work under an item has been completed. From this amount, subtract any quantities included in additive change orders accepted by both parties. Then, to the resulting amount, add any quantities included in deductive change orders accepted by both parties. The final result of this calculation shall become the adjusted final quantity and the basis for comparison to the original Contractor's Proposal quantity.
 - 1. Increased Quantities: Either party to the Contract will be entitled to renegotiate the price for that portion of the adjusted final quantity in excess of 1.25 times the original Contractor's Proposal quantity. The price for excessive increased quantities will be determined by agreement of the parties, or, where the parties cannot agree, the price will be determined by the Engineer based upon the actual costs to perform the Work, including reasonable markup for overhead and profit.
 - 2. Decreased Quantities: Either party to the Contract will be entitled to an equitable adjustment if the adjusted final quantity of Work performed is $< 75\%$ of the original Bid quantity. The equitable adjustment shall be based upon and limited to three factors:
 - a. Any increase or decrease in unit costs of labor, materials, or equipment utilized for Work actually performed, resulting solely from the reduction in quantity
 - b. Changes in production rates or methods of performing Work actually done to the extent that the nature of the Work actually performed differs from the nature of the Work included in the original plan
 - c. An adjustment for the anticipated contribution to unavoidable fixed cost and overhead from the units representing the difference between the adjusted final quantity and 75% of the original Plan quantity.

**REVISED SECTION 01 22 00
MEASUREMENT AND PAYMENT**

- C. If the adjusted final quantity of any item does not vary from the quantity shown in the Contractor's Proposal by >25%, then the Contractor and the Contracting Agency agree that all Work under that item will be performed at the original Contract unit price.
- D. When ordered by the Engineer, the Contractor shall proceed with the Work pending determination of the cost or time adjustment for the variation in quantities.
- E. The Contractor and Owner agree there will be no cost adjustment for decreases if the Owner has entered the amount for the item in the Contractor's Proposal form only to provide a common Contractor's Proposal for Bidders.

1.04 BID ITEMS AND DESCRIPTIONS

ITEM 1: MOBILIZATION/SITE PREPARATION/DEMOBILIZATION

Measurement: Item 1: Mobilization/Site Preparation/DEMobilization shall be measured by the progress (percent completion) of each lump sum subitem (1A through 1L) on the Schedule of Values.

Payment: Payment for Schedule of Values subitems under Item 1 shall be as follows:

- 1. For Subitem 1A Mobilization: 50% of the lump sum price in each of the first and second applications for payment
- 2. For Subitems 1B through 1K: on a percent completed basis as determined by the Owner based on information provided by the Contractor in the application for payment
- 3. For Subitem 1L Demobilization: 100% of the lump sum price after the Notice of Final Acceptance is issued by the Owner.

ITEM 2: PCB-IMPACTED SOIL REMOVAL

Measurement: Subitem 2A: Excavation and Management PCB-impacted Soil shall be measured by on an in situ cubic yard basis and shall be documented by survey.

Payment: Payment for Subitem 2A will be paid by the unit price stated in the Schedule of Values and will constitute full compensation for the cost of all labor, equipment, materials, tools, supplies, and incidentals required to excavate and load soils located adjacent the sedimentation basin and filtration basin as described in the Contract Documents. Transportation and off-site disposal of excavated soil is covered by Subitem 8C T&D MTCA Soil (Non-TSCA).

Incidentals paid for under Subitem 2A include but are not limited to the following:

- 1. Stakeout of the area to be excavated
- 2. Excavation of PCB-impacted soil area to a depth of 1 foot below existing grade (Payment will not be issued for material excavated beyond the required excavation limits defined on the Drawings unless directed by the Engineer.)
- 3. Management of excavated soils

ITEM 3: PRE-DEMOLITION ACTIVITIES

Measurement: Item 3: Demolition Preparation shall be measured by the progress (percent completion) of each lump sum subitem (3A through 3C and 3F through 3J) on the Schedule of Values. Subitems 3D and 3E shall be measured on a per day basis.

Payment: Payment for Schedule of Values subitems under Item 3 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to prepare buildings and structures for demolition as described in the Contract Documents. Payments for lump sum subitems shall be made on percent completed as determined by the Owner and Engineer.

REVISED SECTION 01 22 00 MEASUREMENT AND PAYMENT

Items paid for under Item 3 include but are not limited to the following:

1. Utility disconnections
2. Asbestos abatement
3. Loose paint removal
4. Pre-demolition removals, including:
 - a. Removal of universal and regulated wastes
 - b. Removal of residuals from the sedimentation basin, clearwell, floor drain, trench drains, and sumps
 - c. Removal of filter media from filtration basin
 - d. Regulated and miscellaneous items removal
 - e. Removal of all equipment remaining in the sedimentation basin, filtration basin, clearwell, and buildings
 - f. Removal of metal railings and stairs
 - g. Broom cleaning of basins and clearwell following removal of residuals and filter media.

ITEM 4: SEDIMENTATION BASIN DEMOLITION

Measurement: Item 4: Sedimentation Basin Demolition shall be measured by the progress (percent completion) of each lump sum subitem (4A through 4E, excluding 4D) on the Schedule of Values (Section 01 29 73). Subitem 4D shall be measured on a per day basis.

Payment: Payment for Schedule of Values subitems under Item 4 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to demolish the sedimentation basin as described in the Contract Documents. Payments for lump sum subitems shall be made on percent completed as determined by the Owner and Engineer.

Items paid for under Item 4 include but are not limited to the following:

1. Demolition of sedimentation basin perimeter walls and coated weirs and walls on the basin interior
2. Interior washdown of the basin
3. Demolition of non-coated structures and features on the interior of the basin
4. Removal of the central expansion joint and adjacent concrete and subsequent cleaning of the area
5. Fracturing/puncturing the basin floor
6. Processing of nonhazardous concrete debris for reuse
7. Segregation and management of wastes for off-site transportation and disposal conducted in accordance with the Contract Documents and Section 01 74 00 – Waste and Recyclable Material Movement, Transportation, and Disposition

ITEM 5: FILTRATION BASIN, PIPE GALLERY, ADMINISTRATION BUILDING, PUMP ROOM AND CLEAR WELL DEMOLITION

Measurement: Item 5: Filtration Basin, Pipe Gallery, Administration Building, Pump Room and Clear Well Demolition shall be measured by the progress (percent completion) of each lump sum subitem (5A through 5E, excluding 5D) on the Schedule of Values. Subitem 5D shall be measured on a per day basis.

Payment: Payment for Schedule of Values subitems under Item 5 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to demolish the administration building, filtration basin, and related structures as described in the Contract Documents. Payments for lump sum subitems shall be made on percent completed as determined by the Owner and Engineer.

REVISED SECTION 01 22 00 MEASUREMENT AND PAYMENT

Items paid for under Item 5 include but are not limited to the following:

1. Demolition of the administration building superstructure
2. Broom cleaning the first-floor concrete slab of the administration building
3. Removal of the floor of the administration building and exterior clearwell roof
4. Removal of remaining clearwell walls to at least 1 foot below final grade
5. Removal of the exterior and interior walls and floors of the filtration basin, including the pipe gallery
6. Removal of interior walls and columns in the clearwell
7. Fracturing/puncturing the clearwell floor
8. Demolition of the small shed-like structure located adjacent to the filtration basin and underlying concrete slab
9. Processing of nonhazardous concrete debris for reuse
10. Segregation and management of wastes for off-site transportation and disposal conducted in accordance with the Contract Documents and Section 01 74 00 – Waste and Recyclable Material Movement, Transportation, and Disposition

ITEM 6: WATER MANAGEMENT

Measurement: Item 6: Water management system mobilization and demobilization shall be measured by subitem 6A on a lump sum basis on the Bid Form. Subitem 6B shall be measured on a per month basis.

Payment: Payment for Schedule of Values subitems under Item 6 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to perform water management and control as described in the Contract Documents. Payments for 6A shall be made on percent completed as determined by the Owner and Engineer.

Items paid for under Item 6 include but are not limited to the following:

1. Installing and maintaining stormwater controls
2. Preventing contact water from migrating beyond the work area limits
3. Managing accumulated water present in the sedimentation basin and filtration basin
4. Recovering/collecting and containerizing all contact water
5. Treatment of containerized water to meet the on-site lagoon criteria, including batch testing and subsequent transfer of water to the lagoons, or all work associated with transport and off-site disposal of water at a facility permitted to accept the water.

ITEM 7: EARTHWORK, GRADING, AND RESTORATION

Measurement: Measurement for subitems under Item 7: Earthwork, Grading, and Restoration on the Schedule of Values (Section 01 29 73) is as follows:

1. Excavation to Support Subsurface Demolition shall be measured by the progress (percent completion) of each lump sum subitem (7A.1 through 7A.2) on the Schedule of Values (Section 01 29 73).
2. All Earthwork subitems (7B.1 through 7B.5) shall be measured on an in situ cubic yard basis and documented by survey.
3. Site Restoration subitems 7C.1 and 7C.3 shall be measured on a square foot basis. Site Restoration subitem 7C.2 shall be measured on an in situ cubic yard basis. All measurements shall be documented by survey.

REVISED SECTION 01 22 00 MEASUREMENT AND PAYMENT

Payment: Payment for Schedule of Values subitems under Item 7 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to perform earthwork, grading, and restoration as described in the Contract Documents. Payments shall be paid by the unit price stated in the Schedule of Values (Section 01 29 73).

Items paid for under Item 7 include but are not limited to the following:

1. Excavation as required to perform demolition
2. Cut and fill as required to meet final grades
3. Purchasing, transporting, placing, and compacting gravel borrow as needed for backfilling excavations and to meet grades
4. Placement and compaction of Contractor-generated and Owner-provided fill in the clearwell and sedimentation basin
5. Grading of the project area after demolition
6. Placement and compaction of 4 inches of crushed stone on the surface of the former sedimentation basin at locations shown on the Drawings
7. Repairing/restoring all on-site and off-site features that will have been damaged or otherwise disturbed during implementation of the Work and were not scheduled for demolition/removal or scheduled for any other modifications
8. Preparation for seeding, mulching, and maintenance of the seeded area
9. Final cleaning and removal of trash and debris from the project area

ITEM 8: WASTE AND RECYCLABLE MATERIAL MOVEMENT, TRANSPORTATION, AND DISPOSITION

Measurement: Measurement for subitems under Item 8: Waste and Recyclable Material Movement, Transportation, and Disposition on the Schedule of Values (Section 01 29 73) is as follows:

1. Subitems 8A through 8C shall be measured on a weight basis and shall be documented by weight receipts received from the disposal facility.
2. Subitem 8D shall be measured on a volume basis and shall be documented by receipts received from the disposal facility.
3. Subitem 8E shall be measured by the progress (percent completion) of the lump sum item.
4. Subitem 8F shall be measured on a weight basis and shall be documented by weight receipts received from the recycling facility.

Payment: Payment for Schedule of Values subitems under Item 8 shall constitute full compensation for the cost of all labor, equipment, materials, and services required to perform the movement, transportation, and disposition of waste and recyclable materials as described in the Contract Documents. Payments shall be paid by the unit price stated in the Schedule of Values.

Items paid for under Item 8 include but are not limited to the following:

1. Movement of wastes from staging area
2. Processing of waste to meet facility sizing requirements
3. Loading waste for off-site transportation
4. Transportation and off-site disposal or recycling of wastes
5. Preparing profiles, manifests, and other waste-related documentation and maintaining waste documentation (Waste documentation shall be provided to the Owner and Engineer.)

ITEM 9: AS-BUILTS

Removed from scope.

**REVISED SECTION 01 22 00
MEASUREMENT AND PAYMENT**

1.05 APPLICATIONS FOR PAYMENT

- A. Procedures for payments shall be in accordance with Article 15 of the General Conditions (Section 00 72 13).
- B. Applications for payments must include, at a minimum:
 - 1. Updated progress schedule
 - 2. A payment request based on the Schedule of Values that includes the requested quantity and percent complete for each line item
 - 3. Information supporting reimbursement for unit price items, such as surveys and weight receipts from quarries and waste disposal facilities

PART 2 - PRODUCTS

Not Used

PART 3 - EXECUTION

Not Used

END OF SECTION



City Council Agenda Bill

Meeting Date: May 15, 2023 **Agenda Item:** 6.b.

Agenda Item Title: Interlocal Agreement with Skagit County for the Management Control Agreement for Criminal Justice Functions #23-151-APD-001

Staff Contact(s): DAVE FLOYD

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

Item Summary: City staff seeks approval to execute Interlocal Cooperative Agreement 23-151-APD-001 with Skagit County, which will establish a Management Control Agreement as required by the Criminal Justice Security Information Services (CJIS) Security Policy.

Background: This agreement is related to the current agreement in place between Skagit County and the City for the Spillman Law Enforcement Records Management System and stipulates that management control of the criminal justice function remains solely with the City of Anacortes Police Department.

Key Terms:

- No compensation shall be required from either party.
- The term of this Agreement shall be from execution by both parties through December 31, 2024.

Budget Impact:

No compensation shall be required from either party.

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to execute Interlocal Cooperative Agreement 23-151-APD-001 between the City of Anacortes and Skagit County.

Alternative Actions: Not approve the interlocal.

Attachments (listed in order presented):

1. 23-151-APD-001

INTERLOCAL COOPERATIVE AGREEMENT

BETWEEN

SKAGIT COUNTY
AND
CITY OF ANACORTES

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

1. PURPOSE:

This agreement shall establish a Management Control Agreement as required by the Criminal Justice Security Information Services (CJIS) Security Policy. The Skagit County Information Services Department is a Non-Criminal Justice Agency (NCJA) designated to perform criminal justice functions on behalf of the City of Anacortes.

Per Section 5.1 of the CJIS Security Policy the NCJA shall sign and execute a management control agreement which stipulates management control of the criminal justice function remains solely with the City of Anacortes Police Department.

2. CRIMINAL JUSTICE INFORMATION SYSTEM MANAGEMENT CONTROL AGREEMENT

Pursuant to the CJIS Security Policy, it is agreed that with respect to administration of that portion of computer systems and network infrastructure interfacing directly or indirectly with A Central Computerized Enforcement Service System (ACCESS) for the interstate exchange of criminal history/criminal justice information, the City of Anacortes Police Department shall have the authority, via managed control, to set and enforce:

1. Priorities
2. Standards for the selection, supervision, and elimination of access to personnel who may be tasked with working on or interfacing with any of the telecommunication systems or criminal justice systems/computers enumerated in paragraph three below.
3. Policy governing operation of justice systems, computers, access devices, circuits, hubs, routers, firewalls, and any other components, including encryption, that comprise and support a telecommunications network and related criminal justice systems to include but not limited to criminal history record/criminal justice information, insofar as the equipment is used to process or transmit criminal justice systems information guaranteeing the priority, integrity, and availability of service needed by the criminal justice community.
4. Restriction of unauthorized personnel from access or use of equipment accessing the State network.
5. Compliance with all rules and regulations of the criminal justice agency policies and CJIS Security Policy in the operation of all information received.

Responsibility for management control of the criminal justice function remains solely with the City of Anacortes Police Department as required by the CJIS Security Policy.

This agreement covers the overall supervision of all criminal justice agency systems, applications, equipment, systems design, programming, and operational procedures associated with the development, implementation, and maintenance of any criminal justice agency system to include NCIC Programs that may be subsequently designed and/or implemented within the City of Anacortes Police Department.

The Agency agrees to work with the Skagit County Sheriff's office in the event of conflict of the MCA and services provided by Skagit County. This agreement may be terminated by either party in the event that a conflict in the implementation of the MCA is not resolved.

3. TERM OF AGREEMENT: The term of this Agreement shall be from execution by both parties through December 31, 2024.

4. MANNER OF FINANCING:

No compensation shall be required from either party.

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

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

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

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

7. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

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

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

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

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

CITY OF ANACORTES:

Mayor

(Date _____)

Matt Miller
Print Name of Signatory

Mailing Address:
City of Anacortes
PO Box 547
904 6th Street
Anacortes, WA 98221

ATTEST:

Finance Director

Approved as to Form Only: Approving Management Control Agreement

Anacortes Police Chief

DATED this _____ day of _____, 2023.

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

Ron Wesen, Chair

Lisa Janicki, Commissioner

Attest:

Peter Browning, Commissioner

Clerk of the Board

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

Recommended:

County Administrator/Central Services

Skagit County Sheriff

Information Services

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Approved as to budget:

Budget & Finance Director



City Council Agenda Bill

Meeting Date: May 15, 2023 **Agenda Item:** 6.c.

Agenda Item Title: Ordinance 4051: Title 9 Update - Drug Possession

Staff Contact(s): DARCY SWETNAM

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
GREG FRANCIOCH	Ordinance
DARCY SWETNAM	
STEVE HOGLUND	

Item Summary: First read of proposed Ordinance 4051 that would update Title 9 to prohibit drug possession, provide sentencing guidelines, and allow community court for those defendants charged with possession.

Budget Impact:

Previous Action:

Recommended Motion:

Alternative Actions:

Attachments (listed in order presented):

1. 230512 Police - Ord 4051 Drug Possession
2. 2023-04-24 AMC Title 9 Drug Possession

**City of Anacortes
Ordinance No. 4051**

An Ordinance Regulating Possession of Controlled Substances and Updating Certain Provisions of Title 9

Whereas the City of Anacortes is authorized by RCW 35A.11.020 to create misdemeanors and gross misdemeanors, but requires the punishment for any criminal ordinance to be the same as the punishment provided in state law for the same crime;

Whereas persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships;

Whereas the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death and exacerbates mental health conditions, is more likely to result in addiction, and is correlated with criminal behavior;

Whereas the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's therapeutic Community Court Program;

Whereas state law now requires that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may be arrested;

Whereas prior to 2021, former RCW 69.50.4013 made possession of a controlled substance in violation of the Uniform Controlled Substances Act a felony;

Whereas in *State v. Blake*, 197 W.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013 unconstitutional because the felony statute did not include a *mens rea* element, i.e., a requirement that the defendant knowingly possessed the controlled substance;

Whereas in response to *Blake*, the State Legislature adopted RCW 69.50.4013 during its 2021 legislative session, which temporarily amended the law to add a knowledge requirement, make possession a misdemeanor rather than a felony, and via RCW 10.31.115, require law enforcement to twice refer offenders to voluntary drug treatment before from arresting or charging someone for unlawful possession of a controlled substance;

Whereas the protections in RCW 69.50.4013 are set to expire on July 1, 2023 and the state legislature ended its regular 2023 session without adopting a replacement, and then announced a plan to reconvene in special session starting May 16, 2023, leaving local agencies with uncertainty about the future of state drug possession prohibitions;

Whereas RCW 69.50.608 declares that the State of Washington fully occupies and preempts the entire field of setting penalties for violations of the Uniform Controlled Substances Act, and allows cities to enact laws only if consistent with RCW chapter 69.50 and requires the same penalties as provided by state law;

Whereas the City desires to ensure continuity in drug possession restrictions within the City of Anacortes to prevent public health and safety risks;

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

- Section 1. The Anacortes Municipal Code Title 9 is amended to read as shown in Attachment A.
- Section 2. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof may not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.
- Section 3. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage, approval, and publication in the manner required by law.

PASSED and APPROVED this ____ day of _____, 2023.

CITY OF ANACORTES:

Matt Miller, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

Attachment A

Title 9 Public Peace, Safety, and Welfare

Chapter 9.02 General Provisions

9.02.030 General Provisions

- A. The provision of a criminal penalty for any unlawful act does not preclude the City's use of civil remedies.
- B. Where not otherwise specified, a violation of the Anacortes Municipal Code that is categorized as a crime is to be considered a misdemeanor.
- C. It is the policy of the City of Anacortes to exercise the provisions of RCW 38.52.430 to recover the expenses of emergency response where that response is related to a person's intoxication.
- ~~C.D.~~ Unless otherwise provided, any penalties identified in this Title do not include fees, costs, and assessments.

Chapter 9.22 Substance Abuse

9.22.020 Possession of Drug Paraphernalia

- A. It is unlawful to possess "drug paraphernalia," as defined in RCW 69.50.102, for any purpose related to any controlled substance other than cannabis.
- B. A violation of this section is a misdemeanor subject to the penalties of Section 9.22.070.

9.22.030 Use of a Controlled Substance in a Public Place

- A. It is unlawful to intentionally use a controlled substance in a public place, except as now or hereafter authorized or expressly permitted by the laws of the state or except upon written or oral order or prescription of a physician, surgeon, dentist, or other medical professional licensed to practice in the state and legally authorized to prescribe controlled substances.
- B. Definitions. For the purpose of this section:
 - 1. "Public place" means an area generally visible to public view, including without limitation any place where the public has a right of access, including establishments or conveyances to which the public is invited and their associated parking lots, parking structures, walkways, doorways, entrances, and restrooms.
 - 2. "Use" means any effort taken in furtherance of an attempt to inject, ingest, inhale, or otherwise introduce a dangerous drug into the human body.
- C. A violation of this section is a gross misdemeanor subject to the penalties of Section 9.22.070.

9.22.040 Unlawful Deposit of Controlled Substances and Drug Paraphernalia

- A. It is unlawful for any person to knowingly dump, throw, deposit, or discharge onto the ground or into any body of water, any controlled substance or drug paraphernalia.
- B. A violation of this section is a misdemeanor subject to the penalties of Section 9.22.070.

9.22.050 Unlawful Possession of Controlled Substances

- A. It is unlawful for any person to knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of their professional practice, or except as otherwise authorized by law.
- B. Except as provided within this Chapter, any person who violates this section is guilty of a gross misdemeanor subject to the penalties of Section 9.22.070.

9.22.060 Possession of Marijuana Under Twenty-One

- A. No person under twenty-one years of age may knowingly possess, manufacture, sell, or distribute cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with valid authorization as defined in this chapter.
- B. Except as provided within this Chapter, any person who violates this section is guilty of a gross misdemeanor subject to the penalties of 9.22.070.

9.22.070 Penalties

- A.
 - 1. Any person violating 9.22.050 or any provision thereof shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000) or imprisonment in the county jail for not more than 364 days or both such fine and imprisonment. There shall be a mandatory prohibition condition on the use or possession of alcohol, marijuana, or non-prescribed controlled substance during any period of probation.
 - 2. Subject to the provision of 9.22.080, any person violating 9.22.050 shall be subject to the following mandatory penalties:
 - a. Upon a first conviction shall be subject to a minimum of fourteen (14) days in-custody, a minimum term of probation of twelve (12) months, and any other mandatory penalties as prescribed in this Chapter.
 - b. Upon a second or subsequent conviction shall be subject to a minimum thirty (30) days in-custody, a minimum term of probation of twenty-four (24) months, and any other mandatory penalties as prescribed in this Chapter.
- B. Any person violating 9.22.030 or 9.22.060 or any provision thereof shall be deemed guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000) or imprisonment in the county jail for not more than 364 days or both such fine and imprisonment. There shall be a mandatory prohibition condition on the use or possession of alcohol, marijuana, or non-prescribed controlled substance during any period of probation.
- C.
 - 1. A sentence for a person violating 9.22.050 shall include a substance use disorder evaluation from a state certified substance use disorder treatment agency and completion of any recommended treatment.

2. An individual who fails to get a substance use disorder evaluation within sixty (60) days of sentencing shall be subject to a mandatory probation sanction of ten (10) days in-custody.
 3. An individual who fails to successfully complete substance use disorder treatment by thirty (30) days prior to the end of their probationary period shall be subject to a mandatory probation sanction of thirty (30) days. If the probation period is for one year, the court may extend it up to two years. The mandatory probationary sanction shall not apply to any individual who has no violations of probation, has been in full compliance with substance use disorder treatment, and whose probationary period expires prior to the anticipated completion date of their substance use disorder treatment.
- D. An individual convicted of violating 9.22.050 and while on probation and the Court finds they are reasonably satisfied that the defendant has consumed alcohol or used a controlled substance or committed a new alcohol or controlled substance related offense within this State shall be subject to a mandatory probation sanction of thirty (30) days.
- E. The Court may impose other interim probation sanctions for failure to comply with probation.

9.22.080 Community Court Option

- A. Prior to an individual charged with violating 9.22.0x0, 9.22.0x0, or 9.22.0x0 entering a plea of guilty or being found guilty following a trial, they may enter into the Community Court program supervised by the probation department upon written consent of the prosecuting attorney.
- B. To enter the Community Court program, an individual must agree in writing to the following terms and conditions:
1. An acknowledgement of their rights;
 2. An acknowledgement and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in their defense, and the right to a jury trial;
 3. A stipulation to the admissibility and sufficiency of the facts contained in the written police report to support a finding of guilty; and
 4. Should the defendant fail to comply with any term of the Community Court, the matter shall be submitted on the record pursuant to CrRLJ 6.1.2(b). The Defendant stipulates that the police report(s) in the matter and any other documentation relating to this case shall be admissible as evidence and submitted either at the time of the entry of the Community Court program or at the time of the submittal on the record.
 5. An acknowledgement that the judge will read the police report(s) and any other materials submitted, and based solely upon the evidence, the judge will decide if Defendant is guilty of the crime.
- C. Prior to entering a Community Court program, the Court shall provide the defendant and defendant's counsel with the following information:
1. A full description of the procedures for Community Court;
 2. A general explanation of the roles and authority of the probation department, the prosecuting attorney, arrest and jail alternative program or, the Court in the process;
 3. A clear statement that upon the defendant's successful completion of Community Court, as specified in subsection (5) of this section, and motion of the defendant, prosecuting attorney, court or probation department, the Court must dismiss the charge or charges against the defendant;

4. A clear statement that if the defendant has not made substantial progress with treatment or services provided that are appropriate to defendant's circumstances or, if applicable, community services, the prosecuting attorney may make a motion to terminate Community Court and schedule further proceedings;
 5. An explanation of criminal record retention and disposition resulting from participation in Community Court and the defendant's rights relative to answering questions about their arrest and Community Court following successful completion; and
 6. A clear statement that under federal law it is unlawful for any person who is an unlawful user of or addicted to any controlled substance to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition, or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.
- D. Upon defendant acknowledging and waiving any rights as specific in subsection (2) of this section and being advised by the court of their rights as specified in subsection (3) of this statute, the court shall enter the defendant into the Community Court program. The admission to Community Court requires approval of the prosecuting authority of the jurisdiction where the crime is charged.
1. A defendant who has entered a Community Court program shall not be subject to any mandatory minimum jail sentence as prescribed in this chapter unless they do not successfully complete the terms of Community Court.
 2. The court may impose interim sanctions on defendants in the Community Court program for not following the conditions as set forth in their Community Court agreement. Any interim sanctions shall not qualify as credit towards any mandatory minimum sentence if the defendant does not successfully complete Community Court.
- E. For a defendant to successfully complete Community Court they must complete the following:
1. A substance use disorder evaluation from a Washington State approved provider;
 2. Any recommended substance use disorder treatment or services, to include at a minimum intensive outpatient treatment or services;
 3. Completing the program within 12 months or having 12 months of substantial compliance with the assessment and recommended treatment or services and progress toward recovery goals as reflected by written status updates or by successfully completing the recommended treatment or services, whichever occurs first; or
 4. If the substance use disorder evaluation did not include a recommendation at a minimum for intensive outpatient treatment for treatment or services, the defendant successfully completes Community Court by completing alcohol and drug information school and community service as described in subsection (6) of this section and submitting proof of completion to the court.
- F. If the substance use disorder evaluation recommends treatment or services less than intensive outpatient treatment, the defendant must instead complete, at a minimum, alcohol and drug information school and an amount of community service as determined by the court, not to exceed 120 hours of community service, in order to complete Community Court.
- G. Upon successful completion of diversion, the case shall be dismissed with prejudice with no penalties imposed.
- H. An individual who has participated in a Community Court program may enter a second or subsequent Community Court program for new charges, provided that the charges arose after completion of the previous diversion program.

1. A defendant who is already participating in a Community Court program may be terminated and sentenced accordingly if they are charged with a new crime with a finding of probable cause and after the ability to have a hearing under this chapter.
2. If an individual is discharged from a Community Court program under this subsection, they may enter diversion on the new charge under this chapter.

9.22.090 Deferred Sentence Following Revoked Community Court.

If an individual declines the alternative Community Court Diversion program created through this chapter, or if they enter the program under this chapter and are revoked due to noncompliance, the State/ City will not object to the individual being granted a deferred sentence under RCW 3.50.330 conditioned on compliance and completion with a state-approved substance use disorder treatment program.

City of Anacortes
Ordinance No. ____

**An Ordinance Amending AMC Title 9 to Add a Prohibition Against the Possession of
Controlled Substances**

Whereas the City of Anacortes is authorized by RCW 35A.11.020 to create misdemeanors and gross misdemeanors, but requires the punishment for any criminal ordinance to be the same as the punishment provided in state law for the same crime;

Whereas adoption of state misdemeanors and gross misdemeanors by reference harmonizes local offenses with statewide laws and avoids potential state preemption;

Whereas persons using controlled substances can become addicted to such substances resulting in negative physical and mental health consequences and damage to family and personal relationships;

Whereas the use of controlled substances without a prescription and the supervision of a medical professional can result in physical injury or death and exacerbates mental health conditions, is more likely to result in addiction, and is correlated with criminal behavior;

Whereas the City has taken steps to address these problems through teaming police officers with social workers and mental health professionals and the municipal court's therapeutic Community Court Program;

Whereas state law now requires that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may be arrested;

Whereas prior to 2021, former RCW 69.50.4013 made possession of a controlled substance in violation of the Uniform Controlled Substances Act a felony;

Whereas in *State v. Blake*, 197 W.2d 170 (2021), the Washington State Supreme Court found former RCW 69.50.4013 unconstitutional because the felony statute did not include a *mens rea* element, i.e., a requirement that the defendant knowingly possessed the controlled substance;

Whereas in response to *Blake*, the State Legislature adopted RCW 69.50.4013 during its 2021 legislative session, which temporarily amended the law to add a knowledge requirement, make possession a misdemeanor rather than a felony, and via RCW 10.31.115, require law enforcement to twice refer offenders to voluntary drug treatment before from arresting or charging someone for unlawful possession of a controlled substance;

Whereas RCW 69.50.4013, making drug possession a misdemeanor, is set to expire July 1;

Whereas the State Legislature has adjourned its 2023 session without taking action to extend the drug possession statute, RCW 69.50.4013;

Whereas RCW 69.50.608 declares that the State of Washington fully occupies and preempts the entire field of setting penalties for violations of the Uniform Controlled Substances Act, and allows cities to enact laws only if consistent with RCW chapter 69.50 and requires the same penalties as provided by state law;

Whereas as of July 1, 2023, no state law will prohibit the possession of controlled substances;

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

Section 1. The Anacortes Municipal Code is amended as follows:

AMC 9.22.050 is added to read as shown in Attachment A.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof may not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

Section 3. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage, approval, and publication in the manner required by law.

PASSED and APPROVED this ____ day of _____, 2023.

CITY OF ANACORTES:

Matt Miller, Mayor

Attest:

Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam, City Attorney

Attachment A

New Section 9.22.050 Possession of Controlled Substances [effective July 1, 2023]

- A. It is unlawful for any person to knowingly possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by Chapter 69.50 RCW.
- B. Exceptions.
 - 1. The possession, by a person 21 years of age or older, of useable cannabis, cannabis concentrates, or cannabis-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section.
 - 2. The delivery by a person 21 years of age or older to one or more persons 21 years of age or older, during a single 24-hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any of the following cannabis products, is not a violation of this section:
 - a. One-half ounce of useable cannabis;
 - b. Eight ounces of cannabis-infused product in solid form;
 - c. 36 ounces of cannabis-infused product in liquid form; or
 - d. Three and one-half grams of cannabis concentrates.
 - e. The act of delivering cannabis or a cannabis product as authorized under this subsection must meet one of the following requirements:
 - f. The delivery must be done in a location outside of the view of general public and in a nonpublic place; or
 - g. The cannabis or cannabis product must be in the original packaging as purchased from the cannabis retailer.
 - 3. No person under 21 years of age may possess, manufacture, sell, or distribute cannabis, cannabis-infused products, or cannabis concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.
 - 4. The possession by a qualifying patient or designated provider of cannabis concentrates, useable cannabis, cannabis-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section.
- C. A violation of this section is a gross misdemeanor. Consistent with AMC 9.02.060, the prosecutor is encouraged to utilize therapeutic courts or other alternatives to prosecution for assessment, treatment, or other services.
- D. This section is effective July 1, 2023.