



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA**

Tues., February 19, 2019 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood,
WA

1. CALL TO ORDER

Pledge of Allegiance & Roll Call

2. COUNCIL BUSINESS

- A.  **Review/Discussion** - Monthly Development Review
- B.  **Review/Discussion** - 36th & Meridian Park Phase One –
Recreation & Conservation Office Grant Agreement
- C.  **Review/Discussion** - 36th & Meridian Park Phase One –
Design & Construction Administration Services Agreement
- D.  **Review/Discussion** - Fees for Animal Control Services
- E.  **Review/Discussion** - Removal of Dangerous Dogs or Potentially Dangerous Dog
Determination, Amending EMC 6.01.010

3. OTHER COUNCIL ITEMS

4. ADJOURN

*Study Sessions are meetings for Council to review upcoming and pertinent business of the City,
no action is taken by the City Council. Study Sessions are open to the public, but public input
is reserved for the regular Council meetings*

*This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please
contact City Hall at (253) 952.3299, 24 hours in advance.*



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Monthly Development Review	Agenda Item #:	2A	
	For Agenda of:	February 19, 2019	
	Prepared by:	Kristin Moerler & Darren Groth	
ATTACHMENTS (list): ☒ January 2019 Monthly Permit Tally ☒ Pending Projects (Planning and Engineering Permits) Map ☒ Pending Projects (Planning and Engineering Permits) List			
Review of Materials:			
Mayor, Daryl Eiding	☒	Expenditure Required:	\$0
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$0
City Attorney, Carol Morris	☒	Appropriation Required:	\$0
City Clerk, Rachel Pitzel	☒	Timeline: N/A	
Community Development Director, Darren Groth	☒		
Public Works, Jeremy Metzler	☒	BARS:	
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration: N/A			
SUMMARY STATEMENT: The City's Community Development Department (CDD) is entrusted by City Council, Edgewood citizens, and the State of Washington to provide growth management and development review, neighborhood preservation and revitalization, property inspection and maintenance, and other programs and business development services necessary to ensure the healthy, safety, and quality of life of Edgewood residents. To carry out these responsibilities, the CDD staff members perform numerous customer interactions, code interpretations, permitting functions, project reviews, on-site inspections, and multiple other functions. Materials have again been updated to reflect improvements in the reporting and database use. The focus in the past month was cleaning up and closing older records to improve the accuracy of the pending projects list and mapping.			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A			
RECOMMENDED ACTION: Receive a briefing, hold a discussion, and provide any direction to staff regarding the reporting of community development project and permit statuses.			
ALTERNATIVES TO RECOMMENDED ACTION: Forward to future study session for further discussion.			

January 2019

Number of Applications Received and Issued

Department	Received	Issued	YTD RECEIVED	YTD ISSUED
# of Building Permits	30	31	30	31
# of Planning Permits	5	1	5	1
# of Public Works Permits	6	8	6	8

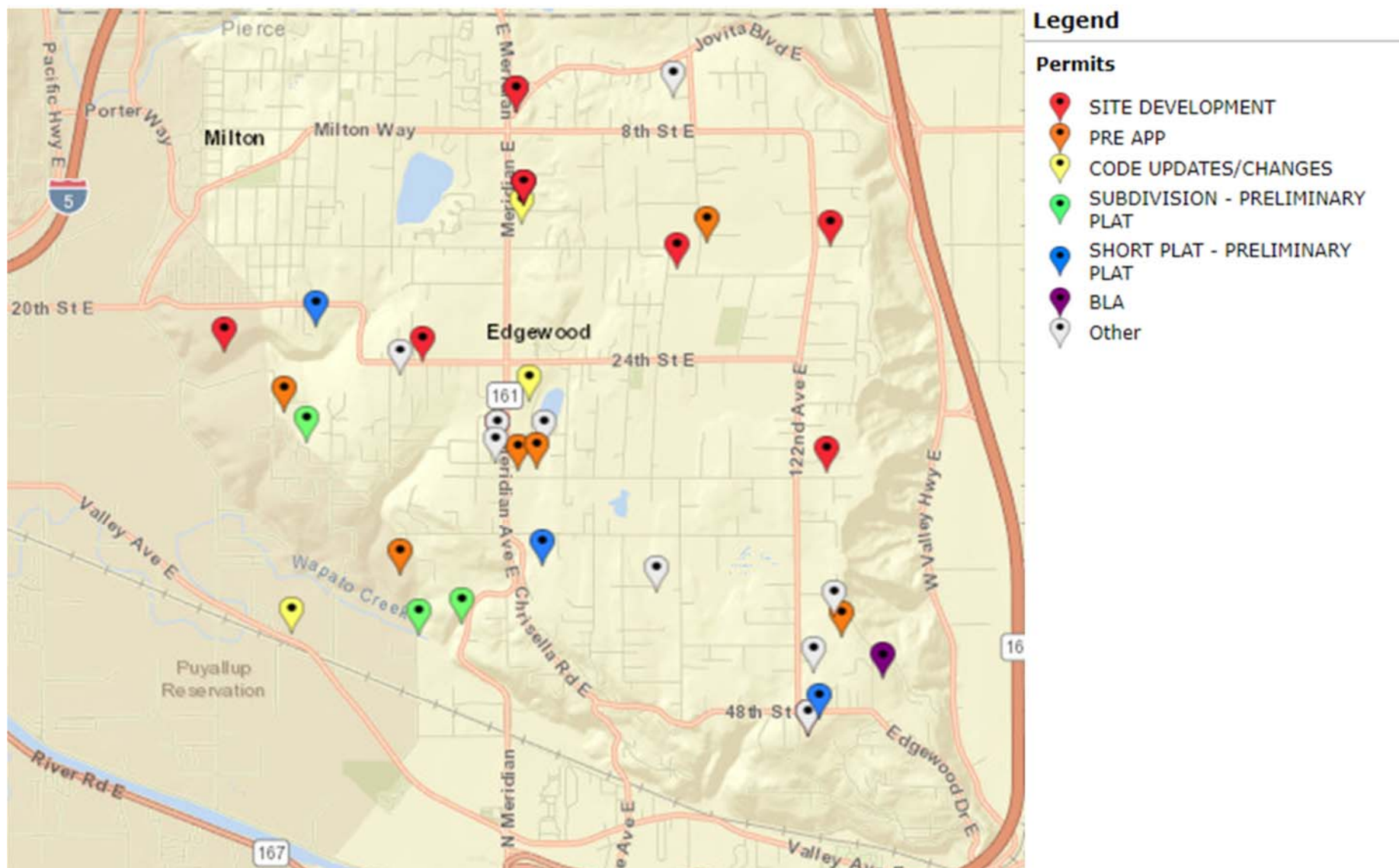
Inspections Completed

Department	# of Stops Made	# of Inspections	YTD # of Inspections
Public Works Inspections	33	66	66
Building Inspections	151	295	295

Number of Inspections By Inspector

Inspector	# of Inspections
Dean	0
Gene	30
Cory	265
Taylor	64
Jeremy	2

Pending Projects (Planning and Engineering Permits) Map



Pending Projects (Planning and Engineering Permits)

37 Records

Permit #	Project	Site Address	Department	Type	Status	Submitted	Expires	Process State	Last Activity
19-1032	MISENAR BLA	4423 127TH AV E	PLANNING	BLA	UNDER REVIEW	1/28/2019	8/7/2019	Technically Complete	2/8/2019 12:05
19-1023	NICKLAUS SUBDIVISION FINAL PLAT	2305 TO 2307 94TH AVCT E	PLANNING	FINAL PLAT - SUBDIV	APPLICATI ON	1/22/2019	2/21/2019	Pending	1/22/2019 16:31
19-1017	GROUND UP ROAD CONSTRUCTION OFFICE PRE-APPLICATION	3013 MERIDIAN AV E	PLANNING	PRE APP	APPLICATI ON	1/16/2019	7/15/2019	Pending	1/29/2019 15:55
19-1005	BECKER SHORT PLAT PRE-APPLICATION	4122 CALDWELL RD E	PLANNING	PRE APP	APPLICATI ON	1/7/2019	7/6/2019	Pending	1/24/2019 14:57
19-1002	LARSON SHORT PLAT PAVING	12301 44TH STCT E	PUBLIC WORKS	SURFACE WATER	UNDER REVIEW	1/3/2019	7/2/2019	Technically Complete	1/10/2019 13:49
18-1491	EDGEWOOD VET CLINIC COMP PLAN AMENDMENT	10215 13TH STCT E	PLANNING	CODE UPDATES/CHANGES	APPLICATI ON	12/31/2018	6/29/2019	Pending	12/31/2018 15:30
18-1486	ABEL SHORT PLAT SITE DEVELOPMENT	12321 16TH ST E	PUBLIC WORKS	SITE DEVELOPMENT	UNDER REVIEW	12/27/2018	7/16/2019	Technically Complete	2/6/2019 10:23
18-1467	MT VIEW EDGEWOOD WATER RESERVOIR SITE DEVELOPMENT	12224 48TH ST E	PUBLIC WORKS	SITE DEVELOPMENT	UNDER REVIEW	12/13/2018	6/11/2019	Technically Complete	1/11/2019 15:28
18-1468	MT VIEW EDGEWOOD WATER ADMINISTRATIVE USE PERMIT	12224 48TH ST E	PLANNING	ADMIN USE PERMIT (AUP)	UNDER REVIEW	12/13/2018	7/9/2019	Technically Complete	1/18/2019 15:43

Permit #	Project	Site Address	Department	Type	Status	Submitted	Expires	Process State	Last Activity
18-1455	MATKOVSKIY SHORT PLAT PRE-APPLICATION	2617 86TH AV E	PLANNING	PRE APP	UNDER REVIEW	12/5/2018	6/3/2019	Technically Complete	2/1/2019 14:29
18-1456	CIRILIUM SITE DEVELOPMENT	12311 31ST ST E	PUBLIC WORKS	SITE DEVELOPMENT	APPLICATI ON	12/5/2018	6/3/2019	Pending	1/24/2019 12:03
18-1453	BARTH ESTATES SUBDIVISION PRE-APP E	3624 96TH AV E	PLANNING	PRE APP	APPLICATI ON	11/29/2018	5/28/2019	Pending	12/13/2018 12:19
18-1449	YURINA-COLLINS SHORT PLAT FINAL PLAT	3826 114TH AV E	PLANNING	FINAL PLAT - SHORT	WAITING ON REVISION S	11/28/2018	1/28/2019	Technically Complete	1/31/2019 14:36
18-1447	BARTH SUBDIVISION PRELIMINARY PLAT	XXX 96TH AV E	PLANNING	SUBDIVISION - PRELIMINARY PLAT	APPLICATI ON	11/26/2018	12/24/2018	Pending	1/18/2019 9:35
18-1438	JENNA ACRES SHORT PLAT PRE-APPLICATION	1419 114TH AV E	PLANNING	PRE APP	UNDER REVIEW	11/14/2018	5/13/2019	Technically Complete	1/8/2019 11:28
18-1428	GREENE CLEAR AND GRADE	2818 105TH AV E	PUBLIC WORKS	CLEAR AND GRADE	INCOMPL ETE	11/6/2018	3/4/2019	Pending	1/10/2019 12:32
18-1421	GROUND UP ROAD CONSTRUCTION PRE-APPLICATION	3005 MERIDIAN AV E	PLANNING	PRE APP	UNDER REVIEW	10/31/2018	4/29/2019	Technically Complete	1/8/2019 11:30
18-1412	2818 MERIDIAN APARTMENTS SITE DEVELOPMENT	2818 MERIDIAN AV E	PUBLIC WORKS	SITE DEVELOPMENT	UNDER REVIEW	10/25/2018	7/17/2019	Technically Complete	1/18/2019 9:34
18-1408	OPFER DRIVEWAY ACCESS	4016 CALDWELL RD E	PUBLIC WORKS	DRIVEWAY ACCESS	UNDER REVIEW	10/19/2018	6/3/2019	Technically Complete	1/18/2019 8:29
18-1405	T GARRETT SHORT PLAT	10412 36TH ST E	PLANNING	SHORT PLAT - PRELIMINARY PLAT	WAITING ON REVISION S	10/17/2018	2/12/2019	Technically Complete	1/3/2019 14:29

Permit #	Project	Site Address	Department	Type	Status	Submitted	Expires	Process State	Last Activity
18-1342	EDGEWOOD VIEW ESTATES SITE DEVELOPMENT	8224 20TH ST E	PUBLIC WORKS	SITE DEVELOPMENT	APPLICATION	9/5/2018	3/4/2019	Pending	2/7/2019 9:58
18-1333	2818 MERIDIAN APARTMENTS DESIGN REVIEW	2818 MERIDIAN AVE	PLANNING	DESIGN STAND REVIEW	WAITING ON REVISIONS	8/28/2018	3/4/2019	Technically Complete	1/2/2019 8:26
18-1280	VIEW POINTE SELF STORAGE BLA	10315 12TH STCT E	PLANNING	BLA	UNDER REVIEW	7/23/2018	1/19/2019	Technically Complete	11/1/2018 11:15
18-1237	EDGEWOOD STORAGE CUP	2920 MERIDIAN AVE	PLANNING	CONDITIONAL USE PERMIT (CUP)	APPLICATION	7/3/2018	1/26/2019	Pending	12/27/2018 8:51
18-1214	GRUBB SHORT PLAT	12325 48TH ST E	PLANNING	SHORT PLAT - PRELIMINARY PLAT	WAITING ON REVISIONS	6/15/2018	3/21/2019	Technically Complete	12/26/2018 11:38
18-1146	CURRAN ESTATES FINAL PLAT	412 114TH AVE	PLANNING	FINAL PLAT - SHORT	INCOMPLETE	4/27/2018	4/4/2019	Pending	1/4/2019 15:10
18-1132	MICKELSON SUBDIVISION PRELIMINARY PLAT	2804 90TH AVE	PLANNING	SUBDIVISION - PRELIMINARY PLAT	WAITING ON REVISIONS	4/17/2018	4/4/2019	Technically Complete	1/31/2019 14:55
18-1045	BEREZNYOV SHORT PLAT PRELIMINARY PLAT	8904 20TH ST E	PLANNING	SHORT PLAT - PRELIMINARY PLAT	WAITING ON REVISIONS	2/8/2018	1/7/2019	Technically Complete	1/31/2019 14:53
18-1040	VIEW POINTE SELF STORAGE RV STORAGE SITE DEVELOPMENT	10315 12TH STCT E	PUBLIC WORKS	SITE DEVELOPMENT	INCOMPLETE	2/5/2018	3/3/2019	Pending	12/26/2018 11:40
17-1549	UCHIDA FARMS COMP PLAN AMENDMENT	XXX 42ND STCT E	PLANNING	CODE UPDATES/CHANGES	APPLICATION	12/27/2017	6/25/2018	Pending	1/4/2019 9:44

Permit #	Project	Site Address	Department	Type	Status	Submitted	Expires	Process State	Last Activity
17-1550	PROJECT S22 COMP PLAN AMENDMENT	10304 24TH ST E	PLANNING	CODE UPDATES/CHANGES	APPLICATION	12/27/2017	6/25/2018	Pending	1/4/2019 9:43
17-1535	NORTHWOOD ESTATES WEST PHASE II DESIGN REVIEW		PLANNING	DESIGN STAND REVIEW	APPLICATION	12/12/2017	6/10/2018	Pending	1/18/2019 9:11
17-1527	NORTHWOOD ESTATES WEST PHASE II SITE DEVELOPMENT	9609 24TH ST E	PUBLIC WORKS	SITE DEVELOPMENT	WAITING ON REVISIONS	12/5/2017		Technically Complete	2/6/2019 12:41
17-1498	THE LEARNING CENTER DESIGN REVIEW	XXX JOVITA BLVD E	PLANNING	DESIGN STAND REVIEW	WAITING ON REVISIONS	11/21/2017	2/15/2019	Technically Complete	1/9/2019 12:20
17-1488	THE LEARNING CENTER SITE DEVELOPMENT	XXX JOVITA BLVD E	PUBLIC WORKS	SITE DEVELOPMENT	WAITING ON REVISIONS	11/13/2017	2/15/2019	Technically Complete	1/9/2019 12:21
17-1472	GERVAIS SHORT PLAT SITE DEVELOPMENT	1607 112TH AV E	PUBLIC WORKS	SITE DEVELOPMENT	APPLICATION	10/27/2017	7/18/2018	Pending	1/8/2019 11:54
17-1444	WOLF POINT SUBDIVISION PRELIMINARY PLAT	XXX MERIDIAN AV E	PLANNING	SUBDIVISION - PRELIMINARY PLAT	WAITING ON REVISIONS	10/10/2017	2/6/2018	Technically Complete	10/12/2018 10:43



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: 36 th & Meridian Park Phase One – Recreation and Conservation Office (RCO) Grant Agreement		Agenda Item #:	2B
		For Agenda of:	February 19, 2019
		Prepared by:	Jeremy Metzler
ATTACHMENTS (list): ☒ DRAFT Resolution 19-0xxx ☒ RCO Grant Agreement			
Approval of Materials:			
Mayor, Daryl Eidinger	☒	Expenditure Required:	\$2,050,000 (est.)
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$3,050,000 (total)
City Attorney, Carol Morris	☒	Appropriation Required:	\$2,050,000 (2019/20)
City Clerk, Rachel Pitzel	☒	Timeline: Council Consideration – 2/26/2019	
Community Development Director, Darren Groth	☒		
Public Works, Jeremy Metzler	☒		
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration: Funding for this project is included in the approved 2019 – 2024 CIP and approved 2019 Budget. Park Impact Fee revenues can be applied to all costs associated with design, contract administration, and construction.			
SUMMARY STATEMENT: Constructing new active park space has been identified as a high priority in the City's adopted Comprehensive Plan and Capital Improvement Plan (CIP). The 36 th and Meridian property was acquired by the City in late 2004. An adhoc committee was formed in early 2007 and with the help of a landscape architect, a Master Plan of the 18-acre park facility was presented to the Council and citizens of Edgewood. Design work for the project began in 2015 and a 30% plan developed by the Berger Partnership as part of the submittal package for two grant applications in June of 2016. The current design includes a shelter, parking lot, play equipment and picnic facilities. The 36 th and Meridian Park Phase One project was selected by the Recreation and Conservation Office (RCO) for funding under both submitted applications, totaling \$1,000,000 in reimbursable funding. Attached is the draft resolution authorizing execution of the RCO grant agreement (also attached). Before construction can begin, a final design needs to be prepared. Because this work can only be done by an architect and/or engineer, the City is required to use the procedure established in chapter 39.80 RCW. The City complied with these requirements by advertising a Request for Qualifications, evaluating the submittals received, interviewing the top three (3) candidate teams, and is now negotiating a contract with the highest-scoring qualified team.			
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A			
RECOMMENDED ACTION: Bring forward Resolution No. 19-0xxx and the grant funding to the next Regular Council Meeting for consideration and action.			
ALTERNATIVES TO RECOMMENDED ACTION: Forward to future study session for further discussion.			

RESOLUTION NO. 19-0xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO THE PROPOSED 36TH AND MERIDIAN PARK, AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT FROM THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE (RCO) IN THE AMOUNT OF \$1,000,000 FOR PHASE 1 DEVELOPMENT OF THE PROPOSED PARK.

WHEREAS, constructing new active park space has been identified as a high priority in the City's Capital Improvement Plan (CIP) for several years; and

WHEREAS, the City has budgeted \$3,050,000 for design and construction of the proposed 36th and Meridian Park, which includes a mix of park impact fees and other funds; and

WHEREAS, with some preliminary design assistance from the Berger Partnership, the Parks and Recreation Advisory Board (PRAB) submitted two grant applications to the Washington State Recreation and Conservation Office (RCO) for the proposed 36th and Meridian Park in June 2016; and

WHEREAS, during 2018, the City's two applications were selected for a total of \$1,000,000 in reimbursable grant funding for Phase 1 development of the proposed 36th and Meridian Park; and

WHEREAS, this Resolution is categorically exempt from SEPA under WAC 197-11-800(19); and

WHEREAS, a project-based SEPA evaluation for the proposed 36th and Meridian Park will be performed during project design; and

WHEREAS, the Council considered this Resolution during its February 26, 2019 regular City Council meeting;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes the Mayor to execute the Washington State RCO grant agreement attached hereto as Exhibit A and incorporated herein by this reference, for the design and construction work relating to the 36th and Meridian Park Phase One project in Edgewood.

Section 2. This Resolution shall become effective upon passage.

PASSED THIS 26TH DAY OF FEBRUARY, 2019.

Daryl Eidinger, Mayor

ATTEST:

Rachel Pitzel, City Clerk

DRAFT

Exhibit A
RCO Grant Agreement

DRAFT

Funding Board Project Agreement

Project Sponsor: City of Edgewood

Project Number: 16-1991D

Project Title: Edgewood Community Park: Phase 1

Approval Date: 9/24/2018

A. PARTIES OF THE AGREEMENT

This Funding Board Project Agreement (Agreement) is entered into between the State of Washington by and through the Recreation and Conservation Funding Board (RCFB or funding board) and the Recreation and Conservation Office (RCO), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Edgewood (Sponsor, and primary Sponsor), 2224 104th Ave E, Edgewood, WA 98372-1513, and shall be binding on the agents and all persons acting by or through the parties.

All Sponsors are equally and independently subject to all the conditions of this Agreement except those conditions that expressly apply only to the primary Sponsor.

Per the Applicant Resolution/Authorizations submitted by all sponsors (and on file with the RCO), the identified Authorized Representative(s)/Agent(s) have full authority to legally bind the Sponsor(s) regarding all matters related to the project, including but not limited to, full authority to: (1) sign a grant application to the funding board for grant assistance, (2) enter into this project agreement on behalf of the Sponsor(s) (including indemnification and waiver of sovereign immunity, if applicable, as provided therein), (3) enter into any amendments thereto on behalf of the Sponsors, and (4) make any decisions and submissions required with respect to the project. Agreements and amendments must be signed by the Authorized Representative/Agent(s) of all sponsors, unless otherwise allowed in Section J.

If a Sponsor wishes to change its Authorized Representative/Agent as identified on the original signed Applicant Resolution/Authorization, the Sponsor has the obligation to provide to RCO in writing a new Applicant Resolution/Authorization signed by its governing body. Unless a new Applicant Resolution/Authorization has been provided, RCO will be entitled to rely upon the fact that the current Authorized Representative/Agent has the authority to bind the Sponsor to the Agreement (including any amendments thereto) and decisions related to implementation of the Agreement.

For the purposes of this Agreement, as well as for grant management purposes with RCO, only the primary Sponsor may act as a fiscal agent to obtain reimbursements (see Section 11. PROJECT REIMBURSEMENTS).

B. PURPOSE OF AGREEMENT

This Agreement sets out the terms and conditions by which a grant is made from the General Fund - Federal and Outdoor Recreation Account of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO).

C. DESCRIPTION OF PROJECT

The City of Edgewood will use this grant for phase 1 development of an 18 acre community park. Development includes a half mile loop trail, inclusive destination playground, picnic shelter, grass amphitheater, restroom, and multi-use programmable general purpose field. The primary recreation opportunities provided by this project will be passive and active recreation.

D. PERIOD OF PERFORMANCE

The period of performance begins on November 1, 2018 (project start date) and ends on December 31, 2020 (project end date). No allowable cost incurred before or after this period is eligible for reimbursement unless specifically provided for by written amendment or addendum to this Agreement, or specifically provided for by applicable RCWs, WACs, and any applicable RCO manuals as of the effective date of this Agreement.

The Sponsor must request extensions of the period of performance at least 60 days before the project end date.

The Sponsor has obligations beyond this period of performance as described in Section F: LONG-TERM OBLIGATIONS.

E. STANDARD TERMS AND CONDITIONS INCORPORATED

The Standard Terms and Conditions of the Recreation and Conservation Office Agreement are hereby incorporated by reference as part of this Agreement.

F. LONG-TERM OBLIGATIONS

For this development, renovation and restoration project, the sponsor's on-going obligations shall be in perpetuity and shall survive the completion/termination of this Project Agreement unless otherwise identified in the Agreement or as

approved by the funding board. It is the intent of the funding board's conversion policy (see Section 25: Long-Term Obligations Of The Project Sponsors) that all lands acquired and/or facilities and areas developed, renovated, or restored with funding assistance remain in the public domain in perpetuity.

G. PROJECT FUNDING

The total grant award provided for this project shall not exceed \$1,000,000.00. The RCO shall not pay any amount beyond that approved for grant funding of the project and within the percentage as identified below. The Sponsor shall be responsible for all total project costs that exceed this amount. The minimum matching share provided by the Sponsor shall be as indicated below:

	Percentage	Dollar Amount	Source of Funding
RCFB - Land and Water Conservation	15.82%	\$500,000.00	Federal
RCFB - WWRP - Local Parks	15.82%	\$500,000.00	State
Project Sponsor	68.36%	\$2,160,380.00	
Total Project Cost	100.00%	\$3,160,380.00	

H. FEDERAL FUND INFORMATION

If federal funding information is included in this section, this project is funded by, matched by, and/or funded in part by the following federal award, or subaward:

Federal Agency: US Dept of Interior
 Catalog of Federal Domestic Assistance Number and Name: 15.916 - Land & Water Conservation Fund
 Federal Award Identification Number: P18AP00200
 Federal Fiscal Year: 2018
 Federal Award Date: 09/24/2018
 Total Federal Award: \$500,000
 Federal Award Project Description: 53-00729 Edgewood

This funding is not research and development (R&D).

If the Sponsor's total federal expenditures are \$750,000 or more during the Sponsor's fiscal-year, the Sponsor is required to have a federal single audit conducted for that year in compliance with 2 C.F.R. Part 200, Sub Part F Audit Requirements, Section 500 (2013). The Sponsor must provide a copy of the final audit report to RCO within nine months of the end of the Sponsor's fiscal year, unless a longer period is agreed to in advance by the federal agency identified in this section.

RCO may suspend all reimbursements if the Sponsor fails to timely provide a single federal audit; further the RCO reserves the right to suspend any and all RCO Agreement(s) with the Sponsor if such noncompliance is not promptly cured.

I. RIGHTS AND OBLIGATIONS INTERPRETED IN LIGHT OF RELATED DOCUMENTS

All rights and obligations of the parties under this Agreement are further specified in and shall be interpreted in light of the Sponsor's application and the project summary and eligible scope activities under which the Agreement has been approved as well as documents produced in the course of administering the Agreement, including the eligible scope activities, the milestones report, progress reports, and the final report. Provided, to the extent that information contained in such documents is irreconcilably in conflict with this Agreement, it shall not be used to vary the terms of the Agreement, unless those terms are shown to be subject to an unintended error or omission. This "Agreement" as used here and elsewhere in this document, unless otherwise specifically stated, has the meaning set forth in the definitions of the Standard Terms and Conditions of the Project Agreement.

J. AMENDMENTS TO AGREEMENT

Except as provided herein, no amendment (including without limitation, deletions) of any of the terms or conditions of this Agreement will be effective unless provided in writing signed by all parties. Extensions of the period of performance and minor scope adjustments consented to in writing (including email) by the Sponsor need only be signed by RCO's director or designee, unless otherwise provided for in another agreement a Sponsor has with the RCO. This exception does not apply to a federal government Sponsor or a Sponsor that requests and enters into a formal amendment for extensions or minor scope adjustments.

It is the responsibility of a Sponsor to ensure that any person who signs an amendment on its behalf is duly authorized to do so, and such signature shall be binding on the Sponsor if the representative/agent signing has been authorized to do so by Applicant Resolution/Authorization provided to the RCO and such Applicant Resolution/Authorization has not been withdrawn by the governing body in a subsequent resolution.

Any amendment to this Agreement, unless otherwise expressly stated, shall be deemed to include all current federal, state, and local government laws and rules, and policies applicable and active and published in the applicable RCO manuals or on the RCO website in effect as of the effective date of the amendment, without limitation to the subject matter of the amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

K. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND POLICIES

This Agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, applicable RCO manuals as identified below, and any applicable federal program and accounting rules effective as of the date of this Agreement, and with respect to any amendments to this Agreement, as of the effective date of that amendment. Provided, any update in law, rule, policy or a manual that is incorporated as a result of an amendment shall apply only prospectively and shall not require that an act previously done in compliance with existing requirements be redone.

For the purpose of this Agreement, WAC Title 286, RCFB policies, and the following RCO manuals are deemed applicable and shall apply as terms of this Agreement:

- Development Projects - Manual 4
- Land and Water Conservation Fund - Manual 15
- Long Term Obligations - Manual 7
- Reimbursements - Manual 8
- WWRP - Recreation Programs - Manual 10a

L. SPECIAL CONDITIONS**1. Cultural Resources - Survey Required**

Funding for this project is partially derived through the National Park Service's Land and Water Conservation fund; therefore it is subject to review under Section 106 of the National Historic Preservation Act. The lead agency has completed the initial consultation for this project and a cultural resources survey is required. The Sponsor must submit to RCO the completed cultural resources survey and receive from RCO a Notice to Proceed before any ground disturbing activities can begin. Please ensure that your project milestones provide ample time for the Agencies to coordinate review with the consulting parties. Construction started without a Notice to Proceed will be considered a breach of contract. In the event that archaeological or historic materials are discovered while conducting ground disturbing activities, work in the immediate vicinity must stop and the Sponsor must ensure compliance with the provisions found in Section 8 of this agreement.

M. AGREEMENT CONTACTS

The parties will provide all written communications and notices under this Agreement to the mail address or the email address listed below if not both:

Sponsor Project Contact

Name: Jeremy Metzler
Title: Public Works Director
Address: 2224 104th Ave E
Edgewood, WA 98372
Email: jeremy@cityofedgewood.org

RCO Contact

Beth Auerbach
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917
Beth.Auerbach@rco.wa.gov

These addresses and contacts shall be effective until receipt by one party from the other of a written notice of any change. Decisions relating to the Agreement must be made by the Authorized Representative/Agent, who may or may not be the Project Contact for purposes of notices and communications.

N. ENTIRE AGREEMENT

This Agreement, with all amendments and attachments, constitutes the entire Agreement of the parties. No other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

O. EFFECTIVE DATE

This Agreement, for project 16-1991D, shall be subject to the written approval of the RCO's authorized representative and shall not be effective and binding until the date signed by both the Sponsor and the RCO, whichever is later (effective date). Reimbursements for eligible and allowable costs incurred within the period of performance identified in Section D: PERIOD OF PERFORMANCE are allowed only when this Agreement is fully executed and an original is received by RCO.

The Sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in this Agreement and the Standard Terms and Conditions of the Project Agreement. The signators listed below represent and warrant their authority to bind the parties to this Agreement.

City of Edgewood**By:** _____**Date:** _____**Name:** (printed) _____**Title:** _____**State of Washington Recreation and Conservation Office****On behalf of the Recreation and Conservation Funding Board (RCFB or funding board)****By:** _____**Date:** _____

Kaleen Cottingham
Director
Recreation and Conservation Office

Pre-approved as to form:

By:  _____**Date:** October 6, 2017

Assistant Attorney General

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Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Edgewood
Project Title: Edgewood Community Park: Phase 1

Project Number: 16-1991D
Approval Date: 9/24/2018

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version on the effective date of this Agreement or the effective date of any amendment thereto.
- B. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- C. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

acquisition project – A project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

Agreement or project agreement – The document entitled “Funding Board Project Agreement” accepted by all parties to the present transaction, including without limitation these Standard Terms and Conditions of the Project Agreement, all attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the Funding Board Project Agreement subject to any limitations on their effect.

applicant – Any party that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.

application – The documents and other materials that an applicant submits to the RCO to support the applicant’s request for grant funds; this includes materials required for the “Application” in the RCO’s automated project information system, and other documents as noted on the application checklist including but not limited to legal opinions, maps, plans, evaluation presentations and scripts.

Authorized Representative/Agent – A Sponsor’s agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

Boating Infrastructure Grant (BIG) – A program administered through the United States Fish and Wildlife Service.

C.F.R. – Code of Federal Regulations

contractor – An entity that receives a contract from a Sponsor related to performance of work or another obligation under this Agreement.

conversion – A conversion occurs 1) when facilities acquired, developed, renovated or restored within the project area are changed to a use other than that for which funds were approved, without obtaining prior written formal RCO or board approval, 2) when property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was approved without obtaining prior written formal RCO or board approval, or 3) when obligations to operate and maintain the funded property are not complied with after reasonable opportunity to cure.

development project – A project that results in the construction of, or work resulting in, new elements, including but not limited to structures, facilities, and/or materials to enhance outdoor recreation resources.

director – The chief executive officer of the Recreation and Conservation Office or that person's designee.

education project – A project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

education and enforcement project – A project that provides information, education, and outreach programs; encourages responsible recreational behavior, and may provide law enforcement for the benefit of outdoor recreationists.

effective date – The date when the signatures of all parties to this agreement are present in the agreement.

enhancement project – 1) A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site, or 2) a project that (i) supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, (ii) ensures compatibility between hatchery production and salmon recovery programs, or (iii) supports sustainable fisheries (WAC 420.04.010).

equipment – Tangible personal property (including information technology systems) having a useful service life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the Sponsor or \$5,000 (2 C.F.R. § 200.33 (2013)).

funding board or board – The board that authorized the funds in this Agreement, either the Recreation and Conservation Funding Board (RCFB) created under RCW 79A.25.110, or the Salmon Recovery Funding Board (SRFB) created under RCW 77.85.110.

grant program – The source of the grant funds received. May be an account in the state treasury, or a grant category within a larger grant program, or a federal source.

indirect cost – Costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved (2 C.F.R. § 200.56 (2013)).

long-term compliance period – The period of time after the project end date or end of the period of performance (depending on the project types and grant program). During this period, the Sponsor has continuing obligations under the Agreement. This period may have a nonspecific end date (in perpetuity) or an expressly specified number of years.

long-term obligations – Sponsor's obligations after the project end date, as specified in the Agreement and applicable regulations and policies.

landowner agreement – An agreement that is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor.

maintenance – A project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreation or salmon recovery.

maintenance and operation – A project that maintains and operates existing areas and facilities through repairs, upkeep, and routine services for the benefit of outdoor recreationists.

match or matching share – The portion of the total project cost provided by the Sponsor.

milestone – An important event with a defined date to track an activity related to implementation of a funded project and monitor significant stages of project accomplishment.

monitoring project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

monitoring and research project – Means a project that tracks the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

Office – Means the Recreation and Conservation Office or RCO.

notice of grant – As required by RCO or another authority, a document that has been legally recorded in the county or counties where the project property is located that describes the grant funded project located on the property, the funding sources, and agencies responsible for awarding the grant.

pass-through entity – A non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 C. F. R. § 200.74 (2013)). If this Agreement is a federal subaward, RCO is the pass-through entity.

period of performance – The period beginning on the project start date and ending on the project end date.

planning (RCFB projects only) – A project that results in one or more of the following: a study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

planning (SRFB projects only) – A project that results in a study, assessment, project design, or inventory.

pre-agreement cost – A project cost incurred before the period of performance.

primary Sponsor – The Sponsor who is not a secondary Sponsor and who is specifically identified in the Agreement as the entity to which RCO grants funds to and authorizes and requires to administer the grant. This administration includes but is not limited to acting as the fiscal agent for the grant (e.g. requesting and accepting reimbursements, submitting reports). Primary Sponsor includes its officers, employees, agents and successors.

project – An undertaking that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.

project area, RCFB – A geographic area that delineates a grant assisted site which is subject to project agreement requirements (WAC 286.04.010).

project area, SRFB – The area consistent with the geographic limits of the scope of work of the project and subject to project agreement requirements. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired for or committed to the project (WAC 420.04.010).

project cost – The total allowable costs incurred under this Agreement and all required match share and voluntary committed matching share, including third-party contributions (2 C.F.R. § 200.83 (2013)).

project end date – The specific date identified in the Agreement on which the period of performance ends, as may be changed by amendment. This date is not the end date for any long-term obligations.

project start date – The specific date identified in the Agreement on which the period of performance starts.

research project – Means a project that studies salmon and the effectiveness of recovery restoration efforts on the population or habitat condition.

RCO – Recreation and Conservation Office – The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by RCW 79A.25.110 and 79A.25.150 and charged with administering this Agreement by RCW 77.85.110 and 79A.25.240.

reimbursement – RCO's payment of funds from eligible and allowable costs that have already been paid by the Sponsor per the terms of the Agreement.

renovation project – A project intended to improve an existing site or structure in order to increase its useful service life beyond current expectations or functions. This does not include maintenance activities to maintain the facility for its originally expected useful service life.

restoration project – A project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of a site.

restoration and enhancement project – A project that brings a site back to its historic function as part of a natural ecosystem or that improves the ecological functionality of a site or a larger ecosystem which improvement may include benefiting fish stocks.

RCFB – Recreation and Conservation Funding Board

RCW – Revised Code of Washington

Recreational Trails Program (RTP) – A Federal Highways Administration grant program.

secondary Sponsor – One of two or more Sponsors who is not a primary Sponsor. Only the primary Sponsor may be the fiscal agent for the project.

Sponsor – A Sponsor is an organization that is listed in and has signed this Agreement.

Sponsor Authorized Representative/Agent – A Sponsor's agent (employee, political appointee, elected person, etc.) authorized to be the signatory of this Agreement and any amendments requiring a Sponsor signature. This person has the signature authority to bind the Sponsor to this Agreement, grant, and project.

SRFB – Salmon Recovery Funding Board

subaward – Funds allocated to the RCO from another organization, for which RCO makes available to or assigns to another organization via this Agreement. Also, a subaward may be an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of any award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal or other program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. Also see 2 C.F.R. § 200.92 (2013). For federal subawards, a subaward is for the purpose of carrying out a portion of a Federal award and creates a federal assistance relationship with the subrecipient (2 C.F.R. § 200.330 (2013)). If this Agreement is a federal subaward, the subaward amount is the grant program amount in Section G: Project Funding.

subrecipient – Subrecipient means an entity that receives a subaward. For non-federal entities receiving federal funds, a subrecipient is an entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency (2 C.F.R. § 200.93 (2013)). If this Agreement is a federal subaward, the Sponsor is the subrecipient.

useful service life – Period during which an asset or property is expected to be useable for the purpose it was acquired, developed, renovated, and/or restored per this Agreement.

WAC – Washington Administrative Code.

SECTION 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the project as described in this Agreement, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein.

Timely completion of the project and submission of required documents, including progress and final reports, is important. Failure to meet critical milestones or complete the project, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the RCO.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the Sponsor with the project by providing a grant pursuant to this Agreement, the project itself remains the sole responsibility of the Sponsor. The funding board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the project is solely that of the Sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project. When a project is Sponsored by more than one entity, any and all Sponsors are equally responsible for the project and all post-completion stewardship responsibilities and long-term obligations unless otherwise stated in this Agreement.

The RCO has no responsibility for reviewing, approving, overseeing or supervising design or construction of the project and leaves such review, approval, oversight and supervision exclusively to the Sponsor and others with expertise or authority. In this respect, the RCO will act only to confirm at a general, lay, and nontechnical level, solely for the purpose of compliance and payment and not for safety or suitability, that the project has apparently been completed as per the Agreement.

SECTION 5. INDEMNIFICATION

The Sponsor shall defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the actual or alleged acts, errors, omissions or negligence in connection with this Agreement (including without limitation all work or activities thereunder), or the breach of any obligation under this Agreement by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors, or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

Provided that nothing herein shall require a Sponsor to defend or indemnify the State against and hold harmless the State from claims, demands or suits based solely upon the negligence of the State, its employees and/or agents for whom the State is vicariously liable.

Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor is legally liable, and (b) the State its employees and agents for whom it is vicariously liable, the indemnity obligation shall be valid and enforceable only to the extent of the Sponsor's negligence or the negligence of the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

This provision shall be included in any agreement between Sponsor and any contractors, subcontractor and vendor, of any tier.

The Sponsor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Sponsor or the Sponsor's agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable, in performance of the work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or communicated to the State, its agents, officers and employees pursuant to the Agreement. Provided, this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions resulting from the State's, its agents', officers' and employees' failure to comply with specific written instructions regarding use provided to the State, its agents, officers and employees by the Sponsor, its agents, employees, contractors, subcontractors or vendors, of any tier, or any other persons for whom the Sponsor may be legally liable.

As part of its obligations provided above, the Sponsor specifically assumes potential liability for actions brought by the Sponsor's own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Sponsor specifically waives any immunity under the state industrial insurance law, RCW Title 51.

The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not officers, employees or agents of the funding board or RCO. The Sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under RCW 41.06 or Section 30B.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, RCW 42.52; or any similar statute involving the Sponsor in the procurement of, or performance under, this Agreement.

In the event this Agreement is terminated as provided herein, RCO shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

In implementing the Agreement, the Sponsor shall comply with all applicable federal, state, and local laws (including without limitation all applicable ordinances, codes, rules, and regulations). Such compliance includes, without any limitation as to other applicable laws, the following laws:

- A. Nondiscrimination Laws.** The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the funding board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.
- B. Secular Use of Funds.** No funds awarded under this grant may be used to pay for any religious activities, worship, or instruction, or for lands and facilities for religious activities, worship, or instruction. Religious activities, worship, or instruction may be a minor use of the grant supported recreation and conservation land or facility.
- C. Wages and Job Safety.** The Sponsor agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington or other jurisdiction which affect wages and job safety. The Sponsor agrees when state prevailing wage laws (RCW 39.12) are applicable, to comply with such laws, to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract, and to file a statement of intent to pay prevailing wage with the Washington State Department of Labor and Industries as required by RCW 39.12.040. The Sponsor also agrees to comply with the provisions of the rules and regulations of the Washington State Department of Labor and Industries.

- 1. Exception, Service Organizations of Trail and Environmental Projects (RCW 79A.35.130).** If allowed by state and federal law and rules, participants in conservation corps programs offered by a nonprofit organization affiliated with a national service organization established under the authority of the national and community service trust act of 1993, P.L. 103-82, are exempt from provisions related to rates of compensation while performing environmental and trail maintenance work provided: (1) The nonprofit organization must be registered as a nonprofit corporation pursuant to RCW 24.03; (2) The nonprofit organization's management and administrative headquarters must be located in Washington; (3) Participants in the program must spend at least fifteen percent of their time in the program on education and training activities; and (4) Participants in the program must receive a stipend or living allowance as authorized by federal or state law. Participants are exempt from provisions related to rates of compensation only for environmental and trail maintenance work conducted pursuant to the conservation corps program.

- D. Archaeological and Cultural Resources.** RCO facilitates the review of applicable projects for potential impacts to archaeological sites and state cultural resources. The Sponsor must assist RCO in compliance with Governor's Executive Order 05-05 or the National Historic Preservation Act before and after initiating ground-disturbing activity or construction, repair, installation, rehabilitation, renovation, or maintenance work on lands, natural resources, or structures. The funding board requires documented compliance with Executive Order 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. If a federal agency declines to consult, the Sponsor shall comply with the requirements of Executive Order 05-05. In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

- E. Restrictions on Grant Use.** No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

- F. Debarment and Certification.** By signing the Agreement with RCO, the Sponsor certifies that neither it nor its principals nor any other lower tier participant are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by Washington State Labor and Industries. Further, the Sponsor agrees not to enter into any arrangements or contracts related to this Agreement with any party that is on Washington State Department of Labor and Industries' "Debarred Contractor List."

SECTION 9. RECORDS

- A. Digital Records.** If requested by RCO, the Sponsor must provide a digital file(s) of the project property and funded project site in a format specified by the RCO.
- B. Maintenance.** The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years from the date RCO deems the project complete, as defined in Section 11: PROJECT REIMBURSEMENTS. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. In order to satisfy 15 CFR 24.42(b) & (c) For projects that contain Pacific Coast Salmon Recovery Funds or are used as match to Pacific Coast Salmon Recovery Funds the sponsor shall retain records for a period of nine years from the date RCO deems the project complete as defined in Section 11: PROJECT REIMBURSEMENTS.
- C. Access to Records and Data.** At no additional cost, the records relating to the Agreement, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. This includes access to all information that supports the costs submitted for payment under the grant and all findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.
- D. Public Records.** Sponsor acknowledges that the funding board is subject to RCW 42.56 and that this Agreement and any records Sponsor submits or has submitted to the State shall be a public record as defined in RCW 42.56. RCO administers public records requests per WAC 286-06 and 420-04. Additionally, in compliance with RCW 77.85.130(8), Sponsor agrees to disclose any information in regards to expenditure of any funding received from the SRFB. By submitting any record to the State, Sponsor understands that the State may be requested to disclose or copy that record under the state public records law, currently codified at RCW 42.56. The Sponsor warrants that it possesses such legal rights as are necessary to permit the State to disclose and copy such document to respond to a request under state public records laws. The Sponsor hereby agrees to release the State from any claims arising out of allowing such review or copying pursuant to a public records act request, and to indemnify against any claims arising from allowing such review or copying and pay the reasonable cost of state's defense of such claims.

SECTION 10. PROJECT FUNDING

- A. Authority.** This Agreement is funded through a grant award from the recreation and conservation funding board per WAC 286 and/or the salmon recovery funding board per WAC 420. The director of RCO enters into this Agreement per delegated authority in RCW 79A.25.020 and 77.85.120.
- B. Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this Agreement.
- C. Before the Agreement.** No expenditure made, or obligation incurred, by the Sponsor before the project start date shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-Agreement costs. For reimbursements of such costs, this Agreement must be fully executed and an original received by RCO. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- D. Requirements for Federal Subawards.** Pre-Agreement costs before the federal award date in Section H: FEDERAL FUND INFORMATION are ineligible unless approved by the federal award agency (2 C.F.R § 200.458 (2013)).
- E. After the Period of Performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this Agreement, the grant amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 11. PROJECT REIMBURSEMENTS

- A. Reimbursement Basis.** This Agreement is administered on a reimbursement basis per WAC 286-13 and/or 420-12. Only the primary Sponsor may request reimbursement for eligible and allowable costs incurred during the period of performance. The primary Sponsor may only request reimbursement after (1) this Agreement has been fully executed and (2) the Sponsor has remitted payment to its vendors. RCO will authorize disbursement of project funds only on a reimbursable basis at the percentage as defined in Section G: PROJECT FUNDING. Reimbursement shall not be approved for any expenditure not incurred by the Sponsor or for a donation used as part of its matching share. RCO does not reimburse for donations. All reimbursement requests must include proper documentation of expenditures as required by RCO.
- B. Reimbursement Request Frequency.** The primary Sponsor is required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30 or as identified in the milestones. Sponsors must refer to the most recently published/adopted RCO policies and procedures regarding reimbursement requirements.
- C. Compliance and Payment.** The obligation of RCO to pay any amount(s) under this Agreement is expressly conditioned on strict compliance with the terms of this Agreement and other agreements between RCO and the Sponsor.
- D. Retainage Held Until Project Complete.** RCO reserves the right to withhold disbursement of the total amount of the grant to the Sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the Agreement are done;
 - 2. On-site signs are in place (if applicable);
 - 3. A final project report is submitted to and accepted by RCO;
 - 4. Any other required documents and media are complete and submitted to RCO;

5. A final reimbursement request is submitted to RCO;
6. The completed project has been accepted by RCO;
7. Final amendments have been processed;
8. Fiscal transactions are complete, and
9. RCO has accepted a final boundary map, if requested by RCO, for which the Agreement terms will apply in the future.
10. Notice of Grant (if applicable) filed with the county lands records office and a stamped copy received by RCO

E. Requirements for Federal Subawards: Match. The Sponsor's matching share must comply with 2 C.F.R. § 200.306 (2013). Any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, can be accepted as part of the Sponsor's matching share when such contributions meet all of the following criteria:

1. Are verifiable from the non-Federal entity's (Sponsor's) records;
2. Are not included as contributions for any other Federal award;
3. Are necessary and reasonable for accomplishment of project or program objectives;
4. Are allowable under 2 C.F.R. Part 200, Subpart E—Cost Principles (2013);
5. Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
6. Are provided for in the approved budget when required by the Federal awarding agency identified in Section H: FEDERAL FUND INFORMATION of this Agreement; and
7. Conform to other provisions of 2 C.F.R. Part 200, Subpart D—Post Federal Award Requirements (2013), as applicable.

F. Requirements for Federal Subawards: Close out. Per 2 C.F.R § 200.343 (2013), the non-Federal entity (Sponsor) must:

1. Submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity (RCO) may approve extensions when requested by the Sponsor.
2. Liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
3. Refund any balances of unobligated cash that the Federal awarding agency or pass-through entity (RCO) paid in advance or paid and that are not authorized to be retained by the non-Federal entity (Sponsor) for use in other projects. See OMB Circular A-129 and see 2 C.F.R § 200.345 Collection of amounts due (2013), for requirements regarding unreturned amounts that become delinquent debts.

4. Account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property (2013).

SECTION 12. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services are not allowed unless approved by the RCO director and are consistent with legal requirements and Manual 8: Reimbursements. See WAC 420-12.

SECTION 13. RECOVERY OF PAYMENTS

- A. Recovery for Noncompliance.** In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, or meet its percentage of the project total, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.
- B. Overpayment Payments.** The Sponsor shall reimburse RCO for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.
- C. Requirements for Federal Subawards.** RCO, acting as a pass-through entity, may impose any of the remedies as authorized in 2 C.F.R §§ 200.207 Specific conditions and/or 200.338 Remedies for noncompliance (2013).

SECTION 14. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the Sponsor, to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 15. INCOME (AND FEES) AND USE OF INCOME

RCFB Projects. See WAC 286-13-110 for additional requirements for projects funded from the RCFB.

- A. Income.**
 - 1. Farm and Forest Account (Farmland and Forestland Preservation Grants).** Excepted from this section is income generated and fees paid on/for properties which received funds from the Farm and Forest Account (RCW 79A.15.130).
 - 2. Firearms and Archery Range Recreation Projects.** Excepted from this section are safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (RCW 79A.25.210).
 - 3. Compatible source.** The source of any income generated in a funded project or project area must be compatible with the funding source and the Agreement and any policies adopted by the RCFB or SRFB.

- B. Use of Income.** Subject to any limitations contained in applicable state or federal law and applicable rules and policies, income or fees generated at a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) during or after the reimbursement period cited in the Agreement, must be used to offset:
1. The Sponsor's matching resources;
 2. The project's total cost;
 3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system;
 5. Capital expenses for similar acquisition and/or development and renovation; and/or
 6. Other purposes explicitly approved by RCO
- C. Fees.** User and/or other fees may be charged in connection with land acquired or facilities developed, maintained, renovated, or restored with funding board grants if the fees are consistent with the:
1. Grant program laws, rules, policies, and funding board policies;
 2. Value of any service(s) furnished;
 3. Value of any opportunities furnished; and
 4. Prevailing range of public fees in the state for the activity involved.
- D. Requirements for Federal Subawards.** Sponsors must also comply with 2 C.F.R. § 200.307 Program income (2013).

SECTION 16. PROCUREMENT REQUIREMENTS

- A. Procurement Requirements.** If the Sponsor has, or is required to have, a procurement process that follows applicable state and/or federal law or procurement rules and principles, it must be followed, documented, and retained. If no such process exists the Sponsor must follow these minimum procedures:
1. Publish a notice to the public requesting bids/proposals for the project;
 2. Specify in the notice the date for submittal of bids/proposals;
 3. Specify in the notice the general procedure and criteria for selection; and
 4. Sponsor must contract or hire from within its bid pool. If bids are unacceptable the process needs to be repeated until a suitable bid is selected.
 5. Comply with the same legal standards regarding unlawful discrimination based upon race, gender, ethnicity, sex, or sex-orientation that are applicable to state agencies in selecting a bidder or proposer.

Alternatively, Sponsor may choose a bid from a bidding cooperative if authorized to do so.

This procedure creates no rights for the benefit of third parties, including any proposers, and may not be enforced or subject to review of any kind or manner by any entity other than the RCO. Sponsors may be required to certify to the RCO that they have followed any applicable state and/or federal procedures or the above minimum procedure where state or federal procedures do not apply.

B. Requirements for Federal Subawards.

1. For all Federal subawards except RTP projects, non-Federal entities (Sponsors) must follow 2 C.F.R §§ 200.318 General procurement standards through 200.326 Contract Provisions (2013).
2. For RTP subawards, Sponsors follow such policies and procedures allowed by the State when procuring property and services under a Federal award (2 C.F.R § 1201.317 (2013)). State procurement policies are in subsection A of this section.

SECTION 17. TREATMENT OF EQUIPMENT AND ASSETS

Equipment shall be used and managed only for the purpose of this Agreement, unless otherwise provided herein or in published funding board policies, or approved by RCO in writing.

A. Discontinued Use. Equipment obtained under this Agreement shall remain in the possession of the Sponsor for the duration of the project, or RULES of applicable grant assisted program. When the Sponsor discontinues use of the equipment for the purpose for which it was funded, RCO may require the Sponsor to deliver the equipment to RCO, or to dispose of the equipment according to RCO published policies.

B. Loss or Damage. The Sponsor shall be responsible for any loss or damage to equipment.

C. Requirements for Federal Subawards. Except in the RTP, procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award or match for the award, until disposition takes place will, at a minimum, meet the following requirements (2 C.F.R § 200.313 (2013)):

1. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the Federal Award Identification Number), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
2. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
3. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.
4. Adequate maintenance procedures must be developed to keep the property in good condition.
5. If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

D. Requirements for RTP Subawards.

1. The subrecipient (Sponsor) shall follow such policies and procedures prescribed by and allowed by the State, as well as federal law and federal rules issued by the Federal Highways Administration and 2 CFR 200.

2. Sponsor may be required to pay prevailing wage rates as required by the Davis Bacon Act as amended.

SECTION 18. RIGHT OF INSPECTION

The Sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, long-term obligations, compliance, and/or quality assurance under this Agreement.

If a landowner agreement or other form of control and tenure as described in Section 23.C: Control and Tenure has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 19. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in funding board policy, this Agreement, or as otherwise directed by RCO consistent with existing policies. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 20. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 21. ACKNOWLEDGMENT AND SIGNS

- A. Publications.** The Sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project during the project period and in the future.
- B. Signs.**
 1. During the period of performance through the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations on the project area that acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director; and
 2. During the period of long-term obligation, the Sponsor shall post openly visible signs or other appropriate media at entrances and other locations to notify the public of the availability of the site for reasonable public access.
- C. Ceremonies.** The Sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The Sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects.** When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
 1. The fund source;
 2. The percentage of the total costs of the project that is financed with federal money;

3. The dollar amount of federal funds for the project; and
4. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 22. PROVISIONS FOR BOATING PROJECT GRANTS

If requested by RCO, or required per state or federal law or rule with respect to any project or project element that supports recreational boating, Sponsor shall manage the project or project element per federal rules to include 2 C.F.R. Part 200, and place a United States Coast Guard (or other federal agency) logo and funding program information at the project site.

SECTION 23. PROVISIONS APPLYING TO DEVELOPMENT, MAINTENANCE, RENOVATION, AND RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is for construction of land or facilities in a development, maintenance, renovation or restoration project:

- A. Operations and Maintenance.** Properties, structures, and facilities developed, maintained, or operated with the assistance of money granted by the board and within the project area shall be built, operated, and maintained according to applicable regulations, laws, building codes, and health and public safety standards to assure a reasonably safe condition and to prevent premature deterioration (WAC 286.13.130). It is the Sponsor's sole responsibility to ensure the same are operated and maintained in a safe and operable condition. The RCO does not conduct safety inspections or employ or train staff for that purpose.
- B. Document Review and Approval.** Prior to commencing construction or finalizing the design, the Sponsor agrees to submit one copy of all construction and restoration plans and specifications to RCO for review solely for compliance with the scope of work to be identified in the Agreement. RCO does not review for, and disclaims any responsibility to review for safety, suitability, engineering, compliance with code, or any matters other than the scope so identified. Although RCO staff may provide tentative guidance to a Sponsor on matters related to site accessibility by persons with a disability, it is the Sponsor's responsibility to confirm that all legal requirements for accessibility are met even if the RCO guidance would not meet such requirements.
 1. Change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval of the board or RCO.
- C. Control and Tenure.** The Sponsor must provide documentation that shows appropriate tenure (such as landowner agreement, long-term lease, easement, or fee simple ownership) for the land proposed for construction. The documentation must meet current RCO requirements identified in the appropriate grant program policy manual as of the effective date of this Agreement and determines the long-term compliance period unless otherwise approved by the board.
- D. Nondiscrimination.** Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

- E. Use of Best Management Practices.** Sponsors are encouraged to use best management practices including those developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. AHG documents include “Integrated Streambank Protection Guidelines”, 2002; “Land Use Planning for Salmon, Steelhead and Trout: A land use planner’s guide to salmonid habitat protection and recovery”, 2009; “Protecting Nearshore Habitat and Functions in Puget Sound”, 2010; “Stream Habitat Restoration Guidelines”, 2012; “Water Crossing Design Guidelines”, 2013; and “Marine Shoreline Design Guidelines”, 2014. These documents, along with new and updated guidance documents, and other information are available on the AHG Web site. Sponsors are also encouraged to use best management practices developed by the Washington Invasive Species Council (WISC) described in “Reducing Accidental Introductions of Invasive Species” which is available on the WISC Web site.

SECTION 24. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition project (including projects with any acquisition component):

- A. Evidence of Land Value.** Before disbursement of funds by RCO as provided under this Agreement, the Sponsor agrees to supply documentation acceptable to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title.** The Sponsor agrees to provide documentation that shows the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired.** The legal description of the real property rights purchased with funding assistance provided through this Agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be delivered to RCO before final payment.
- D. Conveyance of Rights to the State of Washington.** When real property rights (both fee simple and lesser interests) are acquired, the Sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and/or Leases as described below. The Sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the funding board project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.
 - 1. Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, access, and/or use the property for public purposes consistent with the funding source and project agreement. See WAC 286 or 420. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the Sponsor has acquired a perpetual easement for public purposes.
 - 2. Assignment of Rights.** The Assignment of Rights document transfers certain rights to RCO and the state such as public access, access for compliance, and enforcement. Sponsors shall use this document when an easement or lease is being acquired under this Agreement. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
 - 3. Easements and Leases.** The Sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; Sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E. Real Property Acquisition and Relocation Assistance.

- 1. Federal Acquisition Policies.** When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended, and applicable regulations and procedures of the federal agency implementing that Act.
- 2. State Acquisition Policies.** When state funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
- 3. Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the Sponsor agrees to provide any housing and relocation assistance required.

F. Buildings and Structures. In general, grant funds are to be used for outdoor recreation, conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsor must consult with RCO regarding treatment of such structures and compliance with Section 8.D Archeological and Cultural Resources.

G. Hazardous Substances.

- 1. Certification.** The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(13), and certify:
 - a.** No hazardous substances were found on the site, or
 - b.** Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
- 2. Responsibility.** Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
- 3. Hold Harmless.** The Sponsor will defend, protect and hold harmless the State and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the Sponsor is acquiring, except to the extent, if any, that the State, its officers and agents caused or contributed to the release. The funding board and RCO are included within the term State, as are all other agencies, departments, boards, councils, committees, divisions, bureaus, offices, societies, or other entities of state government.

H. Requirements for Federal Subawards. The non-federal entity (Sponsor) must submit reports at least annually on the status of real property in which the federal government retains an interest, unless the federal interest in the real property extends 15 years or longer. In those instances where the federal interest attached is for a period of 15 years or more, the federal awarding agency or the pass-through entity (RCO), at its option, may require the Sponsor to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a federal awarding agency or RCO may require annual reporting for the first three years of a federal award and thereafter require reporting every five years) (2 C.F.R § 200.329 (2013)).

SECTION 25. LONG-TERM OBLIGATIONS OF THE PROJECTS AND SPONSORS

- A. Long-Term Obligations of RCFB Projects.** Sponsor shall comply with WAC 286-13-160, 170, and 180.
- B. Long-Term Obligations of SRFB Projects.** Sponsor shall comply with WAC 420.
- C. Perpetuity.** For acquisition, development, and restoration projects, or a combination thereof, unless otherwise allowed by policy, program rules, or this Agreement, or approved in writing by RCO or the funding board, RCO requires that the project area continue to function as intended after the period of performance in perpetuity.
- D. Conversion.** The Sponsor shall not at any time convert any real property (including any interest therein) or facility acquired, developed, renovated, and/or restored pursuant to this Agreement, unless provided for in applicable statutes, rules, and policies. Conversion includes, but is not limited to, putting such property to uses other than those purposes for which funds were approved or transferring such property to another entity without prior approval via a written amendment to the Agreement. Also see WAC Title 286 or 420 and applicable policies. All real property or facilities acquired, developed, renovated, and/or restored with funding assistance shall remain in the same ownership and in public use/access status in perpetuity unless otherwise expressly provided in the Agreement or applicable policy or unless a transfer or change in use is approved by the funding board through an amendment. Failure to comply with these obligations is a conversion. Further, if the project is subject to operation and or maintenance obligations, the failure to comply with such obligations, without cure after a reasonable period as determined by the RCO, is a conversion. Determination of whether a conversion has occurred shall be based upon this Agreement, applicable law and RCFB/SRFB policies.

For acquisition projects that are expressly term limited in the Agreement, such as one involving a lease or a term-limited restoration, renovation or development project or easement, the restriction on conversion shall apply only for the length of the term, unless otherwise provided in this Agreement, by funding board policy, other RCO approved written documents, or required by applicable state or federal law.

When a conversion has been determined to have occurred, the Sponsor is required to remedy the conversion per established funding board policies, and the board or RCO may pursue such remedies as are allowed by law and board policies, and/or this Agreement.

SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

The following provisions shall be in force only if the project described in this Agreement is an acquisition, development, maintenance, renovation, or restoration project:

- A. Property and facility operation and maintenance.** Sponsor must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:
 1. According to applicable federal, state, and local laws and regulations, including public health standards and building codes;
 2. In a reasonably safe condition for the project's intended use;
 3. Throughout its estimated useful service life so as to prevent undue deterioration;
 4. In compliance with all federal and state nondiscrimination laws, regulations and policies.
- B. Open to the public.** Unless otherwise specifically provided for in the Agreement of funding board policies, and in compliance with applicable statutes, rules, and funding board policies, facilities must be open and accessible to the general public, and must:

1. Be constructed, maintained, and operated to meet or exceed the minimum requirements of the most current guidelines or rules, local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as amended and updated.
2. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
3. Be available for appropriate use by the general public at reasonable hours and times of the year, according to the type of area or facility, unless otherwise stated in RCO manuals, by a decision of the board, or by RCO in writing. Sponsor shall notify the public of the availability for use by posting and updating that information on its website and by maintaining at entrances and/or other locations openly visible signs with such information.

SECTION 27. RECORDED NOTICE OF GRANT

At the request of RCO, Sponsor shall record a notice of grant on the property and shall submit to the RCO a recorded and registry stamped copy of such notice. The purpose of the notice of grant is to ensure that the present and future use of the facility is and shall remain subject to the terms and conditions described in this Agreement. The notice of grant shall be in a format specified by RCO.

SECTION 28. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate Sponsor, including any nonprofit Sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the Sponsor's obligation to the project as identified in the Agreement.
- B. Notify RCO before corporate dissolution at any time during the period of performance or long-term obligations. Within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities, and transfer all property and assets to the successor. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this Agreement. RCO will process an amendment transferring the Sponsor's obligation to the qualified successor if requirements are met.
- C. Maintain sites or facilities open to the public and may not limit access to members.

SECTION 29. PROVISIONS FOR FEDERAL SUBAWARDS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded with a federal subaward as identified in Section H: FEDERAL FUND Information:

- A. **Sub-Recipient** (Sponsor) must comply with the cost principles of 2 C.F.R. Part 200 Subpart E (2013). Unless otherwise indicated, the cost principles apply to the use of funds provided under this Agreement to include match and any in-kind matching donations. The applicability of the cost principles depends on the type of organization incurring the costs.
- B. **Binding Official.** Per 2 CFR 200.415, Sponsor certifies through its actions or those of authorized staff, at the time of a request for reimbursement, the following: "To the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

C. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, paragraph C.

- 1. Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
- 2. Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities (Sponsors) must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity (Sponsor) must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity (Sponsor) must report all suspected or reported violations to the federal awarding agency identified in Section H: Federal Fund Information.

The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U. S. C. 3145), as supplemented by Department of Labor regulations (29 C.F.R Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient (Sponsor) must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity (Sponsor) must report all suspected or reported violations to the Federal awarding agency identified in Section H: Federal Fund Information.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity (Sponsor) in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

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

- F. Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R § 401.2(a) and the recipient or subrecipient (Sponsor) wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient (Sponsor) must comply with the requirements of 37 C.F.R Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as Amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency identified in Section H: Federal Fund Information and the Regional Office of the Environmental Protection Agency (EPA).
- H. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** By signing this Agreement, the Sponsor certifies (per the certification requirements of 31 U.S.C.) that none of the funds that the Sponsor has (directly or indirectly) received or will receive for this project from the United States or any agency thereof, have been used or shall be used to engage in the lobbying of the Federal Government or in litigation against the United States. Such lobbying includes any influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this project. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

- I. Procurement of Recovered Materials.** A non-federal entity (Sponsor) that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- J. Required Insurance.** The non-federal entity (Sponsor) must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award (2 C.F.R § 200.310 (2013)).
- K. Debarment and Suspension (Executive Orders 12549 and 12689).** The Sponsor must not award a contract to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the Office of Management and Budget (OMB) guidelines at 2 C.F.R § 180 that implement Executive Orders 12549 (3 C.F.R part 1986 Comp., p. 189) and 12689 (3 C.F.R part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- L. Conflict of Interest.** Sponsor agrees to abide by the conflict of interest policy and requirements of the federal funding agency established pursuant to 2 C.F.R 200.

SECTION 30. PROVISIONS FOR BOATING INFRASTRUCTURE GRANTS

- A. Use of Sport Fish Restoration Logo.** Per 50 CFR 86 Sec 75 and 76, the user of the logo must indemnify and defend the United States and hold it harmless from any claims, suits, losses, and damages from; any allegedly unauthorized use of any patent, process, idea, method, or device by the user in connection with its use of the logo, or any other alleged action of the user; and any claims, suits, losses, and damages arising from alleged defects in the articles or services associated with the logo. No one may use any part of the logo in any other manner unless the United States Fish and Wildlife Service's Assistant Director for Wildlife and Sport Fish Restoration or Regional Director approves in writing.

SECTION 31. PROVISIONS FOR FIREARMS AND ARCHERY RANGE RECREATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded from the Firearms and Archery Range Recreation Account.

- A. Liability Insurance.** The Sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it carries, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of people who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. Insurance Endorsement.** The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.

- C. Length of Insurance.** The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the project as identified in this Agreement in Section F. LONG-TERM OBLIGATIONS.
- D. Notice of Cancellation.** The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- E. Government Agencies.** The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. Sole Duty of the Sponsor.** By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

SECTION 32. PROVISIONS FOR LAND AND WATER CONSERVATION FUND PROJECTS ONLY

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "LWCF Grant Agreement General Provisions" are made part of this Agreement and incorporated herein. The Sponsor shall abide by these LWCF General Provisions, in addition to this Agreement, as they now exist or are hereafter amended. Further, the Sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 33. PROVISIONS FOR FARM AND FOREST ACCOUNT PROJECTS (FARMLAND AND FORESTLAND PRESERVATION PROJECTS ONLY)

The following sections will not apply to Farmland and Forestland Preservation Projects if covered separately in a recorded RCO approved Agricultural Conservation Easement, or Forest Conservation Easement (or other method):

- A.** Section 15 - Income and Income Use;
- B.** Section 19 - Stewardship and Monitoring;
- C.** Section 21 - Acknowledgement and Signs;
- D.** Section 24 -- Provisions Applying To Acquisition Projects, Sub-sections D, F, and G;
- E.** Section 25C -Perpetuity; and
- F.** Section 26 -- Construction, Operation, Use and Maintenance of Assisted Projects.

SECTION 34. PROVISIONS FOR SALMON RECOVERY FUNDING BOARD PROJECTS ONLY

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the Sponsor shall not commence with clearing of riparian trees or in-water work unless either the Sponsor has complied with 50 C.F.R. § 223.203 (b)(8) (2000), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this Agreement. This section shall not be the basis for any enforcement responsibility by RCO.

SECTION 35. PROVISIONS FOR PUGET SOUND ACQUISITION AND RESTORATION PROJECTS ONLY

The following provisions shall be in force only if the project described in this Agreement is funded in part or wholly from the Puget Sound Acquisition and Restoration program.

The Sponsor agrees to the following terms and conditions:

- A. Cost Principles/Indirect Costs For State Agencies.** GRANT RECIPIENT agrees to comply with the cost principles of 2 CFR 200 Subpart E as appropriate to the award. In addition to the US Environmental Protection Agency's General Terms and Conditions "Indirect Cost Rate Agreements," if the recipient does not have a previously established indirect cost rate, it agrees to prepare and submit its indirect cost rate proposal in accordance with 2 CFR 200 Appendix VII.
- B. Credit and Acknowledgement.** In addition to Section 21: Acknowledgement and Signs, materials produced must display both the Environmental Protection Agency (EPA) and Puget Sound Partnership (PSP) logos and the following credit line: "This project has been funded wholly or in part by the United States Environmental Protection Agency. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use." This requirement is for the life of the product, whether during or after the Agreement period of performance.
- C. Hotel Motel Fire Safety Act.** Sponsor agrees to ensure that all conference, meeting, convention, or training space funded in whole or part with federal funds, complies with the federal Hotel and Motel Fire Safety Act (PL 101-391, as amended). Sponsors may search the Hotel-Motel National Master List @ <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance or to find other information about the Act.
- D. Drug Free Workplace Certification.** Sub-recipient (Sponsor) shall make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 2 C.F.R. Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization shall identify all known workplaces under its federal awards, and keep this information on file during the performance of the award. Sponsors who are individuals must comply with the drug-free provisions set forth in 2 C.F.R. Part 1536 Subpart C. The consequences for violating this condition are detailed under 2 C.F.R. Part 1536 Subpart E.
- E. Management Fees.** Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to the expenses added to direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except for the extent authorized as a direct cost of carrying out the scope of work.
- F. Trafficking in Persons and Trafficking Victim Protection Act of 2000 (TVPA).** This provision applies only to a sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor), if any. Sub-recipient (Sponsor) shall include the following statement in all sub-awards made to any private entity under this Agreement.

"You as the sub-recipient, your employees, sub-awardees under this award, and sub-awardees' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or sub-awards under this Award."

The sub-recipient (Sponsor), and all sub-awardees of sub-recipient (Sponsor) must inform RCO immediately of any information you receive from any source alleging a violation of this prohibition during the award term.

The federal agency funding this Agreement may unilaterally terminate, without penalty, the funding award if this prohibition is violated, Section 106 of the Trafficking Victims Protection Act of 2000, as amended.

- G. Lobbying.** The chief executive officer of this recipient agency (Sponsor) shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States, unless authorized under existing law. The recipient (Sponsor) shall abide by its respective Cost Principles (OMB Circulars A-21, A-87, and A-122), which generally prohibits the use of federal grant funds for litigation against the United States, or for lobbying or other political activities.

The Sponsor agrees to comply with 40 C.F.R. Part 34, New Restrictions on Lobbying. Sponsor shall include the language of this provision in award documents for all sub-awards exceeding \$100,000, and require that sub-awardees submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any Sponsor who makes a prohibited expenditure under 40 C.F.R. Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure.

All contracts awarded by Sponsor shall contain, when applicable, the anti-lobbying provisions as stipulated in the Appendix at 40 C.F.R. Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, Sponsor affirms that it is not a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a non-profit organization described in Section 501(c)(4) of the code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

- H. Reimbursement Limitation.** If the Sponsor expends more than the amount of RCO funding in this Agreement in anticipation of receiving additional funds from the RCO, it does so at its own risk. RCO is not legally obligated to reimburse the Sponsor for costs incurred in excess of the RCO approved budget.
- I. Disadvantaged Business Enterprise Requirements.** The Sponsor agrees to comply with the requirements of EPA's Utilization of Small, Minority and Women's Business Enterprises in procurements made under this award.
- J. Minority and Women's Business Participation.** Sponsor agrees to solicit and recruit, to the maximum extent possible, certified minority owned (MBE) and women owned (WBE) businesses in purchases and contracts initiated after the effective date of this Agreement.

These goals are expressed as a percentage of the total dollars available for purchase or agreement and are as follows:

Purchased Goods 8% MBE 4% WBE

Purchased Services 10% MBE 4% WBE

Professional Services 10% MBE 4% WBE

Meeting these goals is voluntary and no agreement award or rejection shall be made based on achievement or non-achievement of the goals. Achievement of the goals is encouraged, however, and Sponsor and ALL prospective bidders or people submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this Agreement:

1. Include qualified minority and women's businesses on solicitation lists.
2. Assure that qualified minority and women's business are solicited whenever they are potential sources of services or supplies.

3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
4. Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

K. MBE/WBE Reporting. In accordance with the deviation from 40 C.F.R. §33.502, signed November 8, 2013, DBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

1. There are any funds budgeted in the contractual/services, equipment or construction lines of the award;
2. \$3,000 or more is included for supplies; or
3. There are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as
4. Described in items (a) and (b).

When completing the form, recipients (Sponsors) should disregard the quarterly and semi-annual boxes in the reporting period Section 1B of the form. For annual submissions, the reports are due by October 30th of each year or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients (Sponsors) with funds budgeted for non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in Section 5B when completing the form.

MBE/WBE reports should be sent to the DBE Coordinator in the Sponsor's region. Contact information can be found at <http://www.epa.gov/osbp/contactpage.htm>. The coordinators also can answer any questions.

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. To be in compliance with regulations, the Sponsor must submit a final MBE/WBE report. Non-compliance may impact future competitive grant proposals. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm.

L. Procurement involving an EPA Financial Assistance Agreement. Pursuant to 40 C.F.R. § 33.301, the Sponsor agrees to make the following six good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients (Sponsors), and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprise (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government Sponsors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Sponsors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when an agreement is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration (SBA) and the Minority Business Development of the Department of Commerce.
6. If the Sponsor awards subcontracts, require the Sponsor to take the steps in paragraphs (a) through (e) of this section.

M. Lobbying & Litigation. By signing this Agreement, the Sponsor certifies that none of the funds received from this Agreement shall be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

The chief executive officer of this Sponsor agency shall ensure that no grant funds awarded under this Agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The Sponsor shall abide by its respective Attachment in 2 C.F.R. Part 200, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

For subawards exceeding \$100,000, EPA requires the following certification and disclosure forms:

1. Certification Regarding Lobbying, EPA Form 6600-06:
http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf
2. Disclosure of Lobbying Activities, SF LLL: http://www.epa.gov/ogd/AppKit/form/sflllin_sec.pdf
3. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

N. Payment to Consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients (Sponsors) or by a recipients' (Sponsor's) contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with his/her normal travel reimbursement practices).

Subagreements with firms for services that are awarded using the procurement requirements in 40 C.F.R. Parts 30 or 31, are not affected by this limitation unless the terms of the contract provide the recipient (Sponsor) with responsibility for the selection, direction and control of the individual who will be providing services under the contract at an hourly or daily rate of compensation. See 40 C.F.R. § 30.27(b) or 40 C.F.R. § 31.369(j), as applicable, for additional information.

As of January 1, 2014, the limit is \$602.24 per day \$75.28 per hour.

- O. Peer Review.** Where appropriate, prior to finalizing any significant technical products the Principal Investigator (PI) of this project must solicit advice, review, and feedback from a technical review or advisory group consisting of relevant subject matter specialists. A record of comments and a brief description of how respective comments are addressed by the PI will be provided to the Project Monitor prior to releasing any final reports or products resulting from the funded study.
- P. International Travel (Including Canada).** All International Travel must be approved by the US Environmental Protection Agency's Office of International and Tribal Affairs (OITA) BEFORE travel occurs. Even a brief trip to a foreign country, for example to attend a conference, requires OITA approval. Please contact your Partnership Project manager as soon as possible if travel is planned out of the country, including Canada and/or Mexico, so that they can submit a request to the EPA Project Officer if they approve of such travel.
- Q. Unliquidated Obligations (ULO).** Sub-recipients, and all sub-awardees of Sub-Recipients, if any, should manage their agreement and subaward funding in ways that reduce the length of time that federal funds obligated and committed to subaward projects are unspent (not yet drawn down through disbursements to sub-recipients and sub-awardees).

SECTION 36. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of a direct and irreconcilable conflict between the terms of this Agreement and any applicable statute, rule, or policy or procedure, the conflict shall be resolved by giving precedence in the following order:

1. Federal law and binding executive orders;
2. Code of federal regulations;
3. Terms and conditions of a grant award to the state from the federal government;
4. Federal grant program policies and procedures adopted by a federal agency that are required to be applied by federal law;
5. State law (constitution, statute);
6. Washington Administrative Code;
7. Funding board or RCO policies.

SECTION 37. LIMITATION OF AUTHORITY

Only RCO's Director or RCO's delegate by writing (delegation to be made prior to action) shall have the authority to alter, amend, modify, or waive any clause or condition of this Agreement; provided that any such alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made as a written amendment to this Agreement and signed by the RCO Director or delegate.

SECTION 38. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached as an amendment to the original Agreement.

SECTION 39. APPLICATION REPRESENTATIONS – MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 40. SPECIFIC PERFORMANCE

The funding board and RCO may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the project as described in this Agreement and/or enforcement of long-term obligations. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity, including but not limited to seeking full or partial repayment of the grant amount paid and damages.

SECTION 41. TERMINATION AND SUSPENSION

The funding board and RCO will require strict compliance by the Sponsor with all the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the Sponsor in its application for a grant as finally approved by the funding board. For federal awards, notification of termination will comply with 2 C.F.R. § 200.340.

A. For Cause.

1. The funding board or the director may suspend or terminate the obligation to provide funding to the Sponsor under this Agreement:
 - a. If the Sponsor breaches any of the Sponsor's obligations under this Agreement;
 - b. If the Sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this Agreement. Included in progress is adherence to milestones and other defined deadlines; or
 - c. If the primary and secondary Sponsor(s) cannot mutually agree on the process and actions needed to implement the project;
2. Prior to termination, the RCO or the funding board shall notify the Sponsor in writing of the opportunity to cure. If corrective action is not taken within 30 days or such other time period that the director or board approves in writing, the Agreement may be terminated. In the event of termination, the Sponsor shall be liable for damages or other relief as authorized by law and/or this Agreement.
3. RCO reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Sponsor from incurring additional obligations of funds during the investigation of any alleged breach and pending corrective action by the Sponsor, or a decision by the RCO to terminate the Contract.

B. For Convenience. Except as otherwise provided in this Agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part when it is in the best interest of the state. If this Agreement is so terminated, RCO shall be liable only for payment required under the terms of this Agreement prior to the effective date of termination. A claimed termination for cause shall be deemed to be a "Termination for Convenience" if it is determined that:

1. The Sponsor was not in default; or
2. Failure to perform was outside Sponsor's control, fault or negligence.

C. Rights of Remedies of the RCO.

1. The rights and remedies of RCO provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
2. In the event this Agreement is terminated by the funding board or director, after any portion of the grant amount has been paid to the Sponsor under this Agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived. However, any repayment shall be limited to the extent it would be inequitable and represent a manifest injustice in circumstances where the project will fulfill its fundamental purpose for substantially the entire period of performance and of long-term obligation.

D. Non Availability of Funds. The obligation of the RCO to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. If amounts sufficient to fund the grant made under this Agreement are not appropriated to RCO for expenditure for this Agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or the Office of Financial Management occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

1. **Suspension:** The obligation of the RCO to manage contract terms and make payments is contingent upon the state appropriating state and federal funding each biennium. In the event the state is unable to appropriate such funds by the first day of each new biennium RCO reserves the right to suspend the Agreement, with ten (10) days written notice, until such time funds are appropriated. Suspension will mean all work related to the contract must cease until such time funds are obligated to RCO and the RCO provides notice to continue work.

SECTION 42. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 43. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 44. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington . In the event of a lawsuit involving this Agreement, venue shall be in Thurston County Superior Court if legally proper; otherwise venue shall be in a county where the project is situated, if venue there is legally proper, and if not, in a county where venue is legally proper. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington .

SECTION 45. PROVISIONS APPLICABLE ONLY IF FEDERALLY RECOGNIZED INDIAN TRIBE IS THE SPONSOR

In the cases where this Agreement is between the funding board (which includes the State of Washington for purposes of this Agreement) and a federally recognized Indian Tribe, the following terms and conditions apply, but only between those parties:

- A.** Notwithstanding the above venue provision, if the State of Washington intends to initiate legal action against a federally recognized Indian tribe relating to the performance, breach, or enforcement of this Agreement, it shall so notify the Tribe. If the Tribe believes that a good faith basis exists for subject matter jurisdiction of such an action in federal court, the Tribe shall so notify the State within five days of receipt of such notice and state the basis for such jurisdiction. If the Tribe so notifies the State, the State shall bring such action in federal court, otherwise the State may sue the Tribe in the Thurston County Superior Court, or such other superior court where venue is proper, if not proper in Thurston County. Interpretation of the Agreement shall be according to applicable State law, except to the extent preempted by federal law. In the event suit is brought in federal court and the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the State may bring suit in Thurston County Superior Court or such other superior court where venue is proper, if not proper in Thurston County.
- B.** Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from such actions under subsection A above, shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers, or employees, or the State of Washington, its agencies, or its officers and employees may exceed the amount of funding awarded under this Agreement.
- C.** As requested by RCO, the Tribe shall provide to RCO its governing requirements and procedures for entering into Agreement with RCO and waiving its sovereign immunity. In addition, the tribe shall provide to RCO all authorizations the Tribe requires to authorize the person(s) signing the Agreement on the Tribe's behalf to bind the Tribe and waive the Tribe's sovereign immunity as provided herein .

- D.** The Tribe hereby waives its sovereign immunity for suit in federal and state court for the limited purposes of allowing the State to bring and prosecute to completion such actions relating to the performance, breach, or enforcement of this Agreement as provided in subsection A above, and to bring actions to enforce any judgment arising from such actions. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

For purposes of this provision, the State includes the funding board, the RCO, and any other state agencies as the term "agency" is broadly understood to include, but not be limited to, departments, commissions, boards, divisions, bureaus, committees, offices, councils, societies, etc.

SECTION 46. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

Eligible Scope Activities

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Project Sponsor: City of Edgewood

Project Number: 16-1991

Project Title: Edgewood Community Park: Phase 1

Project Type: Development

Program: Land and Water Conservation

Approval: 9/24/2018

Project Metrics

Sites Improved

Project acres developed:	8.00
Project acres renovated:	0.00

Development Metrics

Worksite #1, 36th and Meridian

Athletic Fields

Baseball field development

Number of baseball fields:	1 new, 0 renovated
Number of baseball fields with lighting:	0 new, 0 renovated
Number of baseball fields by surface type:	
Synthetic	0
Natural	1

Buildings and Structures

Construct / install restroom

Number of restrooms:	1 new, 0 renovated
Select the restroom type :	Restroom

Construct amphitheater/stage

Number of amphitheaters:	1 new, 0 renovated
Number of amphitheater stages:	1 new, 0 renovated
Select the amphitheater seating type:	Sloped lawn area

Eligible Scope Activities

[Back to Agenda](#)

General Site Improvements

Construct picnic shelter

Number of group picnic shelters: 1 new, 0 renovated

Develop circulation paths or access routes

Enter length of circulation paths and routes by surface type:

Asphalt 0
Boardwalk 0
Crushed rock 0
Recycled materials 0
Concrete 2000

Lighting provided (yes/no): No

Habitat enhancement

Acres of the habitat enhancement area : 0.50

Acres of wetland created: 0.00

Wetland acres restored / enhanced: 0.50

Linear feet of stream bank / shoreline restored or enhanced : 0

Install fencing/barriers

Install signs/kiosk

Number of kiosks: 1 new, 0 renovated

Number of interpretive signs/displays: 2 new, 0 renovated

Number of permanent entrance signs: 2 new, 0 renovated

Number of electronic signs: 0 new, 0 renovated

Project involves installation of informational signs (yes/no): Yes

Install site furnishings

Landscaping improvements

Acres of landscaped area : 3.86

Select the landscape features: Boulders, Grass/turf, Irrigation, Native vegetation, Trees/shrubs

Parking and Roads

Parking development

Number of vehicle parking stalls: 57 new, 0 renovated

Number of vehicle with trailer parking stalls: 0 new, 0 renovated

Number of accessible parking stalls:

Vehicle with trailers 0

Vehicle 3

Select the parking surfaces : Asphalt

Select the parking enhancements: Catch basins, Curbs, Entry gate, Striping, Wheel stops

Play Areas

Playground development

Number of play areas: 1 new, 0 renovated

Number of climbing walls/rocks: 1 new, 0 renovated

Select the play area surface material type: Engineered wood fiber, Recycled rubber

Site Preparation

General site preparation

Eligible Scope Activities

[Back to Agenda](#)

Utilities

Install power utilities

Select the power utilities:

General service connection

Install sewage system

Number of dump stations:

0 new, 0 renovated

Select the sewer utilities:

Sewer connection, Sewer line

Install stormwater system

Select the stormwater utilities:

Bio filtration swale, Catch basins,
Oil/water separators, Rain garden,
Stormwater line

Install water system

Select the water utilities:

Water line, Water meter, Water service
connection

Cultural Resources

Cultural resources

Permits

Obtain permits

Architectural & Engineering

Architectural & Engineering (A&E)

Milestone Report By Project

Project Number: 16-1991 D
Project Name: Edgewood Community Park: Phase 1
Sponsor: Edgewood City of
Project Manager: Beth Auerbach

X	!	Milestone	Target Date	Comments/Description
		Project Start	11/01/2018	
		Design Initiated	03/01/2019	
		SEPA/NEPA Completed	07/31/2019	
	!	Progress Report Due	07/31/2019	
	!	Annual Project Billing Due	07/31/2019	
	!	Cultural Resources Complete	08/31/2019	See Special Condition #1.
		60% Plans to RCO	08/31/2019	
		Applied for Permits	10/31/2019	
		All Bid Docs/Plans to RCO	10/31/2019	
		Bid Awarded/Contractor Hired	01/31/2020	
	!	Progress Report Due	01/31/2020	For the period ending September 30, 2019.
	!	Construction Started	04/01/2020	
		50% Construction Complete	07/01/2020	
		RCO Interim Inspection	07/01/2020	
	!	Annual Project Billing Due	07/31/2020	
	!	Progress Report Due	07/31/2020	
		90% Construction Complete	09/30/2020	
		Funding Acknowl Sign Posted	10/31/2020	
		Construction Complete	10/31/2020	
		RCO Final Inspection	11/15/2020	
		Final Billing Due	11/30/2020	
		Final Report Due	12/15/2020	
	!	Agreement End Date	12/31/2020	

X = Milestone Complete

! = Critical Milestone



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: 36 th & Meridian Park Phase One – Design and Construction Administration Services Agreement	Agenda Item #:	2C
	For Agenda of:	February 19, 2019
	Prepared by:	Jeremy Metzler
ATTACHMENTS (list): ☒ Request for Qualifications (RFQ), published November 30, 2018 ☒ Addendum Number 1, published December 21, 2018 ☒ Submittal of Qualifications (SOQ), Berger Partnership, dated December 28, 2018 ☒ RFQ Scoring Summary, dated January 18, 2019 ☒ Interview Scoring Summary, dated January 28, 2019 ☒ DRAFT Resolution 19-0xxx ☒ DRAFT Professional Services Agreement with Exhibit “A” – Scope of Work		
Approval of Materials:		
Mayor, Daryl Eidinger	☒	Expenditure Required: \$279,900
Asst. City Administrator, Dave Gray	☒	Amount Budgeted: \$300,000 (Design/CM)
City Attorney, Carol Morris	☒	Appropriation Required: \$279,900 (2019/20)
City Clerk, Rachel Pitzel	☒	Timeline: Council Consideration – 2/26/2019
Community Development Director, Darren Groth	☒	
Public Works, Jeremy Metzler	☒	
Police Chief, Micah Lundborg	☒	
Fiscal Note/Consideration: Funding for this project is included in the approved 2019 – 2024 CIP and approved 2019 Budget. Park Impact Fee revenues can be applied to all costs associated with design, contract administration, and construction.		
SUMMARY STATEMENT: Constructing new active park space has been identified as a high priority in the City’s adopted Comprehensive Plan and Capital Improvement Plan (CIP). The 36 th and Meridian property was acquired by the City in late 2004. An adhoc committee was formed in early 2007 and with the help of a landscape architect, a Master Plan of the 18-acre park facility was presented to the Council and citizens of Edgewood. Design work for the project began in 2015 and a 30% plan developed by the Berger Partnership as part of the submittal package for two grant applications in June of 2016. The current design includes a shelter, parking lot, play equipment and picnic facilities. The 36 th and Meridian Park Phase One project was selected by the Recreation and Conservation Office (RCO) for funding under both submitted applications, totaling \$1,000,000 in reimbursable funding. Before construction can begin, a final design needs to be prepared. Because this work can only be done by an architect and/or engineer, the City is required to use the procedure established in chapter 39.80 RCW. This procedure has been satisfied by advertising a Request for Qualifications (RFQ) on November 30, 2018, issuing an Addendum on December 21, 2018, evaluating and scoring the submittals received by the January 15, 2019 deadline, interviewing of the top three (3) scoring teams on January 25, 2019, and selecting the highest-scoring qualified team on January 30, 2019. The selected team is the Berger Partnership, and Staff is working on this contract now. Attached with this summary are the published RFQ, Addendum, Berger’s Submittal of Qualifications (SOQ), the RFQ and interview scoring summaries, and the draft resolution authorizing execution of the Professional Services Agreement and Scope of Work (also attached). As published in the RFQ Addendum, it is Staff’s goal to execute the agreement by February 27, 2019.		
COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A		

RECOMMENDED ACTION: Bring forward Resolution No. 19-0xxx to the next Regular Council Meeting for consideration and action.

ALTERNATIVES TO RECOMMENDED ACTION: Forward to future study session for further discussion.

City of Edgewood

REQUEST FOR QUALIFICATIONS

36TH AND MERIDIAN PARK – PHASE ONE PLANNING AND DESIGN

I. PURPOSE OF REQUEST

The City of Edgewood is requesting statements of qualifications from professional landscape architects, engineers, and planning consultants licensed under the laws of the state of Washington to support the City's completion of the design for Phase One of the City of Edgewood's 36th and Meridian Community Park.

The City of Edgewood does not expect or require a large amount of preliminary work to be performed by the applicants for this phase of the selection process. It is the City's intent to select consultants based on qualifications, abilities, past performance, and the ability to perform the necessary work and complete the project within the timeframe specified. **Do not submit any price or fee information at this time. Firms providing such information as part of their response to this RFQ will be disqualified.**

II. BACKGROUND

The City of Edgewood is 8.9 square miles and home to approximately 10,900 residents. The City is entirely within Pierce County and is geographically located in the "North Hill" area surrounded by the cities of Milton, Fife, Puyallup and Sumner. The City's northern boundary is adjacent to King County. Incorporated as a code city, the City of Edgewood formed on February 28, 1996 and has operated under the strong Mayor form of government since August 2015.

30% design for Phase One of the 36th and Meridian Community Park has been completed. The design work was suspended at that point due to a lack of funding. Funding is now in place to complete the design, and the city seeks to hire a consultant to complete the design to 100% construction documents, permitting, bidding, and construction administration.

III. TIME SCHEDULE

The following preliminary schedule for the project has been laid out:

RFQ Issued	November 30, 2018
Deadline for Submittal of Qualifications	December 28, 2018
Review of Submittals	January 2-4, 2019
Preliminary Selection of Firm(s)	January 7, 2019
Interviews (if needed)	January 14 – 18, 2019
Notify Firm Chosen	January 23, 2019
Contract Negotiations	January 24-30, 2019
City Council Acceptance	February 12, 2019
Executed Agreement	February 13, 2019

IV. INSTRUCTIONS TO PROPOSERS

- A. **Three (3) copies** of the response to the City's RFQ must be submitted to City by **4:30 PM, Friday, December 28, 2018**. No faxed or e-mail copies will be accepted. It is the responsibility of the firm to ensure the qualifications statements arrive on time and to the correct location. Any qualifications statements received after the scheduled closing time shall be returned to the firm unopened.
- B. All submittals should be sent or hand delivered to:
City of Edgewood
Attn: City Clerk
2224 104th Avenue E
Edgewood, WA 98372-1513
- C. Responses to the RFQ should be prepared simply and economically, providing a straightforward, concise description of provider capabilities to satisfy the requirements of request. All responses shall be limited to **fifteen (15) pages total, including a cover letter**.
- D. All qualifications must include the following information:
 - a. The names of individuals who will be working on the proposed services and their areas of responsibility.
 - b. A brief overview of the company, including how long in business, privately or publicly owned, etc.
 - c. At least three (3) references, including entity name, contact person, and telephone number. Municipal references preferred.
 - d. Ability to execute contract upon award.

V. SELECTION CRITERIA

The following will be used to evaluate the applicants:

- A. References and demonstrated experience working on similar projects and past work with small cities. (40%)
- B. Prior experience with the City of Edgewood or similar facility designs (40%)
- C. General impressions and presentation of qualifications. (20%)

VI. GENERAL SCOPE OF WORK

The successful consultant team is expected to develop project documents, 60%, 90%, and 100% complete, permitting, bid administration and construction administration. This will include one public meeting to get feedback on the plan, and regular coordination with city staff, elected officials, and the park and recreation advisory board. The City of Edgewood Public Works Director will direct the activities of the Consultant on behalf of the City.

- Reconcile the existing 30% design to fit project budget and RCO grant requirements
- Establish a project schedule
- Prepare necessary permit application(s) and associated reports
- Conduct 1 public meeting
- Prepare technical specifications
- Prepare bid package
- Construction Administration and Observation

VII. TERMS AND CONDITIONS

- A. The City reserves the right to reject any and all responses to this RFQ.
- B. The City reserves the right to request clarification of information submitted and to request additional information from any firm.
- C. The City reserves the right to reject all responses to the RFQ, or to award any contract to the next most qualified firm, if the successful firm does not execute a contract by the proposed date of February 13th, 2019.
- D. The contract resulting from acceptance of a proposal by the City shall be in the attached form and reflect the specifications in this RFQ. The City reserves the right to reject any proposed amendments to the City's form agreement.
- E. The City shall not be responsible for any costs incurred by the firm in preparing, submitting or submitting its response to the RFQ.
- F. The City reserves the right to waive irregularities and informalities in the submittal and evaluation process.

VIII. PRESUBMITTAL SITE VISIT

The City of Edgewood will host an optional pre-submittal meeting on Friday, December 14th, 2018 at the 36th and Meridian Park site from 1:00 pm to 2:00 pm, interested firms will be provided an opportunity to ask questions regarding the history of the park property and review the documents relating to the previous planning and design work.

IX. OTHER INFORMATION

For additional information or explanation of the contents or intent of these specifications, please contact the City with your questions to the attention of Jeremy Metzler, PE, Public Works Director by phone at (253) 952-3299 ext. 114, or via e-mail at jeremy@cityofedgewood.org.

X. ADDITIONAL INFORMATION

Please refer to the attached Professional Services Agreement template. Background documents for the park can be found on the City of Edgewood's website, including the current master plan, the RCO Grant application materials, and the 30% Design Concept.

CITY OF EDGEWOOD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the ____th day of _____, 2019, by and between the City of Edgewood, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF EDGEWOOD, WASHINGTON (hereinafter the “CITY”)
2224 - 104th Avenue E.
Edgewood, Washington 98372
Contact: Mayor Daryl Eiding Phone: 253-952-3299 Fax: 253-952-3537

and _____, (a corporation, limited liability corporation, sole proprietorship, etc.)
organized under the laws of the State of _____, doing business at:

_____ (hereinafter the “CONSULTANT”)
_____(address)

Contact: _____ Phone: _____ Fax: _____ e-mail: _____

for professional services in connection with the following Project:

36th and Meridian Park – Phase One Planning and Design

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “A.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. **Terms.** This Agreement shall commence on _____, (“Commencement Date”) and shall terminate on _____ unless extended or terminated in writing as provided herein.

4. Compensation.

- ☐ LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____, which includes all applicable tax.
- ☐ TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$_____, including all applicable tax, without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit “B.”
- ☐ TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit “B.”
- ☐ OTHER. _____

5. Payment.

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant’s business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. Discrimination and Compliance with Laws

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Edgewood business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated by the City upon the default of the Consultant. Upon 30 days' notice and reasonable cause, as determined by the sole discretion of the City, the Agreement may be terminated by the Consultant.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

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

D. **Suspension.** The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. **Notice of Termination or Suspension.** If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

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

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Daryl Eidinger
Mayor
2224 - 104th Avenue E.
Edgewood, WA 98372

CONSULTANT

(add address and contact info)

Phone: 253-952-3299
Fax: 253-952-3537

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the Mayor or Administrator's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the

City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF EDGEWOOD, WASHINGTON

CONSULTANT

By: _____
Daryl Eidingen
Mayor

Date: _____

Attest:

By: _____
Rachel Pitzel
City Clerk

APPROVED AS TO FORM:

By: _____
Carol A. Morris
City Attorney

By: _____

Name: _____

Title: _____

Date: _____

City of Edgewood
REQUEST FOR QUALIFICATIONS
36TH AND MERIDIAN PARK – PHASE ONE PLANNING AND DESIGN
ADDENDUM No. 1

In response to questions received to date, and in light of scheduling difficulties due to the Holiday Season, the City of Edgewood is issuing this addendum to ensure fairness and transparency in the review and selection process.

- Section III – TIME SCHEDULE: The preliminary schedule is hereby amended as follows:

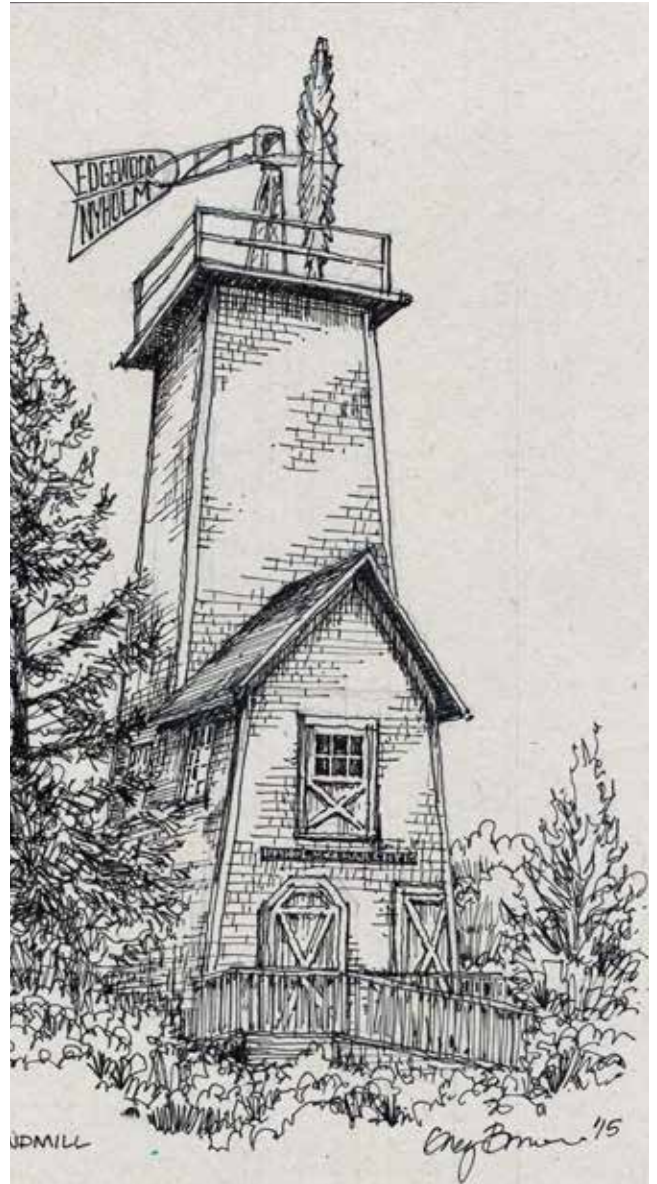
RFQ Issued	November 30, 2018
Deadline for Submittal of Qualifications	December 28, 2018 January 15, 2019
Review of Submittals	January 2–4 16 – 18 , 2019
Preliminary Selection of Firm(s)	January 7 18 , 2019
Interviews (if needed)	January 14–18 21 – 25 , 2019
Notify Firm Chosen	January 23 30 , 2019
Contract Negotiations	January 24–30 31 – February 13 , 2019
City Council Study Session Discussion	February 19, 2019
City Council Acceptance	February 12 26 , 2019
Executed Agreement	February 13 27 , 2019
- Section IV – INSTRUCTIONS TO PROPOSERS, Item A: **Three (3) hard copies and one (1) electronic copy** of the response to the City’s RFQ must be submitted to City by **4:30 PM, Tuesday, January 15, 2019**. No faxed or e-mail copies will be accepted. It is the responsibility of the firm to ensure the qualifications statements arrive on time and to the correct location. Any qualifications statements received after the scheduled closing time shall be returned to the firm unopened.
- Section VII – TERMS AND CONDITIONS, Item C: The City reserves the right to reject all responses to the RFQ, or to award any contract to the next most qualified firm, if the successful firm does not execute a contract by the proposed date of February **27th**, 2019.

Any further questions, including requests for clarification, shall be submitted in writing (via email) to Jeremy Metzler, PE, Public Works Director, at jeremy@cityofedgewood.org, and will be compiled, answered, and posted on the RFP website no later than January 11, 2019. Interested parties may also request email notification of said posting by contacting the City beforehand.

36TH AND MERIDIAN PARK PHASE 1 PLANNING AND DESIGN

City of Edgewood
December 28, 2018





December 28, 2018

City of Edgewood
Attn: City Clerk
2224 104th Avenue E
Edgewood, WA 98372-1513

Request for Qualifications: 36th and Meridian Park – Phase 1 Planning and Design

Dear Selection Committee:

We are pleased to submit our qualifications for the completion of Phase 1 of 36th and Meridian Park. We have been working with the city and Park Board for the past three years to create a wonderful new park and gathering place for the City of Edgewood. This includes the preparation of a master plan, RCO documents, and a number of cost estimates, phasing strategies, and responses to budget realities. We look forward to the opportunity to turn the vision into reality.

We have worked with a number of smaller communities to achieve their dreams of active public spaces, including North Bend, Issaquah, Auburn, and Lynnwood. All have had their unique challenges with budget, program, and providing something truly meaningful to the community. We have addressed the challenges through carefully planned outreach, listening to the needs of the community and creatively bringing the soul of the community into the park.

For the completion of 36th and Meridian Park, we have assembled a team of very talented and creative subconsultants including KPFF, AESI, Mazzetti, and Swenson Say Fagét. Our team has experience with the project through contributions to the master plan or RCO documents and has a strong grasp on the work needed to complete the park. We are ready to finish what we started, with the understanding that there may need to be changes to respond to the budget considerations.

We are excited about the opportunities this park will bring to the community and the city both now and for future generations. We offer the best of our knowledge and creativity to turn your vision into reality.

Sincerely,

Berger Partnership PS



Greg Brower, PLA, ASLA
Principal-in-Charge
gregb@bergerpartnership.com



Jordan Zlotoff, PLA
Project Manager
jordanz@bergerpartnership.com

LOOKING BACK TO MOVE FORWARD

Before we talk about where we're going, we should mention where we've been. In close collaboration with the City of Edgewood and the community, we listened to ideas and identified recreational desires for a wonderful new park with room to gather and places to play. The existing park master plan reflects what we heard during three community meetings and was honed through the refinement of master plan options resulting in a final master plan embraced by all. Prior to community outreach we engaged in site reconnaissance, a cultural resources study, a wetland study, utility availability, and stormwater analysis to ensure the master plan addressed both site constraints and opportunities. Finally, all the studies and design work developing a preferred master plan garnered Edgewood ROC grant funding to make the park a reality!

CELEBRATE EDGEWOOD

The public engagement process revealed that play areas and gathering spaces were the community's top priorities. After exploring several themes, the preferred direction reflects the history and heritage of the community while also looking to the future for opportunity. Your park is destined to be a significant resource for the community as well as a physical statement of Edgewood's community values and a true gateway to the city.

LISTENING, LEVERAGING AND FUNDING

With community support in hand, the next key element needed to make this dream a reality was fundraising. The city had park impact fees available but more dollars were needed. We assisted with successfully securing an RCO grant by providing plans and details that told the story of the park and what it would bring and mean to the city.

This effort was supported by detailed cost estimating and budget-driven choices with the goal of providing great play opportunities all with an eye toward infrastructure, constructibility and durability. One example of our cost conscious approach is the "napkin sketch," which provided you with a quick, inexpensive design alternative. With a strong foundation in place, we are ready to see the project successfully through to completion.

INSPIRATION AND STEWARDSHIP

In the time since we completed the 30% plans, we recognize that as stewards of the budget you are tasked with ensuring park funding is leveraged to its fullest potential. To support your role, we reviewed and provided numerous budget scenarios to tailor the budget and create a park that will become the heart of the community and an economic catalyst for the town.

BUILT IN EFFICIENCIES

Given our experience to date, our team of highly qualified consultants is poised to hit the ground running. We've retained the same team who worked on the master plan and 30% design to maintain efficiency and complete the project on time and on budget. Additionally, familiarity with the project saves you time and money and allows us to immediately begin reconciling 30% design, project budget, and RCO grant requirements.

The park budget is composed of amenities for recreation, play, and parking, as well as necessities such as infrastructure, contractor costs, taxes, fees, and design services. One component of the reconciliation process is a public meeting to measure community support and confirm preferences and choices.

The community input, grant requirements, and reconciled budget will define and guide the production of a 60% complete set of documents, which will be used to engage the permitting and approval process. We offer you a list of potential permits required to advance the project garnered through recent discussions with our consultant team. This gives us a head start getting the necessary permits approved before the project bids. Permits may include:

- Pre-application form
- Critical Areas Review Checklist
- SEPA Checklist
- Clear and Grade
- Right of Way
- SWPPP
- Storm Drainage
- Surface Water
- Building Permit
- Mechanical and Plumbing Permit
- Electrical Permits (L&I)

EXCELLENCE TO THE END

100% design documents will include what is necessary for bid and construction including plans, specifications, and an updated cost estimate to ensure the project is within budget. During the bidding process we assist with contractor questions and provide interpretation of the plans. The same holds true for construction. We review construction progress and provide note of work that is in need of correction or compliance with permits. Once the construction wraps up with the acceptance of the work, through the final stages of closeout, we take great pride in continuing our close collaboration all the way through to the ribbon cutting celebration!





Berger Partnership is a privately owned legacy firm, founded in 1971 in Seattle, and a pioneering firm in Northwest landscape architecture. Today, our staff of 24 landscape architects and technical staff are involved in parks and recreation projects that cover all aspects of design, from master planning, site planning, and design development to construction document production and construction observation.

Our portfolio of park projects ranges from the design of small community parks to the creation and implementation of park master plans for regional destination park facilities.

We are recognized for our ability to recognize the importance of providing a variety of uses, both active and passive, to meet the needs of a wide range of community members and park visitors. We derive our greatest satisfaction from working with clients to design parks that serve as the heart of the surrounding community. All of our park projects are approached with a high level of creativity, focusing on sustainable, functional design that is safe, accessible and durable.

While we continually strive to meet the highest design ideals, we always work to ensure our design is a feasible solution to the project program. We produce very detailed construction documents which reduce the chances for change orders and misinterpretations. The project manager documents all construction observation visits and provides correspondence to resolve issues as quickly and efficiently as possible.

OUR PORTFOLIO OF REALIZED WORK EXHIBITS:

Acclaimed signature projects that shape civic culture.

Trusted relationships built through collaboration with teammates and clients.

Cherished open spaces shaped and built with communities and stakeholders.

Enhanced environmental performance that demonstrates stewardship while reducing infrastructure costs.



Greg Brower, PLA, ASLA
 BERGER PARTNERSHIP - PRIME CONSULTANT
PRINCIPAL, LANDSCAPE ARCHITECT

With over 25 years of experience as a landscape architect, Greg has designed, led, and implemented projects of all types and scales, with an emphasis on public park projects that serve as cherished community gathering places with a focus on environmental stewardship. His extensive experience with public outreach has guaranteed that the spaces he designs serve the needs of the community, who can see their goals and feedback met in the design and built project.

Education

Bachelor of Landscape Architecture,
 Iowa State University, 1988

Registration

Landscape Architect, WA, 1991, #545
 ID, 2017, #LA-1683

Awards

Kent Park, Recreation, Open Space
 and Trails Comprehensive Plan
 WA Chapter APA Award for
 Outstanding Contribution to the Field
 of Planning in the Category of Large
 Cities, 2016

WRPA, Spotlight Award,
 Jefferson Park, 2013

Projects

36th & Meridian Park Master Plan,
 Edgewood, WA

Si View Park Master Plan &
 Implementation, North Bend, WA

Spiritbrook Park Master Plan &
 Implementation, Redmond, WA

Tollgate Farm Park Master Plan &
 Implementation, North Bend, WA

Stadler Ridge Pocket Park Master Plan
 & Implementation, Lynnwood, WA

Maple Leaf Park Master Plan &
 Implementation, Seattle, WA

Kent Valley Loop Trail Master Plan &
 Implementation, Kent, WA

Confluence Park Master Plan
 Issaquah, WA

Reimagining of Lake Boren Park,
 Newcastle, WA

Surrey Downs Park Master Plan,
 Bellevue, WA



David Schwartz, PE, LEED AP
 KPFF

CIVIL ENGINEER

David has 36 years of experience in planning, designing, and coordinating site developments and public improvements. He is sensitive to the environmental and architectural needs of public parks engineering in conjunction with design of recreational amenities and preservation of natural areas. His work includes site work, major utility extensions, upgrades, and relocations; stormwater detention, water quality enhancements, water storage and distribution; streets; parks; as well as construction support.

Education

Civil Engineering, Oregon State
 University Bachelor of Science, 1982

Registration

Licensed Civil Engineer WA #33194
 Project Management Professional

Projects

36th & Meridian Park Master Plan,
 Edgewood, WA (w/Berger)

Madrazo Park Master Plan & Memorial
 Bothell, WA (w/Berger)

Washington Arboretum Park, North
 Entry/Multi-Use Trails, Seattle, WA
 (w/Berger)

West Fenwick Park Renovation
 Kent, WA (w/Berger)

Smith Cove Park Master Plan
 Seattle, WA (w/Berger)





Jordan Zlotoff, PLA
 BERGER PARTNERSHIP - PRIME CONSULTANT
PROJECT MANAGER, LANDSCAPE ARCHITECT

Jordan Zlotoff is devoted to developing cooperative relationships between natural processes and recreational programming to develop places that are beautiful, environmentally sensitive, and functional. Of particular interest are projects in the public realm where site-oriented design can begin to develop a narrative that joins people to the landscape in which they live and work through the physical, emotional, and intellectual experience of gathering.

Education

Master of Landscape Architecture,
 University of California Berkeley, 2006
 Bachelor of Arts in Biology, Colorado
 College

Registration

Landscape Architect, CA, # LA 5756

Projects

36th & Meridian Park Master Plan,
 Edgewood, WA

Lower Russel Road Setback Levee Trail
 System, Kent, WA

Van Doren's Landing Park, Kent, WA

Lakeview Commons/El Dorado Beach
 South Lake Tahoe, CA*

- Waterfront Trails
- Complex Permitting
- Local, Regional and State Permitting
- Stakeholder and Community Outreach

Stafford Lake Park Master Plan,
 Marin, CA*

- Lake View Trails
- Balanced Human Use with Natural Systems
- Stakeholder and Community Outreach

*while with another firm



Jeff Laub, LG, LEG
 ASSOCIATED EARTH SCIENCES, INC.
ENGINEERING GEOLOGIST

Jeff's work includes geotechnical reconnaissance and siting studies, geotechnical site investigations, geotechnical design reports, and geotechnical project management services. His role includes project management and administration, office engineering, supervising field explorations, performing site reconnaissance and geotechnical construction observation. For project implementation, he brings extensive experience preparing and reviewing construction plans and specifications and interacting with general contractors and subcontractors. Jeff also manages geotechnical monitoring, construction inspection, and materials testing phases of various construction projects.

Education

Western Washington University,
 Masters of Geology, 2001
 Washington State University,
 Bachelors of Business
 Administration, 1995

Projects

36th and Meridian Park
 Edgewood, WA (w/Berger)

Lake Boren Park
 Newcastle, WA (w/Berger)

Totem Lake Park Master Plan & Phase 1
 Kirkland, WA (w/Berger)

Surrey Downs Park Master Plan &
 Implementation Bellevue, WA
 (w/Berger)

Kinser Trust Residence
 Seattle, WA (w/Berger)

Newport Hills Park Field Renovation
 Bellevue, WA



Eric Sweet, PE, CxA, LEED AP
MAZZETTI
SENIOR ELECTRICAL ENGINEER

Eric's technical expertise spans the design and commissioning of electrical systems, normal and emergency power distribution, interior and exterior lighting, medium voltage systems, and construction administration. His years of electrical commissioning work on complex electrical systems for aviation and mission critical facilities has influenced his design approach with a pragmatic attention to maintenance, functionality, and reliability of electrical systems.

Projects

Education
Bachelor of Science, Electrical Engineering
Bucknell University, Lewisburg, PA
Master of Business Administration
University of Washington, Seattle, WA

Surrey Downs Park
Bellevue, WA (w/Berger)

Echo Glen Children's Center
Snoqualmie, WA

Newport High School Modernization
Bellevue, WA

Point Defiance Zoo & Aquarium
Tacoma, WA

Nasselle Youth Camp Visitor's Center
Nasselle, WA

Registration
Registered Professional Engineer:
Alaska, California, Oregon, and
Washington
Certified Commissioning Authority
LEED Accredited Professional



Greg Juttner, PE
SWENSON SAY FAGÉT
STRUCTURAL ENGINEER

Greg joined Swenson Say Fagét in 2004 and became an Associate Principal in 2013. He provides structural engineering solutions for wood, masonry and concrete structures for a variety of clients. Greg has teamed with Berger Partnership on a number of park and residential projects. He is skilled at guiding projects of any size from conceptual design through construction completion. He produces creative solutions while adhering to budget and schedule needs. Greg's excellent communication and organizational skills are appreciated by his clients and an asset to the entire project team.

Projects

Education
Bachelor of Science in Civil
Engineering, University of
Washington, 2002
Registration
Structural Engineer, WA # 43671
Project Management Professional

Confluence Park Barn Picnic Shelter
Issaquah, WA (w/Berger)

Totem Lake Park,
Kirkland, WA (w/Berger)

Si View Park Renovation and
Boardwalks, North Bend, WA (w/Berger)

Kinser Trust Stabilization Wall
Seattle, WA (w/Berger)

Tollgate Farm Park Boardwalk Extension
North Bend, WA (w/Berger)

Lake Boren Park
Newcastle, WA (w/Berger)

Maple Leaf Reservoir Park
Redevelopment, Seattle, WA
(w/Berger)





36TH & MERIDIAN PARK, Edgewood

Berger Partnership led a multidisciplinary design team to develop a master plan for this 18-acre pastoral park site. The plan preserves a wetland that began as a farm pond, includes community gathering and event spaces, a playground, flexible lawn areas, and an onsite stormwater treatment basin. The project engaged the community and stakeholders through a series of public meetings on and off site to develop a preferred final plan that met the budget. During each stage, we worked to ensure the plan met community needs and the city's budget, leading to adoption of a fundable and realistically implementable final plan, which successfully secured an RCO grant.

The master plan locates major passive and active elements on the east side to capture site topography, optimize accessibility and limit grading. The center slope exceeds accessibility. To address this, a loop trail is aligned with the slope to offer an accessible route of travel. The play area includes fun, all-inclusive opportunities that highlight the park's agricultural theme.





CONFLUENCE PARK MASTER PLAN & IMPLEMENTATION, Issaquah

Confluence Park is a 15.5-acre park located in the heart of Issaquah's Olde Town. The park was master planned and Phase 1 was implemented by Berger. Features include walking trails, nature playscape, barn shelter, new entry, and expanded parking and restroom facilities.

The park design is forward looking in preparation for increased density and future infrastructure while making connections to existing traditions such as the salmon hatchery and Salmon Days as well as natural features like the creek and the oxbows left in its trail. Two of the properties consolidated to create the park tell the story of Issaquah's agricultural history.

A partnership with Seattle Central Community College resulted in a cost savings that enabled the city to build an amazing barn shelter and picnic tables on a tight budget. Students gained hands-on experience in the art of heavy timber truss carpentry and the City of Issaquah gained an iconic structure and scored an early win for the project.





SI VIEW PARK MASTER PLAN & IMPLEMENTATION, North Bend

This beloved hub of activity is truly treasured by all creating deep community ties while serving as the iconic meeting place for the town.

Site improvements include construction of a new restroom/concession building, picnic shelter, plaza with enhanced seating, two new play areas, looping pathways, and a basketball court. The site was regraded to provide uniform natural turf play surfaces and an upgraded baseball field with new covered dugouts, fencing and improved infield.

Through careful planning, additional play equipment, such as the cargo net climbers and zip line, were purchased a year ahead at a lower price than later installed by the contractor, giving the community the most equipment for their budget. The play area is one of the most popular features of the park.





TOLLGATE FARM PARK MASTER PLAN & IMPLEMENTATION, North Bend

Tollgate Farm is a landmarked farmstead residing in the picturesque Snoqualmie Valley. Work included environmental stewardship for impacts to Ribary Creek, a cultural resources survey, a parking area and restroom, play area and pathways.

Park development followed an approved master plan to set aside 23 of the 57 acres as farmland. This honors a lease with a rancher who has worked the site for over 50 years and allows him to maintain his herd of cattle on the site. There are two boardwalks: one crosses an old oxbow of the South Fork of the Snoqualmie, which is now a wetland.

The new trail system winds around the historic and landmarked farmstead/barn foundation leading to an open meadow. Additional work included developing a parking area with rain gardens, signage, and wayfinding.





MAPLE LEAF PARK MASTER PLAN & IMPLEMENTATION, Seattle

This beloved community park serves as the gathering place for community events ranging from play dates to the annual Halloween parade. The renovation of the play area, as part of the larger Maple Leaf Reservoir replacement and lidding, is divided into three thematic zones: Adventure Play, the Children's Garden, and the Built Play area. A bike trail for trikes and trainers winds its way throughout the terrace tying the three zones together.

The Children's Garden is full of blooming plants that attract butterflies and is the jumping off point for chasing down thirteen sculptural butterflies hidden throughout the park. The garden features a dig zone with sand, washed river rock and gravel.

The Built Play and Adventure Zones are packed full of fun with everything from a zip line to a tree house, a nature trail to new swings, replacing the set removed for renovation per the community's enthusiastic suggestion. Subtle nods to well-known state landmarks, also based on neighbors' input, include earthen mounds signifying the Mima Mounds of Southwest Washington.



LES GOVE PARK MASTER PLAN AND PHASED IMPLEMENTATION, Auburn

Targeted and cost-effective improvements greatly enhanced user experience and increased the prominence and vitality of this long cherished green space and its cultural institutions. Les Gove Park, ringed by the King County Library, White River Valley Museum, a senior activity center, gym and teen center, and community center, was largely invisible to those passing by, hidden behind old structures and closed businesses.

A carefully shaped, three-phased master plan made this hidden treasure more readily apparent and welcoming by claiming the campus edges, clarifying entry points, unifying the campus's many buildings and creating an intuitive circulation pattern (the crescent). New layers and interests enhance community focused gathering spaces with art and culture!

The community now enjoys the inviting new park space with a salvaged drive-in restaurant structure home to a new farmers market. The crescent pathway, outfitted with modular benches, replaces a road and parking lot with a lighted pedestrian link connecting the surrounding institutions. New park elements include a bathroom and a central plaza for pop-up events and performances.



The Berger Partnership team is fortunate to have collaborated with parks departments throughout the region. We encourage you to contact these individuals in reference to the quality of design and service provided.

Jeff Watling, Parks and Recreation Director
City of Issaquah
425.837.3325
jeffw@issaquahwa.gov

Travis Stombaugh, Executive Director
Si View Metropolitan Park District
425.831.1900
tstombaugh@siviewpark.org

Hope Gibson
Seattle Center Redevelopment
206.615.0887
hope.gibson@seattle.gov



Redmond Central Connector community event

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Submitting Firm	AHBL	Berger	Gray and Osborne	Robert W. Droll
Reviewer				
Jeremy Metzler	85	85	75	75
Brian Levenhagen	62	97	16	64
Linda Howard	100	100	70	90
Jason Ramirez	78	92	63	97
Tyron Christopherson	80	85	85	90
Rosanne Tomy	100	100	95	100

Maximum	100	100	95	100
Minimum	62	85	16	64
Average	84.16667	93.16667	67.33333	86
Rank	3	1	4	2

"Drop High" Average	81	91.8	61.8	83.2
Rank	3	1	4	2

"Drop Low" Average	88.6	94.8	77.6	90.4
Rank	3	1	4	2

Submitting Firm	AHBL	Robert W. Droll	Berger
Reviewer			
Jeremy Metzler	77	77	75
Brian Levenhagen	62	78	92
Linda Howard	85	98	100
Jason Ramirez	89	96	97
Tyron Christopherson	--	--	--
Rosanne Tomy	--	--	--

Maximum	89	98	100
Minimum	62	77	75
Average	78.25	87.25	91
Rank	3	2	1

"Drop High" Average	74.66667	83.66667	88
Rank	3	2	1

"Drop Low" Average	83.66667	90.66667	96.33333
Rank	3	2	1

RESOLUTION NO. 19-0xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES ON THE 36TH AND MERIDIAN PARK PHASE ONE WITH THE BERGER PARTNERSHIP (BERGER)

WHEREAS, constructing new active park space has been identified as a high priority in the City's adopted Comprehensive Plan and Capital Improvement Plan (CIP); and

WHEREAS, since its acquisition in late 2004, there have been multiple efforts to develop construction plans for a new active park space at 36th and Meridian; and

WHEREAS, two grant applications were submitted to the Washington State Recreation and Conservation Office (RCO) in 2016, and both were selected in 2018 for reimbursable funding; and

WHEREAS, the City advertised for qualified consultants to aide City Staff in this task and an initial screening panel, including members of the Parks and Recreation Advisory Board, City Council, a Edgewood citizen at-large, and the Public Works Director reviewed and scored the proposals; and

WHEREAS, the three most-qualified respondents were interviewed by a panel, including members of the Parks and Recreation Advisory Board, a Edgewood citizen at-large, and the Public Works Director; and

WHEREAS, the interview panel scored and recommended the Berger Partnership (Berger) as the firm most qualified and willing to provide the necessary services; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute an agreement for the 36th and Meridian Park Phase One Design and Construction Administration Services, substantially in the form attached hereto as Exhibit A, for a contract amount not to exceed \$279,900.

PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 26TH DAY OF FEBRUARY, 2019.

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk

DRAFT

Exhibit A
Professional Services Agreement

DRAFT

CITY OF EDGEWOOD PROFESSIONAL SERVICES AGREEMENT

THIS Agreement is made effective as of the 26th day of February, 2019, by and between the City of Edgewood, a municipal corporation, organized under the laws of the State of Washington, whose address is:

CITY OF EDGEWOOD, WASHINGTON (hereinafter the “CITY”)
2224 - 104th Avenue E.
Edgewood, Washington 98372
Contact: Mayor Daryl Eidinger Phone: 253-952-3299 Fax: 253-952-3537

and The Berger Partnership, P.S., a corporation, organized under the laws of the State of Washington, doing business at:

THE BERGER PARTNERSHIP, P.S. (hereinafter the “CONSULTANT”)
1927 Post Alley, Suite 2
Seattle, WA 98101-1025
Contact: Greg Brower Phone: 206-325-6877 E-mail: gregb@bergerpartnership.com

for professional services in connection with the following Project:

36th and Meridian Phase One – Design and Construction Administration

TERMS AND CONDITIONS

1. Services by Consultant.

A. Consultant shall perform the services described in the Scope of Work attached to this Agreement as Exhibit "A." The services performed by the Consultant shall not exceed the Scope of Work without prior written authorization from the City.

B. The City may from time to time require changes or modifications in the Scope of Work. Such changes, including any decrease or increase in the amount of compensation, shall be agreed to by the parties and incorporated in written amendments to the Agreement.

2. Schedule of Work.

A. Consultant shall perform the services described in the scope of work in accordance with the Schedule attached to this contract as Exhibit “A.” If delays beyond Consultant's reasonable control occur, the parties will negotiate in good faith to determine whether an extension is appropriate.

B. Consultant is authorized to proceed with services upon receipt of a written Notice to Proceed.

3. Terms. This Agreement shall commence on February 27, 2019, (“Commencement Date”) and shall terminate on December 31, 2020 unless extended or terminated in writing as provided herein.

4. Compensation.

- ☐ LUMP SUM. Compensation for these services shall be a Lump Sum of \$_____, which includes all applicable tax.
- ☒ TIME AND MATERIALS NOT TO EXCEED. Compensation for these services shall not exceed \$279,900, including all applicable tax, without written authorization and will be based on billing rates and reimbursable expenses attached hereto as Exhibit "B."
- ☐ TIME AND MATERIALS. Compensation for these services shall be on a time and material basis according to the list of billing rates and reimbursable expenses attached hereto as Exhibit "B."
- ☐ OTHER. _____

5. Payment.

A. Consultant shall maintain time and expense records and provide them to the City monthly after services have been performed, along with monthly invoices in a format acceptable to the City for work performed to the date of the invoice.

B. All invoices shall be paid by City warrant within sixty (60) days of receipt of a proper invoice. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Consultant shall keep cost records and accounts pertaining to this Agreement available for inspection by City representatives for three (3) years after final payment unless a longer period is required by a third-party agreement. Copies shall be made available on request.

D. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors, including, but not limited to, the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to Revised Code of Washington (RCW) 51.08.195, as required by law, to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties, which is subject to Title 51 RCW, Industrial Insurance.

E. If the services rendered do not meet the requirements of the Agreement, Consultant will correct or modify the work to comply with the Agreement. City may withhold payment for such work until the work meets the requirements of the Agreement.

6. Discrimination and Compliance with Laws

A. Consultant agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state, or local law or ordinance, except for a bona fide occupational qualification.

B. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state and municipal laws, rules and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

C. Consultant shall obtain a City of Edgewood business license prior to receipt of written Notice to Proceed.

D. Violation of this Paragraph 6 shall be a material breach of this Agreement and grounds for cancellation, termination, or suspension of the Agreement by City, in whole or in part, and may result in ineligibility for further work for City.

7. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

8. Suspension and Termination of Agreement

A. Termination without cause. This Agreement may be terminated by the City at any time for public convenience, for the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors.

B. Termination with cause. The Agreement may be terminated by the City upon the default of the Consultant. Upon 30 days' notice and reasonable cause, as determined by the sole discretion of the City, the Agreement may be terminated by the Consultant.

C. Rights Upon Termination.

1. *With or Without Cause.* Upon termination for any reason, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City, and Consultant shall be entitled to just and equitable compensation for any satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein. Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on work not performed because of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise.

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

D. **Suspension.** The City may suspend this Agreement, at its sole discretion. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

E. **Notice of Termination or Suspension.** If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date as stated in the City's notice of termination, whichever is later. Notice of suspension shall be given to the Consultant in writing upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Notice may also be delivered to the Consultant at the address set forth in Section 15 herein.

9. Standard of Care. Consultant represents and warrants that it has the requisite training, skill and experience necessary to provide the services under this agreement and is appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

10. Ownership of Work Product.

A. All data materials, reports, memoranda, and other documents developed under this Agreement whether finished or not shall become the property of City, shall be forwarded to City at its request and may be used by City as it sees fit. Upon termination of this agreement pursuant to paragraph 8 above, all finished or unfinished documents, reports, or other material or work of Consultant pursuant to this Agreement shall be submitted to City.

B. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in Consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents and sub-consultants in the performance of the work hereunder, and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is Subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and Volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

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

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named by endorsement as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability Insurance.
4. Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
4. Employer's Liability insurance each accident \$1,000,000; Employer's Liability Disease each employee \$1,000,000; and Employer's Liability Disease – Policy Limit \$1,000,000.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

1. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.
2. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
3. The City will not waive its right to subrogation against the Consultant. The Consultant's insurance shall be endorsed acknowledging that the City will not waive their right to subrogation. The Consultant's insurance shall be endorsed to waive the right of subrogation against the City, or any self-insurance, or insurance pool coverage maintained by the City.
4. If any coverage is written on a "claims made" basis, then a minimum of a three (3) year extended reporting period shall be included with the claims made policy, and proof of this extended reporting period provided to the City.

D. Acceptability of Insurers

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

E. Verification of Coverage

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

14. Assigning or Subcontracting. Consultant shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

15. Notice. Any notices required to be given by the City to Consultant or by Consultant to the City shall be in writing and delivered to the parties at the following addresses:

Daryl Eidinger
Mayor
2224 - 104th Avenue E.
Edgewood, WA 98372

Phone: 253-952-3299
Fax: 253-952-3537

THE BERGER PARTNERSHIP, P.S.
Attn: Greg Brower
1927 Post Alley, Suite 2
Seattle, WA 98101-1025

Phone: 206-325-6877
Fax: 206-323-6867

16. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the Mayor, who shall determine the term or provision's true intent or meaning. The Mayor shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the Mayor or Administrator's determination in a reasonable time, or if the Consultant does not agree with the Mayor or Administrator's decision on a disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney's fees from the other party.

17. General Provisions.

A. Non-waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein contained in one or more instances, shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be in full force and effect.

B. Modification. No waiver, alteration, modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

C. Severability. The provisions of this Agreement are declared to be severable. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other provision.

D. Entire Agreement. The written provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the

City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, the Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and the Exhibits attached hereto, which may or may not have been dated prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CITY OF EDGEWOOD, WASHINGTON

CONSULTANT

By: _____
Daryl Eidinger
Mayor

By: _____
Name: _____

Date: _____

Title: _____

Date: _____

Attest:

By: _____
Rachel Pitzel
City Clerk

APPROVED AS TO FORM:

By: _____
Carol A. Morris
City Attorney

Exhibit "A"



2.14.19

Mayor Daryl Eiding
Mr. Jeremy Metzler, Public Works Director
City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372

Scope of Work for Landscape Architectural Services – 36th and Meridian Park, 60% Design through Construction

Dear Mayor Eiding and Mr. Metzler:

This proposal is for continued work on the 36th and Meridian Park planning and development. The scope of work includes development of the project documents, 60%, 90%, and 100% complete, permitting, bid administration and construction administration. This proposal outlines the design team, scope of work, services, deliverables, and estimated fees.

Design Team

We have assembled a team of very qualified professionals to assist with the preparation of drawings, specifications, and estimates of probable construction costs. Design team members include:

KPFF – Civil Engineer
AESI – Geotechnical Engineer
SSF - Structural Engineer
Mazzetti – Electrical Engineer
Design 2426 – Irrigation Design

Park Program

The park improvements in this phase include the following:

- Loop path
- Play area
- Amphitheater
- Restroom (2 stalls on city sewer)
- Shelter
- Parking (60 stalls)
- Stormwater conveyance and treatment
- Lighting – parking lot and safety



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Mayor Daryl Eiding

City of Edgewood

Scope of Work for Landscape Architectural Services – 36th and Meridian Park

Page 2 of 8

- Secondary paths
- Landscape plantings

Project Budget

The total project budget is \$3,160,000. This includes design, permitting, construction, sales tax, and contingency.

60% Design

We will establish the character for the park, determine the materials, and establish layout and location of all park features. Our work will begin with reconciling the master plan with the budget. Once the features from the master plan to be implemented are determined, we will proceed with the preparation of plans and draft specifications.

Regulatory Code and Permit Review

- Review applicable code sections and determine the effects to the project.
- Review possible permit needs and duration of permit approval process.

Schedule

- Establish a project schedule including dates for document review, permit submittal, DD phase, CD phase, bidding and construction.

General

- Reconcile Master Plan with a cost estimate prepared by our office.
- Update wetland buffer per current regulations.
- Prepare a drawing set that locates and describes the improvements. Drawing set to include:
 - Survey
 - Site Preparation Plan
 - Layout Plans
 - Restroom Plans and Elevations
 - Picnic Shelter Plans and Elevations
 - Grading and Drainage Plan
 - Utility – Water Supply and Sanitary Sewer
 - Lighting and Electrical Plan
 - Irrigation Plan
 - Planting Plan
 - Details in sketch and image format



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Scope of Work for Landscape Architectural Services – 36th and Meridian Park

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- Prepare water quality calculations and determine stormwater treatment/detention needs.
- Prepare a stormwater report.
- Review existing geotechnical information and provide recommendation for infiltration and pavement sections.
- Prepare general conditions in WSDOT format
- Prepare outline specifications in CSI format.
- Submit plans and written materials for review.
- Respond to review comments, revise plans, specifications and cost estimates as required.
- Prepare one 60% Design cost estimate that includes phasing.
- Develop content and conduct (1) public meeting.
- Attend three meetings with the city and design team.
- Provide project administration.

Deliverables

- 60% Design documents
- Outline specifications
- 60% Design cost estimate
- Stormwater Report

Permitting/Approvals

We will provide the services necessary for obtaining approvals for construction. Permits may include clearing and grading, building, and environmental.

- Building Permits – Restroom, Shelter
- Site Development
- SEPA Checklist
- Demolition
- Driveway Access
- Utility Permits – Water, Sanitary Sewer
- Electrical (through state L&I)

Specific services include:

- Schedule and attend a pre-application meeting (during 60% Design).



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Mayor Daryl Eiding

City of Edgewood

Scope of Work for Landscape Architectural Services – 36th and Meridian Park

Page 4 of 8

- Prepare documents for submittal review and approval including notes and calculations.
- Prepare necessary forms and paperwork for permit submittal.
- Arrange and attend intake meeting with the City of Edgewood permit center.
- Submit plans to the City of Edgewood.
- Review comments and provide written responses and plan revisions. Response and revision time for permitting is limited to 12 hours. Additional time will be billed on an hourly basis.

Deliverables

- Permit documents

90% and 100% Design

Upon approval from Parks, Construction Documents will be prepared. Specific services include the following:

- Respond to comments on the 60% Design documents.
- Prepare a drawing set that locates and describes the improvements. Drawing set to include:
 - Survey
 - Site Preparation Plan
 - Temporary Erosion Control Plan
 - Layout Plans
 - Site Details
 - Grading and Drainage Plans
 - Drainage Details and Calculations
 - Utility Plan – Water Supply and Sanitary Sewer
 - Electrical and Lighting Plans, and details
 - Irrigation Plan
 - Irrigation details and Schedules
 - Planting Plan
 - Planting Details and Schedules
- Prepare Construction Specifications in CSI format with general conditions in WSDOT format. CSI documents will be a special provision to the WSDOT standard.
- Submit draft Construction Documents and meet with Park Board and Public Works to review plans and specifications.



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Scope of Work for Landscape Architectural Services – 36th and Meridian Park

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- Respond to review comments, revise plans, specifications, and cost estimates as required.
- Prepare an update of the cost estimate.
- Attend three meetings with Park Board, Public Works, and the design team.
- Provide project administration.

Deliverables

- 90% Design - Construction Documents
- Specifications
- 90% Design - Construction cost estimate
- 100% Design Construction Documents and estimate

Bid Administration

We will provide the following support services during the bidding and negotiation of the site work.

- Prepare bid packages using format provided by the City.
- Submit bid packages to Parks and Public Works for review.
- Prepare documents for bid and provide digital documents for posting.
- Advertise for bid.
- Conduct a pre-bid meeting.
- Review and respond to bidder questions with input from the owner.
- Prepare bid addenda.
- Attend the bid opening and tabulate the bids.
- Identify apparent low bidder and assist City with qualifying low bidder.

Construction Administration

We will make visits to the project site to observe construction of the elements in our scope of work as follows:

- Attend preconstruction meeting and prepare meeting notes.
- Attend weekly construction meetings for a total of (30) meetings, prepare meeting notes, and track issues.
- Review submittals and shop drawings.
- Review contractor schedule.
- Review and verify contractor pay application.



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Mayor Daryl Eiding

City of Edgewood

Scope of Work for Landscape Architectural Services – 36th and Meridian Park

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- Prepare modification proposals and change orders for approval by the city.
- Conduct walk-through, prepare punchlist, and confirm substantial completion.
- Conduct back check of punchlist and confirm physical completion.
- Review contractor as-builts.
- Obtain maintenance manuals, operating manuals, equipment brochures, and material brochures from contractor.

Deliverables

- Construction meeting notes
- Three copies of maintenance manuals
- Contractor as-builts

Assumptions

- Drawings will be provided on our title block with signature block as required by the City of Edgewood.
- Specifications will be prepared in CSI format and included with WSDOT standard as a special provision.
- The bid process will follow protocols established by the city utilizing established forms and standards.
- Meetings and site visits in addition to those indicated will be billed on an hourly basis.
- The site is not connected to utilities. Sanitary sewer will be extended to the site by the city. Water and electricity are available in the right of way adjacent to the site and will be available to the project. Storm sewer is not available and storm water will be treated on site prior to release.
- Fees for permits and bid announcements will be paid by the City of Edgewood and are not included.
- The City will prepare and negotiate contracts with the successful low bidder.
- Construction testing services will be provided by the City of Edgewood.
- Construction duration is assumed to be (7) months (30 weeks). Fees for services beyond this duration will be provided on an hourly basis or by approved scope and fee.



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Scope of Work for Landscape Architectural Services – 36th and Meridian Park

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Fees

Based on the scope of services identified at this time, we have established a fee for landscape architectural services as follows:

60% Design	\$46,000.00
Permitting	\$12,000.00
90% and 100% Design	\$55,000.00
Bid Administration	\$14,000.00
Construction Administration	\$64,800.00
<u>Sub consultants (includes 10% mark-up)</u>	
Civil Engineer	\$48,000.00
Geotechnical Engineer	\$3,500.00
Structural Engineer	\$5,000.00
Electrical Engineer	\$15,400.00
Irrigation Design	\$13,200.00
Total	\$276,900.00
Reimbursable Expenses	\$3,000.00

Optional Services

Optional services include are provided for consideration. These may be added at the discretion of the City.

Restroom Sanitary Sewer (\$4,300.00)

Change from a septic system to City sanitary sewer. City sewer main located in Meridian Avenue.

Road Extension Through Park (\$6,300.00)

The City will propose alignment for the parallel road. We will study the alignment through the park and the adjustments to park features.

Additional Weekly Site Visits (\$12,500.00)

We will provide (1) weekly site visit in addition to the weekly contractor meeting during the 30 weeks of construction for a total of (30) site visits.

Right of Way Improvements for 36th Street E. and Meridian Avenue E. (TBD)

If improvements adjacent to or within the right of way are required we will prepare scope and fee for necessary services.



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City of Edgewood
Scope of Work for Landscape Architectural Services – 36th and Meridian Park
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Electrical Service for Security (\$3,500.00)

Provide design for extending electrical service for security purposes. Security cameras, mounting device, and controls provided by others.

Revisions & Additions to Proposal

Once the 60% Design plan is approved, any substantive revision to the drawings resulting from owner/client directed changes (including program changes, scope of work changes, modifications to existing documents, construction and/or site and conditions change and adjustments to time frames) will be billed as an extra service. Billing will be hourly, unless a guaranteed maximum fee is requested for the revision. Written confirmation of the change/revision will be sent as an amendment to this contract. Revision work started at the direction of the owner/client, then subsequently terminated, will be billed as extra services through date of stop-work notification.

If you have questions, would like more information, or wish to make any modifications, please do not hesitate to contact us. We look forward to working with you on the development of 36th and Meridian Park.

Sincerely,

Berger Partnership PS

A handwritten signature in black ink, appearing to read "Greg Brower", with a stylized flourish at the end.

Greg Brower, PLA
Principal



EXHIBIT B

36TH and MERIDIAN PARK

City of Edgewood

2019 HOURLY RATES

The hourly rates for the people involved on our team at this time include:

Principal	\$195.00 per hour
Associate	\$155.00 per hour
Project Manager	\$125.00 per hour
Landscape Designer	\$100.00 per hour
Administrative Staff	\$80.00 per hour

REIMBURSABLE EXPENSES

Printing, reprographic expenses, CAD plots, travel costs, bid advertisements, and other reimbursable expenses will be billed in addition to the above fees at cost plus a 10% administrative mark-up.



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Fees for Animal Control Services		Agenda Item #:		2D
		For Agenda of:		February 5, 2019
		Prepared by:		Carol Morris
ATTACHMENTS (list): ☒ Resolution No. 19-0XXX				
Approval of Materials:				
Mayor, Daryl Eidinger	☒	Expenditure Required:	\$0	
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$0	
City Attorney, Carol Morris	☒	Appropriation Required:	\$0	
City Clerk, Rachel Pitzel	☒	Timeline:		
Community Development Director, Darren Groth	☒			
Public Works, Jeremy Metzler	☒			
Police Chief, Micah Lundborg	☒			
Fiscal Note/Consideration: Pursuant to the Interlocal Agreement for Animal Control Services between Sumner, Edgewood and Puyallup, the revenues associated with the animal control activities are deposited into a special fund maintained by Sumner. Expenditures are made only for animal shelter and animal control activities, including the actual administrative costs and City overhead. (Section 4 of the Interlocal Agreement.) "Edgewood shall be responsible for any costs associated with enforcing or defending their ordinances relating to potentially dangerous or dangerous dog declarations, impounds or additional costs associated with prosecution of criminal or civil cases, or other unforeseen costs that may arise from time to time." (<i>Id.</i> , Subsection E.)				
SUMMARY STATEMENT: Edgewood entered into an interlocal agreement with METRO Animal Control for animal control services on December 30, 2010. In this interlocal agreement, Edgewood agreed to adopt animal control regulations that are "similar" to those adopted by Sumner and Puyallup, "to ensure consistency in enforcement and to increase management efficiency." (Section 2, City of Edgewood's Responsibilities, Subsection B). The Interlocal Agreement establishes the method under which the fees for Animal Control Services are calculated. Edgewood adopted Sumner's Animal Control regulations by reference. While these regulations included some of the fees that are charged for animal control activities, many fees were missing. We recently revised all of Sumner's Animal Control regulations, including a chapter on dangerous dogs/potentially dangerous dogs and a resolution updating the fee schedule for implementation of these regulations. Our revised ordinances/resolution were sent to Sumner's City Attorney, who has been considering them and coordinating revisions with METRO Animal Control. Recently, we received our draft fee resolution back from Sumner, with the fees shown in the attached Resolution (minus any fee for the removal of the dangerous dog designation). As described in the Agenda Bill associated with the ordinance for the removal of the dangerous dog designation, we plan to adopt this procedure prior to our agreement on these revisions to the Animal Control Code, in order to address a particular situation. Therefore, if the Council decides to adopt the ordinance allowing the removal of the dangerous dog designation, the Council should establish the fee for this procedure. If the Council decides not to adopt this ordinance, the Council could decide to pass the resolution as drafted, without that line item.				

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION: Bring forward Resolution No. 19-0xxx to the next Regular Council Meeting for consideration and action.

ALTERNATIVES TO RECOMMENDED ACTION: Forward to future study session for further discussion.

RESOLUTION NO. 19-0xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, RELATING TO ANIMAL CONTROL, ESTABLISHING THE 2019 FEES FOR ANIMAL LICENSING, COMMERCIAL ANIMAL BUSINESSES AND RELATED FEES IMPOSED BY THE ANIMAL CONTROL AUTHORITY FOR LICENSING AND OTHER FEES RELATING TO ANIMAL CONTROL.

WHEREAS, the Animal Control Authority establishes shelter-related fees and a number of commercial and non-commercial animal businesses and operations, as well as other animal-control related activities; and

WHEREAS, the Council desires to remove these fees adopted by the Animal Control Authority from the Edgewood Municipal Code and to instead insert them in a resolution; and

WHEREAS, the Council considered this Resolution during its meeting of _____, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council does hereby adopt the following fees to implement its animal control regulations, all as set forth in chapters 6.01 (Animal Control), 6.0_ (Animal Licensing) and 6.0_ (Potentially Dangerous Dogs and Dangerous Dogs).

<u>License Fees</u>	<u>Dogs and Cats -- unaltered</u>
\$0.00	Juvenile dogs/cats (under 6 months of age)
\$60.00	Adult dogs/cats (7 months and older) annual license
\$30.00	Adult dog/cat (7 months and older) annual license for Seniors 65 yrs and ` older
<u>License Fees</u>	<u>Dogs and Cats – altered</u>
\$16.00	Adult dogs (7 months and older) annual license
\$12.00	Adult cats (7 months and older) annual license
\$ 8.00	Adult dog (7 months and older) annual license for Seniors 65 yrs and older
\$ 6.00	Adult cat (7 months and older) annual license for Seniors 65 yrs and older

Altered dogs and cats: In order to receive a license for an altered adult dog or cat, the owner must provide either proof of alteration from a licensed veterinarian or a written statement from a licensed veterinarian that the spay/neuter procedure would be harmful to the animal. Adoption paperwork showing spay/neuter also accepted.

Permits

Potentially Dangerous and Dangerous Dogs

\$250.00	Permit for Potentially Dangerous Dog
\$ 50.00	Annual Renewal Fee for Permit for Potentially Dangerous Dog
\$500.00	Permit for Dangerous Dog
\$100.00	Annual Renewal Fee for Permit for Dangerous Dog
\$ 75.00	PDD and DD Re-inspection (If Initial inspection failed. Initial inspection is no charge)
\$_____	Request for Removal of Potentially Dangerous and Dangerous Dog Determination (if animal behaviorist is hired pursuant to EMC 6.10.047(C), the cost shall be paid by the dog's owner)

Fees

Activity

\$ 5.00	Replacement Tag Fee
\$ 10.00	Penalty for failure to timely renew an annual license after 30 days for dog/cat
\$ 20.00	Penalty for failure to timely renew an annual license after 60 days for dog/cat

Shelter Fees

Impound Fees (\$75/spay/neuter/microchip refundable deposit if an unaltered animal is impounded more than once in a 12 month period)

\$ 45.00	First time
\$ 90.00	Second time
\$135.00	Third time or more
\$ 60.00	Livestock, 75 lbs or less
\$150.00	Livestock, 75 lbs or more

Kennel Fees

\$ 15.00/day	Boarding Fee Dog/Cat
\$ 25.00/day	Boarding Fee Livestock

This is the fee charged to an owner for costs associated with boarding an animal that has been impounded or taken into protective custody, including the first and last day that the animal is retained by the impounding authority even where the animal is in custody for less than a full day.

Adoption Fees

\$125.00	<u>Cat Single Adoption:</u> Includes spay/neuter/microchip/and METRO license if applicable
\$115.00	<u>Cat Multiple Adoption:</u> Includes spay/neuter/microchip/and METRO license if applicable Full Adoption Rate applies to first animal – subsequent animals at lower rate
\$110.00	<u>Cat Adoption Special/Senior:</u> Includes spay/neuter/microchip/and METRO license if applicable. Reduced rate for hard to adopt animals or high shelter populations – requires Shelter Supervisor/Staff approval.
\$165-185.00	<u>Dog/Puppy Single Adoption:</u> Includes spay/neuter/microchip and METRO license if applicable
\$150.00	<u>Dog Multiple Adoption:</u> Includes spay/neuter/microchip/and METRO license if applicable. Full Adoption Rate applies to first animal – subsequent animals at lower rate.
\$130.00	<u>Dog Adoption Special/Senior:</u> Includes spay/neuter/microchip/and METRO license if applicable. Reduced rate for hard to adopt animals or high shelter populations – Requires Shelter Supervisor/Staff approval.
\$ 25.00 more than 20 lbs	<u>Small Animal Adoption (Rabbits, Fowl, Snakes, etc.):</u>
\$ 20.00 less than 20 lbs	
\$ 75.00	<u>Adoption Spay Neuter Deposit.</u>

Miscellaneous Fees

\$ 50.00/\$75.00 OSA	Dog/Cat Animal Drop Off Fee ¹
\$ 10.00	Kitten Drop Off Fee
\$ 50.00 plus \$.50 per lb.	Owner Euthanasia Fee ²
\$ 75.00 plus \$.50 per lb. OSA	Owner Euthanasia Fee
\$ 25.00/week plus \$25.00 deposit	Trap Rental
\$ 35.00	Microchip Sales
\$ 40.00	NFS Checks ³

OSA is for Outside Service Area (areas NOT in jurisdictions served by MAS).

<u>License Fee</u>	<u>Activity</u>
\$ 75.00	Animal Shelter – annual
\$ 75.00	Doggie Day Care -- annual
\$ 75.00	Grooming Parlor -- annual
\$ 75.00	Hobby Kennel – annual

¹ This is the fee charged to an owner who surrenders their animal to animal control for adoption.

² This is the fee charged to an owner who surrenders their animal to animal control for euthanasia.

⁴ Any person who issues a check for which funds are insufficient will be assessed this fee. In addition, any license(s) or penalties paid with such checks will be invalid. Additional costs incurred in collecting funds under NFS checks are the personal obligation of the animal owner and may result in other legal consequences.

\$ 75.00	Kennel – annual
\$ 75.00	Pet Shops – annual
\$ 75.00	Short-term Boarding Facilities -- annual
\$ 75.00	Re-Inspection Fee (If Initial inspection failed. Initial inspection is no charge)

Section 2. Effective Date. This Resolution will take effect five days after publication as required by law.

PASSED THIS __ day of _____, 2018.

Daryl Eiding, Mayor

ATTEST:

Rachel Pitzel, City Clerk



City Of Edgewood Council Agenda Summary Sheet

SUBJECT: Removal of Dangerous Dog or Potentially Dangerous Dog Determination, Amending EMC 6.01.010		Agenda Item #: 2E	
		For Agenda of: February 19, 2019	
		Prepared by: Carol Morris	
ATTACHMENTS (list): ☒ Ordinance No. 19-xxxx ☒ Memo			
Approval of Materials:			
Mayor, Daryl Eidinger	☒	Expenditure Required:	\$0
Asst. City Administrator, Dave Gray	☒	Amount Budgeted:	\$0
City Attorney, Carol Morris	☒	Appropriation Required:	\$0
City Clerk, Rachel Pitzel	☒	Timeline:	
Community Development Director, Darren Groth	☒		
Public Works, Jeremy Metzler	☒		
Police Chief, Micah Lundborg	☒		
Fiscal Note/Consideration: A separate resolution addresses the fee associated with this request.			
SUMMARY STATEMENT: Edgewood entered into an interlocal agreement with METRO Animal Control for animal control services. In this interlocal agreement, Edgewood agreed to adopt animal control regulations that are consistent with Sumner's animal control regulations. In 2016, the City adopted Sumner's animal control regulations by reference, including those relating to dangerous dogs and potentially dangerous dogs. We recently revised all of Sumner's Animal Control regulations, including a chapter on dangerous dogs/potentially dangerous dogs and a resolution updating the fee schedule for implementation of these regulations. Our revised ordinances/resolution were sent to Sumner's City Attorney, who has been considering them and coordinating revisions with METRO Animal Control. In the last couple of weeks, Animal Control notified us that a dog determined dangerous in Lakewood had been moved into Edgewood. According to the Animal Control officer who actually visited the home where the dog is being kept, the dog is now "geriatric," and did not exhibit any aggressive tendencies during her visit. In the existing dangerous dog regulations that Edgewood has adopted by reference, once a dog has been determined to be dangerous, the dog's owner is required to: annually renew the dangerous dog permit (\$100.00); maintain a proper enclosure for the dog; post a sign warning the public that there is a dangerous dog on the premises; microchip and tattoo the dog; muzzle the dog whenever the dog is outside of the primary residence; ensure that the dog wears a brightly colored collar with the license tag; and obtain homeowner's liability insurance in the amount of at least \$500,000, insuring the owner for any personal injuries inflicted by the dangerous dog. If a dog determined to be dangerous is moved into Edgewood, the dog's owner is required to notify Edgewood within 48 hours. Before bringing the dog into Edgewood, the owner is required to meet all of the licensing conditions and any other conditions imposed by an authority outside of Edgewood. If the dog's owner doesn't comply with these regulations without following the code, the owner could be charged with a gross misdemeanor. In addition, if the owner doesn't obtain the annual permit (which requires compliance with all of the above), the			

Animal Control Authority is authorized to seize/impound the dog, notify the owner, and hold the dog for a period of no more than five days. If the owner can meet the licensing requirements within five days, the owner can redeem the dog, but if not, the Animal Control authority can destroy the dog.

The existing dangerous dog/potentially dangerous dog regulations adopted by Edgewood (and Sumner), there is no provision allowing for the removal of the designation, regardless of any current circumstances relating to the dog. In the research performed to determine whether other jurisdictions allow the designation to be removed, we learned that Pierce County allows a dog owner to petition for removal of the designation, and the Animal Control Authority makes a recommendation on it to the Hearing Examiner, who issues the final decision. (Pierce County Municipal Code 6.07.040.) We also learned that the State of Minnesota adopted a procedure allowing for the annual review of a dangerous dog designation (copy attached).

Staff is suggesting that the Council consider the adoption of a provision allowing for the elimination of a dangerous dog or potentially dangerous dog designation, before we negotiate all of the language of the new Animal Control Code with Sumner, to address this geriatric dog situation. (We have sent a copy of this ordinance to Sumner's City Attorney, who is aware of the geriatric dog situation.)

If the Council agrees with this approach, the procedure for removal of the dangerous dog determination would be effective within five days after publication of the ordinance. It would subsequently be incorporated into the final version of the Edgewood Animal Control Code and Edgewood regulations on Dangerous and Potentially Dangerous Dogs. Because a request for removal of the designation does involve administrative costs, a permit fee must also be established. This is the subject of an associated resolution.

COUNCIL COMMITTEE REVIEW AND RECOMMENDATION: N/A

RECOMMENDED ACTION: Bring forward Ordinance No. 19-0xxx to the next Regular Council Meeting for consideration and action.

ALTERNATIVES TO RECOMMENDED ACTION: Forward to future study session for further discussion.

ORDINANCE NO. 19-xxxx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON, RELATING TO DANGEROUS DOGS, ADDING A PROCEDURE ALLOWING THE DOG'S OWNER TO REQUEST REMOVAL OF A DANGEROUS DOG OR POTENTIALLY DANGEROUS DETERMINATION UNDER CERTAIN LIMITED CIRCUMSTANCES, PROVIDING FOR AN APPEAL; ALLOWING FEES TO BE ESTABLISHED FOR THE PROCESSING OF A REQUEST; AMENDING EDGEWOOD MUNICIPAL CODE SECTION 6.01.010; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Edgewood entered into an interlocal agreement with METRO Animal Control to enforce the City's animal control regulations, which require consistency between Edgewood's and Sumner's codes on the subject of animal control, including regulations adopted pursuant to RCW 16.08.080 on Dangerous Dogs and Potentially Dangerous Dogs; and

WHEREAS, the City of Edgewood adopted the Dangerous and Potentially Dangerous Dog regulations in the Sumner Municipal Code by reference in Edgewood Municipal Code Section 6.01.010; and

WHEREAS, once a dog has been determined to be a "Dangerous Dog" under these Codes, the dog owner must obtain a dangerous dog license and pay the associated fee; the owner must maintain a "proper enclosure" to confine the dog (as defined in RCW 16.08.070(4)); the owner must post a bond in the sum of \$50,000 for potentially dangerous dogs, payable to any person injured by the potentially/dangerous dog; and the owner must maintain a homeowner's insurance policy in the amount of at least \$50,000 for potentially dangerous dogs and \$500,000 for dangerous dogs, insuring the owner for any personal injuries inflicted by the potentially/dangerous dog; and

WHEREAS, failure to comply with these requirements after a dog has been determined dangerous can result in, among other things, the immediate confiscation and possible destruction of the dangerous dog; and

WHEREAS, although a dog owner may appeal the initial potentially dangerous dog or dangerous dog designation within a limited time after the final determination, there is no procedure in the Sumner/Edgewood Municipal Code on potentially dangerous dogs or dangerous dogs which allows a dog owner to request removal of the designation at any time in the future; and

WHEREAS, the City Council recognizes that years after the dog has been determined to be potentially dangerous or dangerous, the designation and the imposition of such conditions may no longer be necessary, in light of the dog's health and condition; and

WHEREAS, if the dog no longer warrants the potentially dangerous or dangerous dog designation because the dog does not present any danger to the public, forcing the dog's owner to comply with the licensing conditions is unnecessarily burdensome and costly; and

WHEREAS, this Ordinance was considered by the City Council during its study session of _____, 2019; and

WHEREAS, the City Council adopted this Ordinance during its regular City Council meeting of _____, 2019;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 6.01.010 is hereby amended to read as follows:

6.01.010 Adoption.

A. Pursuant to RCW 35A.12.140, the City hereby adopts by reference the following chapters of the Sumner Municipal Code (SMC) related to the control, regulation and licensing of animals, inclusive of any future amendments thereto:

SMC Chapter 6.04, Animal Control;

SMC Chapter 6.08, Dog Feces Removal;

SMC Chapter 6.10, Dangerous and Potentially Dangerous Dogs;

SMC Chapter 6.16 Exotic Animals.

B. The following Section 6.10.047 is hereby added to Chapter 6.10 SMC, Dangerous and Potentially Dangerous Dogs, to be in effect within the City of Edgewood:

6.10.047 Dangerous Dog and Potentially Dangerous Dog Designation Review.

A. Beginning six months after a dog is declared a dangerous dog or potentially dangerous dog, an owner may request, on an annual basis, that the animal control authority review the designation and determine whether it should be removed. The owner must provide evidence that the dog's behavior has changed due to the dog's age, health, neutering, environment, completion of obedience training that includes modification of aggressive behavior, and/or other factors, and pay the fees associated with processing the request.

B. If the animal control authority finds sufficient evidence that the dog's behavior has changed, the authority will provide its recommendation to the Police Chief that the dangerous dog or potentially dangerous dog designation should be rescinded. If the animal control authority instead determines that there is insufficient evidence to rescind the designation, there is no appeal from this decision, but the dog's owner may make the same request within one year.

C. The Police Chief shall review the animal control authority's recommendation that the designation be rescinded, together with all relevant evidence. The Police Chief shall also decide whether (1) an independent animal behaviorist should be hired at the dog owner's cost to evaluate the dog; and (2) whether any other members of the public should be notified about the request to remove the potentially dangerous or dangerous dog designation (i.e., the complainants involved in the original determination that the dog was dangerous or potentially dangerous,) and whether they should be asked to provide comment on the request.

D. After review of all of the evidence presented, the Police Chief shall issue a decision on the rescission of the potentially dangerous or dangerous dog designation. There is no appeal of the Police Chief's

decision, but the dog's owner may request another review not less than one year after the Chief's decision.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. A summary of this Ordinance consisting of its title shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of final passage. The full text of this Ordinance shall be mailed without charge, upon request.

PASSED BY THE CITY COUNCIL ON THE _TH DAY OF XXXXXXXXXXXXXXXX, 2019

Mayor Daryl Eiding

ATTEST/AUTHENTICATED:

Rachel Pitzel, CMC
City Clerk

APPROVED AS TO FORM:

City Attorney, Carol Morris

Date of Publication:

Effective Date:



City of
Edgewood

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MEMO

Date: February 8, 2019
To: Edgewood Mayor and City Council
From: Carol Morris, City Attorney
Re: Dangerous and Potentially Dangerous Dogs – Removal of Designation

In this Memo, I have addressed a number of questions that you may have about the draft ordinance which describes a procedure that allows an owner of a dog that has been declared “potentially dangerous” or “dangerous” to have this designation removed. Edgewood Municipal Code (EMC) Section 6.01.010 adopts Sumner’s code on dangerous and potentially dangerous dogs by reference, which is chapter 6.04 and 6.10 of the Sumner Municipal Code).

1. What is a potentially dangerous dog or dangerous dog?

“Potentially dangerous dog” means any dog that when unprovoked: (a) inflicts bites on a human or domestic animal either on public or private property, or (b) chases or approaches a person upon the streets, sidewalks or any public grounds in a menacing fashion or apparent attitude of attack, or any dog with a known propensity, tendency or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise threaten the safety of humans or domestic animals.¹

“Dangerous dog” means any dog that (a) inflicts severe injury on a human being without provocation on public or private property, (b) kills a domestic animal without provocation while the dog is off the owner’s property, or (c) has been previously found to be potentially dangerous because of injury inflicted on a human, the owner having received notice of such and the dog again aggressively bites, attacks or endangers the safety of humans.²

¹ This definition is in state law, RCW 16.08.070(1). The definition adopted by Sumner (and Edgewood, by reference) is the same, except the words “or livestock on any public or private property” have been added at the end. Police dogs (as defined in RCW 4.24.410) are exempt from the “dangerous dog” procedures and requirements. RCW 16.08.080(5)

² This definition is in state law, RCW 16.08.070(2). The definition of “dangerous dog” adopted by Sumner is:

“Dangerous dog” means any dog that: (1) inflicts severe injury on or kills a human being without provocation, or (2) inflicts severe injury on or kills an animal without provocation while the

Dogs cannot be declared dangerous if the threat, injury or damage was sustained by a person who, at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused or assaulted the dog or was committing or attempting to commit a crime.³

2. How are “dangerous” and “potentially dangerous” dogs regulated?

State law requires that unless a city or county has a more restrictive code, the owner of a dog determined to be dangerous must obtain a certificate of registration and:

- a. present sufficient evidence of a proper enclosure to confine the dog, post the premises with a clearly visible warning sign, conspicuously display a sign with a warning symbol which warns children of a dangerous dog;
- b. obtain a surety bond in the sum of at least \$250,000, payable to any person injured by the dangerous dog or obtain a policy of liability insurance in the amount of at least \$250,000, insuring the owner for any personal injuries inflicted by the dangerous dog;
- c. pay the annual fee for the certificate of registration, including any licensing fee.⁴

A city may place additional restrictions upon the owners of dangerous dogs.⁵ State law does not limit the restrictions that may be placed on potentially dangerous dogs. Sumner and Edgewood have also placed restrictions on dangerous dogs (consistent with state law) and also on potentially dangerous dogs.⁶

3. 1. Does the Animal Control Interlocal between Sumner, Puyallup and Edgewood prevent Edgewood from adopting an ordinance that allows for the removal of a dangerous/potentially dangerous dog designation? Short answer: Not only does the Interlocal

animal inflicting the injury is off the property where its owner resides, or (3) has been previously found to be potentially dangerous, the owner having received notice of such, and the animal again aggressively bites, attacks or endangers the safety of humans or other animals. Any dog which inflicts injury to a human or animal while trespassing on the property of another is the presumed provoker, unless such presumption is overcome by the preponderance of the evidence.

³ RCW 16.08.090(3).

⁴ RCW 16.08.080(6) and (7).

⁵ RCW 16.08.080(9). Sumner’s code (and Edgewood’s by reference) requires the annual permit (and permit/licensing fee), the “proper enclosure,” proof that the dog has been microchipped, that the dog has a tattoo for identification purposes, proof of rabies vaccination, proof that the animal has been fixed, proof of a policy of liability insurance in the amount of \$500,000 or proof of a surety bond in the amount of at least \$500,000 which must be payable to any person injured by the dangerous dog, the dog must be muzzled and the dog must wear a brightly colored collar. SMC 6.10.045.

⁶ The owner must obtain an annual permit (and pay the permit/licensing fees), maintain the potentially dangerous dog in a proper enclosure, conspicuously post a sign with a warning sign and a warning symbol to warn children, post a surety bond in the sum of at least \$50,000 or obtain a liability insurance policy in the amount of at least \$50,000, payable to a person injured by the potentially dangerous dog. SMC 6.10.020.

allow it, Edgewood needs to do so in order to defend the dangerous/potentially dangerous dog code.

Sumner, Puyallup and Edgewood entered into an “Interlocal Agreement for Animal Control Services” (the “Interlocal”) on December 30, 2010. This Interlocal has an indefinite duration.⁷ In the Interlocal, the parties have agreed that Metro Animal Services (“Metro”) will provide animal control and shelter services to Edgewood.⁸ “All employees involved in animal control and shelter services will be employees of Sumner . . .”⁹ In Metro’s provision of animal control services, Sumner and Puyallup “shall be the sole judge as the most expeditious, efficient, and effective manner of handling calls for animal control services, and operation of the shelter.”¹⁰

With regard to Edgewood’s responsibilities:

Edgewood shall review its local laws regulating dangerous dogs, licensing, and other animal related codes and shall make amendments as needed to ensure that the regulations contain similar provisions as Sumner’s and Puyallup’s to ensure consistency in enforcement and to increase management efficiency. . . .

Edgewood shall be responsible for any costs associated with enforcing or defending their ordinances related to potentially dangerous or dangerous dog declarations, impounds or additional costs associated with prosecution of criminal or civil cases, or other unforeseen costs that may arise from time to time.¹¹

The Interlocal also requires that Edgewood provide Metro written notice of all code changes related to animal control.¹² Copies of all proposed changes have to be sent to Metro at least 30 days prior to adoption.¹³

Sumner’s code currently does not have a provision that allows the potentially dangerous/dangerous designation to be removed, but this alone doesn’t mean that Edgewood’s proposed ordinance isn’t “similar” to Sumner’s code (as required by Section 2(B)). It actually addresses Section 2(E) in the Interlocal, because Edgewood, not Sumner, is required to defend challenges to Edgewood’s dangerous/potentially dangerous dog code. Any constitutional challenges brought to the code would have to be defended by Edgewood, not Sumner.

4. If Edgewood is required by the Interlocal to pay the costs associated with defending or enforcing its potentially dangerous and dangerous dog code, is the proposed ordinance needed to defend any substantive due process claim? Short Answer: Yes.

⁷ Section 9 and 7 of the Interlocal.

⁸ “Whereas” sections, page 1, section 2 of the Interlocal.

⁹ Section 2(H) of the Interlocal.

¹⁰ Section 2(J) of the Interlocal.

¹¹ Sections 2(B) and E of the Interlocal.

¹² Section 2(F) of the Interlocal.

¹³ Section 2(F) of the Interlocal. I redrafted the Animal Control chapter, a new Animal Licensing chapter, a new Dangerous and Potentially Dangerous Dog chapter and a new Animal Control fee resolution and sent them to the Sumner City Attorney in 2018. The proposed ordinance removing the dangerous/potentially dangerous dog determination was provided to the Sumner City Attorney in January of 2019.

The issue is whether substantive due process is violated by an ordinance that allows a dog to be designated as potentially dangerous or dangerous – and imposes the significant restrictions on such potentially dangerous/dangerous dogs -- until the dog's death, without regard to the dog's age, physical condition, training, behavior, etc.¹⁴ The Washington courts have held that “the ownership of dogs and cats is generally subject to regulation under a municipality's police power.”¹⁵ In challenges brought to the constitutionality of municipal regulations affecting dogs and cats, the courts have developed a number of tests. First, the courts examine the regulation to determine if it meets “the test of reasonableness.”¹⁶ There is also a more detailed test for whether an exercise of the police power has exceeded constitutional due process limits:

(1) whether the regulation is aimed at achieving a **legitimate public purpose**; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the landowner. ‘In other words, 1) there must be a public problem or evil’ 2) the regulation must tend to solve this problem, and 3) the regulation must not be ‘unduly oppressive’ upon the person regulated.’¹⁷

The stated purpose of the Sumner Animal Control (which is adopted in Edgewood) code is:

It is declared the public policy of the city to secure and maintain such levels of animal control as will protect human health and safety, and to the greatest degree practicable, prevent injury to property and cruelty to animal life. To this end, it is the purpose of this chapter to provide a means of licensing dogs, cats, animal shelters, hobby kennels, kennels and pet shops and controlling errant animal behavior so that it shall not become a public nuisance and to prevent cruelty to animals.¹⁸

Using the court tests for constitutionality, it can be argued that an ordinance which **permanently** imposes the potentially dangerous/dangerous dog designation on a dog, and which has no provision for removal of this designation -- even when the dog is so old that it can no longer see, walk or spend much time outdoors -- is not aimed at achieving the code's stated purpose (to protect human health and safety, prevent injury to property and cruelty to animal life). Also, if the owner of a potentially dangerous/dangerous dog is required to maintain the annual permits, licenses, to perpetually house the dog in a “proper enclosure,” obtain/maintain a surety bond, liability insurance, signs, muzzle, etc., even for geriatric dogs that pose no threat to public health or safety, these restrictions would likely be viewed by a court as being unduly oppressive. Finally, it is simply not “reasonable” to permanently impose these conditions of permitting/licensing on a dog until the dog's death, if the owner can provide sufficient evidence

¹⁴ See, Question 1 for the definition of a “dangerous dog,” “potentially dangerous dog,” and the restrictions that accompany such designation.

¹⁵ *Ramm v. City of Seattle*, 66 Wash. App. 15, 20, 830 P.2d 395 (1992). In *Ramm*, a Seattle code enforcement officer issued a notice of violation to a homeowner, alleging that her 14 cats violated the code prohibition on no more than three small animals per single-family residence.

¹⁶ *Id.*, 66 Wash. App. at 20.

¹⁷ *Id.*, 66 Wash. App. at 21, citing *Presbytery of Seattle v. King County*, 114 Wash.2d 320, 330-31, 787 P.2d 907, cert. denied, 498 U.S. 911 (1990), emphasis added.

¹⁸ SMC Section 6.04.010.

that the dog no longer meets the definition of “potentially dangerous” or “dangerous.”¹⁹ If the restrictions serve no purpose whatsoever, the restrictions are not reasonable.

5. Should Metro or the Edgewood Police Chief make the final decision on whether or not the potentially dangerous/dangerous dog determination should be removed?

If the persons working for Metro are Sumner employees, then they are covered by Sumner’s insurance.²⁰ However, if they make the final, unappealable decision whether or not to remove a potentially dangerous or dangerous dog designation, and Edgewood is sued as a result, it is likely that Edgewood -- not Sumner -- would be exposed to the liability (as well as costs and attorneys’ fees). Section 12 of the Interlocal includes a hold harmless provision which requires each of the parties to hold the other parties harmless from claims arising from the Interlocal that are based on “the fault of the indemnitor, its appointed or elected officials, employees, officers, agents, ...”

My recommendation is that to ensure that Edgewood’s insurance is not triggered by an action of Metro or in a challenge to the constitutionality of Sumner’s code (adopted by reference in Edgewood), that Edgewood (1) review and update its existing animal control and dangerous/potentially dangerous dog ordinances; and (2) ensure that Edgewood, not Metro, makes the final decision on potentially dangerous/dangerous dogs. As you can see from the draft ordinance, Metro makes a recommendation to the Edgewood Police Chief on the issue whether the potentially dangerous/dangerous dog designation should be removed. The Police Chief makes the final decision, and can hire an animal behaviorist to assist in this decision. In sum, Edgewood, not Sumner/Metro, should be the entity making decisions that could expose Edgewood to liability, lawsuits and damage claims.

If you have any questions, please let me know.

cc: Edgewood Police Chief, Assistant City Administrator, City Clerk

¹⁹ See, 347.51 of the Minnesota Statutes, which allows a dog owner the opportunity to annually request that the animal control authority review the dangerous dog determination. The burden is on the dog’s owner to prove that the dog’s behavior has changed, due to the dog’s age, neutering, environment, completion of obedience training that includes modification of aggressive behavior, or other factors.

²⁰ Section 11 of the Interlocal requires that: “For the duration of this Agreement, all parties shall maintain insurance coverage through membership of the Washington Cities Insurance Authority, Cities Insurance Association of Washington, or Association of Washington Cities.” The parties to the Interlocal are Sumner, Puyallup and Edgewood – Metro is not a party, because Metro’s employees are also Sumner employees. Interlocal, Section 2(H).