



City of Longview

1525 Broadway
Longview, WA 98632
www.ci.longview.wa.us

Agenda

City Council

*Mayor MaryAlice Wallis
Mayor Pro Tem Michael Wallin
Council Member Ruth Kendall
Council Member Angie Wean
Council Member Spencer Boudreau
Council Member Hillary Strobel
Council Member Christopher Ortiz*

Thursday, April 27, 2023

6:00 PM

2nd Floor, City Hall

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<https://us02web.zoom.us/j/82394132374>

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Webinar ID: 823 9413 2374

1. CALL TO ORDER
2. INVOCATION*/FLAG SALUTE
3. ROLL CALL
4. WORKSHOP
23-001046 DOG PARKS (TIME ESTIMATE 60 MINUTES)
5. APPROVAL OF MINUTES

23-001093 APRIL 13, 2023 REGULAR MEETING MINUTES
APRIL 20, 2023 SPECIAL MEETING MINUTES

6. CHANGES TO THE AGENDA

7. PRESENTATIONS & AWARDS

23-001047 PROCLAMATION - COWLITZ CHAPLAINCY 40TH ANNIVERSARY

RECIPIENT: KALEI LAFAVE & CHAPLAIN EXECUTIVE DIRECTOR PAUL BRICKNELL

23-001051 COWLITZ COUNTY HEALTH & HUMAN SERVICES PRESENTATION - KRISTIN YOUNG

23-001050 HUMANE SOCIETY PRESENTATION - DARREN ULLMANN

8. CONSTITUENTS' COMMENTS (Thirty Minutes)

9. PUBLIC HEARINGS

23-001094 PROPOSED ANNEXATION - 4504 OCEAN BEACH HWY

RECOMMENDED ACTION:

MOTION TO HOLD A PUBLIC HEARING TO RECEIVE TESTIMONY ABOUT THE
PROPOSED ANNEXATION AND TO DIRECT THE CITY ATTORNEY TO PREPARE AN
ORDINANCE APPROVING THE ANNEXATION

10. BOARD & COMMISSION RECOMMENDATIONS

11. ORDINANCES & RESOLUTIONS

23-001049 ORDINANCE 3477 - AMENDING LMC 6.06.020 TO REQUIRE DOGS TO BE ON A LEASH
WHEN OFF PRIVATE PROPERTY

RECOMMENDED ACTION:

MOTION TO ADOPT ORDINANCE 3477.

23-001043 RESOLUTION 2446 - ACCEPTING THE LONGVIEW PUBLIC DEVELOPMENT
AUTHORITY'S 2022 ANNUAL REPORT TO THE CITY

RECOMMENDED ACTION:

MOTION TO ADOPT RESOLUTION 2446

12. MAYOR'S REPORT

13. COUNCILMEMBERS' REPORTS

14. CONSENT CALENDAR

23-000949 APPROVAL OF CLAIMS

23-001090 SET PUBLIC HEARING - AMENDMENT TO THE SIX YEAR TRANSPORTATION
IMPROVEMENT PROGRAM (TIP) 2023- 2028 AND RIVERCITIES TRANSIT PROGRAM OF
PROJECTS (POP)

RECOMMENDED ACTION:

MOTION TO SET THE CITY COUNCIL MEETING ON MAY 25, 2023, AS THE DATE AND
TIME FOR A PUBLIC HEARING TO AMEND THE 2023-2028 SIX-YEAR TIP/POP

23-001091 PROJECT COMPLETION – CALIFORNIA WAY REHABILITATION**RECOMMENDED ACTION:****MOTION TO ACCEPT AS COMPLETE THE CALIFORNIA WAY REHABILITATION PROJECT****23-001104 AMENDMENT TO AGREEMENT FOR MANAGEMENT AND OPERATION OF THE MINT VALLEY RACQUET AND FITNESS COMPLEX****RECOMMENDED ACTION:****MOTION TO AUTHORIZE THE CITY MANAGER TO SIGN THE PROFESSIONAL SERVICES AGREEMENT FOR THE MANAGEMENT AND OPERATION OF THE MINT VALLEY RACQUET COMPLEX ON BEHALF OF THE CITY****23-001048 ORDINANCE 3481 - GRANTING A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF LONGVIEW****RECOMMENDED ACTION:****MOTION TO ADOPT ORDINANCE 3481.****23-001092 RESOLUTION 2448 - AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH COWLITZ COUNTY FOR PUBLIC WORKS CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE****RECOMMENDED ACTION:****MOTION TO ADOPT RESOLUTION 2448****15. CITY MANAGER'S REPORT****16. MISCELLANEOUS****17. EXECUTIVE SESSION****18. ADJOURNMENT**

*** Any invocation that may be offered at the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.**

NEXT REGULAR COUNCIL MEETINGS:**THURSDAY, MAY 11, 2023 – 6:00 P.M.****THURSDAY, MAY 25, 2023 – 6:00 P.M.****NEXT REGULAR WORKSHOP:****THURSDAY, MAY 11, 2023 – 6:00 P.M. – AFFORDABLE HOUSING OPTIONS****NEXT SPECIAL WORKSHOP:****THURSDAY, MAY 25, 2023 – SPECIAL START TIME 5:00 P.M. – PARKS AND RECREATION COMPREHENSIVE PLAN**

Dog Parks In CITY PARKS

APRIL 27, 2023

PARKS & REC



Gerhart
dog park

DOG PARK ESTIMATED INSTALLATION COST - \$17,500 - \$25,000
THE FOLLOWING PARKS WHERE THE THREE RECOMMENDED PARKS BY THE CITY OF
LONGVIEW PARKS & RECREATION ADVISORY COMMITTEE

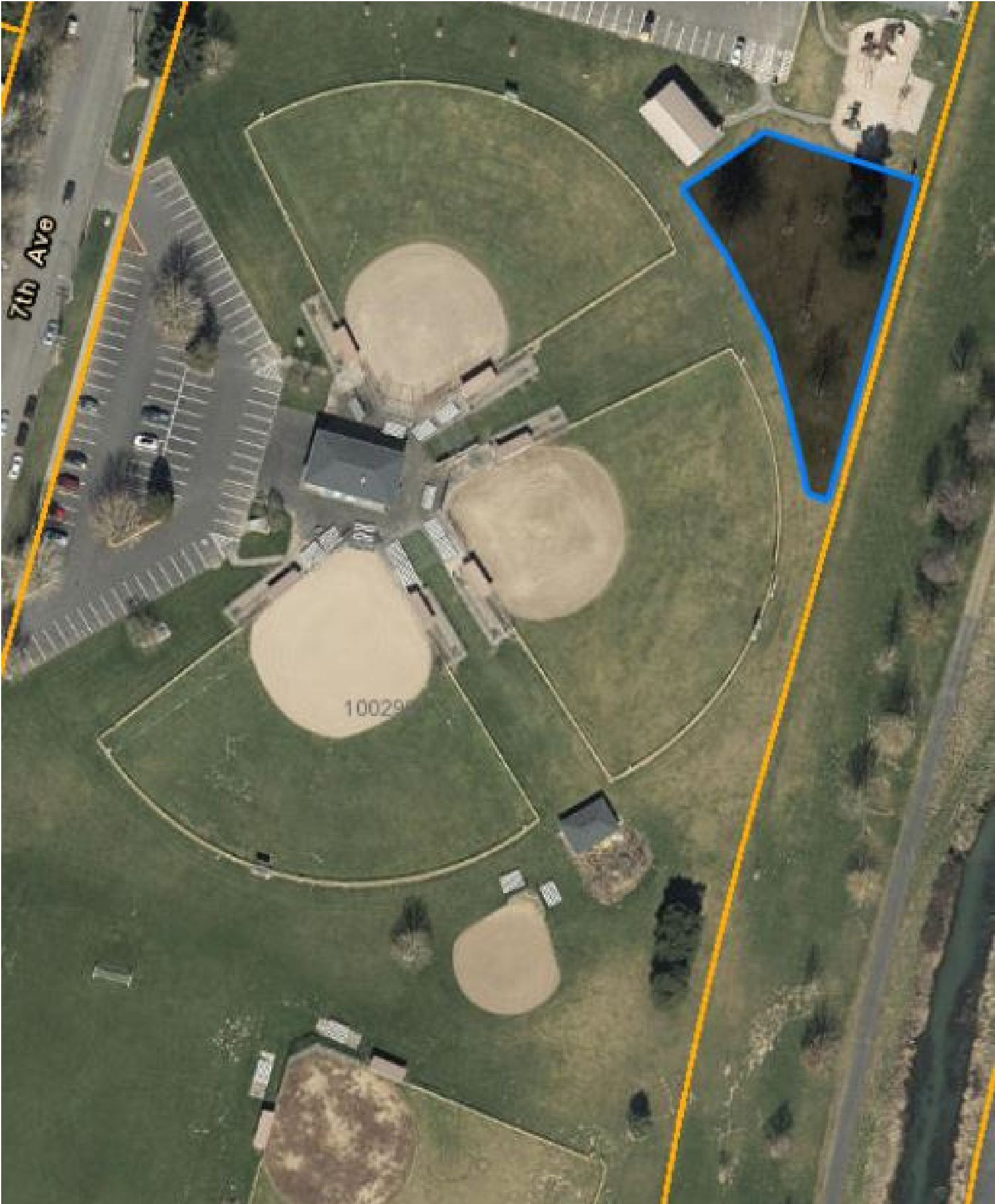


FENCED DOG PARK OPTIONS

#1ST SUGGESTED PARK

7th Avenue
Park

ANNUAL MAINTENANCE:
494 HOURS ANNUAL/9.5 WEEKLY
ANNUAL COST:
\$11,750



CLOSE TO SHELTER & PARKING LOT

NEAR PLAYGROUND

#2ND SUGGESTED PARK

John Nall
Park

ANNUAL MAINTENANCE:

1,144 HOURS ANNUAL/22 WEEKLY

ANNUAL COST:

\$26,271



CLOSE TO PARKING LOT

NEAR PLAYGROUND

#3RD SUGGESTED PARK

Ray Morse
Park

ANNUAL MAINTENANCE:

1,080 HOURS ANNUAL/20.8 WEEKLY

ANNUAL COST:

\$24,592



CLOSE TO PARKING LOT

NEAR DISC GOLF



ALTERNATIVE OPTION SHARED USE AREA

This form of use designates a site or a portion of a site for off leash use. It can be during specific times of year or day. Shared use areas are typically unfenced with limited or no improvements.

Benefits

- Shares Park with other uses
- Lower development cost option
- Lower turf impact option

Drawbacks

- Difficult to enforce hours
- Entire Park becomes off-leash facility
- Frequent conflicts with other park users



**ANOTHER OPTION?
ROY MORSE OR JOHN NULL**



DESIGNATED UNFENCED OFF LEASH AREAS



QUESTIONS?



Dog Park Maintenance Requirements Projections - 7th Avenue Park

Maintenance Activity	Unit of Measure	Quantity	Hours per Unit	Hours per Occurrence	Annual Frequency												Annual Hours
					J	F	M	A	M	J	J	A	S	O	N	D	
Empty Trash Cans	Each	1	0.04	0.04	15	15	31	30	31	30	31	31	30	31	15	15	12.20
Fencing - Herbicide Spraying	KLF	0.64	2.00	1.28			1		1								2.56
Fencing - Repairs	Each	1	2.00	2.00				1					1				4.00
Fencing - String Trim	KLF	0.64	1.00	0.64			1	1	1	1	1	1	1	1			5.12
Fill holes	Each	5	0.50	2.50			1			1			1				7.50
Litter Pickup	KSF	18.76	0.03	0.56	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	29.04
Mow - Hand	KSF	18.76	1.00	18.76			4	2	2	2	2	2	2	2			337.68
Overseed	KSF	18.76	0.50	9.38										1			9.38
Remove Graffiti	Each	1	0.08	0.08		1			1			1			1		0.32
Site Furnishing - Repairs	Each	1	1.00	1.00		1						1					2.00
Site Inspection	Each	1	0.75	0.75	1		1		1		1		1		1		4.50
Stock Mutt Mitts	Each	1	0.04	0.04	15	15	31	30	31	30	31	31	30	31	15	15	12.20
Tree - Elevation	Each	12	0.25	3.00			1										3.00
Tree - Inspection	Each	12	0.50	6.00		1											6.00
Tree - Leaf Removal	KSF	18.76	0.08	1.50									1	1			3.00
Annual Hours																	438.50
Average Hours per Week																	8.43

KLF = 1,000 Linear Feet

Maintenance Activity	Job Title		
	Tech 2	Tech 3	Field Worker
Empty Trash Cans			12.20
Fencing - Spraying		2.56	
Fencing - Repairs	4.00		
Fencing - String Trim			5.12
Fill holes		7.50	
Litter Pickup			29.04
Mow - Hand			337.68
Overseed		9.38	
Remove Graffiti			0.32
Site Furnishing - Repairs	2.00		
Site Inspection	4.50		
Stock Mutt Mitts			12.20
Tree - Elevation			3.00
Tree - Inspection	6.00		
Tree - Leaf Removal			3.00
Hours per Job Title	16.50	19.44	402.56



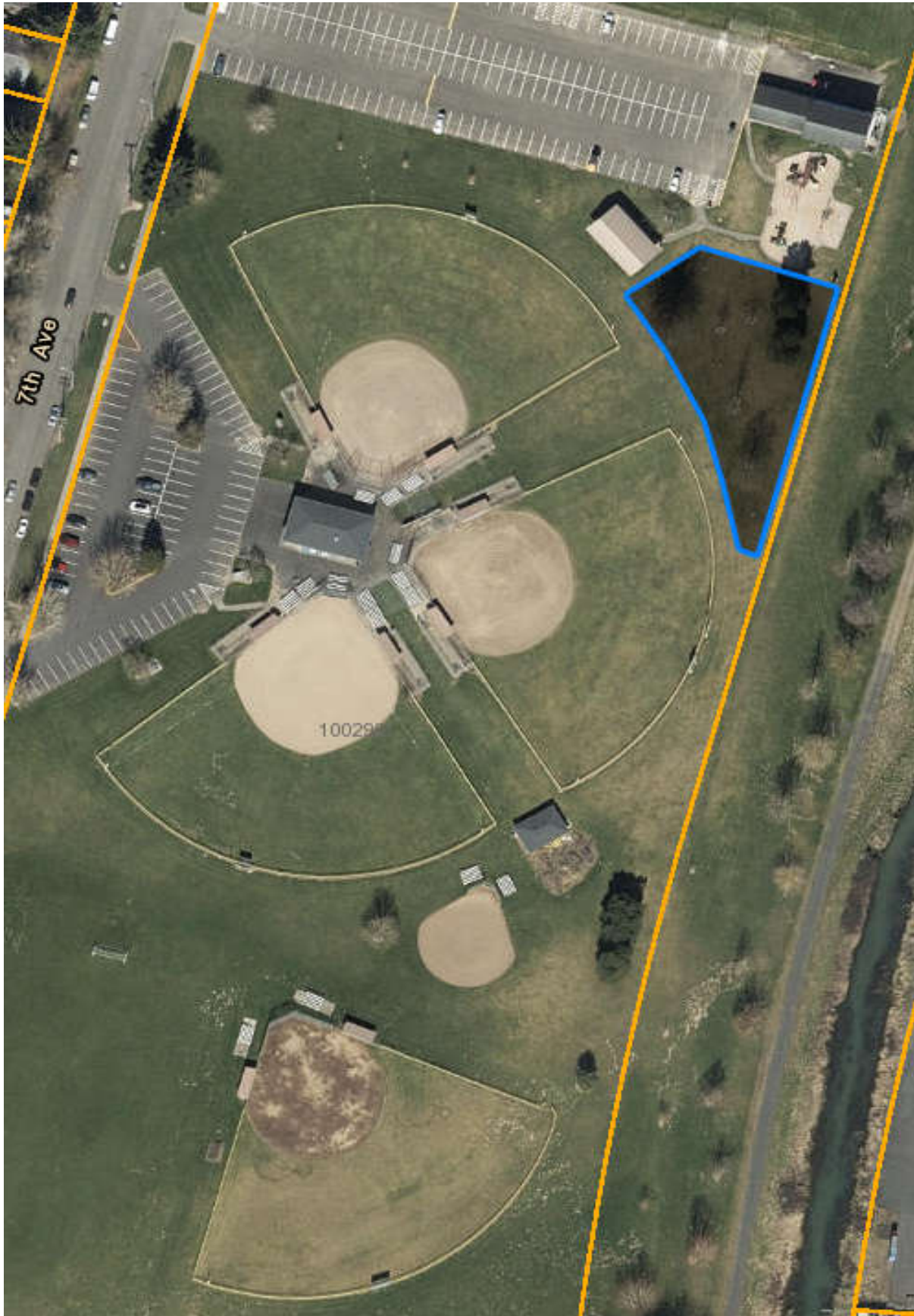
Staffing Costs for Required Maintenance of 7th Ave Dog Park

Full Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Maintenance Tech 2	32.28	14.05	46.33	16.50	1.32	21.78	\$1,009.07
Maintenance Tech 3	28.09	16.1	44.19	19.44	1.32	25.66	\$1,133.95
Full-Time Staff Totals						47.44	\$2,143.02

Part Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Field Worker	16.41	5.09	21.50	402.56	1.11	446.84	\$9,607.14
Temporary Staff Totals						446.84	\$9,607.14

Personnel Summary	Total Adjusted Labor Hours	FTE	Cost
Full Time Staff	47.44	0.02	\$2,143.02
Part Time Staff	446.84	0.21	\$9,607.14
Annual Personnel Summary	494.28	0.24	\$11,750.16

PROPOSED DOG PARK SITE AT 7TH AVENUE PARK





Dog Park Maintenance Requirements Projections - John Null Park

Maintenance Activity	Unit of Measure	Quantity	Hours per Unit	Hours per Occurrence	Annual Frequency												Annual Hours
					J	F	M	A	M	J	J	A	S	O	N	D	
Empty Trash Cans	Each	1	0.04	0.04	15	15	31	30	31	30	31	31	30	31	15	15	12.20
Fencing - Herbicide Spraying	KLF	0	2.00	2.00			1		1								4.00
Fencing - Repairs	Each	1	2.00	2.00				1					1				4.00
Fencing - String Trim	KLF	0	1.00	1.00			1	1	1	1	1	1	1	1			8.00
Fill holes	Each	5	0.50	2.50			1			1			1				7.50
Litter Pickup	KSF	0	0.03	1.41	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	4.3	72.76
Mow - Hand	KSF	0	1.00	47.00			4	2	2	2	2	2	2	2			846.00
Overseed	KSF	0	0.50	23.50										1			23.50
Remove Graffiti	Each	1	0.08	0.08		1			1			1			1		0.32
Site Furnishing - Repairs	Each	1	1.00	1.00		1						1					2.00
Site Inspection	Each	1	0.75	0.75	1		1		1		1		1		1		4.50
Stock Mutt Mitts	Each	1	0.04	0.04	15	15	31	30	31	30	31	31	30	31	15	15	12.20
Tree - Elevation	Each	33	0.25	8.25			1										8.25
Tree - Inspection	Each	33	0.25	8.25		1											8.25
Tree - Leaf Removal	KSF	0	0.08	3.76									1	1			7.52
Annual Hours																	1021.00
Average Hours per Week																	19.63

Maintenance Activity	Job Title		
	Tech 2	Tech 3	Field Worker
Empty Trash Cans			12.20
Fencing - Spraying		4.00	
Fencing - Repairs	4.00		
Fencing - String Trim			8.00
Fill holes		7.50	
Litter Pickup			72.76
Mow - Hand			846.00
Overseed		23.50	
Remove Graffiti			0.32
Site Furnishing - Repairs	2.00		
Site Inspection	4.50		
Stock Mutt Mitts			12.20
Tree - Elevation			8.25
Tree - Inspection	8.25		
Tree - Leaf Removal			7.52
Hours per Job Title	18.75	35.00	967.25



Staffing Costs for Required Maintenance of John Null Dog Park

Full Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Maintenance Tech 2	32.28	14.05	46.33	18.75	1.32	24.75	\$1,146.67
Maintenance Tech 3	28.09	16.10	44.19	35.00	1.32	46.20	\$2,041.58
Full-Time Staff Totals						70.95	\$3,188.25

Part Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Field Worker	16.41	5.09	21.50	967.25	1.11	1073.64	\$23,083.33
Temporary Staff Totals						1073.64	\$23,083.33

Personnel Summary	Total Adjusted Labor Hours	FTE	Cost
Full Time Staff	70.95	0.03	\$3,188.25
Part Time Staff	1073.64	0.52	\$23,083.33
Annual Personnel Summary	1144.59	0.55	\$26,271.57

PROPOSED DOG PARK SITE AT JOHN NULL PARK



Maintenance Activity	Job Title		
	Tech 2	Tech 3	Field Worker
Empty Trash Cans			12.20
Fencing - Spraying		4.00	
Fencing - Repairs	4.00		
Fencing - String Trim			8.00
Fill holes		7.50	
Litter Pickup			69.66
Mow - Hand			810.00
Overseed		22.50	
Remove Graffiti			0.32
Site Furnishing - Repairs	2.00		
Site Inspection	4.50		
Stock Mutt Mitts			12.20
Tree - Elevation			0.25
Tree - Inspection	0.25		
Tree - Leaf Removal			7.20
Hours per Job Title	10.75	34.00	919.83



Staffing Costs for Required Maintenance of Roy Morse Dog Park

Full Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Maintenance Tech 2	32.28	14.05	46.33	10.75	1.32	14.19	\$657.42
Maintenance Tech 3	28.09	16.10	44.19	34.00	1.32	44.88	\$1,983.25
Full-Time Staff Totals						59.07	\$2,640.67

Part Time Staff	Hourly Rate	Benefit Rate per Hour	Actual Hourly Rate	Labor Hours	Adjustment Factor	Adjusted Labor Hrs	Cost
Field Worker	16.41	5.09	21.50	919.83	1.11	1021.01	\$21,951.74
Temporary Staff Totals						1021.01	\$21,951.74

Personnel Summary	Total Adjusted Labor Hours	FTE	Cost
Full Time Staff	59.07	0.03	\$2,640.67
Part Time Staff	1021.01	0.49	\$21,951.74
Annual Personnel Summary	1080.08	0.52	\$24,592.41



City of Longview

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Minutes

City Council

*Mayor MaryAlice Wallis
Mayor Pro Tem Michael Wallin
Council Member Ruth Kendall
Council Member Angie Wean
Council Member Spencer Boudreau
Council Member Hillary Strobel
Council Member Christopher Ortiz*

Thursday, April 13, 2023

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Webinar ID: 823 9413 2374

1. **CALL TO ORDER**

Mayor Wallis called the meeting to order at 6:00 p.m.

2. **INVOCATION*/FLAG SALUTE**

The flag salute was recited.

3. **ROLL CALL**

***Present:** Mayor Wallis, Mayor Pro Tem Wallin, Councilmember Kendall, Councilmember Wean, Councilmember Strobel on-line, Councilmember Boudreau on-line at 6:25 p.m., Councilmember Ortiz*

***Staff Present:** City Manager Kris Swanson, City Attorney Jim McNamara, City Clerk Tiffany Ostreim,*

Deputy City Clerk Elizabeth Halili, Public Works Director Ken Hash, Community and Economic Development Director Ann Rivers, Parks & Recreation Director Jennifer Wills, Fire Chief Jim Kambeitz, Police Chief Robert Huhta, Library Director Jacob Cole, Human Resources Director Sabrina Fraidenburg

4. **WORKSHOP**

23-001005 AMERESCO ENERGY AUDIT (TIME ESTIMATE 60 MINUTES)

RECOMMENDED ACTION:

MOTION TO APPROVE RECOMMENDED PROJECT LIST

City Manager Kris Swanson explained the background of the study.

Brian Jewett, Business Development Executive at Ameresco started the presentation.

Steve Butros, Washington State Department of Enterprise Services Energy Program was present to answer questions.

Fleet and Facilities Maintenance Manager Keith Walling presented the Facilities Capital Projects.

The council discussed the presentation.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

Councilmember Wallin congratulated Ameresco for their previous work.

A motion was made by Councilmember Ortiz, seconded by Councilmember Wean, to approve the recommended project list. The motion carried by the following vote:

Ayes: Councilmember Ortiz, Councilmember Wean, Councilmember Kendall, Councilmember Wallin, Councilmember Strobel, Mayor Wallis.

Nays: Councilmember Boudreau.

The workshop concluded and the Mayor recessed the meeting at 7:00 p.m.

Mayor Wallis resumed the meeting in the Council Chambers at 7:10 p.m.

5. **APPROVAL OF MINUTES**

23-001006 MARCH 23, 2023 REGULAR MEETING

A motion was made by Councilmember Kendall, seconded by Councilmember Boudreau, to approve the minutes of March 23, 2023 regular meeting. The motion carried unanimously.

6. **CHANGES TO THE AGENDA**

Councilmember Boudreau requested Project Completion for Hope Village Site Improvements be pulled from the Consent Calendar for separate consideration.

7. **PRESENTATIONS & AWARDS**

23-001002 PROCLAMATION - FAIR HOUSING MONTH

RECIPIENT - BRAD WHITTAKER OF REALTY ONE PACIFICA REAL ESTATE ON BEHALF OF THE ASSOCIATION OF REALTORS

Mayor Wallis read and presented the proclamation to Brad Whittaker, who accepted on behalf of the Lower Columbia Realtors Association.

**23-001001 PROCLAMATION - NATIONAL LIBRARY WEEK
RECIPIENT - LIBRARY DIRECTOR JACOB COLE**

Mayor Wallis read and presented the proclamation to Library Director Jacob Cole, who accepted on behalf of the Longview Library. Director Cole acknowledged many library volunteers.

23-001035 LOWER COLUMBIA CAP ANNUAL REPORT

Ilona Kerby, Executive Director of Lower Columbia CAP presented the Annual Report.

23-001004 LONGVIEW FIRE 2022 ANNUAL REPORT

Fire Chief Jim Kambeitz presented the Annual Report.

8. CONSTITUENTS' COMMENTS (Thirty Minutes)

*Ron Kosloski provided public comment.
Randy Knox provided public comment.
Tricia Rodman provided public comment.
Bill Kasch provided public comment.
Colby Connerly provided public comment.
Larry Crosby provided public comment.
Eric Halvorson provided public comment.
Bill Youngren provided public comment.
Mike Pederson provided public comment.
A citizen, name unstated, provided public comment.
Rayleen Aguirre provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.*

9. PUBLIC HEARINGS

10. BOARD & COMMISSION RECOMMENDATIONS

23-001026 NEIGHBORHOOD PARK GRANT RECOMMENDATIONS - ROUND 1

RECOMMENDED ACTION:

MOTION TO APPROVE THE LONGVIEW PARKS AND RECREATION ADVISORY BOARD'S RECOMMENDATION FOR NEIGHBORHOOD PARK GRANT FUNDING

*Parks and Recreation Director Jennifer Wills presented.
Councilmembers discussed the two applications submitted for the Neighborhood Park Grant Program.*

A motion was made by Councilmember Boundreau, seconded by Councilmember Kendall, to approve the Longview Parks and Recreation Advisory Board's recommendation for Neighborhood Park Grant funding for Project 1, submitted by Longview Altrusa Club for a bird blind and informational signs at Altrusa Park in the amount of \$3,956.

*Two members of the Altrusa Club spoke in support of Project 1, bird blind and informational signs.
Rayleen Aguirre provided public comment.*

The motion carried unanimously.

11. ORDINANCES & RESOLUTIONS

12. MAYOR'S REPORT

Mayor Wallis provided a report and solicited members to serve on the city's Homeless Task Force.
The Mayor appointed Councilmembers Kendall, Strobel and Ortiz to serve on the Homeless Task Force.

13. COUNCILMEMBERS' REPORTS

Councilmember Wallin provided a report.
Councilmember Ortiz provided a report.
Councilmember Boudreau provided a report.

14. CONSENT CALENDAR

Councilmember Boudreau requested Project Completion for Hope Village Site Improvements be pulled from the Consent Calendar for separate consideration.

Public Works Director Ken Hash explained the contract with Advanced Excavating Specialists has been completed. The City Council must accept the project as complete before final contract closeout can be accomplished. This action starts the clock for the warranty on the work.

A motion was made by Councilmember Strobel, seconded by Councilmember Kendall, to approve the Consent Calendar.

A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.
A citizen, name unstated, provided public comment.

The motion carried unanimously.

23-000948 APPROVAL OF CLAIMS

23-001003 2023 EXTENSION AND RENEWAL OF AGREEMENT FOR COWLITZ PARTIAL COUNTY RURAL LIBRARY DISTRICT SERVICES

RECOMMENDED ACTION:

MOTION TO AUTHORIZE THE CITY MANAGER TO SIGN THE 2023 EXTENSION AND RENEWAL OF AGREEMENT FOR LIBRARY SERVICES

23-001022 PROJECT COMPLETION – HOPE VILLAGE SITE IMPROVEMENTS

RECOMMENDED ACTION:

MOTION TO ACCEPT AS COMPLETE THE HOPE VILLAGE SITE IMPROVEMENTS PROJECT

23-001023 ORDINANCE 3479 - AMENDING LMC 16.24.020 AND LMC 16.24.060, ELECTRICAL CODE TO PERMIT ELECTRIC SECURITY DEVICES

RECOMMENDED ACTION:

MOTION TO ADOPT ORDINANCE 3479

23-001024 ORDINANCE 3480 - AMENDING LMC 19.67.040 and LMC 19.68.070 TO REMOVE THE REQUIREMENT TO PROVIDE BOUNDARY LINE ADJUSTMENT SURVEY MAPS AND SHORT PLATS ON MYLAR MEDIA

RECOMMENDED ACTION:
MOTION TO ADOPT ORDINANCE 3480

23-001034 RESOLUTION 2444 - SURPLUS PROPERTY

RECOMMENDED ACTION:
MOTION TO ADOPT RESOLUTION 2444

23-001042 RESOLUTION 2445 - AUTHORIZING INVESTMENT OF CITY OF LONGVIEW MONIES IN THE WASHINGTON STATE TREASURER'S LOCAL GOVERNMENT INVESTMENT POOL

RECOMMENDED ACTION:
MOTION TO ADOPT RESOLUTION 2445

15. CITY MANAGER'S REPORT

City Manager Kris Swanson provided a report explaining grant funding, warranty related repairs and expenditures and contracts for Hope Village.

A citizen, unnamed, provided public comment.

A citizen, unnamed, provided public comment.

16. MISCELLANEOUS

17. EXECUTIVE SESSION

23-001000 COLLECTIVE BARGAINING

The City Council (two members via on-line), City Manager Kris Swanson, City Attorney Jim McNamara, and Human Resources Director Sabrina Fraidenburg entered Executive Session at 9:23 p.m. pursuant to RCW 42.30.140(4)(a) Collective Bargaining for a period of 15 minutes. At 9:33 a.m. Executive Session was continued for 15 minutes. At 9:48 p.m. all parties came out of Executive Session. No decisions were made.

18. ADJOURNMENT

The meeting was adjourned at 9:50 p.m.

*Tiffany Ostreim
City Clerk*

*Approved: _____
Mayor*

*** Any invocation that may be offered at the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.**

NEXT REGULAR COUNCIL MEETINGS:

THURSDAY, APRIL 27, 2023 – 6:00 P.M.

THURSDAY, MAY 11, 2023 – 6:00 P.M.

THURSDAY, MAY 25, 2023 - 6:00 P.M.

NEXT REGULAR WORKSHOP:

THURSDAY, APRIL 27, 2023 - 6:00 P.M. - DOG PARKS

THURSDAY, MAY 11, 2023 - 6:00 P.M. - AFFORDABLE HOUSING OPTIONS

NEXT SPECIAL COUNCIL WORKSHOP:

THURSDAY, APRIL 20, 2023 – 6:00 P.M. – MINT VALLEY GOLF COURSE

THURSDAY, MAY 25, 2023 - SPECIAL START TIME 5:00 P.M. - PARKS AND RECREATION COMPREHENSIVE PLAN



City of Longview

1525 Broadway
Longview, WA 98632
www.ci.longview.wa.us

Minutes

City Council

*Mayor MaryAlice Wallis
Mayor Pro Tem Michael Wallin
Council Member Ruth Kendall
Council Member Angie Wean
Council Member Spencer Boudreau
Council Member Hillary Strobel
Council Member Christopher Ortiz*

Thursday, April 20, 2023

6:00 PM

2nd Floor, City Hall

NOTICE IS HEREBY GIVEN, in accordance with RCW Chapter 42.30, that the City Council of the City of Longview, Washington, will conduct a special workshop in the Longview City Hall - Training Room, 1525 Broadway, Longview, on Thursday, April 20, 2023 at 6:00 p.m. The topics of discussion follow. Final disposition shall be taken on no other matter.

The City Hall is accessible for persons with disabilities. Special equipment to assist the hearing impaired is also available. Please contact the City Executive Office at 360.442.5004 48 hours in advance if you require special accommodations to attend the meeting. Please note - virtual attendees may comment verbally during public hearings only. Virtual attendees may also submit written comments to the Clerk's Office with the heading, "Public Comment for disbursement to the City Council".

<https://us02web.zoom.us/j/82394132374>

Telephone options (dial any of the following numbers):

1-253-215-8782
1-346-248-7799
1-408-638-0968
1-669-900-6833
1-301-715-8592
1-312-626-6799
1-646-876-9923

Webinar ID: 823 9413 2374

1. **CALL TO ORDER**
Mayor Wallis called the meeting to order at 6:00 p.m.
2. **INVOCATION*/FLAG SALUTE**
The flag salute was recited.

3. ROLL CALL

Present: Mayor Wallis, Mayor Pro Tem Wallin, Councilmember Kendall, Councilmember Wean, Councilmember Boudreau, Councilmember Ortiz

Excused: Councilmember Strobel

Staff Present: City Manager Kris Swanson, Assistant City Attorney Linda Nguyen, City Clerk Tiffany Ostreim, Deputy City Clerk Elizabeth Halili, Public Works Director Ken Hash, Parks & Recreation Director Jennifer Wills, Police Chief Robert Huhta, Fleet and Facilities Maintenance Manager Keith Walling

4. WORKSHOP**23-000953 MINT VALLEY GOLF COURSE (TIME ESTIMATE 90 MINUTES)**

City Manager Swanson explained the background of the golf course.

A motion was made by Councilmember Wallin, seconded by Councilmember Wean, to eliminate Plan Options C, D, E and F. The motion carried unanimously.

Parks and Recreation Director Jennifer Wills introduced Mint Valley Golf Operations Manager Jim Nickerson, Maintenance Manager Scott Knapp, Recreation Specialist Colton Froberg, and Russ Olson, of Valley Golf Academy LLC.

Parks and Recreation Director Jennifer Wills provided the presentation. Russ Olson, Jim Nickerson, Scott Knapp and Fleet and Facilities Manager Keith Walling provided information on the golf course and building.

The Council discussed the presentation.

Parks and Recreation Director Jennifer Wills explained Plan Option A - Irrigation Investment - \$5 million - full replacement of 18-hole irrigation system and Plan Option B - the re-investment plan - 1/2 fund move - transition maintenance expenditures to the General Fund.

The Council discussed the options.

City Manager Swanson discussed the substantial impact to the General Fund and the need for a funding source.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

The Council discussed funding opportunities and the need for a building capacity plan for repair and maintenance.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

A motion was made by Councilmember Wean, seconded by Councilmember Wallin to request the City Manager work with Finance to develop Option B and bring back to the Council.

The Council discussed the motion.

A citizen, name unstated, provided public comment.

A citizen, name unstated, provided public comment.

The motion carried unanimously.

5. ADJOURNMENT

The meeting was adjourned at 8:08 p.m.

*Tiffany Ostreim
City Clerk*

*Approved: _____
Mayor*

*** Any invocation that may be offered at the Council meeting shall be the voluntary offering of a private citizen, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the religious beliefs or views of this, or any other speaker.**

NEXT REGULAR COUNCIL MEETINGS:

THURSDAY, APRIL 27, 2023 – 6:00 P.M.

THURSDAY, MAY 11, 2023 – 6:00 P.M.

THURSDAY, MAY 25, 2023 - 6:00 P.M.

NEXT REGULAR WORKSHOP:

THURSDAY, APRIL 27, 2023 – 6:00 P.M. – DOG PARKS

THURSDAY, MAY 11, 2023 - 6:00 P.M. - AFFORDABLE HOUSING OPTIONS

NEXT SPECIAL COUNCIL WORKSHOP:

THURSDAY, MAY 25, 2023 - SPECIAL START TIME 5:00 P.M. - PARKS & RECREATION COMPREHENSIVE PLAN

Proclamation

City of Longview, Washington

Cowlitz Chaplaincy Week

May 7th to May 13th, 2023

“May 13th-40th Anniversary”

WHEREAS, the Cowlitz Chaplaincy was started out of necessity by former Cowlitz County Sheriff Les Nelson as a result the Mt. St. Helens’ eruption; and

WHEREAS, Cowlitz Chaplaincy has served Cowlitz County since 1983; and

WHEREAS, Cowlitz Chaplaincy serves those in need, free-of-charge, and by invitation in three specific areas: emotional, relational, and spiritual; and

WHEREAS, Cowlitz Chaplaincy Chaplains are neither police officers nor firefighters, rather they serve as CARE givers; and

WHEREAS, Cowlitz Chaplaincy Chaplains are professionally trained (most with ‘Advance status’) and are prepared to respond “24-7” whenever a critical incident occurs, and

WHEREAS, on Saturday, May 13th, 2023, the Cowlitz Chaplaincy invites all to celebrate their 40th Anniversary at the Cowlitz EXPO Center. The service, support, counseling, and care provided by these selfless men and women will be acknowledged at the “Beauty from Ashes” dinner auction.

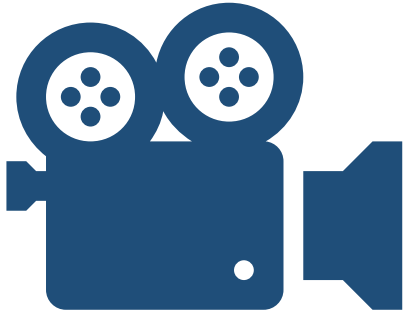
NOW, THEREFORE, I, MaryAlice Wallis, Mayor of the City of Longview, do hereby proclaim May 7th – May 13th, 2023, as Cowlitz Chaplaincy Week in Longview, Washington, and publicly salute the service of Chaplains in our community and in communities throughout Cowlitz County.

MaryAlice Wallis, Mayor

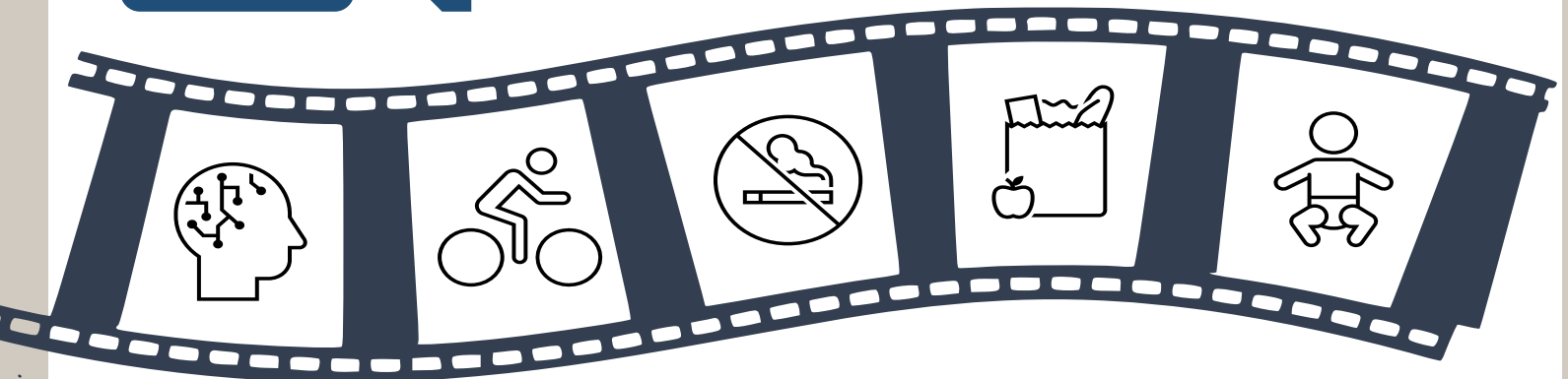


Health & Human Services Public Health PSA Contest

National Public Health Week April 3rd-9th, 2023



To celebrate, Cowlitz County Health & Human Services (CCHHS) is sponsoring a Public Service Announcement (PSA) contest to raise awareness about an issue through an informative and educational message.



Cowlitz County residents, businesses, schools, church groups, and team members of all ages are invited to express their message about a public health issue. Topics could include smoking, substance abuse, physical activity, nutrition, mental health, preventative medicine, oral health, emergency preparedness, food safety, childhood injury prevention, violence prevention, composting, clean water, healthy septic systems, litter free community, or another health topic promoting public health.

The winning PSA will be on the CCHHS Facebook page and website during National Public Health Week. The winning PSA may also be broadcast on local television and radio stations during National Public Health Week. In addition to fame, a prize will be awarded to the winning submission.

**Contest rules and entry forms are
available on the CCHHS website:**

www.co.cowlitz.wa.us/PSA

*Healthy People,
Healthy
Communities.*





Cowlitz County Health & Human Services

1952 9th Avenue
Longview, WA 98632
TEL (360) 414-5599
FAX (360) 425-7531
www.co.cowlitz.wa.us/hhs

Board of County Commissioners

Arne Mortensen	District 1
Dennis Weber	District 2
Richard R. Dahl	District 3

NEWS RELEASE

FOR IMMEDIATE RELEASE

February 24, 2023

Contact:

Kristin Young
Communications Manager
(360) 414-5599, ext. 6451
AskCowlitzHealth@cowlitzwa.gov
Release #: 23-003

A Healthier Cowlitz County: Public Service Announcement (PSA) Contest

LONGVIEW, Washington – National Public Health Week is April 3rd – 9th. To celebrate, Cowlitz County Health & Human Services (CCHHS) is sponsoring a PSA contest to raise awareness about a public health issue through an informative and educational message. Acceptable entries can be submitted as a 30-second or less video/audio message, picture, or poster.

- Cowlitz County residents, businesses, schools, church groups, and team members of all ages are invited to express their message about a public health issue.
- Topics could include smoking, substance abuse, physical activity, nutrition, mental health, preventative medicine, oral health, emergency preparedness, food safety, childhood injury prevention, violence prevention, composting, clean water, healthy septic systems, litter free community, or another health topic promoting public health.

The winning PSA will appear on the [CCHHS Facebook page](#) and [website](#) during National Public Health Week and for 60 days after the end of the contest. The winning PSA may also be broadcast on local television and radio stations during National Public Health Week. In addition to fame, a prize will be awarded to the winning submission.

Contest rules and entry forms are available on the CCHHS website: <http://www.co.cowlitz.wa.us/PSA>.
The deadline for submissions is March 24th at 5:00 p.m.

To contact Cowlitz County Health & Human Services, please call 360-414-5599.

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Follow us online

Facebook <https://www.facebook.com/cowlitzHHS/>

Website: www.co.cowlitz.wa.us/hhs

News Releases: www.co.cowlitz.wa.us/civicalerts



Cowlitz County Health & Human Services

1952 9th Avenue
Longview, WA 98632
TEL (360) 414-5599
FAX (360) 425-7531
www.co.cowlitz.wa.us/hhs

Board of County Commissioners

Arne Mortensen	District 1
Dennis Weber	District 2
Richard R. Dahl	District 3

NEWS RELEASE

FOR IMMEDIATE RELEASE

March 31, 2023

Contact:

Kristin Young
Communications Manager
(360) 414-5599, ext. 6451
young.kristin@cowlitzwa.gov
Release #: 23-005

A Healthier Cowlitz County: Public Service Announcement (PSA) Contest Winner

LONGVIEW, Washington – National Public Health Week is April 3rd – 9th. To celebrate, Cowlitz County Health & Human Services (CCHHS) sponsored a PSA contest to raise awareness about a public health issue through an informative and educational message for our community. Contest details can be found on the [PSA Contest webpage](#).

CCHHS would like to publicly congratulate two local high school seniors, Ethan Pelletier and Jasper Keller, for their PSA about Healthier Eating Habits. Their PSA will appear on the [CCHHS Facebook page](#) and [website](#) during National Public Health Week and for 60 days after the end of the contest. In addition, their PSA will be broadcast on local television and radio stations during National Public Health Week.

CCHHS would like to thank the YMCA of Southwest Washington for donating a 3-month membership to each of our winners.

To contact the Health & Human Services Department, please call 360-414-5599.

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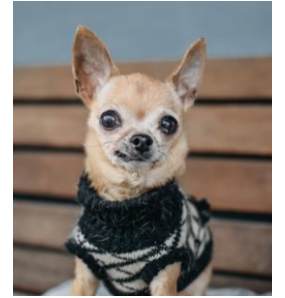
Follow us online

Facebook <https://www.facebook.com/cowlitzHHS/>

Website: www.co.cowlitz.wa.us/hhs

News Releases: www.co.cowlitz.wa.us/civicalerts





Humane Society Mission

“We will promote the humane treatment of animals through education, advocacy, and services.”

General Pet Statistics



- From 2010 to 2021 Cowlitz County's population increased **9%** from 102,358 to 111,524.
- **Seventy percent (70%) of U.S. households, or about 90.5 million families, own a pet,** according to the 2021-2022 National Pet Owners Survey conducted by the American Pet Products Association (APPA).
- Cowlitz County has approximately **32,000 households with at least one pet.**
- According to the APPA, these are the most common sources from which primary methods cats and dogs are obtained as pets:

	Dogs	Cats
Animal Shelter/Humane Society	23%	31%
Friends/Relatives	20%	28%
Breeder	34%	3%
Stray	6%	27%
Private Party	12%	6%
Other	32%	39%

* Source of Statistics:

- ASPCA
- American Pet Products Association (APPA)

APPA reports that 34% of dogs are purchased from breeders, while 23% of dogs and 31% of cats are obtained from an animal shelter or humane society.

ORGANIZATIONAL ANIMAL TOTALS

2022

LIVE INTAKES	CANINE	FELINE	SUB TOTAL	OTHER*	TOTAL
STRAY/AT LARGE	704	1186	1890	0	1890
RELINQUISHED BY OWNER	256	426	682	0	682
TRANSFERRED IN FROM AGENCY (IN STATE)	0	0	0	0	0
TRANSFERRED IN FROM AGENCY (OUT OF STATE)	0	0	0	0	0
TRANSFERRED IN FROM AGENCY (INTERNATIONAL)	0	0	0	0	0
TRANSFERRED IN FROM AGENCY (UNDESIGNATED)	0	0	0	0	0
OWNER INTENDED EUTHANASIA	110	48	158	0	158
SEIZURE	0	0	0	0	0
OTHER INTAKES	0	335	335	0	335
TOTAL LIVE INTAKES	1070	1995	3065	0	3065

LIVE OUTCOMES	CANINE	FELINE	SUB TOTAL	OTHER*	TOTAL
ADOPTION	352	967	1319	0	1319
RETURNED TO OWNER (RTO)	469	46	515	0	515
TRANSFERRED OUT TO AGENCY (INSTATE)	2	65	67	0	67
TRANSFERRED OUT TO AGENCY (OUT OF STATE)	29	404	433	0	433
TRANSFERRED OUT TO AGENCY (INTERNATIONAL)	0	0	0	0	0
TRANSFERRED OUT TO AGENCY (UNDESIGNATED)	0	0	0	0	0
RETURNED TO FIELD (RTF)	0	339	339	0	339
OTHER LIVE OUTCOMES	0	0	0	0	0
TOTAL OUTCOMES	852	1821	2673	0	2673

This report is a snapshot of data for all species recorded by your organization, within the timeframe selected for the report. See additional pages for age breakouts for each species.

For full definitions, visit [ShelterAnimalscount.org/IOD](https://www.shelteranimalscount.org/IOD)

LIVE INTAKES:

1) "Transfer in to agency (undesignated)" represents Transfer In data prior to when agency location break outs (in state, out of state, international) were added to the database.

LIVE OUTCOMES:

2) "Transfer out to agency (undesignated)" represents Transfer Out data prior to when agency location break outs (in state, out of state, international) were added to the database.

This information can be found online at **Animal Shelter Count**

<https://www.shelteranimalscount.org/>





Animal Control Activity By Jurisdiction

Castle Rock

Castle Rock Animal Control Calls for Service	2021 Totals	2022 Totals	2023 (YTD)
Complaints	45	115	13
Rescue	0	1	0
Cruelty	2	0	0
Unfounded	2	7	0
Injured	1	1	0
Return	2	0	1
Gone on Arrival	4	9	0
Patrol Hours	40	101	20
Impounds	9	22	1
Notice/Warning	12	8	5
Citations	1	1	5
Court Time	0	0	0
Vet Pickup	0	0	0
DOA	2	4	0
Calls After-Hours	14	20	4
Response After-Hours	3	4	0
Door Tags	9	9	1
Follow-ups	0	1	1
Bite Cases (all animals)	38	3	0
Spay & Neuter	20	20	3

Woodland

Woodland Animal Control Calls for Service	2021 Totals	2022 Totals	2023 (YTD)
Complaints	50	77	13
Rescue	0	1	0
Cruelty	5	5	2
Unfounded	2	6	1
Injured	0	1	0
Return	1	0	0
Gone on Arrival	14	10	2
Patrol Hours	72	93	12
Impounds	14	15	4
Notice/Warning	13	8	4
Citations	0	0	0
Court Time	0	0	0
Vet Pickup	1	4	1
DOA	7	1	1
Calls After-Hours	19	21	2
Response After-Hours	6	3	0
Door Tags	7	16	0
Follow-ups	10	23	1
Bite Cases (all animals)	8	3	0
Spay & Neuter	18	31	6

County

County Calls for Service	2021 Totals	2022 Totals	2023 (YTD)
Complaints	722	1048	173
Rescue	1	4	0
Cruelty	62	34	17
Unfounded	58	67	16
Injured	6	4	2
Return	11	7	2
Gone on Arrival	100	166	38
Patrol Hours	744	1018	182
Impounds	173	227	40
Notice/Warning	169	128	36
Citations	0	20	32
Court Time	0	4	1
Vet Pickup	0	0	0
DOA	89	105	19
Calls After-Hours	117	142	20
Response After-Hours	51	58	9
Door Tags	68	112	28
Follow-ups	34	65	35
Bite Cases (all animals)	26	19	3
Spay & Neuter	193	256	94

Longview

Longview Calls for Service	2021 Totals	2022 Totals	2023 (YTD)
Complaints	935	1408	289
Rescue	1	2	0
Cruelty	39	42	23
Unfounded	56	72	22
Injured	10	16	2
Return	32	15	12
Gone on Arrival	211	289	65
Patrol Hours	841	1069	204
Impounds	284	349	179
Notice/Warning	152	127	23
Citations	0	6	17
Court Time	1	11	5
Vet Pickup	0	3	0
DOA	94	182	31
Calls After-Hours	204	206	51
Response After-Hours	100	81	16
Door Tags	69	112	21
Follow-ups	11	64	23
Bite Cases (all animals)	31	17	3
Spay & Neuter	251	197	132

Kelso

Kelso Calls for Service	2021 Totals	2022 Totals	2023 (YTD)
Complaints	258	415	106
Rescue	0	0	0
Cruelty	16	8	8
Unfounded	26	24	8
Injured	10	10	1
Return	9	4	2
Gone on Arrival	59	64	33
Patrol Hours	360	445	135
Impounds	97	117	14
Notice/Warning	39	45	17
Citations	0	2	8
Court Time	0	0	0
Vet Pickup	0	2	0
DOA	22	29	8
Calls After-Hours	84	98	15
Response After-Hours	46	32	4
Door Tags	24	42	11
Follow-ups	13	22	12
Bite Cases (all animals)	15	9	3
Spay & Neuter	94	58	56

County	Animal Control Services	Notes
Adams County, WA	Sheriff's Office	
Asotin County, WA	Sheriff's Office	
		Benton County Canine Shelter only deals with stray and/or found dogs. They do not accept owner-surrenders. Vicious animal complaints and/or welfare checks on animals are directed to the Benton County Sheriff's Office.
Benton County, WA	Sheriff's Office	
Chelan County, WA	Sheriff's Office	
Clallam County, WA	Sheriff's Office	
Clark County, WA	County Animal Protection and Control	
Columbia County, WA	Sheriff's Office	
Cowlitz County, WA	Humane Society	
Douglas County, WA	Wenatchee Valley Animal Care and Control LLC	
Ferry County, WA	Sheriff's Office	
		Tri-Cities Animal Shelter operates under the Animal Control Authority (ACA) and an interlocal agreement between the three cities it serves.
Franklin County, WA	Tri-Cities Animal Shelter	
Garfield County, WA	Sheriff's Office	
Grant County, WA	Sheriff's Office	
Grays Harbor County, WA	Sheriff's Office	
Island County, WA	Sheriff's Office	
Jefferson County, WA	Sheriff's Office	
King County, WA	RASKC Regional Animals Services of King County	
Kitsap County, WA	Humane Society	
Kittitas County, WA	Sheriff's Office	
Klickitat County, WA	Sheriff's Office	
Lewis County, WA	Sheriff's Office	
Lincoln County, WA	Sheriff's Office	
Mason County, WA	Sheriff's Office	
Okanogan County, WA	Sheriff's Office	
Pacific County, WA	Sheriff's Office	
Pend Oreille County, WA	Sheriff's Office	
		Pierce County Animal Control's service area is limited. Most cities provide their own Animal Control Services.
Pierce County, WA	Sheriff's Office	
San Juan County, WA	Sheriff's Office	
Skagit County, WA	Sheriff's Office	
Skamania County, WA	Sheriff's Office	
		Our service area is limited to unincorporated areas of Snohomish County. Most cities have their own animal services agencies.
Snohomish County, WA	County Animal Services	
Spokane County, WA	SCRAPS	Spokane Regional Animal Protection Services
Stevens County, WA	Collville Animal Control Services	
Thurston County, WA	Joint Animal Services Commission	
Wahkiakum County, WA	Sheriff's Office	
Walla Walla County, WA	Sheriff's Office	Walla Walla Animal Control within city limits
Whatcom County, WA	Humane Society	
Whitman County, WA	Sheriff's Office	
Yakima County, WA	Sheriff's Office	

Animal Control Services Around the State



THE WASHINGTON FEDERATION
OF ANIMAL CARE AND CONTROL AGENCIES



More than just Animal Control



- **Saving lives:** Since 1973, the Humane Society has **found new homes for more than 63,000 pets**. We've returned another **28,000 lost pets** to their homes.
- **Community Cat Program:** Over one year, we spayed or neutered **556 feral cats**.
 - Of those, **252** were males while **304** were females.
 - Because a female cat can become pregnant as young as 16 weeks of age and go on to have two or three litters a year, the feral cat population -- and the problems associated with it -- grows and perpetuates. **In seven years, a single female cat and their kittens can produce 420,000 more cats.**
- **Vaccine Clinic:** Since we started in 2019, we have provided **vaccinations for 814 pets**.



Financially Speaking

- The Humane Society been contracting with our local communities for Animal Control and Shelter Services since 1974.
- **59% (+/-) of our revenue comes from contracts** which are vital for us to provide these services.



Revenue Breakdown

Contracts = 59%
Fundraising = 17%
Licensing = 4%
Adoptions = 9%
Special Projects = 9%

2021

Total Revenue:
\$1,438,396.68

Total Expenses:
\$1,262,338.11

2022

Total Revenue:
\$1,494,399.20*

Total Expenses:
\$1,693,274.27

% Change

Revenue:
↑ 3.8% (+/-)

Expenses:
↑ 34% (+/-)

*We received a \$404,373 gift plus a \$60,000 grant which are not included in this figure.

A Few Reasons for Cost Increases...

- Insurance Rate Increase: From 2021 to 2022 our medical insurance rates for employees **increased 14.6%**. 2023 rates won't be available until June.
- Utilities Rate Increase: Our utilities **increased 21%** from 2021 to 2022.
- Minimum Wage Increase: Washington now has the highest state minimum wage in the country with the 2023 increase of **nearly 9% to \$15.74 an hour**.
- Staff Veterinarian: We now have an in-house veterinarian. This added an additional **\$140,000 a year**.
- Vaccinations alone **increased 34%** during that timeframe.



National Increases as of 3-19-23

- In February, when annual CPI declined to 6%, the catch-all “pets, pet products and services” index **rose to 10.9%**, veterinary services jumped nearly 2 percentage points to **10.3%** and pet food increased to **15.2%**, according to Bureau of Labor Statistics data.
- In 2022, **4% more animals entered shelters than left**, according to Shelter Animals Count, a national database of animal shelter statistics launched by some of the largest animal welfare organizations in the United States.





12

Rabbits

As of today,
we have a
total of
217 animals
in the shelter
being cared
for by our
amazing staff.

2023

Adoptions
This Year:

348

DOA: 57

Died: 7

Return to Owner: 118

Relocated: 86

Euthanized: 53



80

Dogs



4

Puppies



51

Cats



55

Kittens



Moving Forward

- This year we are launching our capital campaign for a full renovation of existing facilities.
- With the new facility comes a perfect time to make a change to the organization.
- We are also working to develop an endowment fund that will provide financial security for the Humane Society indefinitely.



City of Longview

Agenda Summary

PROPOSED ANNEXATION - 4504 OCEAN BEACH HWY

RECOMMENDED ACTION:

MOTION TO HOLD A PUBLIC HEARING TO RECEIVE TESTIMONY ABOUT THE PROPOSED ANNEXATION AND TO DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE APPROVING THE ANNEXATION

COUNCIL INITIATIVE ADDRESSED:

Strengthen economic conditions & create new opportunities

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

A single parcel included within the comprehensive plan for the city as zoned general commercial, has submitted a notice of intent to commence annexation proceedings to annex into the City from the County. Further information is provided in the narrative and site plan attachments.

FINANCIAL SUMMARY:

If annexed, the revenue shifted into the City is estimated at \$626.80, and included in the County vs City attachment.

STAFF CONTACT:

McAllister Kosar, Planner

Attachments:

1. 4504 Ocean Beach Hwy Annexation Packet & Exhibits
2. 2023-010 Hatfield-Site Map-BW
3. (1) Notice of Intention to Commence Annexation Proceedings
4. (2) 23'0123-Hatfield-narrative
5. (4) County vs City
6. (5) Annexation Petition Method RCW 35A.14.120
7. (6) Annexation Exempt from SEPA
8. City of Lv Anx OB Hwy 2023



ANNEXATION INSTRUCTIONS

The City of Longview allows annexation to the City under RCW 35A.14.120 (the 60 percent petition method), which allows for property owners to request annexation by filing a petition signed by the owners of at least sixty (60) percent of the assessed property value in the area of requested annexation. The city allows for other forms of annexation provided for in RCW 35A.14 "Annexation by Code Cities". The application fee of **\$1,159** is due when the **Petition for Annexation** is submitted (see Step 2). Actual cost for engineering fees, geological fees, traffic consultant fees, other professional consultant fees, publications, and mailing costs may be billed to applicant for reimbursement.

STEP 1.

This information page and the **Notice of Intent** to commence annexation proceedings should be filed with the City to begin the annexation process. The owners of only ten (10) percent of the assessed property values may submit the intent to annex. The intent needs to include an Exhibit A - description of the property to be annexed - and an Exhibit B - a map of the area to be annexed.

Applicant Contact Dan Hatfield

Address 2220 36th Avenue, Longview, WA 98632

Phone (360) 957-2040

Title of Annexation 4504 Ocean Beach Highway - Annexation

Parcel #'s 02960 (Property ID# 3023739) # of Acres 1.29

Email dhatfield@lemfield.com

Signature of Applicant 

Upon receipt of a complete Notice of Intent, the Longview City Council will set a date for a meeting with the applicants (usually a regular City Council meeting) within 60 days from the date of filing. At that meeting the Council will determine if they accept, reject, or modify the area in the proposed annexation, determine the zoning designation under which the annexation would be accepted, and whether the City will require the assumption of all or any portion of the existing indebtedness by the area to be annexed. Should the Council reject the application, the annexation application is closed. Upon acceptance of the intent to annex by the City Council, the applicants can proceed with the circulation of the petition for annex to all the property owners within the annexation area.

STEP 2

The applicants circulate the petition which must contain the following:

- A. A complete description of the property included in the annexation.
- B. A map outlining the boundaries of the property included in the annexation.
- C. A statement that the annexation will require the assumption of all or any portion of the indebtedness of the City.
- D. The zoning designation of the property upon annexation.

A complete petition must be signed by the owners of not less than sixty (60) percent of the assessed value of the property for which annexation is petitioned if using the 60 percent petition method. There is no time limit as to when the petition must be filed with the City after it begins circulation, but signatures on a petition are only valid if signed no later than six (6) months prior to the filing date.

Submit with the petition the following:

- A. Legal Description - A copy of the legal description of the boundaries of the area involved in the proposed action **certified by a registered engineer or land surveyor**.
- B. Assessor's Map. A Cowlitz County Assessor's map **certified by a registered engineer or land surveyor** on which the boundary of the area involved in the proposal and the size in acres must be clearly indicated.
- C. **Vicinity Map**. A vicinity map, no larger than 11"x17", and reproducible on a **non-color** photocopier displaying:
 - 1) The boundary of the area involved in the proposal and the size in acres.
 - 2) The current corporate boundaries of the proposing entity.
 - 3) Major physical features such as streets and highways, railways, public facilities, rivers, freeways etc.,
 - 4) The boundaries of all cities or special purpose districts having jurisdiction in or near the proposed area.
 - 5) The location of the nearest service point(s) for the required utility services to the area.

A complete petition is filed with the City, along with the annexation fee of \$1,159.

STEP 3

Upon receipt the City of Longview will transmit the petition to the Cowlitz County Assessor, for determination of sufficiency of the petition. Upon receipt of a legally sufficient petition, the City Council shall set a public hearing date and publish and post the hearing date as required by law.

At the hearing, the City will take testimony from the proponents and opponents of the annexation. Following the hearing the City Council will by resolution accept or reject the petition for annexation. If accepted, the City will file an intent to annex with the Boundary Review Board.

STEP 4

The annexation is forwarded to the Boundary Review Board (BRB). If after forty-five (45) days the BRB has not received any requests for review of the annexation, then the annexation is deemed approved. Should the BRB receive requests for review by the City, Cowlitz County, other government agencies, or a petition of registered voters or property owners, the Board may invoke jurisdiction over the annexation.

If the BRB invokes jurisdiction, they will set and publish the date time and place for a public hearing and provide public notice to all parties at least 30 days prior to the hearing date. Once the decision of the Board is reached, they have 40 days to issue a written decision. If the decision of the Board is to approve the annexation as submitted or with modifications, the annexation goes back to the City Council for final approval.

STEP 5

Upon receipt of approval of the annexation from the BRB with no modifications to the request, the City will adopt an ordinance to annex the property fixing the effective date of the annexation.

Should the approval of the annexation include modifications from the BRB, the City Council will review the annexation as modified and should they accept the modifications, the City will adopt an ordinance to annex the property. If the City rejects the modifications to the annexation, they may choose not to adopt an ordinance and the annexation will not be completed.

Notice of the proposed effective date of the annexation including a description of the property is to be published at least once a week for 2 weeks after the passage of the ordinance in the newspaper of general circulation within the city and within the area to be annexed. If the annexation ordinance provides for adoption of a proposed zoning regulation or for the assumption of indebtedness, the notice must include a statement of these requirements.

The final ordinance is to be recorded and then copies are forwarded to the County (9 total) and to other entities. Upon completion of a census of the annexation area, the completed annexation is forwarded on to the State as required by law.

NOTICE OF INTENT TO COMMENCE ANNEXATION PROCEEDINGS

To Longview City Council
Longview, WA

Date _____

The undersigned being owners of not less than ten percent in value, according to the assessed valuation for general taxation, of the property described in Exhibit "A" and for which the boundaries of are outlined on the attached map labeled Exhibit "B" attached hereto and incorporated herein by reference, hereby respectfully notify you of our intention to commence annexation proceedings. Said property is contiguous to the City of Longview.

We request a date for a meeting be set in accordance with RCW 35A.14.120 to determine if the City will accept the proposed annexation, if it will require assumption of existing indebtedness, and if it will zone said property as:

SIGNATURES	NAME PRINTED	ADDRESS	DATE SIGNED

We, the undersigned property owners, petition the City of Longview to annex the real property owned by us, which is described in Exhibit A and which boundaries are shown on a map attached as Exhibit B. The Longview City Council at a meeting held on 03/23/23 required the assumption of the proportionate share of all City indebtedness by the property annexed and zoning of the property will be established by the City prior to final adoption of the annexation.

[illegible]

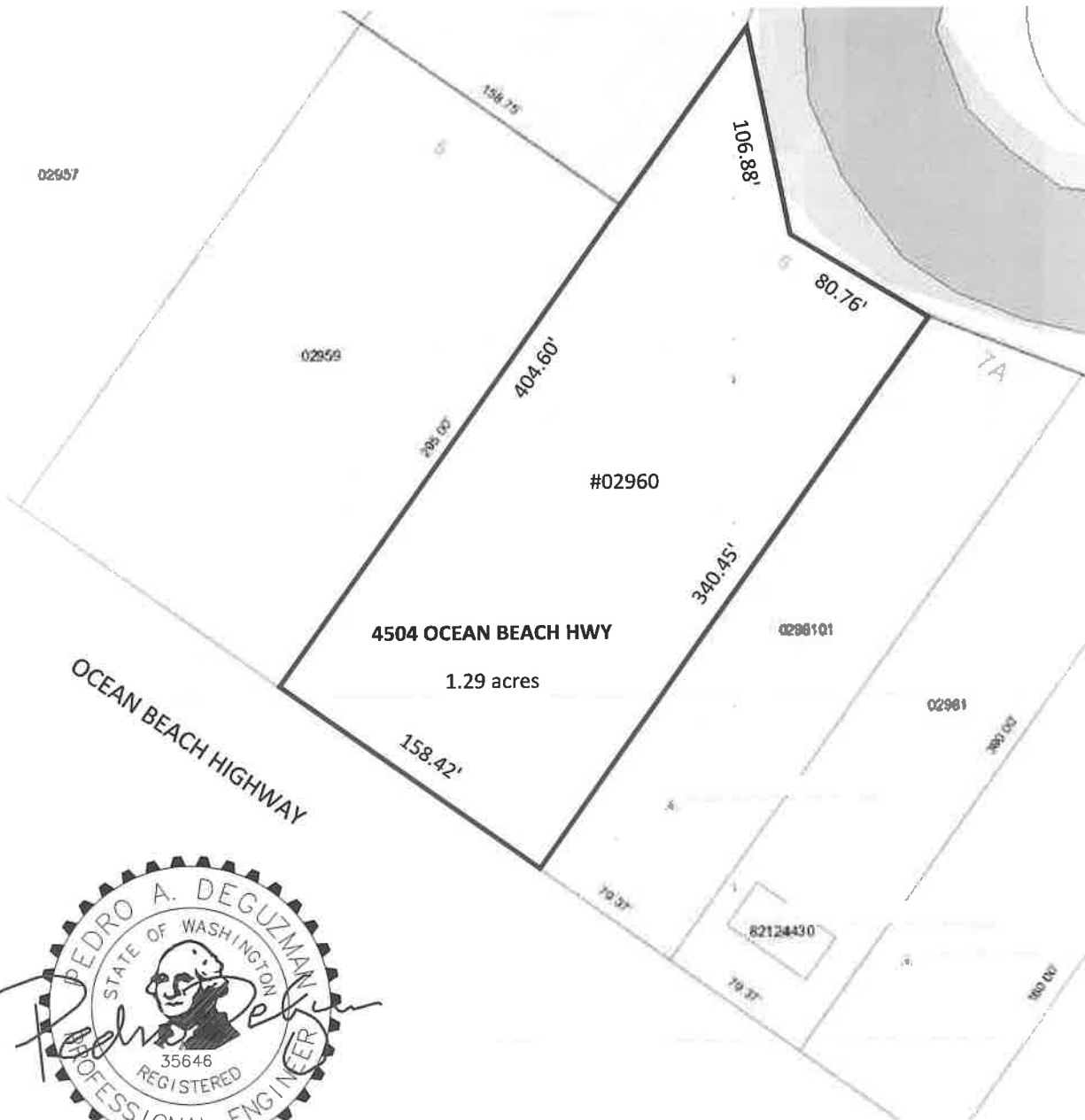
WARNING: Every Person who signs this petition with any other than his true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he is not a legal voter or signs a petition when he is otherwise not qualified to sign, or who makes here any false statements, shall be guilty of a misdemeanor.

EXHIBIT A - PROPERTY LEGAL DESCRIPTION

Lot 6, Block 32, COLUMBIA VALLEY GARDENS ADDITION TO LONGVIEW NO. 3,
according to the Plat thereof recorded in Volume 7, Page 9,
records of Cowlitz County, Washington.



EXHIBIT B - PARCEL MAP



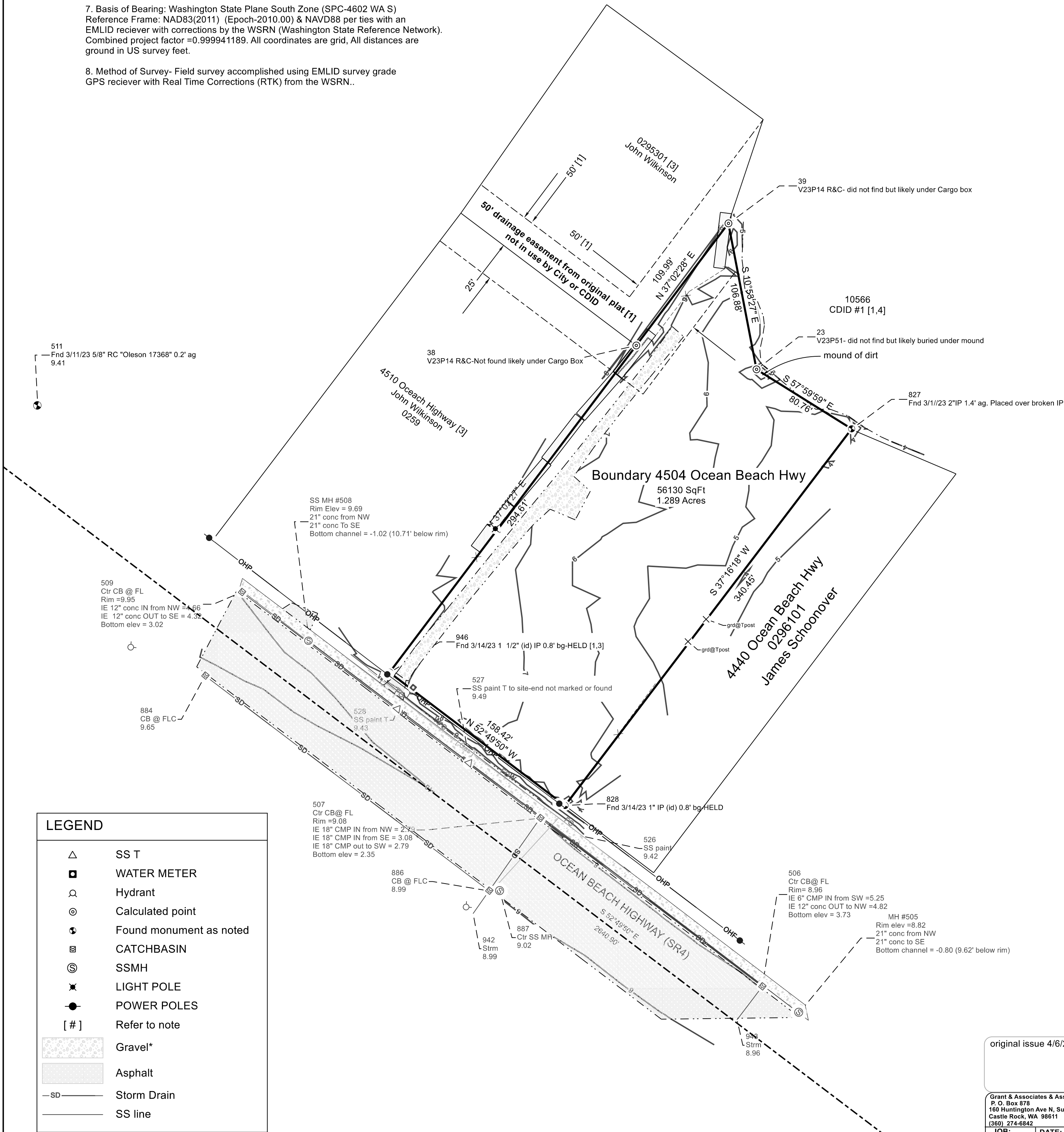
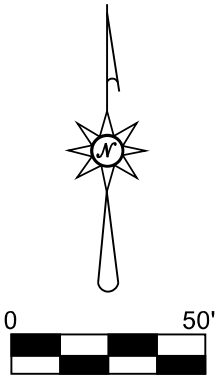
[illegible]

Page 54 of 140

EXISTING CONDITIONS FOR PARCEL 4504 OCEAN BEACH HIGHWAY
LONGVIEW, WASHINGTON 98632
PARCEL 02960
BEING LOT 6, BLOCK 32, COLUMBIA VALLEY GARDENS #3
ALL IN THE SE1/4 OF SECTION 24, TOWNSHIP 8 NORTH, RANGE 3 WEST
COWLITZ COUNTY, WASHINGTON

NOTES:

1. Refer to Plat of Columbia Valley Gardens No.3 as filed in volume 7, page 5 -9.
2. Refer to Record of Survey by C. Butler as filed in volume 23, page 51-52 under AFN 3137203.
3. Refer to Record of Survey by N. Oleson as filed in volume 23, page 14 under AFN 3130651.
4. Refer to Record of Survey by L. Gibbs as filed in volume 5, page 61 under AFN 820511027.
5. Refer to Record of Survey by P. Gustin as filed in volume 27, page 198 under AFN 3311468.
6. Refer to Commitment for Title Insurance by Stewart Title Company under commitment number 1911793 with commitment date of 12/27/2022.
7. Basis of Bearing: Washington State Plane South Zone (SPC-4602 WA S) Reference Frame: NAD83(2011) (Epoch-2010.00) & NAVD88 per ties with an EMLID reciever with corrections by the WSRN (Washington State Reference Network). Combined project factor =0.999941189. All coordinates are grid, All distances are ground in US survey feet.
8. Method of Survey- Field survey accomplished using EMLID survey grade GPS reciever with Real Time Corrections (RTK) from the WSRN..



LEGEND

- △ SS T
- WATER METER
- ⊕ Hydrant
- ⊙ Calculated point
- ⊙ Found monument as noted
- ⊕ CATCHBASIN
- ⊙ SSMH
- ✕ LIGHT POLE
- POWER POLES
- [#] Refer to note
- Gravel*
- Asphalt
- SD— Storm Drain
- SS line

original issue 4/6/2023

Grant & Associates & Associates Surveying LLC
P. O. Box 878
160 Huntington Ave N, Suite C
Castle Rock, WA 98611
(360) 274-6842
JOB: 2023.010 DATE: 4-6-2023 SCALE: 1" = 50'

NOTICE OF INTENTION TO COMMENCE ANNEXATION PROCEEDINGS

JAN 10 2022

Community Development

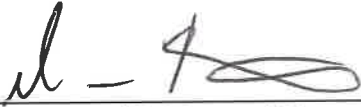
TO: THE CITY COUNCIL OF THE CITY OF LONGVIEW, WASHINGTON

The undersigned, representing the ownership of more than ten percent of the acreage of the real property for which annexation is sought, as more particularly described below, hereby gives notice to the City Council of the City of Longview, Washington, of their intent to commence annexation proceedings.

The City Council of the City of Longview is hereby requested to set a date not later than 60 days after the date this NOTICE OF INTENTION is filed with the City Clerk for a meeting with the initiating party to determine whether the city will accept, reject, or geographically modify the proposed annexation, whether it will require the simultaneous adoption of a proposed zoning regulation, and whether it will require the assumption of all or any portion of existing city indebtedness by the area sought to be annexed.

Respectfully submitted:

**Information regarding real property
for which annexation is sought:**


Signature of Initiator of Annexation
Dan Hatfield
Printed Name of Initiator of Annexation
1-10-2023
(Date)
3146 Pennsylvanian St
(Mailing address of petitioner)
Longview, WA 98632
(City, State, Zip)
360 957-2040
(Phone Number – only required for petitioner)

4504 Ocean Beach Hwy
(Street address of property)
Longview, WA 98632
02960
(Parcel Number)
Legal
1.27
(Acreage)

** List this same information for all signers representing the ownership of at least 10% of the most recent assessed valuation of the real property for which annexation is sought. Attach additional sheets, as necessary.

** Provide a location map identifying the area you are requesting to be annexed.

PROJECT NARRATIVE

PROJECT: HATFIELD COMMERCIAL
PARCEL#: 02960 (COUNTY PROPERTY ID: 3023739)
ADDRESS: 4504 Ocean Beach Highway, Longview, WA 98632

NARRATIVE SUMMARY:

Dan Hatfield proposes to redevelop a vacant 1.3 acre parcel for a new 5800 sf shop / office building and a self-storage use. New parking and landscaping improvements are proposed to meet agency requirements.

The parcel is currently within unincorporated Cowlitz County but a request for annexation into the City of Longview is proposed. Zoning will be General Commercial.

A new driveway will be proposed onto Ocean Beach Highway (SR-4). We propose to connect to City of Longview water and sanitary sewer system. A storm connection will be proposed to the City of Longview storm system. The site is not within a floodplain. There are no known wetlands or sensitive areas onsite or in the immediate vicinity.

LIST OF QUESTIONS:

Are the proposed uses allowed?

Required land use process? Is SEPA required by the City.

Duration for the land-use process?

Duration of the annexation process?

Required roadway improvements along both frontages?

Are there any traffic mitigation fees?

Are construction permits required of WSDOT for the frontage improvements?

Confirm static water pressure and fire flow available to the site.

Is stormwater typically infiltrated in this area?

Storm water development fees?

Water connection & sewer connection fees?

Current in County (based on 2022 rates)	
County Road	\$ 424.93
Fire District	\$ 323.10
Library District	\$ 89.42
Total Revenue Shift from County	\$ 837.45

If Annexed (based on 2022 rates)	
City	\$ 626.80
Revenue Shifted into City	\$ 626.80

Direct petition method—Notice to legislative body—Meeting—Assumption of indebtedness—Proposed zoning regulation—Contents of petition.

Proceedings for initiating annexation of unincorporated territory to a charter code city or noncharter code city may be commenced by the filing of a petition of property owners of the territory proposed to be annexed, in the following manner. This method of annexation shall be alternative to other methods provided in this chapter. Prior to the circulation of a petition for annexation, the initiating party or parties, who shall be the owners of not less than ten percent in value, according to the assessed valuation for general taxation of the property for which annexation is sought, shall notify the legislative body of the code city in writing of their intention to commence annexation proceedings. The legislative body shall set a date, not later than sixty days after the filing of the request, for a meeting with the initiating parties to determine whether the code city will accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed for the area to be annexed as provided for in RCW 35A.14.330 and 35A.14.340, and whether it shall require the assumption of all or of any portion of existing city indebtedness by the area to be annexed. If the legislative body requires the assumption of all or of any portion of indebtedness and/or the adoption of a proposed zoning regulation, it shall record this action in its minutes and the petition for annexation shall be so drawn as to clearly indicate these facts. Approval by the legislative body shall be a condition precedent to circulation of the petition. There shall be no appeal from the decision of the legislative body. A petition for annexation of an area contiguous to a code city may be filed with the legislative body of the municipality to which annexation is desired. It must be signed by the owners, as defined by RCW 35A.01.040(9) (a) through (d), of not less than sixty percent in value, according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That a petition for annexation of an area having at least eighty percent of the boundaries of such area contiguous with a portion of the boundaries of the code city, not including that portion of the boundary of the area proposed to be annexed that is coterminous with a portion of the boundary between two counties in this state, need be signed by only the owners of not less than fifty percent in value according to the assessed valuation for general taxation of the property for which the annexation is petitioned. Such petition shall set forth a description of the property according to government legal subdivisions or legal plats and shall be accompanied by a map which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city indebtedness by the area annexed or the adoption of a proposed zoning regulation, these facts, together with a quotation of the minute entry of such requirement, or requirements, shall also be set forth in the petition.

[1989 c 351 § 6; 1979 ex.s. c 124 § 8; 1967 ex.s. c 119 § 35A.14.120.]

NOTES:

Severability—1979 ex.s. c 124: See note following RCW 35A.14.015.

Sufficiency of petition in code city: RCW 35A.01.040.

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[RCWs > Title 43 > Chapter 43.21C > Section 43.21C.222](#)

[43.21C.220](#) << [43.21C.222](#) >> [43.21C.225](#)

[PDF](#)**RCW 43.21C.222****Annexation by city or town exempt from chapter.**

Annexation of territory by a city or town is exempted from compliance with this chapter.

[[1994 c 216 § 19.](#)]

NOTES:

Effective date—1994 c 216: See note following RCW [35.02.015](#).



Cowlitz County Assessor's Office
Emily Wilcox, Assessor

County Administration Building
207 Fourth Avenue North
Kelso, WA 98626
TEL (360) 577-3010
FAX (360) 442-7080
www.co.cowlitz.wa.us

COWLITZ COUNTY ASSESSOR
CERTIFICATE OF SUFFICIENCY

RCW 35A.01.040 & RCW 35A.14.120

I, Emily Wilcox, Cowlitz County Assessor, pursuant to RCW 35A.01.040(9), do hereby certify that I have received the **Avarre/Hatfield Annexation** petition filed with **City of Longview**. I further certify that said petition contains valid signatures of property owners of at least sixty percent (60%) of the value as assessed for the general taxation of the property for which annexation is petitioned as required by RCW 35A.14.120.

Terminal Date: April 26, 2023


Janeene Stephens Niemi, Chief Deputy for
Emily Wilcox, Cowlitz County Assessor


Date



City of Longview

Agenda Summary

ORDINANCE 3477 - AMENDING LMC 6.06.020 TO REQUIRE DOGS TO BE ON A LEASH WHEN OFF PRIVATE PROPERTY

RECOMMENDED ACTION:

MOTION TO ADOPT ORDINANCE 3477.

DATE: April 27, 2023

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Preserve and enhance neighborhoods

Address quality of place issues

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

Residents of Longview have raised concerns about encounters with dogs who are unleashed. These concerns include attacks by vicious dogs, intimidation of people by unrestrained dogs, concerns about owners not cleaning up after unrestrained dogs, and concerns about the safety of unattended dogs running into busy streets. In the interest of public safety, it is important that dogs within the City be under control by means of a leash when off the premises of the owner so that the public may be free from unwanted or unsafe interactions. The attached ordinance would amend LMC 6.06.020 to require dogs to be on a leash when off private property. The ordinance makes an exception for off-leash areas or lawful training for such herding or competitive activities and provides further, that the leash requirements do not apply to any dog while in the performance of duty as part of a law enforcement canine patrol.

RECOMMENDED ACTION:

Motion to adopt Ordinance 3477.

STAFF CONTACT:

City Attorney Jim McNamara

Attachments:

1. Ord 3477 amending LMC 6.06.020 to create a leash law

ORDINANCE NO. 3477

AN ORDINANCE OF THE CITY OF LONGVIEW, WASHINGTON AMENDING LMC 6.06.020 TO REQUIRE DOGS TO BE ON A LEASH WHEN OFF PRIVATE PROPERTY

WHEREAS, residents of Longview have raised concerns about encounters with dogs who are unleashed. These concerns include attacks by vicious dogs, intimidation of people by unrestrained dogs, concerns about owners not cleaning up after unrestrained dogs, and concerns about the safety of unattended dogs running into busy streets; and

WHEREAS, in the interest of public safety, it is important that dogs within the City be under control by means of a leash when off the premises of the owner so that the public may be free from unwanted or unsafe interactions; and

WHEREAS, the City provides an off-leash dog park at Gearhart Gardens.

NOW THEREFORE, the City Council of the City of Longview do ordain as follows:

Section 1 That Chapter 6.06.020 of the Longview Municipal Code shall be, and is hereby amended to read as follows; provided, manifest and numbering errors shall be corrected prior to publication:

6.06.020 Public nuisance – Owner/keeper responsibilities

It is a public nuisance for and unlawful for any person to permit any animals to:

- (1) Bite, cause bodily harm or severe injury to a person or persons or to damage property;
- (2) Chase or habitually or frequently run after, snap at or jump at or upon any pedestrian, any person on a bicycle, or vehicle on any public sidewalk or roadway;
- (3) Trespass, roam upon, damage, destroy or deposit excrement or other solid waste upon any public property or property of persons or private parties other than the owner/keeper of the animal;

(4) Unreasonably annoy or disturb other persons residing in the neighborhood where the animal is kept by frequent or continuous howling, barking, braying, yelping or other oral noise;

(5) Be any dog running in a pack off the premises of the owner/keeper;

(6) Be a female dog in heat running at large, or any male dog in pursuit thereof;

(7) Allow any dog to roam, stray or be away from the premises of the owner or custodian, or to be in or on any public place or property unless such dog is controlled by the owner, custodian or other competent and authorized person by means of a leash; provided, that the leash requirement of this section shall not apply to areas of the city designated as off-leash areas or to dogs which are under control while engaged in the lawful herding of livestock, lawful competition sanctioned by a nationally recognized body or a local chapter thereof, or lawful training for such herding or competitive activities; and provided further, that the leash requirements of this section shall not apply to any dog while in the performance of duty as part of a law enforcement canine patrol;

(78) Be any other vicious or dangerous animal which runs at large at any time. (Ord. 3040 § 1, 2008; Ord. 2891 § 2, 2004; Ord. 2693 § 1, 1998; Ord. 2372 § 1, 1989).

Section 2. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance and the same shall remain in full force and effect. The City of Longview hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 3. That the City of Longview City Clerk is hereby ordered and directed to cause this Ordinance to be published.

Section 4. Any act consistent with the authority and prior to the effective date of this Ordinance is hereby ratified and affirmed.

Section 5. This Ordinance shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law.

Passed by the City Council this ____ day of _____, 2023.

Approved by the Mayor this ____ day of _____, 2023.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

James J. McNamara
City Attorney

Published: _____



City of Longview

Agenda Summary

RESOLUTION 2446 - ACCEPTING THE LONGVIEW PUBLIC DEVELOPMENT AUTHORITY'S 2022 ANNUAL REPORT TO THE CITY

RECOMMENDED ACTION:

MOTION TO ADOPT RESOLUTION 2446

DATE: April 27, 2023

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Strengthen economic conditions & create new opportunities

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

LMC 2.71.220 provides that the Public Development Authority (PDA) shall file an annual report with the City Clerk and the City Council detailing its assets and liabilities, and summarizing its significant accomplishments, and projects and activities to be undertaken during the current year. The PDA has drafted and approved the attached annual report.

RECOMMENDED ACTION:

Motion to approve Resolution 2446.

STAFF CONTACT:

Kris Swanson, City Manager

Brian Magnuson, PDA Chairman

Attachments:

1. Res 2446 - 2022 PDA Annual Report
2. 2022 PDA Annual Report
3. PDA Fund Balance
4. PDA Resolution

**A RESOLUTION ACCEPTING THE LONGVIEW PUBLIC DEVELOPMENT
AUTHORITY'S 2022 ANNUAL REPORT TO THE CITY COUNCIL**

WHEREAS, the City of Longview has created the Longview Public Development Authority (PDA) for the purpose of economic development and focus on implementation of the Cowlitz County Event Center Master Plan; and

WHEREAS, LMC 2.71.220 provides that the PDA shall file an annual report with the city clerk and the city council detailing its assets and liabilities, and summarizing its significant accomplishments, and projects and activities to be undertaken during the current year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Longview as follows:

Section 1. The City Council accepts the 2022 annual report of the Longview Public Development Authority, attached to this Resolution as Exhibit A and incorporated by this reference.

PASSED by the City Council of Longview, Washington, and approved by its Mayor this 27th day of April, 2023.

Mayor

ATTEST:

City Clerk

2022 Longview Public Development Authority

Annual Report to the Longview City Council

In accordance with LMC 2.71.220, the Longview Public Development Authority makes this annual report to the Longview City Council for the year 2022.

Statement of assets and liabilities:

See attached balance sheet

Income and expenditures:

See attached balance sheet

Changes in financial position during the previous year:

See attached Income Statement

Summary of significant accomplishments:

We have a purchase and sale agreement for the 1.8 acres east of the Conference Center. The planned hotel has 88 rooms on four floors with a rooftop bar.

The hotelier has been approved by Hilton for it to be a Hampton Inn and is completing a due diligence over the next 60 days.

List of depositories used:

Heritage Bank, Longview, Washington

Projected operating budget for the current fiscal year:

See attached

A summary of the projects and activities to be undertaken during the current year:

We will be supporting the Public Facilities District with updating the 2010 Master Plan for the 48 acres at the Fairgrounds.

The feasibility studies the PDA performed in 2015 for sports, and equestrian will also be part of this process.

This process will inventory all sports, equestrian, and meeting venue opportunities within a reasonable radius to determine what the best opportunity is for our community.

The goal is to create a facility that would make our community a destination and increase room nights, meals, etc.

Longview Public Development Authority

BALANCE SHEET

As of December 31, 2022

	2022	2021
Assets:		
Cash	\$ 1,402	\$ 645
Receivables (net)		
Due from other governments	-	-
Total assets	1,402	645
Liabilities and fund balance		
Liabilities:		
Accounts payable	-	-
Total liabilities	-	-
Fund balance:		
Unreserved	1,402	645
Total fund balance	1,402	645
Total liabilities and fund balance	\$ 1,402	\$ 645

A Resolution adopting the Longview Public Development Authority’s budget for calendar year 2023; providing for an effective date of January 1, 2023.

The Board of the Longview Public Development Authority do resolve as follows:

Section 1. That the Longview Public Development Authority budget for the current calendar year of 2023, as the same now appears on file with the Secretary of the Board, and the same is hereby, in all respects, adopted and approved.

Section 2. That the following are the separate totals for revenues anticipated for the calendar year 2023:

<u>Revenues</u>	<u>2023</u>
Intergovernmental Revenues	\$25,000.00

Section 3. That the following are the separate totals for the total dollar appropriation for the calendar year 2023:

<u>Appropriation</u>	<u>2023</u>
Supplies & Services	\$25,000.00

Section 4. That the Board Secretary be, and is hereby authorized and directed to transmit to the Washington State Auditor’s Office a copy of the budget, as adopted.



City of Longview

Agenda Summary

APPROVAL OF CLAIMS

Based upon the authentication and certification of claims and demands against the city, prepared and signed by the City's auditing officer, and in full reliance thereon, it is moved and seconded as shown in the minutes of this meeting that the following vouchers/warrants are approved for payment:

FIRST HALF APRIL 2023 ACCOUNTS PAYABLE: \$1,196,061.05

Checks no. 42732 - 43059.

FIRST HALF APRIL 2023 PAYROLL:

\$7,652.70, checks no. 1689 - 1699

\$895,580.42, direct deposits

\$611,872.64, wire transfers

\$1,515,105.76 Total

STAFF CONTACT:

Lindy Kennedy, Accountant

Dana Beck, Payroll Specialist

Attachments: None



City of Longview

Agenda Summary

SET PUBLIC HEARING - AMENDMENT TO THE SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) 2023- 2028 AND RIVERCITIES TRANSIT PROGRAM OF PROJECTS (POP)

RECOMMENDED ACTION:

MOTION TO SET THE CITY COUNCIL MEETING ON MAY 25, 2023, AS THE DATE AND TIME FOR A PUBLIC HEARING TO AMEND THE 2023-2028 SIX-YEAR TIP/POP

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Improve streets and roads
Improve transportation systems.

SUMMARY STATEMENT:

State law requires that each city amend its Six-Year Transportation Improvement Program (TIP) and RiverCities Transit Program of Projects (POP) as new projects are identified and file a copy of the amended program with the Secretary of Transportation. In order to obtain federal funding, a project must appear on the TIP/POP. After adoption, the TIP/POP can be subsequently amended to include new projects and funding sources. The 2023-2028 Six-Year TIP/POP was approved by Council on June 9, 2022 by Resolution #2409; however, additional projects need to be added to the TIP/POP.

Copies of the draft TIP/POP amendment will be distributed to the city council at least one week prior to the public hearing.

STAFF CONTACT:

Ken Hash, Public Works Director

Attachments: None



City of Longview

Agenda Summary

PROJECT COMPLETION – CALIFORNIA WAY REHABILITATION

RECOMMENDED ACTION:

MOTION TO ACCEPT AS COMPLETE THE CALIFORNIA WAY REHABILITATION PROJECT

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Improve transportation systems

CITY ATTORNEY REVIEW: N/A

SUMMARY STATEMENT:

The California Way Rehabilitation project has been completed in accordance with the contract under Contract No. 22-2481-R entered into between the City of Longview and Advanced Excavating Specialists. The City Council must accept the project as complete before final contract closeout can be accomplished.

STAFF CONTACT:

Will Hoskins, Project Engineer

Attachments: None



City of Longview

Agenda Summary

AMENDMENT TO AGREEMENT FOR MANAGEMENT AND OPERATION OF THE MINT VALLEY RACQUET AND FITNESS COMPLEX

RECOMMENDED ACTION:

MOTION TO AUTHORIZE THE CITY MANAGER TO SIGN THE PROFESSIONAL SERVICES AGREEMENT FOR THE MANAGEMENT AND OPERATION OF THE MINT VALLEY RACQUET COMPLEX ON BEHALF OF THE CITY

DATE: April 27, 2023

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Address quality of place issues

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

Attached is the Professional Services Agreement with Mr. Don Harlan for the management and operation of the Mint Valley Racquet and Fitness Complex. Consistent with previous agreements, this is an extension with the term starting July 1, 2023 and ending June 30, 2024. This will be the final extension as the contractor has stated that he will no longer wishes to extend his contract and that he will pursue his interests elsewhere.

The facility provides individual and group recreation opportunities for tennis, racquet, walleyball, pickleball, and fitness for members and public as well as hosts outside tournaments, Southwest Washington high school tennis tournaments, as well as USTA junior tournaments drawing participants from as far away as Victoria BC and Idaho. Multiple USTA adult leagues use the facility throughout the year, drawing hundreds of players from the Portland - Vancouver area. Mr. Harlan has been providing these services and the overall day-to-day operations for more than 24 years for the Mint Valley Racquet Complex. Having an asset like the Mint Valley Racquet Complex not only increases the City's quality of place for those that live and work here, but it is also a major attraction for visitors to the area. Tournaments for both pickleball and tennis draw young people and adults from outside our area to the community.

The City has hired a qualified firm to assist in the development of a community needs assessment that includes a long range facility plan for the Mint Valley Golf and Racquet Complex. The City will work alongside the consultant to undergo a needs assessment to fully understand if recreation and facility needs are being met by the current provision of offerings, if there are deficiencies or gaps in programming, and where expansion of services is possible. The purpose of the assessment/study is to evaluate the golf and racquet facilities, programs and services provided, and deliver recommendations for improvements, additions, changes, priorities and strategies to address the current and future needs of the community.

Additionally, the City has recently undergone a facility assessment and the consultant will use the assessment to develop a long-range plan that will support the City and community's vision for the future. The long-range facility plan will identify shortfalls in current facilities and operations that could impair or impede the success of the complex and identify both short- and long-term actions to solve the identified deficiencies.

RECOMMENDED ACTION:

Motion to authorize the City Manager to sign the attached professional services agreement for the management and operation of the Mint Valley Racquet Complex on behalf of the City

STAFF CONTACT:

Jennifer Wills, Parks and Recreation

Attachments:

1. 2024 PSA Donald Harlan Racquet Complex Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into the date last below written between the CITY OF LONGVIEW, WASHINGTON (“CITY”) AND DONALD HARLAN (“PROFESSIONAL”)

1. SERVICES BY PROFESSIONAL

- A. **Performance of Services.** The Professional shall perform the services described in the scope of work attached hereto as Attachment A. All Services will be rendered to the best of the Professional’s ability and in a timely and professional manner in compliance with all standards and rules reasonably established by the City.

2. PAYMENT

- A. The City shall pay the Professional for such services: (Check One)
- ☐ Hourly: _____ per hour, plus actual expenses, but not more than a total of _____.
 - ☐ Fixed Sum: A total amount of: _____.
 - ☒ Other: See Services and Compensation Attachment A, for all services performed, and expenses incurred under this agreement.

3. TERM AND TERMINATION OF AGREEMENT

- A. **Term.** This Agreement shall remain in effect until June 30, 2024 as described in Attachment A unless terminated earlier in accordance with Paragraph 4.B. of this Agreement.
- B. **Rights upon Termination.** This Agreement shall remain in effect and terminated earlier in accordance with Section 4 of Attachment A.

4. GENERAL ADMINISTRATION AND MANAGEMENT

The City Manager of the City, or his/her designee, shall be the City’s representative and shall oversee and approve all services to be performed, coordinate all communications, and review and approve all invoices under this Agreement.

5. INDEMNIFICATION AND HOLD HARMLESS

- A. The Professional shall protect, defend, indemnify, and save harmless the City, its officers, employees, and agents from any and all cost, claims, judgments, or awards of damages, arising out of or in any way resulting

from the negligent acts or omission of the Professional. The Professional agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agent. For this purpose the Professional, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

- B. The City shall protect, defend, indemnify and save harmless the Professional, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts or omission of the City. The City agrees that its obligations under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the City, by mutual negotiation, hereby waives, as respects the Professional only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW
- C. The Professional will indemnify, defend, and hold the City (and its elected officials, officers, employees, successors, assigns, insurers, licensees, distributors, independent Professionals, and agents) harmless from all claims, damages, losses, and expenses (including reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) arising out of or resulting from any claim, action, or other proceeding that is based upon (a) the Professional's breach of any obligations, representations, or warranties under the Agreement, (b) the Professional's outside business activities, or (c) the infringement or misappropriation by the Professional of any foreign or United States patent, copyright, trade secret, or other proprietary right in results.

6. INSURANCE; RISK OF LOSS

The Professional shall maintain insurance that is sufficient to protect the Professional's business against all applicable risks, as set forth in Attachment B. The Professional will cause the indemnified parties, as described in Section 7 above, to be named as additional insureds on the policy required under the Agreement and shall cause its insurance to be primary to any insurance carried by the indemnified parties. The Professional will provide the City with certificates of insurance and other supporting materials as City reasonably may request to evidence Professional's continuing compliance with this Section 8. The Professional will be liable for all loss or damage, other than ordinary wear and tear, to the City's property in the Professional's possession or control that is caused by the Professional. In the event of any such loss or damage, the Professional will pay the City the full current

replacement cost of such equipment or property within thirty (30) days after its loss or damage.

7. INDEPENDENT PROFESSIONAL

- A. Nature of Relationship.** The Professional shall be and act as an independent Professional (and not as the employee, agent, or representative of the City) in the performance of the services for the City. This Agreement shall not be interpreted or construed as creating or evidencing an association, joint venture, partnership, or franchise relationship among the parties or as imposing any partnership, franchise, obligation, or liability on any party. The Professional will not represent himself/herself as an employee of the City. The Professional shall not be entitled to, and shall not attempt to, create or assume any obligation, express or implied, on behalf of the City. So long as the Professional is able to adequately perform all of the Professional's obligations under the Agreement in a skilled and workmanlike manner. Since the Professional will not be an employee of the City, the Professional will not be entitled to any of the benefits that the City may make available to its employees, such as but not limited to vacation leave, sick leave, or insurance programs, including group health insurance or retirement benefits; nor shall the Professional permit or cause any of the Professional's employees, agents, or subcontractors to perform any services under the Agreement in such a way as to cause or enable them to become, or claim to have become, employees, common law or otherwise, of the City. In addition, the Professional acknowledges that as an independent contractor, he/she/it and or his/her/its agents, servants, or employees are not eligible to recover worker's compensation benefits from or through the City in the event of injury.
- B. Professional Responsible for Business License, Taxes and Records.** The Professional shall obtain a Longview Business License prior to commencing any work under this Agreement. The Professional will be solely responsible for and will file, on a timely basis, all tax returns and payment required to be filed with or made to any federal, state, or local tax authority with respect to the Professional's performance of the services and receipt of fees under the Agreement. The Professional will be solely responsible for and must maintain adequate records of expenses incurred in the course of performing the services under the Agreement. No part of the Professional's payment will be subject to withholding by the City for the payment of any social security, federal, state or any other employee payroll taxes; nor shall the City be obligated to make any such withholdings and/or payments on behalf of any employee, subcontractor, supplier, or other person working for or engaged by the Professional to perform the Professional's obligations under the Agreement. The City will regularly report amounts paid to the Professional by filing Form 1099-MISC with the Internal Revenue Service as required by law.

8. SUBLETTING OR ASSIGNING AGREEMENT

Neither the City nor the Professional shall assign, transfer, or encumber any rights, obligations, duties, or interests accruing or arising from this Agreement without the express prior written consent of the other. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the parties and their successors and assigns.

9. FUTURE SUPPORT

The City makes no commitment and assumes no obligations for the support of the Professional's activities except as set for in this Agreement.

10. GENERAL PROVISIONS

- A. **Governing Law.** The Agreement will be governed by the laws of the State of Washington and its choice of law rules. The Professional irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in Cowlitz County, Washington or the applicable federal court for such County, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.
- B. **Severability.** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The City and the Professional agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- C. **Nonwaiver.** Any failure by the City to enforce strict performance of any provision of the Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of the Agreement.
- D. **City Marks.** The Professional will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent.
- E. **Notices.** All notices and other communications required under the Agreement must be in writing, and must be given by registered or certified mail, postage prepaid, or delivered by hand to the party to whom the communication is to be given, at its address as follows:

CITY:

Jennifer Wills, Director of Parks and Recreation
2920 Douglas Street
Longview, WA 98632
360-442-5405
Jenniferw@mylongivew.com

PROFESSIONAL:

Donnie Harlan
4004 Pennsylvania Street
Longview, WA 98632
360-636-4770
donnie@mintvalley.net

- F. **Legal Fees/Venue.** In the event either of the Parties defaults on the performance of any terms of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each Party shall pay all its own attorneys' fees, costs and expenses. The venue for any dispute related to this Agreement shall be Cowlitz County, Washington.
- G. **Counterparts.** The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.
- H. **Captions.** The captions in this Agreement are for convenience only and do not in any way limit or amplify particular provisions.

11. EXTENT OF AGREEMENT/MODIFICATION

This Agreement together with attachments or addenda, represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified, or added to only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of _____, 2023.

PROFESSIONAL

CITY OF LONGVIEW

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Address: _____

Approved as to form:

City/State/ZIP: _____

By: _____
City Attorney

Tax ID# _____

**ATTACHMENT A
SERVICES & COMPENSATION**

1. GENERAL PROVISIONS

1.01 The City hereby grants to the Professional the concession of Complex commencing the 1st day of July, 2023, and terminating on the 30th day of June, 2024.

1.02 The Professional shall, during the term of this Agreement, devote his time, skill and attention to promote the total operation of the Complex, including the activities of junior tennis, complete lesson program, men's and women's leagues and activities, tournaments, clinics and exhibitions, fitness programs, as well as any other matters of public recreation, which the Professional and the Director mutually agree will be beneficial in promoting racquet sports and fitness activities. Professional shall conduct no operations or activities at the Complex other than as are set forth herein.

2. OBLIGATIONS OF PROFESSIONAL

2.01 Professional shall operate such concession every day, including Sundays and holidays, with the exception of Christmas day, and during such hours as are approved by the Director. Closure is permitted only with the approval of the Director or his or her designees. The Professional shall not be absent from the premises for a period of more than eight (8) consecutive days without first notifying the Director of said absence. Failure to notify the Director of such absence shall not constitute grounds for terminating this Agreement unless failures occur more than twice in any calendar year. During such time of absence, suitable personnel shall be placed in charge of the Professional's duties.

2.02 The Professional shall provide, at his own expense, such other employees as he may deem necessary, to aid and assist him in the performance of his duties. The Professional shall provide adequate supervision over all personnel employed by him and the services of such employees shall be available to the public at all times while the Complex is open. Any complaint by the public about employees shall be subject to review by the Director.

2.03 Professional's personnel shall at all times while on duty be clean and neatly groomed, courteous, efficient, and attired appropriately for the Complex.

2.04 Professional shall at all times maintain a high standard of services to the public, to the satisfaction of the Director. Upon written notice by the Director that the conduct of any of Professional's personnel is detrimental to the best interests of the public, or to City, Professional shall, within five (5) business days thereafter, furnish evidence satisfactory to the Director of correction of such deficiency.

2.05 Professional shall staff the Complex with personnel to conduct the operations authorized hereunder, in sufficient number to meet public demand for prompt, courteous, and efficient service. Professional shall adjust the number of his assigned personnel, or hours

of operation, as mutually agreed upon with the Director. Professional shall, in writing, inform the Director of the full names of each of his personnel assigned to the Professional's staff in January and July each year.

2.06 Professional shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, disability, marital status or national origin, in violation of the law. Professional shall take affirmative action, as necessary, to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, age, national origin, disability, or marital status, in violation of the law. Such action shall include but not be limited to employment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Professional shall comply with all applicable federal, state, and City statutes, ordinances, regulations, directives, and laws.

2.07 Professional shall not discriminate in the provision of services because of color, race, creed, national origin, religion, sex, sexual orientation, age, or physical or mental handicap in accordance with Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and all other applicable laws and regulations requiring no discrimination. Professional shall also comply with Federal, State, and City Equal Employment Opportunity requirements.

2.08 Professional shall comply with the Americans with Disabilities Act as it relates to all operations under his jurisdiction including but not limited to court usage, instructional lessons, tournament play, and retail sales. It is the responsibility of Professional to make reasonable accommodations for qualified individuals with disabilities. Reasonable accommodations may include but not be limited to modifications to rules and equipment, pairing or grouping of individuals for reservations, co-participation between facility users and/or staff and patrons, instructional techniques, and consideration of any other means of allowing for full participation of an individual.

2.09 The parties hereto mutually pledge to work together in a spirit of cooperation and to negotiate in all areas and among all parties involved in order to develop the Complex to its full potential and to give the best service to the patrons of this facility. The City and Professional shall jointly negotiate, prepare and participate in a joint marketing and promotion program. Examples of this joint marketing and promotion include lessons offered under the auspices of City's recreation program, placing City's and Professional's program materials in the Complex and City offices, and allowing the Professional a quarter page advertisement in the recreation programs guides to publicize racquet and fitness opportunities at the Complex. Professional shall, as a part of this Agreement, work with the Director and City officials, in promoting racquet sports and the Complex. Professional shall use his best efforts to develop and maintain cooperative working relationships with the aforesaid persons and other interested organizations in order to provide the best programs and services possible for the public. Professional and City staff will discuss opportunities to use the Complex as a location for City recreation classes and activities at mutually beneficial times.

2.10 The Professional shall provide, and be responsible for, the following duties:

- A. The Professional shall be responsible for the enforcement of all existing rules and regulations governing the use of the Complex, a copy of which is attached hereto.
- B. The Professional shall be under the direct responsibility of and accountable to the Director who shall together with the Professional review and establish hours of operation, and pricing of fees, membership dues, and lessons so as to remain competitive with the racquet sports and fitness facilities market.
- C. The Professional shall retain and be fully responsible for the collection of all revenues associated with the operation of the Complex. Professional shall keep complete records of accounts with regard to all moneys collected hereunder and make said reports available to the Director in an annual report and audit.
- D. The Professional shall provide the City with a tri-annually use report due May 31, September 30, and January 30. The Professional and Director will work together to determine the reporting requirements to be provided – and the report will include data such as memberships (fitness and racquet), court use, tournament use, numbers of individuals, lessons, and events to have a better understanding of the operation of the facility.
- E. The Professional will procure, at his expense, all janitorial supplies including paper products, cleansers, light bulbs, etc., and will be responsible for all janitorial functions within the Complex and maintain the same in a safe, neat, sanitary, and orderly condition in compliance with City's direction, any and all applicable present and future laws, and general rules and regulations of any governmental authority in force now or at any time during the term of this Agreement relating to sanitation, public health, safety, or welfare. Professional shall remedy without delay any defective, dangerous, or unsanitary conditions. Professional shall correct such situation within a reasonable time, or City may, at its option, do so at Professional's sole cost and expense, payable upon demand, provided that City shall have first provided reasonable notice of such condition to Professional, and Professional shall have failed or refused to correct such situation within a reasonable period of time. Professional is not responsible for the replacement of plumbing, the heating and air-conditioning plant, exterior painting of the Complex, floor coverings, and other capital repairs related to the Complex.
- F. The Director may, at any time, without notice, enter the Complex to determine if repairs, housekeeping and maintenance satisfactory to City are being performed. If it is determined that said housekeeping or maintenance is not satisfactory, City shall so notify Professional in writing. If said housekeeping or maintenance is not performed by Professional within thirty (30) day after receipt of written notice, City, or its agents, shall have the right to enter the Complex and perform the maintenance therefor. However, maintenance required to avoid substantial harm to the building, its contents or other persons, or health and safety items shall be

performed immediately. The reasonable cost thereof shall be borne by Professional payable on demand. The City shall also be held accountable for responding to facility operations needs within thirty (30) days written notice so as not to detract from the public's enjoyment of the complex nor hamper the Professional's ability to provide services.

- G. Professional shall conduct his operations in a first-class, businesslike, efficient, courteous, and accommodating manner. The Director shall have the right to make reasonable objections to the quality and character of articles sold and services offered to the public and the appearance and condition of the premises utilized by the Professional for its operations. The Director also reserves the right to prohibit the sale or rental of any items of merchandise which are deemed objectionable or completely unrelated to a racquet sports and fitness complex. Professional shall promptly meet and confer with the Director regarding any such objectionable items or practice upon written notification by the Director.
- H. The Professional shall provide to the City a full financial disclosure according to generally accepted accounting principles of his entire operation at the Complex by April 30th of each year, and shall make available his books and records for audit at a mutually convenient time and place. If at any time the Director or the City's Finance Director deems Professional accounting practices or procedures inadequate or not in accordance with general accepted accounting principles, Professional shall make requested adjustments to its practices and procedures. Any other internally prepared financial or statistical reports reasonably requested by the Director from time to time during the term hereof shall be provided by Professional, without cost to City, within a reasonable period of time. To the extent permitted by law, City shall keep the financial reports and records referred to above confidential. Professional shall retain all its books and records of account for the term hereof for not less than two (2) calendar years following the last day of such term. Such books and records of account shall show all Professional's gross receipts, commissions, and other income derived from his operations, pursuant to this Agreement, all deductions therefrom, supporting documents, and all other information required by this Agreement. At any time within two (2) calendar years following the last day of the term hereof, upon written notification to Professional, City may, at its sole cost and expense, inspect, audit, and copy Professional's books, records of account, and supporting documentation relating to Professional's operations at the Complex.
- I. Professional shall, at his sole cost and expense, obtain and maintain in full force and effect throughout the term of this Agreement any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, for the conduct of Professional's operations hereunder.

2.11 Professional accepts the Complex in the condition existing immediately prior to this agreement. City shall repair or replace any part of the Complex damaged or destroyed by

casualty. Professional shall, at his sole cost and expense, equip and maintain such facilities with all such appliances and equipment as may be necessary or convenient to Professional's operations hereunder. City shall have no obligation to equip or improve such facilities. However, all equipment proposed to be installed or otherwise provided by Professional shall be subject to the inspection and approval of the Director. City shall permit Professional to use whatever City owned equipment, if any, that City may subsequently place at such facility being in proper working order. Any such equipment used by Professional shall be taken "as is", inventoried, repaired or renovated, if necessary, at the sole expense of Professional and returned to City at the end of the term hereof. Professional shall at his sole cost and expense, perform proper and timely maintenance. Professional shall make no refurbishment or alterations to the Complex, whether in whole or in part, nor construct additional improvements upon the said premises without the prior written approval of the Director. Any such work shall be at Professional's sole cost and expense. Any such improvements shall be the property of the Professional during the term of this Agreement. Upon termination of this Agreement, City may, at its option, require removal by Professional, at Professional's sole cost, of any or all Professional-made improvements, including, but not limited to, trade fixtures, furniture, furnishings and equipment installed by Professional. Professional may have sixty (60) days to remove such furniture, furnishing, and equipment. Professional shall not encumber, mortgage or transfer any property of City, and shall not permit any condition to exist which would presently, or upon the passage of time, create any lien or encumbrance on any City property, by or through Professional. Professional shall be permitted to remove, upon expiration or earlier termination of this Agreement, all personal property owned by Professional. All injury or damage to City property caused by such removal shall be repaired at Professional's sole cost and expense. Professional shall remove all such personal property within three (3) calendar weeks from such date.

Should Professional fail to remove or dispose of such property, City may, at its election, consider such property abandoned and may dispose of same at Professional's expense or after ninety (90) days declare the personal property of Professional's to be City property.

2.12 The City and Professional shall jointly make and maintain an on-going inventory list of all city owned property situated in the complex, and Professional shall agree thereto and accept the possession thereof. Said inventory list shall be preserved and maintained. Upon the termination of this Agreement, Professional shall surrender the premises, equipment, goods and merchandise not the personal property of the Professional, in good order and repair (except for reasonable wear and tear), together with funds representing the value of all unearned membership payments and/or prepaid tennis or racquetball court use fees. The inventory prepared pursuant to this section shall be consulted and compared with the surrender of items to the City as provided. Any deficiency in value of merchandise held for resale shall be resolved by payment as outlined in Section 3.08.

3. LEASE PAYMENTS AND REVENUE SHARING

LEASE PAYMENTS

Effective 07.01.2023 – 6.30.2024

Lease payment of \$250/month for 6 months beginning 01-01-2023 and continuing through 6-30-2023 due to the City of Longview by or before the last day of each month.

4. PROVISIONS FOR EXTENSION, AMENDMENT, TERMINATION

4.01 Sixty (60) days or more prior to the expiration of this Agreement, the City may, in its sole discretion, offer to the Professional an extension of this Agreement of six (6) months commencing on the anniversary date of this Agreement. No more than two extensions may be offered under this Agreement.

The Professional acknowledges that such extension of this Agreement is solely within the discretion of the City and that the Professional has no right to such an extension unless offered by the City. Any such extension shall be evidenced by a written Agreement between the parties subject to such terms and conditions as may then be agreeable to the City and the Professional.

Upon the expiration of this Agreement at the end of the term set forth above, and provided that the City consents, Professional may continue to provide services on a month-to-month basis (not to exceed ninety (90) days).

4.02 If the Professional should fail or neglect for a period of thirty (30) consecutive days or more to perform the obligations of the Professional as set forth in this Agreement or any significant portion of such obligations (as reasonably determined by the City) and after having been notified in writing by the City of the failure or neglect in performance with reasonable time to cure after the notice, this Agreement may be terminated by the City on sixty (60) days written notice to the Professional. The Director shall be authorized to terminate this Agreement, without serving such notice of default to Professional, upon the occurrence of any of the following events:

1. The failure of Professional to maintain in full force and effect all forms of insurance required hereunder.
2. A major breach of service after notice of continued violation.
3. Significant health or safety violations which cause or may cause facility closure unless such violation is out of Professional's control.
4. Conviction of a felony criminal offense, or a misdemeanor offense involving theft, sex, or illegal drugs.
5. Disability which incapacitates the Professional for an aggregate of six months.
6. Abandonment of or absence from the premises by the Professional without the approval of the City beyond that which is allowed in Section 2.01.

4.03 If, in the event Professional breaches this Agreement, and the Director terminates this Agreement pursuant to this Section, the Director may take immediate possession of the

facility and operate the Complex in any manner deemed appropriate by the Director for City's benefit and the public's best interest, without any liability therefore to Professional.

4.04 If the City should fail or neglect for a period of thirty (30) consecutive days or more to perform the obligations of the City as set forth in this Agreement or any significant portion of such obligations (as reasonably determined by the Professional) and after having been notified in writing by the Professional of the failure or neglect in performance with reasonable time to cure after the notice, this Agreement may be terminated by the Professional on sixty (60) days written notice to the City.

4.05 Upon the death of the Professional or upon the filing of a voluntary or involuntary petition in bankruptcy, and thereafter the Professional's adjudication of bankruptcy, or if the Court shall take jurisdiction of the Professional and his assets pursuant to proceedings under any Federal Reorganization Act, or any receiver of the Professional's assets shall be appointed or if the Professional shall be divested of his interest in the Agreement by other operation of law, or the making of any general assignment for the benefit of creditors, or upon the occurrence of any act which operates to deprive the Professional permanently of the rights, powers and privileges necessary for the proper conduct and operation of the concession granted herein, or upon the abandonment and discontinuance of the operation of the business described herein, the City may, at its election, cancel this Agreement and remove the Professional and all of his employees from the premises and the Professional hereby waives any notice of such election, or demand for payment of the amounts agreed upon as the same become due, or the performance of any covenants herein; provided, however, that the failure of the City to declare this Agreement and concession terminated upon the default of the Professional or any of the reasons set out above shall not bar the right of the City to declare this Agreement null and void and at an end upon any subsequent violation of the terms of this Agreement by the Professional.

4.06 Upon expiration of the term hereof, whether at the end of the original term of this Agreement, an extension hereof, or prior thereto by reason of default on the part of the Professional, the Professional may remove all of his personal property and furniture and equipment installed by him, except for items affixed to the premises, and shall deliver the premises to the City in as good condition as at the beginning of the term except for reasonable wear and tear. Upon expiration or termination hereof, however, the Professional shall be allowed a period of up to three (3) additional calendar weeks to remove all of his merchandise and equipment from the Complex, and to conduct sales thereof during said period of time. The Professional during said period, however, shall cooperate with the City and with any new Professional employed by the City to effect a smooth transition in connection with operation of the concession of the Complex.

4.07 Either City or Professional may terminate this Agreement at no cost at any time upon 90 days or more written notice to the other. City may terminate Agreement upon less than 90 days written notice, but in such case must compensate Professional for the balance of time up to 90 days based upon recent average annual net income derived by Professional under Agreement. (For example, if the Agreement is terminated by City upon 30 days written notice, City shall compensate Professional for 60 days of average annual net income.)

Professional may terminate Agreement upon less than 90 days written notice, but in such case must compensate City for its reasonable costs of soliciting and recruiting a new racquet sports and fitness services provider at Complex.

4.08 Upon the termination of this Agreement, the City shall purchase, and the Professional may elect to sell to the City some or all of the pro shop inventory of stock- in-trade and merchandise, and equipment of the Professional's at prices to be determined as follows:

1. General pro shop inventory: The lesser of Professional's cost or fair market valued computed on the basis of wholesale prices. Any disagreements shall be settled by a third party, whose service is mutually agreeable to both parties.
2. Equipment owned by Professional: The fair market value is to be determined by independent appraisal.

Payment of the purchase price established thereunder shall be made in cash within forty-five (45) days following the effective date of termination.

5. FORCE MAJEURE

5.01 Neither City nor Professional shall be deemed in violation of this Agreement if they are prevented from performing any of their obligations hereunder by reason of strike, boycott, labor dispute, embargo or shortage of energy or materials. Neither City nor Professional shall be deemed in violation of this Agreement if either is prevented from performing any of its obligations hereunder by reason of acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riot, rebellion, sabotage, or any other circumstances for which it is not responsible or which are not reasonably within its control.

ATTACHMENT "B"

INSURANCE REQUIREMENTS

The Professional shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Professional, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be paid by the Professional. Insurance shall meet or exceed the following unless otherwise approved by the City.

A. Minimum Insurance

1. Commercial General Liability coverage with limits not less than \$1,000,000 per occurrence /\$2,000,000 annual aggregate,
2. Stop/Gap/Employers Liability coverage with limits not less than \$1,000,000 per accident/disease,

3. Business Automobile Liability coverage with limits not less than \$1,000,000 per accident for any auto,
4. Workers' Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.

B. Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City.

C. Other Provisions.

Commercial General Liability policies shall be endorsed to:

1. Include the City, its officials, employees, and volunteers as insureds,
2. Provide that such insurance shall be primary as respects any insurance or self-insurance maintained by the City,
3. Each insurance policy shall provide that coverage shall not be canceled except after thirty (30) days' written notice has been given to the City.

D. Acceptability of Insurers

Insurance shall be placed with insurers with a rating acceptable to the City.

E. Verification of Coverage

Professional shall furnish the City with certificates of insurance required by this clause. The certificates are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. Subcontractors

Professional shall require subcontractors to provide coverage that complies with the requirements stated herein.



City of Longview

Agenda Summary

ORDINANCE 3481 - GRANTING A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF LONGVIEW

RECOMMENDED ACTION:

MOTION TO ADOPT ORDINANCE 3481.

DATE: April 27, 2023

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Strengthen economic conditions & create new opportunities

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

In 2013, by Ordinance 3243, the City Council granted a ten year franchise to install fiber optic cables in the City right of way to LS Networks. The intent of the ordinance is to renew that ordinance, with an addition of the following clarifying language: "The franchisee is subject to LMC 12.08.130 Street Cuts - New Streets - Procedures, Fees, and Exceptions. As such, Excavation in City Streets within Five Years of Street Paving Prohibited. No permit shall be issued for any openings, cuts or excavations in any city street for a period of five years following the date such street was paved or repaved, except as provided in this section."

RECOMMENDED ACTION:

Motion to approve Ordinance No. 3481.

STAFF CONTACT:

City Attorney Jim McNamara

Attachments:

1. LS Networks Franchise 2023 renewal

ORDINANCE NO. 3481

AN ORDINANCE OF THE CITY OF LONGVIEW GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF LONGVIEW

WHEREAS, Article 11, Section 11, of the Washington State Constitution provides that the City of Longview "may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws;" and

WHEREAS, the Longview City Council, by Section 35A.11.020 of the Revised Code of Washington, through Section 35A.13.230 of the Revised Code of Washington, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto; and

WHEREAS, Section 35A.47.040 of the Revised Code of Washington authorizes the City to grant, permit, and regulate non-exclusive franchises for the use of public ways; and

WHEREAS, LightSpeed Networks Inc., dba LS Networks, an Oregon Corporation, hereinafter referred to as Franchisee has applied to the City of Longview, Washington for a non-exclusive franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair fiber optic facilities in the City of Longview; and

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers, recognizes and provides state and local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis; and

WHEREAS, Washington's Telecommunications Services Act, 2000 Wash. Laws, Chapter 83, as amended, RCW Chapter 35.99, relating to telecommunications providers recognizes and provides Washington cities authority to require franchises and use permits for constructing, installing, operating, maintaining, repairing, or removing telecommunication facilities in public rights-of-way; and

WHEREAS, a franchise is a legislatively approved master permit granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities subject to requirements that a franchisee must also obtain separate use permits from the City for use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

WHEREAS, a franchise does not include, and, is not a substitute for any other permit, agreement, or other authorization required by the City, including, without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans; and

WHEREAS, the grant of a non-exclusive franchise requires submission to the City Attorney, an affirmative vote of at least a majority of the entire City Council and publication at least once in newspaper of general circulation; and

WHEREAS, the City Council finds that the franchise terms and conditions contained in this ordinance are in the public interest;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF LONGVIEW, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Longview Municipal Code unless inconsistent herewith.

"Cable Television Service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"City" means the City of Longview, Washington, its agencies, departments, and divisions.

"City Property" means and includes all real property owned by the City, other than public ways, including without limitation, City parks, and all property owned in fee by the City.

"Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

"Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

"Dark Fiber" means properly functioning optical cable which is not used or available for use by Franchisee or the general public.

"Effective Date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from accidents or natural consequences, such as storms, earthquakes, riots or wars.

"Existing" means in actual physical being upon the effective date of this Franchise.

"Facilities" means all of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver telecommunications services, including but not limited to poles with crossarms, poles without crossarms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services.

"Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.

"Franchisee" means the person to whom this Franchise is granted by the Council pursuant to this Franchise and the lawful successor, transferee or assignee of said person subject to such conditions as defined herein.

"Governmental Use" means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means both internally and externally within or between their various agencies, departments, and divisions.

"Gross Revenue" means any and all revenue, of any kind, nature, or form, without deduction for expense in the City and as further defined in Section 16. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or proration of costs, of any kind whatsoever, including, without limitation, overhead or labor costs, which would have otherwise been incurred.

"Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Optical Cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

"Overhead Facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means natural person, joint venture, joint stock association or company, partnership, firm, association, club, company, corporation, business, trust, or organization.

"Personal Wireless Services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

"Public Street" means any highway, street, alley or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes.

"Public Way" means and includes all public streets, utility easements, and other rights-of-way, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such public streets, utility easements, or other rights-of-way for telecommunications facilities. "Public way" does not include City property; State highways; land dedicated for roads, streets, and not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the public way; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way that are not open for motor vehicle use.

"Street Tree" means any tree located in, or that portion over-hanging, any public way and any tree planted on private property near a public way at the direction of the City.

"Telecommunications Service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public.

"Telecommunications Service" excludes the over-the-air transmission of broadcast television or broadcast radio signals.

"State" means the State of Washington, its agencies, departments, and governmental subdivisions, and all agencies, departments, and divisions of its agencies, departments, and governmental subdivisions.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

"Utility Poles" means poles, crossarms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

Section 2. Franchise.

- A. The City grants to Franchisee, subject to the terms and conditions of this Franchise, a non-exclusive franchise to enter, occupy, and use public ways for constructing, installing, operating, maintaining, repairing, and removing wireline facilities necessary to provide telecommunications services. Except as expressly provided otherwise in

subsections 4(E)(1)-(4), Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

- B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing wireless communication facilities.
- C. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property.
- D. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.
- E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.
- F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.
- G. Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.
- H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.
- I. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Franchisee's facilities.
- J. Nothing in this Franchise grants authority to Franchisee to provide or offer cable television service.
- K. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.

- L. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

M. Nothing in this Franchise authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that party's permission.

Section 3. Term. Authorization granted under this Franchise shall be for a period of ten (10) years from the effective date of this Franchise.

- A. Renewal. If Franchisee desires to renew its franchise for an additional term, it shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current franchise, give written notice to the City requesting renewal.
- B. Within sixty (60) days after receiving a written renewal request, the City Administration shall make a written recommendation to the Longview City Council to grant or deny the franchise in whole or in part. Within sixty (60) days after receipt of the recommendation, the City Council shall conduct a public hearing and make a decision. If the renewal request is denied, the written determination shall include the reason(s) for non-renewal. The City Council may continue consideration of the request, as necessary. The decision to grant or deny a renewal request shall be based upon the following standards:
- (1) The continuing capacity of the public ways to accommodate the Franchisee's existing facilities;
 - (2) Franchisee's compliance with the requirements of the franchise agreement;
 - (3) Applicable federal, state and local telecommunications laws, rules and policies; and
 - (4) Such other factors as may demonstrate that the continued grant to use the public ways will serve the community interest.

Section 4. Location of Facilities.

- A. Franchisee must place its facilities underground except as otherwise expressly provided herein. Subject to the terms and conditions of this Franchise, Franchisee may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead facilities if approved by the owner of the utility poles. All other facilities, including, without limitation, facilities required to operate or maintain such optical cable and optical cable housing, and splicing connections must be underground facilities if they are located in a public way.

- B. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons authorized to enter, occupy, or use public ways or City property. Whenever new facilities will exhaust

the capacity of a public way to reasonably accommodate future users or facilities, the Franchisee shall provide nondiscriminatory access to its facilities to future users and facilities.

- C. Franchisee shall not impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.
- D. Franchisee shall provide the City with information in such form requested by the City which accurately reflects the horizontal and vertical location and configuration of all of Franchisee's facilities. Franchisee shall provide the City with updated information annually or upon request by the City.
- E. Franchisee shall relocate its facilities at the request of the City when there is construction, alteration, repair or improvement of a public way. Franchisee shall complete the relocation by the date specified by the City, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation cannot be completed by the dates specified, using best efforts and meeting safety and service requirements. Franchisee shall relocate its facilities at its expense except:
 - (1) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.
 - (2) Where the Franchisee has an ownership share of the existing utility poles upon which its optical cable and optical cable housing is located as overhead facilities, the additional incremental cost of underground to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City if it required the underground relocation.
 - (3) Where the City requests relocation of underground facilities solely for aesthetic purposes, the cost of relocation shall be paid by the City; provided, however, in no event shall a request by the City to relocate overhead facilities to underground be considered to be made for aesthetic purposes. Franchisee is authorized to place optical cable and optical cable housing on existing utility poles as overhead facilities only as an exception to pre-existing City policies which require undergrounding, and the cost of relocating overhead facilities to underground shall be paid by the Franchisee except as provided in Section 4(E)(2).
 - (4) Where the construction, alteration, repair or improvement of a public way is primarily for private benefit, the Franchisee may seek reimbursement from the private party or parties for the cost of relocation in the same proportion as their contribution to the costs of the project; provided, however, in no event shall the City be considered a private party for purposes of seeking reimbursement under this section.

Franchisee shall relocate its facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

Section 5. Pole, Structures and Property Owned by Others. Franchisee must obtain written approval from the owners of utility poles, structures and property not owned by Franchisee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by third parties for any reason whatsoever. The installation of facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Franchisee to construct, install, operate, maintain, and repair Franchisee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

Section 6. Construction and Installation Requirements.

- A. The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City will have the full authority permitted by applicable law to enforce compliance with these technical standards.
- B. All installations of facilities will be durable and installed in accordance with good engineering, construction, and installation practices.
- C. All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.
- D. The plans shall conform to all federal, state, local, and industry codes, rules, regulations, and standards. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.
- E. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.

- F. Before constructing or installing facilities, Franchisee shall provide and maintain a restoration bond written by a corporate surety acceptable to the City in an amount equal to at least one hundred percent of the estimated cost of removing Franchisee's facilities and restoring public ways and other property to as good a condition as existed prior to construction or installation of facilities. Each such bond shall remain in full force and effect until at least sixty (60) days after completion of construction or installation, and shall warrant all restoration work for a period of one year following completion.

Section 7. Coordination of Construction and Installation Activities and Other Work.

- A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the public ways at least annually or as determined by the City.
- B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.
- C. At least twenty-four (24) hours prior to entering a public way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Franchisee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.
- D. Franchisee shall make available and accept the co-location of property of others within trenches excavated or used by Franchisee in the public ways provided the costs of the work are fairly allocated between the parties.
- E. By February 1 of each year, Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property.
- F. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the public way to be opened. When notice has been given, Franchisee may only construct or install facilities during such period that the City has opened the public way for construction or installation.
- G. In the event of an unexpected repair or emergency, Franchisee may commence such repair and emergency response work as required under the circumstances, provided Franchisee shall notify the City as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

- H. The franchisee is subject to LMC 12.08.130 Street Cuts - New Streets - Procedures, Fees, and Exceptions. As such, Excavation in City Streets within Five Years of Street Paving Prohibited. No permit shall be issued for any openings, cuts or excavations in any city street for a period of five years following the date such street was paved or repaved, except as provided in this section.

Section 8. Temporary Removal, Adjustment or Alteration of Facilities.

- A. Franchisee shall temporarily remove, adjust or alter the position of its facilities at its cost at the request of the City for public projects, events, or other public operations or purposes.
- B. If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:
 - (1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;
 - (2) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, in the sole discretion of the City;
 - (3) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and
 - (4) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.
- C. The City may temporarily remove, adjust or alter the position of Franchisee's facilities as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.

- D. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

Section 9. Safety and Maintenance Requirements.

- A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.
- B. Franchisee, in accordance with, applicable federal (Occupational Safety and Health Administration) , state (Washington Industrial Safety and Health Act), and local (City Safety Policy) safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established timeframe, the City may make the repairs itself at the cost of the Franchisee or have them made at the cost of Franchisee.
- C. Franchisee, and any person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property.
- D. Franchisee shall maintain its facilities in proper working order. Franchisee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Franchisee, establish a reasonable time for Franchisee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established timeframe, the City may restore the facilities to proper working order or have them restored at the cost of Franchisee.

Section 10. Removal of Unauthorized Facilities. Within ninety (90) days following written notice from the City, Franchisee shall, at its expense, remove unauthorized facilities and restore public ways and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

- A. Upon expiration, termination, or cancellation of this Franchise;
- B. Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Franchisee for a period of ninety (90) days;
- C. If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;

- D. If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits; or
- E. If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise.

Provided, however, that the City may, in its sole discretion, allow a Franchisee to abandon facilities in place. No facilities may be abandoned in place without the express written consent of the City. Upon consensual abandonment in place of facilities, the facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such facilities. The failure of Franchisee to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

Section 11. Restoration of Public Ways and Other Property.

- A. When Franchisee, or any person acting on its behalf, does any work in or affecting any public way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways and property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's cost, and Franchisee lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Franchisee or have them made at the cost of Franchisee.

Section 12. Use and/or Development Authorization and Permits. Franchisee shall obtain use and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a public way. The City will endeavor to act on applications for use and/or development authorization or required permits within thirty (30) days of receipt of a completed application, unless Franchisee consents to a different time period.

- A. Franchisee shall provide the following information for all facilities that it proposes to construct or install:
 - (1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:

- a. The location and route of the proposed facilities;
 - b. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;
 - c. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;
 - d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.
- (2) If Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole; if the overhead facilities are subsequently relocated underground, the Franchisee shall relocate underground at no cost to the City.
- (3) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:
- a. Evidence of ownership or authorization to use such ducts or conduits;
 - b. Conditions of use imposed by the owner(s) of the ducts or conduits;
 - c. If known to Franchisee or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and
 - d. If known to Franchisee or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.
- (4) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:
- a. The location proposed for new ducts or conduits;
 - b. The total capacity of such ducts or conduits; and
 - c. The initial listing of collocated facilities located within Franchisee constructed or installed ducts or conduits.
- (5) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.

- (6) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.
 - (7) Such other documentation and information regarding the facilities requested by the City.
- B. The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Franchisee to a previously approved facility; provided that neither excavation nor trenching in the public right-of-way is required, that the optical cable does not cross a distance of more than twenty feet from its point of connection to the approved facility and the point where it exits the public right-of-way, that the optical cable connection meets or exceeds all applicable technical standards required by law, that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare, that the optical cable connection is constructed and installed to conform to all federal, state, local, and industry codes, rules, regulations, and standards, and that the optical cable connection does not damage or impair the City's urban forest.
- C. The requirements of this section do not apply to repair or maintenance of previously approved overhead facility; provided that the location and size of the previously approved facility is not materially changed, that no additional new facilities are constructed or installed, that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare, that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards, and that the repair or maintenance activities comply with Chapter 5.56 of the Longview Municipal Code.
- D. Franchisee shall not be granted development authorization or issued permits for construction or installation of new facilities unless Franchisee is in full compliance with the provisions of this Franchise and all of Franchisee's existing facilities have been expressly approved by the City in writing.

Section 13. Hold Harmless and Assumption of Risk.

- A. Hold Harmless.
 - (1) Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, to any person, including claims by Franchisee's own employees to which Franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property arising out of the acts or omissions of Franchisee, its officers, employees, servants, agents or representatives.

- (2) Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives from any and all claims, costs, damages, judgments, awards, or liability to any person, including claims by Franchisee's own employees, including those claims to which Franchisee might otherwise have immunity under Title 51 RCW, arising out of Franchisee's exercise of the rights, privileges, or authority granted by this Franchise which are made against the City, in whole or in part, due to the City's ownership or control of the public ways or other City property, by virtue of the City permitting the Franchisee's entry, occupancy or use of the public ways, or based upon the City's inspection or lack of inspection of work performed by Franchisee, its officers, employees, servants, agents or representatives.
- (3) These hold harmless covenants include, but are not limited to, claims against the City arising as a result of the acts or omissions of Franchisee, its officers, employees, servants, agents or representatives in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public way or other public place in performance of work or services permitted under this Franchise.
- (4) Franchisee further agrees to indemnify, hold harmless and defend the City, its elected officials, officers, employees, servants, agents, and representatives against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Franchisee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of damage or destruction of Franchisee's facilities, except to the extent any such damage or destruction is caused by or arises from the active sole negligence of the City.
- (5) 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 Franchisee and the City, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence.
- (6) It is further specifically and expressly understood that the hold harmless covenants provided herein constitutes the Franchisee's waiver of immunity under Title 51 RCW. This waiver has been mutually negotiated by the parties.
- (7) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction or installation shall not be grounds for avoidance of any of these hold harmless covenants. Said hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

- (8) In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the hold harmless covenants contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay and be responsible for all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this hold harmless clause.

B. Assumption of Risk.

- (1) Franchisee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, servants, agents, or representatives. Franchisee releases and waives any and all claims against the City, its elected officials, officers, employees, servants, agents, and representatives for damage to or destruction of the Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence of the City.
- (2) Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, servants, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all subrogation claims if it fails to do so.

Section 14. Insurance. Franchisee shall obtain and maintain, at its cost, worker's compensation insurance and the following liability insurance policies insuring both Franchisee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
- (1) \$2,000,000.00 for bodily injury or death to each person;
 - (2) \$2,000,000.00 for property damage resulting from any one accident;
 - (3) \$5,000,000.00 Automobile liability per accident for owned, non-owned and hired vehicles; and
 - (4) Franchisee its contractors, and/or subcontractors shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability of \$5,000,000.

- B. The liability insurance policies required by this section shall be maintained by Franchisee throughout the term of this Franchise, such other periods of time during which Franchisee's facilities occupy public ways, and while Franchisee is engaged in the removal of its facilities. Franchisee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any construction or installation of any facilities pursuant to this Franchise or other work, in a public way. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee's insurance shall be, primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.
- C. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain an endorsement in a form which substantially complies with the following:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 10 days after receipt by the City, by registered mail, of a written notice addressed to the Longview City Manager of intent to cancel or not to renew for reason of nonpayment of premium and until 30 days after receipt by the City, by registered mail, of a written notice addressed to the Longview City Manager of intent to cancel or not to renew for any other reason."
- D. At least ten (10) days prior to said cancellation or non-renewal, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

Section 15. Security Fund. Franchisee shall establish and maintain a security fund in the amount of eight thousand dollars (\$8,000), at its cost, with the City by depositing such monies, or bonds, letters of credit, or other instruments in such form and amount acceptable to the City. Within 10 days of the execution of this Agreement, Franchisee shall establish this fund, and inform the City of its form and location. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a public way.

- A. The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of

any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.

- B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:
 - (1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;
 - (2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;
 - (3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
 - (4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.
- C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.
- D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility.

Section 16. Compensation.

- A. Franchisee shall pay and be responsible for all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to RCW Ch. 43.21C. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.
- B. Pursuant to Section 35.21.860 of the Revised Code of Washington (RCW), the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any tax authorized by RCW 35.21.865. Also pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a service provider as defined in RCW 35.99.010(6) & (7), except for administrative expenses or any tax authorized by RCW 35.21.865. Franchisee hereby warrants that its operations as authorized under this franchise are subject to the City's Utility Tax of 6.0% of Franchisee's Gross Revenues, per LMC 5.06.120. Any net uncollectables, bad debts, or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point-to-point services is based on the pro-rata share of the revenue from those services.
- C. Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the administrative

fees and/or taxes below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

- D. **Payment of Utility Tax.** Payments due under this provision shall be computed and paid in monthly installments, and remittance shall be made on or before the thirtieth day of the next month. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the month for which payment is made.
- E. In addition to penalties and other remedies for which Franchisee may be subjected, the City reserves the right to impose site-specific charges for placement of structures used to provide personal wireless services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least one hundred percent (100%) of the costs of construction or installation of such structures.

Section 17. Acquisition of Facilities. Upon Franchisee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

Section 18. One-Call System. Franchisee is responsible for complying with the provisions of Washington's One-Call statutes: RCW Ch. 19.122.

Section 19. Vacation of Public Ways. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Franchisee has facilities in such public way, the City shall reserve an easement for Franchisee.

Section 20. Duty to Provide Information. Within ten (10) days of a written request from the City, Franchisee shall furnish the City with all requested information sufficient to demonstrate:

- A. That Franchisee has complied with all requirements of this Franchise;
- B. That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid; and
- C. Franchisee's obligations under this section are in addition to those provided in subsection 4(E).

Section 21. Records.

- A. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise onto verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party. All documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.
- B. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing, within ten (10) days of the City's request, that the City inspect them at Franchisee's local office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Franchisee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

Section 22. Assignment or Transfer. Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

- A. No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve 12 months after the effective date of this Franchise.
- B. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.
- C. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:

- (1) Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;
 - (2) Any other information reasonably required by the City.
- D. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.
- E. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section shall be void and is cause for termination of this Franchise.
- F. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the Franchisee, of the ownership or working control of affiliated entities having ownership or working control of Franchisee, or of control of the telecommunications capacity or bandwidth of Franchisee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Franchisee to another person controlled by Franchisee.
- G. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Section 23. Violations, Noncompliance, and Other Grounds for Termination or Cancellation.

- A. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:
- (1) Violation of or noncompliance with any term or condition of this Franchise by Franchisee;
 - (2) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Franchisee;
 - (3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;

- (4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;
 - (5) Misrepresentation or lack of candor by or on behalf of Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;
 - (6) Abandonment of facilities;
 - (7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or
 - (8) Insolvency or bankruptcy of Franchisee.
- B. In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice, and providing Franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence:
- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;
 - (2) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or
 - (3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.
- C. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (B) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.
- D. If the City Council determines that the violation, noncompliance, or other grounds for termination or cancellation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:
- (1) Whether the misconduct was egregious;
 - (2) Whether substantial harm resulted;
 - (3) Whether the violation was intentional;
 - (4) Whether there is a history of prior violations of the same or other requirements;

- (5) Whether there is a history of overall compliance; and
 - (6) Whether the violation was voluntarily disclosed, admitted or cured.
- E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

Section 24. Notices.

- A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City:

City of Longview
Attn: City Manager
P.O. Box 128
Longview, WA 98632-7080
Phone: (360) 442-5004

Franchisee:

Legal Compliance Director
LS Networks
921 S.W. Washington Street, Suite 210
Portland, OR 97205
Phone: (503) 294-5300

- B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Section 25. Non-Waiver. The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 26. Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Limitation of Liability. Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servants, agents, and representatives for any injury or damage from the failure

of the Franchisee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Section 28. Damage to Facilities. Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Section 29. Governing Law and Venue. This Franchise and use of the applicable public ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Cowlitz County, or in the case of a federal action, the United States District Court for the Western District of Washington at Tacoma, Washington, unless an administrative agency has primary jurisdiction.

Section 30. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise nor its application to any other person or entity; provided that, if any term or condition of this Franchise relating to Franchisee's right, privilege, or authority to place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead facilities is held to be invalid or unconstitutional by a court of competent jurisdiction, Franchisee's authority to construct, install, operate, maintain, or repair overhead facilities shall be deemed void *ab initio*, any overhead facilities shall be deemed to be unauthorized, and Franchisee shall be authorized only to place facilities underground.

Section 31. Miscellaneous.

- A. Equal Employment and Nondiscrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.
- B. Descriptive Headings. The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.
- C. Costs. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs,

excluding attorneys' fees, in addition to such other relief as the court may deem proper.

- D. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.
- E. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.
- F. Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.
- G. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.
- H. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.
- I. Modification. The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.
- J. Non-Exclusivity. This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.
- K. Rights Granted. This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.
- L. Contractors and Subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

Section 32. Acceptance of Franchise. Within thirty (30) days after the passage and approval of this ordinance, this Franchise may be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights, privileges, and authority herein granted shall, after the expiration of the 30-day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 33. Publication. The City Clerk is authorized and directed to publish a summary hereof in accordance with Revised Code of Washington §§ 35A.13.200 and 35A.12.160.

Section 34. Effective Date. This Ordinance shall be in full force and effect from and after thirty (30) days from the date of its passage and publication as provided by law.

Passed by the City Council this ____ day of _____, 2023.

Approved by the Mayor this ____ day of _____, 2023.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

James McNamara
City Attorney

Published: _____

ORDINANCE NO. ____



City of Longview

Agenda Summary

RESOLUTION 2448 - AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH COWLITZ COUNTY FOR PUBLIC WORKS CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE

RECOMMENDED ACTION:

MOTION TO ADOPT RESOLUTION 2448

DATE: April 27, 2023

COUNCIL STRATEGIC INITIATIVE ADDRESSED:

Continue effective financial management
Enhance public safety & emergency response
Improve transportation systems
Address quality of place issues

CITY ATTORNEY REVIEW: REQUIRED

SUMMARY STATEMENT:

The City of Longview and Cowlitz County regularly engage in the contracting for construction of public works for transportation projects pursuant to the competitive bidding requirements of RCW 39.04, and wish to enter into an Agreement to collaborate and cooperate in joint bidding and construction processes for both incorporated and unincorporated lands to improve local public safety while providing savings on administration and management of the competitive bidding for public works projects; and

The City and County propose to work cooperatively when efficiency and economy of scale dictate that it is in the best public interest to include public works projects and bidding needed by one party within the other party's public works projects and bidding.

RECOMMENDED ACTION:

Motion to adopt Resolution 2448.

Attachments:

1. Resolution 2448 for Joint Bid Interlocal with County
2. JOINT BID INTRCLCL_CITY_CTY_2021-23 (002)

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN
INTERLOCAL AGREEMENT WITH COWLITZ COUNTY FOR PUBLIC WORKS
CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE

WHEREAS, the City of Longview ("CITY") and Cowlitz County ("COUNTY") regularly engage in the contracting for construction of public works for transportation projects pursuant to the competitive bidding requirements of RCW 39.04, and wish to enter into an Agreement to collaborate and cooperate in joint bidding and construction processes for both incorporated and unincorporated lands to improve local public safety while providing savings on administration and management of the competitive bidding for public works projects; and

Whereas, the CITY and COUNTY propose to work cooperatively when efficiency and economy of scale dictate that it is in the best public interest to include public works projects and bidding needed by one party within the other party's public works projects and bidding; and

Whereas, the CITY and COUNTY wish to enter into an Agreement to set forth the processes and responsibilities of CITY and COUNTY in coordinating and cooperating in the drafting of specifications, bidding, award, administration and construction of public works projects.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Longview as follows:

Section 1. The City Manager is authorized to execute the agreement with Cowlitz County for public works construction of transportation infrastructure which is attached as Exhibit A, and forming a part of this Resolution.

PASSED by the City Council of Longview, Washington, and approved by its Mayor this _____ day of _____, 2023.

Mayor

ATTEST:

City Clerk

INTERLOCAL AGREEMENT BETWEEN THE CITY OF LONGVIEW WASHINGTON AND COWLITZ COUNTY FOR PUBLIC WORKS CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE

This Interlocal Agreement (“Agreement”) is made this ____ day of April, 2023, by and between the City of Longview (“CITY”), a Washington municipal corporation, and Cowlitz County (“COUNTY”), a Washington political subdivision, individually referred to as ‘Party’ and collectively referred to as ‘Parties’ where applicable.

RECITALS

1. Pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform. CITY, pursuant to RCW 35A.11.020 and RCWs 35.68 through 35.79, and 35.68, and COUNTY, pursuant to RCWs 36.75 through 36.87, have the authority to enter into an Agreement for the collaborative and coordinated processes on the construction of respective transportation infrastructure.
2. CITY and COUNTY regularly engage in the contracting for construction of public works for transportation projects pursuant to the competitive bidding requirements of RCW 39.04, and wish to enter into an Agreement to collaborate and cooperate in joint bidding and construction processes for both incorporated and unincorporated lands to improve local public safety while providing savings on administration and management of the competitive bidding for public works projects.
3. CITY and COUNTY propose to work cooperatively when efficiency and economy of scale dictate that it is in the best public interest to include public works projects and bidding needed by one party within the other party’s public works projects and bidding.
4. CITY and COUNTY wish to enter into this Agreement to set forth the processes and responsibilities of CITY and COUNTY in coordinating and cooperating in the drafting of specifications, bidding, award, administration and construction of public works projects.

NOW, THEREFORE, in consideration of these shared purposes, the Parties agree as follows:

I. Purpose.

The purpose of this Agreement is to permit CITY and COUNTY to make the most efficient use of their resources to carry out public works projects subject to competitive bidding under Chapter 39.34 RCW by enabling each party to be included in the other’s public works bidding processes. This Agreement also authorizes the design and/or construction of the of a public works of one party in connection with a public works project(s) of the other, contracting party and its duly-bid and duly-authorized third party contractor(s), by separate agreements and approvals, following the procedures and the terms set forth in this master Agreement.

II. Recitals Adopted.

The recitals set forth above are hereby adopted as the factual basis for this Agreement.

III. Definitions.

Add-On means Work requested by a User to the Contracting Party, and to be adequately documented and prepared by a User to be included in the Contracting Party's bid packet, and thereafter to be independently contracted, managed and funded with a successful bidder by the User.

Agreement means this document, together with its terms, conditions, covenants, and performances contained therein, as well as any attached Exhibits, which shall be incorporated herein and become a part hereof.

Approved Bid Packet means the design, purchasing, bidding, advertising, review and award of the CITY's and COUNTY's public works projects that conform to the purposes and intent of this Agreement.

Business Days means Monday through Friday, inclusive, except for official state holidays.

CITY means the City of Longview, a Washington municipal corporation, and its officials, employees, agents, assign, and its contractors and subcontractors.

City Project Manager means the person designated by CITY to act as CITY's coordinator and primary representative, both legal and contractual, in all matters arising during the course of preparations for and the performance of public works projects under this Agreement.

City Facilities means City of Longview, owned or regulated facilities, including city streets, utilities, infrastructure and public works improvements, and including facilities impacted by, or constructed as part of any public works that are owned or will be owned or are controlled by CITY as set forth in this Agreement.

City Standards means all City of Longview ordinances, rules, regulations and standards and all applicable federal and state laws, rules, regulations and standards, including but not limited to the following, except as otherwise provided in this Agreement: City Municipal Code; City standard specifications for road, bridge and municipal Construction, and including the City right of way improvement standards

City Street means a public, incorporated municipal street, bridge and right-of-way, or any part thereof, pursuant to RCW 46.04.120 and RCW 47.04.010(6), and acquired, established, constructed, maintained, used or vacated as provided in RCW 35A.47.020, and RCWs 35.68 through 35.79, and 35.68, and under the jurisdiction of City of Longview.

Contract Award means COUNTY's and CITY's joint, written decision accepting a bid(s) the design, purchasing, bidding, advertising, and review of the CITY's and COUNTY's public works projects.

Contracting Party means the respective CITY or COUNTY party which has solicited for and/or effected the public works contracts, and who has assumed the responsibility for the

administration and implementation of the public works project, including but not limited to initiation of the public works bidding process pursuant to Chapter 39.04 RCW; overseeing bidding advertising, review, award and contracting; collecting, reviewing and approving required documentation in furtherance of this Agreement.

County Engineer means the licensed professional civil engineer empowered and obligated under RCW 36.80 to supervise the establishing, laying out, constructing, altering, improving, repairing, and maintaining all county roads of COUNTY.

County Road means a public, unincorporated, county roadway and bridge, and right-of-way, improved or unimproved, or any part thereof, pursuant to RCW 46.04.150 and RCW 47.04.010(9), and acquired, established, constructed, maintained, used or vacated as provided in RCWs 36.75 through 36.87, and under the jurisdiction of COUNTY.

County Standards means all COUNTY laws, rules, regulations and standards and all applicable federal and state laws, rules, regulations, and standards, including but not limited to the following, except as otherwise provided in this Agreement: County Code; County standard specifications for road, bridge, and municipal Construction, and including the County right of way improvement standards.

Designated Representative means the legal and binding representative of a Party, lawfully empowered by statute or official designation to sign Task Orders, MOU's or contracts or to receive official communications, as set forth below.

Environmental Law(s) means any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the parties have knowledge), now or hereafter in effect including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.

Letter of Project Approval means the letter provided to CITY by COUNTY, or by COUNTY to CITY following the completion of the joint public works specifications review process, but before public bid proceedings by the Contracting Party, signifying the specifications stated in the competitive bid, to be awarded and contracted for, are jointly approved.

Letter of Award for Work means the written document provided to CITY by COUNTY, or by COUNTY to CITY, following the completion of the public works bidding and review processes, in advance of the bid award by the lead agency as the CITY or as the COUNTY, respectively, that signifies the other party's acceptance of the review of the joint bids for accuracy, content, and compliance with the specifications, and approval of a contract award on the public works project(s).

Project means the public works project(s) specified within a given bid packet, generated for the Contracting Party pursuant to Chapter 39.04 RCW, for the purpose of securing a materials vendor or a contractor, or both, to complete the specified public works project(s) of the respective parties and comprehensively labeled 'the Project'. When the parties proceed under this master Agreement, the Project will also include the respective User's Work when requested, and the bid packet shall include all drawings, specifications, documents, estimates, forms, bid bonds, User performance bond and insurance certification, and contracting form, relevant to the contracting for and performance of the User's Work.

User means the party requesting that its specified Work be included and/or completed in connection with the Project, when requested by the User to the Contracting Party.

Work means all survey and engineering (including plans and specifications, and design process on the Project), materials, equipment, labor, contract administration, construction inspection, and any other matters necessary to complete additions to the Project as were requested by User.

IV. Term and Termination

- A. This Agreement will become effective on the date the Agreement is recorded or posted pursuant to RCW 39.34.040.
- B. This Agreement shall remain in effect until the completion of the last of the joint Projects entered into under this Agreement, unless terminated earlier as provided below. Any early termination shall be in writing and shall be based upon the following:
 1. VOLUNTARY. In the event that either CITY or COUNTY determines that termination of this Agreement is in its, respective best interest, that terminating party shall give the other party thirty (30) days' notice of termination of this Agreement. Upon a party's notice of termination of the Agreement, that party be released from any future funding or other obligations regarding the completion of any bid-award-pending Work or future Project under the Agreement
 2. DEFAULT. By reason of a breach of this Agreement by a Party, the other Party may terminate this Agreement; provided that written notice specifying the breach, and thirty (30) days to cure the breach is given, and thereafter, in the absence of a substantial cure, the dispute resolution procedures set forth below are followed. The notice and dispute resolution requirements do not apply where protection of the public's health, welfare, or safety requires immediate termination.
 - a. Dispute resolution: In the event that a dispute arises under this Agreement, it will be resolved in the following manner: CITY and COUNTY will each individually appoint one member to a Dispute Board and jointly appoint a third member. The

Dispute Board will evaluate the dispute and make a determination of the dispute. The decision of the Dispute Board may be appealed to the Superior Court for *de novo* review.

3. **LACK OF APPROPRIATION.** Any Party's obligation under this Agreement that may extend beyond the current appropriation year is expressly conditioned upon that Party's legislative appropriation of sufficient funds to support the Work and Project activities described in this Agreement. If the Party's legislative body does not appropriate sufficient funds and resources for those purposes, then that Party's participation under this Agreement shall terminate automatically at the end of the current appropriation year.

V. Work Request of the Parties.

- A. **Communication.** The respective departments of Public Works of CITY and COUNTY have historically worked together to coordinate public works construction and maintenance. The parties agree to continue to exercise reasonable efforts to keep one another informed of Projects that may fall under this Agreement, and the projected timetables and time restrictions on such Projects.
- B. **Initiation of Work Request.** A User shall request and the Contracting Party shall process such request on a Project as follows:
 1. **PRE-BID.** Unless otherwise mutually agreed to by the parties as an Amendment to this Agreement, a User shall deliver a written Work request to the Contracting Party for the User's Work to be integrated into the Contracting Party's planned Project, not less than 6 mos. prior to the date that the bid package will be issued, unless such submission time deadline is waived at the sole discretion of the Contracting Party.
 2. **CHANGE ORDER.** In the event that a Work request has not been submitted as a pre-bid in the preceding subsection, the User may still request that the Contracting Party integrate Work into Contracting Party's planned project through use of a 'change order' on a Project that is currently in progress, if such change order is properly within the scope of an accepted bid by Contracting Party, and as addressed in *WSDOT Local Agency Guidelines*, §52.5-Changes and Extra Work (06-2021) and in Ofc. of Wash. State Auditor, *Best Practices for Change Orders* (09-2020):
(<https://portal.sao.wa.gov/PerformanceCenter/#!/address?mid=6&rid=18531>).
The decision to include such Work request as a change order on a Project shall be in the sole discretion of the Contracting Party, as is the manner and time deadline for submission by User of such Work at the sole discretion of the Contracting Party.
 3. **WORK REQUEST FORM.** Each Work request shall be in writing and shall specify in detail the Work for integration into the Project. To the extent practicable, the Work request shall specify the purposes, amounts and types of labor, equipment, materials required, location of the Work, estimated cost of the Work, and any other pertinent information to the request for pre-bid or change order. The Work request shall be substantially in the form of the Work request form attached as Exhibit 1; provided, however, the Work request form may be revised by consent of the parties as necessary to implement this Agreement and without modification of this Agreement.

- C. Agreement to Perform. The Parties agree to work cooperatively and in good faith with one another to timely and expeditiously perform their responsibilities and obligations under this Agreement, including, but not limited to the following terms:
1. DISCRETION TO ACCEPT OR REJECT. Acceptance or rejection of a User's Work request in connection with each Project shall be within the sole discretion of the Contracting Party. All parties to this Agreement acknowledge and agree that the work of the Contracting Party on a Project takes priority in making the determination of whether a Work request is accepted or rejected.
 2. TIMELINES. Upon receipt of a User's Work request, the Contracting Party shall, within 10 business days, indicate acceptance or rejection of the Work request and acknowledge the User's estimated cost of the Work (if made available), and expeditiously obtain an authorized approval signatures of both the Contracting Party and the User on the Work request form (returning a signed copy to User).
 3. COST OF WORK. For each Project, the Contracting Party may accept the bid of the lowest responsible and responsive bidder for the Project, in accordance with the statutory processes for the Contracting Party, or may accept the change order cost for any Work under the terms of the particular Project contract governing such change orders. Both parties acknowledge there is a possibility that the cost to perform the User's Work under these circumstances may not reflect to lowest possible cost to the User. The User's sole remedy in these circumstances is to opt out of performance of the Work under this Agreement under subsection 5, in the User's sole discretion.
 4. REIMBURSABLE WORK. If the Contracting Party and the User agree to proceed with bidding and performance of the User's Work, they shall both document that agreement by completing a Work Order in a form required by the Contracting Party (and execute any respective, individual party's vendor and contractor agreements).
 5. OPT-OUT
 - a. Opt-Out Prior to Bid Award. Prior to an award of the bid, either party(ies) may opt- out of performance of Work under this Agreement by timely notifying the other party in writing prior to the award of the bid for the Work. "Timely notifying" means sufficient notice for the Contracting Party to procedurally facilitate the opt-out of performance of Work prior to Bid Award. Opting-out shall only be allowed if the Work is included as an Add-On. The User is responsible for determining, prior to bid advertisement that budgeted funds are and will be available to cover the cost of the Work included as an Add-On. Such budgeted funding amounts will be applied when determining whether or not the Work will be included as a Add-On to the bid, and thereafter if the Work will be awarded under the bid. If the bid for the Add-On is greater than such budgeted funding amounts, then the User may opt out by timely notifying the Contracting Party. If the Work is awarded from the bid, then the Work will proceed under User's contract and be completed in accordance with such contact and change order terms.
 - b. Opt-Out Prior to Approval of Change Order Under Section V.B.2. Prior to approval of a change order to add Work on a Project that is in progress, using the process set forth in Section V.B.2 of this Agreement, either party(ies) may opt-out of performance of the change order under this Agreement by notifying the other party in writing prior to approval of the change order.

- c. Opt-Out After Approval of Change Order Under Section V.B.2. After award of the bid or approval of a change order for any contracted portion of the Work, a party may opt-out of performance of the Work and its obligations for the Work under this Agreement only in event of Default as defined herein.
- d. Reimbursements for Opting-Out. If either party opts out of performance of the Work and its obligations for the Work under this Agreement prior to the fulfillment of any of the terms stated herein, the party opting out shall reimburse and make whole the other party for all of the other party's direct and reasonably-related indirect costs incurred due to the party's Work request, including but not limited to: fines, penalties, judgments, fees, costs and expense, and including but not limited to those incurred: for design, survey, engineering work, mobilization, construction engineering, contract administration and overhead, and contracted-for labor and services, non-cancelable, pending obligations, and for labor and materials, and redesign, re-engineering or re-estimating or re-bidding, and any contractor or vendor claims payable. Each party agrees to timely provide the other party all Work-related documents upon final payment by the obligated party.

VI. Responsibilities of Parties.

- A. The Contracting Party is responsible for compiling, publishing, and awarding the contract and any Work as required under this Agreement for the purpose of securing a materials vendor or a contractor, or both, to complete 'the Project'. If the User does not separately execute vendor and contractor agreements for User's Work, the Contracting Party is responsible for contracting after bid award or issuance a change order for performance of the Work as required in this Agreement. The Contracting Party's bid package or change order shall include all drawings, specifications, documents, estimates, paperwork, bid forms, contract forms, and bid bonds relevant to User's Work. The User shall have the opportunity to review the above documents and make changes. The Contracting Party will exercise good faith efforts to oversee and facilitate the inclusion and application of the User's plans, specifications, preferences, and documents.
- B. The User is responsible for determining, prior to award of a bid or approval of a change order for its Work, that budgeted funds are available and dedicated to cover the cost of the Work. The User shall fully compensate the Contracting Party as required under this Agreement for all costs and expenses of the Work.

VII. Plans, Specifications and Bids.

- A. The Contracting Party, acting on behalf of the User, agrees to contract for performance of the User's Work, in accordance with the Plans and Specifications. The Project amendments, any Special Provisions and Plans for User's Work will be developed either by the User or by the Contracting Party, under the guidance of the User with User-provided information and documentation, as agreed to by the parties on a case-by-case, Project-by-Project basis.

- B. The requirements for construction and materials requested for Work shall be as set forth in the most current version of the Washington State Standard Specifications for Road, Bridge, and Municipal Construction, as well as Project amendments, the Special Provisions, City Standards, and the Plans.
- C. The process by which the Project amendments, Special Provisions and Plans are developed shall be as follows:
- The party designing the Work, as agreed to by the parties on a case-by-case, Project-by-Project basis, shall timely provide the other party an engineering design for the proposed Work. The other Party's engineering staff shall have up to three (3) weeks to review the Project design, including plans, specifications and materials, and return with redline comments to the designing party's engineering staff. The designing party shall address those comments, make change, and provide a revised design to the other party within three (3) weeks of such return. Then the receiving party shall have up to three (3) weeks to provide a final review with redline comments. The designing party shall make the final revisions and provide a final design to the other party for review and approval within three (3) weeks of this latest return. The other, receiving party will then have three (3) weeks to approve the final design for the Work. Project amendments and Special Provisions will be developed and submitted using the same review process and procedure. The User's engineer must provide written approvals for the final Plans, Project amendments and Special Provisions, or the design for the requested Work will not be included in the Contracting Party's bid packet, bid award or contracting. The timelines under this review process and procedure may be amended or changed by mutual written agreement of the parties.
- D. The Contracting Party will incorporate the Plans, Project Amendments and Special Provisions into the Project. The User agrees that it is solely responsible for ensuring that all of User's submitted requirements are sufficiently set forth in the adopted Plans, Project amendments and Special Provisions, and that it has provided the Contracting Party with all applicable standards, codes, regulations, and other requirements for the Project that the User is obligated to meet.
- E. The Contracting Party will include the User's Work in the bid advertisement for the Project. The User's Work shall be prepared as a separate Addition in the bid packet. The Contracting Party will be the User's representative during the procurement process, beginning with advertisement and through award of the bid. If the User does not separately contract and bond with the vendor or contractor for the User's requested Work, the Contracting Party will continue such representation through contract closeout. When requested by the Contracting Party, the User shall timely assist the Contracting Party in responding to bid questions and resolving any design issues related to the Work. All comments and clarifications of the User related to the bidding process must go through the Contracting Party and not directly to the prospective bidders. The Contracting Party will provide the User with written notifications of the bid price(s) no later than two (2) days after the bid opening for all Work items for which the User is responsible. The User shall respond in writing to the Contracting Party, stating its acceptance or opt out of the Work, within two (2) working days of the written notification time deadlines under this Section

VII. As above, the timelines under this subsection may be amended or changed by mutual written agreement of the parties.

- F. Should the User opt out of the Work, the Contracting Party will delete the User's requested Work from the Project. The User agrees to reimburse the Contracting Party for its engineering and legal costs, and other direct and indirect costs incurred for deleting the User's requested Work from the Project, and to timely pay such costs in accordance with the billing and payment process set forth below.

VIII. Construction, Inspection and Acceptance.

- A. If the User does not separately contract and bond with the vendor or contractor for the User's requested Work, the Contracting Party agrees to administer the Work on behalf of the User.
- B. All materials removed by the Contracting Party in administering the Work shall be reclaimed or disposed of by the Contracting Party, and shall become the property of the Contracting Party or the vendor or contractor if so designated in the Project amendments or Special Provisions.
- C. If the User does not separately contract and bond with the vendor or contractor for the User's requested Work, all formal contacts between the User and the Contracting Party's vendor or contractor shall be through the Contracting Party's representatives. The parties agree to cooperate in allowing the User to have such informal contact with the vendor or contractor as may be useful in the efficient and timely completion of the Work and Project. In such instances and in the event of a disagreement arising from such contacts, the Contracting Party's determinations shall be final and binding.
- D. The Contracting Party shall promptly notify the User in writing with the Work and Project is completed.
- E. Upon the request of the User, the Contracting Party in administering the Work will provide the User with inspection documentation, including but not limited to inspection reports, backfill test results, samplings, and materials and testing submittals.
- F. The Users shall, within two (2) weeks of being notified that the User's requested Work is completed, conduct any necessary walk-through or inspection of such Work and (a) deliver a written letter of acceptance to the Contracting Party, or (b) deliver to the Contracting Party a detailed, written explanation in punch list format fully addressing the reasons why the a Work does not comply with the approved Plans and Specifications. The User agrees to work diligently and in good faith with the Contracting Party to resolve any issues relating to the requested Work so as not to delay the Contracting Party's completion and closeout of the Project. If issues raised by the User are resolved, the User is obligated to immediately deliver to the Contracting Party its letter of acceptance.

- G. If the User does not respond within two (2) weeks of being notified, as provided in the above subsection, the Work and all administration thereof by the Contracting Party shall be deemed accepted by the User, and the Contracting Party shall be released from any further obligations herein and from any future claims and demands thereto.
- H. Upon completion and acceptance of the User's requested Work, the User agrees that it shall be solely responsible for all future construction, ownership, operation, maintenance and inspection obligations and costs of any public works or public works materials provided under the User's requested Work, without further responsibility or expense to the Contracting Party.
- I. The Contracting Party will prepare the final construction and purchasing documentation in general conformance with the Contracting Party's public works practices. This final documentation will not include or address the User's requested Work unless specifically, further requested by the User. If the User so requests, the Contracting Party will maintain one set of Plans and Specifications as an official 'as built' record, and make identifiable notations of all plan and specification revisions typically recorded per standard practice of the Contracting Party. Once the User has accepted the requested Work per the preceding subsections herein, the Contracting Party upon request by the User will provide on true copy of the record to the User.

IX. Cost of Work.

- A. The User shall be responsible for the actual direct and reasonably-related indirect fines, penalties, judgments, fees, costs and expenses of the User's requested Work, including but not limited to those incurred: for design, survey, engineering work, mobilization, construction engineering, contract administration and overhead, and contracted-for labor and services. The parties agree that the estimates and bidding on costs of the User's requested Work to be bid and performed by the Contracting Party on behalf of the User were provided to initiate the Project, and were provided for informational and process purposes only. User's total financial responsibilities may be more or less than amounts indicated in any cost estimates, and are dependent upon the actual, ultimate costs of the User's requested Work.
- B. The parties' respective contract managers designated below may adjust the scope and amount of compensation to correspond with the parties' respective performance under this Agreement, allowing for inflation, materials and labor cost and services increases or reductions, being equal to or less than twenty-five percent (25%) of the original Project cost (including taxes).

X. Billing Method and Process.

- A. The User, in consideration of the requested Work to be done by the Contracting Party, agrees to pay the Contracting Party for the actual direct and reasonably-related indirect fines, penalties, judgments, fees, costs and expenses of the User's requested Work, as set forth above. The Contracting Party shall invoice the User, providing with such invoicing

sufficient documentation and information to support the invoice figures. The User agrees to pay the Contracting Party within thirty (30) calendar days following receipt of an invoice. If the User disagrees with any portion of the invoice, the User shall notify the Contracting Party of the specifics of any disagreement within two (2) weeks of receipt of the invoice. The User's notification of disagreement shall include a detailed explanation, together with supporting documentation and information. The User shall remain obligated to pay within thirty days any portions of the invoice which were not expressly included within its detailed explanation of disagreement. After the disagreement on any portion of the invoice is resolved, the User shall pay any remaining invoiced sums within thirty days. Billing by the Contracting Party will continue monthly until the Project is complete.

- B. Payments that are not satisfied by User within the applicable time periods set forth above shall be considered delinquent. Delinquent payments shall accrue interest from the date of delinquency, until paid, at a rate of one percent (1 %) interest per month, and that a charge of twenty-five dollars (\$25.00) shall be assessed as late fees for administering to payments which are delinquent, or which remain delinquent.
- C. Payments will be remitted to the following address:
City of Longview
Public Works Department
PO Box 128
Longview, WA 98632
- D. Should the User fail to make a payment according to the terms of this Agreement, the Contracting Party shall have the right to terminate this Agreement, charging the User for the Contracting Party's associated costs of termination, and including: non-cancellable items, costs resulting from any delays attendant to termination, and unpaid contractor and supplier charges for the User's Work, including costs referenced in the following Section.

XI. Change in Work or Cost Increases.

- A. If unforeseen conditions cause the cost of the User's Work to exceed the bid amount or change order approval amount (including sales tax, engineering, and other cost contingencies) by more than twenty-five percent (25 %), the Contracting Party will notify the User of such increase within five (5) working days of the date the Contracting Party is able to confirm information of a pending cost(s) increase.
- B. If the Contracting Party desires to add to or change the User's Work, it shall give advance notice to the User, except as set forth in the subsection below. The User shall respond to the Contracting Party's notification as soon as practicable, but not later than five (5) working days from notice. The Contracting Party will not proceed with the addition or change to the Work unless the User approves the addition or change in writing; HOWEVER, if the User agrees to any User-approved addition or change to the Work, or the User denies the request for fails to respond—which shall be deemed a denial of the request—the User agrees to pay all costs associated with any User-approved addition or change to Work, or to pay the additional costs of delays to both Project and User's Work,

and to pay all Contracting Party-prevailing contractor or supplier claims associated with the User's failure to timely respond to a request(s).

- C. When the Contracting Party determines that an addition or change to the User's Work is more immediately required to mitigate or remediate a Project emergency or a health or safety threat, the Contracting Party may authorize the addition or change without the User's approval. The Contracting Party shall notify the User of such addition or change, and the basis of the emergency or threat as soon as possible and no later than 48 hours thereafter.
- D. The User may request additions or changes in writing to User's Work. If the Contracting Party accepts the User-request, it shall provide its approval in writing to the User. The Contracting Party will then implement the requested additions or changes as change orders, as long as the change does not negatively impact the Contracting Party's Project, and complies with the Special Provisions, Plans, Project Amendments, Standard Specifications, Project permits, and applicable Contracting Party's policies or such laws, rules and regulations regarding such change orders, and does not negatively impact or unreasonably delay scheduled Project activities and milestones.
- E. The User agrees to pay for the increases in Project cost attributable to elective additions and changes approved by the User, subject to the 'Billing Method and Process' set forth above. The Contracting Party will make available to the User all change order documentation related to User's Work and to increased costs.
- F. Any contractor or supplier request submitted to the Contracting Party for permission to utilize different materials or structure or specifications for the User's Work will be immediately provided to the User for review. The User will have five (5) working days to advise the Contracting Party as to whether it accepts the different materials or structures or specifications. If no response is received by the Contracting Party from the User within that five (5) working days, the User waives its rights to object to the determination of the Contracting Party on such matters. The Contracting Party's Project engineer will make a final, contractual determination on the User's behalf.

XII. Franchising, Condemnation, Right of Entry and Permits.

- A. The User shall be responsible to apply for or to grant any franchise required for the User's Work. The User shall be responsible for acquiring title or sufficient interests in lands associated with User's Work, and responsible for condemnation proceedings to acquire necessary interest in the lands associated with User's Work within the User's jurisdiction. The User shall also be responsible for obtaining necessary permits and approvals for the User's Work, and to grant any permits required for the Project and User's Work within User's jurisdiction. A copy of such franchising, acquisition of interests in lands, and permitting shall be provided to the Contracting Party a minimum of forty-five (45) days prior to the bid publication date for the Project or the Contracting Party need not include or consider the User's Work within a bid packet.

- B. If necessary to carry out the User's Work, the User shall secure adequate rights-of-entry for the Contracting Party, and its contractors and agents upon all privately-owned and publicly-owned (by other than the parties herein) lands, and upon lands for which the User has a claimed property right. The rights-of-entry may provide for reasonable and ordinary entry and usage restrictions for such Work. The User will provide the Contracting Party such adequate rights-of-entry within five (5) working days prior to the date of Notice to Proceed to the Contracting Party's contractor or agent. The User shall be responsible for all costs and delays attendant to its failure to timely obtain such rights-of-entry.

XIII. Administration and Contact.

- A. No separate legal entity is created under this Agreement. The Agreement represents a collaborative, multiagency public works, interlocal agreement that includes a component for collaborative funding by the Contracting Party and the User, and for coordination of the exercise of respective authority to design, prepare, and bid a public works or public works purchase, and select and award and administer a contract thereto, for purposes of timely completing the Project and the User's Work.
- B. The parties through their respective Contracting Party's Engineer and User's Engineer shall be the responsible officials for environmental reviews, and for securing or facilitating federal, state, and local permits and approval, and for securing bid approvals and contract award. The City Engineer and the County Engineer are designated Contract Managers to administer and monitor the Project and Work, and shall be the contact and notice agent for their respective parties under this Agreement.

XIV. Indemnification and Hold Harmless.

- A. The Contracting Party's participation in the review or approval of any of the User's plans or specifications for the Work, or the inspection of the User's Work, or any assistance provided to the User by the Contracting Party is for Contracting Party's sole benefit and shall not constitute an opinion or representation by Contracting Party as to any compliance with any law, ordinance, rule, or regulation or any adequacy for other than Contracting Party's own purposes; and such assistance, inspection, review or approval shall not create or form the basis of any liability on the part of Contracting Party or any of its officials, officers, employees, or agents for any injury, damage, or other liability resulting from, or relating to, any inadequacy, error, or omission therein or any failure to comply with applicable law, ordinance, rule, or regulation; and such assistance, inspection, review, or approval shall not relieve the User of any of its obligations under this Agreement, and contracts and their additions and change orders, and under applicable laws and regulations.
- B. Excepting failures to act or other delays which are required under this Agreement or any agreed addition or change order responsibilities of the Contracting Party under this Agreement, the Contracting Party shall not be liable in damages for any failure to act within any time limits established by law or for any other delay to the User or User's contractors, nor shall the Contracting Party have any liability for liquidated damages for such failures to act or for such delays, and, to the maximum extent allowed by law, the User shall protect,

defend, indemnify, and save harmless the Contracting Party, and its officials, officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to delays. The parties agree that this Agreement is not to be construed as being or creating any joint-venture, public works between the parties.

- C. Except as provided above, and to the extent permitted by law, User shall protect, defend, indemnify, and save harmless the Contracting Party and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, actions, suits, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of User or User's contractors, consultants, or agents including any and all claims and litigation arising out of, or resulting from, any state or federal environmental review process in any way relating to the User's Work, and including any private utility relocations required for the User's work. User's obligations under this paragraph also extend to claims asserted by third parties against the Contracting Party arising out of, or in any way resulting from SEPA compliance related to the User's portions of the Project.

The User further agrees that the Contracting Party shall have no liability to the User that in any way arises out of Contracting Party decision making processes in agreeing to go forward with the User's Work within the Project. Where such claims, suits, or actions, et al., result from the concurrent negligence of the Parties the indemnity provisions provided herein shall be valid and enforceable only to the extent of User's own negligence. In the event of any claims, demands, actions, or lawsuits, the User upon notice from the Contracting Party, shall assume all costs of defense thereof, including legal fees incurred by Contracting Party, and of all resulting judgments that may be obtained against the Contracting Party, to the extent of the User's liability. In the event that the Contracting Party incurs attorneys' fees, costs, or other legal expenses to enforce the indemnity, acquisition or User funding provisions of this Agreement, all such fees, costs, and expenses shall be recoverable by the Contracting Party. Environmental protection and compliance, as provided elsewhere in this Agreement, and contracts and their additions and change orders, shall be in addition to the foregoing general indemnification.

- D. Except as provided above, and to the extent permitted by law, the Contracting Party shall protect, defend, indemnify, and save harmless the User and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, actions, suits, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of the Contracting Party or the Contracting Party's contractors, consultants, or agents including any and all claims and litigation arising out of, or resulting from, any state or federal environmental review process in any way relating to the Contracting Party's Project, and including any private utility relocations required for the Contracting Party's Project. The Contracting Party's obligations under this paragraph also extend to claims

asserted by third parties against the User arising out of, or in any way resulting from SEPA compliance related to the Contracting Party's portions of the Project.

Where such claims, suits, or actions, et al., result from the concurrent negligence of the Parties the indemnity provisions provided herein shall be valid and enforceable only to the extent of the Contracting Party's own negligence. In the event of any claims, demands, actions, or lawsuits, the Contracting Party upon notice from the User, shall assume all costs of defense thereof, including legal fees incurred by the User, and of all resulting judgments that may be obtained against the User, to the extent of the Contracting Party's liability. In the event that the User incurs attorneys' fees, costs, or other legal expenses to enforce the indemnity, acquisition or the Contracting Party's funding provisions of this Agreement, all such fees, costs, and expenses shall be recoverable by the User. Environmental protection and compliance, as provided elsewhere in this Agreement, and contracts and their additions and change orders, shall be in addition to the foregoing general indemnification.

- E. These indemnity and hold harmless provisions shall include any claim made against either Party by an employee, officer, contractor, subcontractor or agent of the other Party, even if the other Party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of that Party. Both Parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that each party provide the other Party with the broadest scope of indemnity permitted by RCW 4.24.115.
- F. Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. Nothing in this Agreement shall make any employee of the Contracting Party an employee of the User or any employee of the User an employee of the Contracting Party for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

XV. Miscellaneous Provisions.

- A. This Agreement is the full and complete understanding of the parties on the subjects covered herein. This Agreement may be modified or amended only by mutual written agreement approved by the governing bodies of the parties.
- B. Neither party will have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.
- C. Subject to the foregoing subsection, the rights and obligations of the parties will inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.

- D. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Any action or suit brought in connection with this Agreement will be filed in Cowlitz County Superior Court.
- E. If any section of this Agreement is adjudicated to be invalid, such action will not affect the validity of any section not so adjudicated.
- F. The failure of any party to this Agreement to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option or right conferred by this Agreement, in any one or more instances will not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreements which will remain in full force and effect.
- G. All communications regarding this Agreement will be sent to the Designated Representative of each Party at the following addresses or such other address as may be hereafter specified in writing. Any written notice hereunder will become effective upon personal service or four (4) business days after the date of mailing by registered or certified mail, and will be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

To the User's Engineer:
Susan Eugenis, PE
1600 13th Ave
Kelso, WA 98626

To the Contracting Party's Engineer:
Karl Enyeart, PE
PO Box 128
Longview, WA 98632

- H. This Agreement is made and entered into for the sole benefit of the Contracting Party and the User. No third party will be deemed to have any rights under this Agreement, and there are no third-party beneficiaries to this Agreement.
- I. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same document. The parties additionally acknowledge and agree that this Agreement may be executed and delivered by facsimile or email. Pursuant to RCW 39.34.040, the Parties will cause a copy of this Agreement to either be filed or to be posted on their respective websites.

IN WITNESS WHEREOF, the authorized signatories of CITY and of COUNTY have caused this interlocal cooperation Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the _____ day of April, 2023.

CITY OF LONGVIEW, WASH.

COWLITZ COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

, City Council

Richard Dahl, Chairman

Arne Mortensen , Commissioner

Dennis P. Weber , Commissioner

Dated: _____

Dated: _____

ATTEST:

Clerk of Board

Approved as to form:
City Attorney for Longview, Wash.

Approved as to form:
Cowlitz County Prosecuting Attorney

James McNamara, City Attorney

Douglas E. Jensen, Chief Civil Deputy