

Kelso City Council Agenda

Regular Meeting, 6:00 pm
September 17, 2013
City Hall, Council Chambers
203 South Pacific
Kelso, WA 98626



**Special accommodations for the handicapped and hearing impaired are available
by special arrangement through the City Clerk's Office at 360-423-0900**

Invocation:

Pastor Russ Tevis, Central Christian Church

Roll Call to Council Members:

1. Approve Minutes:

- 1.1. September 3, 2013 – Regular Meeting
- 1.2. September 10, 2013 – Special Meeting

2. Proclamations:

- 2.1. Constitution Week
- 2.2. National Recovery Month

3. Presentation:

- 3.1. South Kelso Railroad Crossing – FCS Group

4. Consent Items:

- 4.1. Agreement – EPA Grant, Terry's Salvage site, 1124 North Pacific Ave.
- 4.2. Auditing of Accounts

5. Citizen Business:

6. Council Business:

- 6.1. Solid Waste Rate Adjustment

7. Action/Motion Items:

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- 7.1. Ordinance, 1st Reading
 - 7.1.1. Amend Zoning Text Change Chapter 17.08.020
- 7.2. Ordinance, 2nd Reading
 - 7.2.1. 2013 Budget Revision
- 7.3. Ordinance, 2nd Reading
 - 7.3.1. Repeal – Library Charges Policy
- 7.4. Ordinance, 2nd Reading
 - 7.4.1. Special Events Permits Timeline Chapter 12.24
- 7.5. Resolution
 - 7.5.1. Interlocal Agreement with AWC Employee Benefit Trust
- 7.6. Resolution
 - 7.6.1. Emergency Work at Water Treatment Plant

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Pastor Chuck Dunnavant, Longview Church of the Nazarene, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Futcher, Lefebvre, Schimmel, Archer, Myers, and Roberson. Councilmember McDaniel was absent.

Minutes: Upon motion by Councilmember Schimmel seconded by Councilmember Lefebvre, 'Approve the Minutes of the 8/20/13 Regular Meeting,' motion carried, all voting yes.

PRESENTATION:

Solid Waste Rates: Cowlitz County Public Works Solid Waste Superintendent Don Olson gave a power point presentation regarding the acquisition and finances of the Headquarters Landfill. He commented that the anticipated Municipal Solid Waste rates will be increased from \$37.30 per ton to \$49.00 per ton.

CONSENT AGENDA:

Interlocal Agreement – Bus Stop Maintenance, RiverCities Transit

Upon motion by Councilmember Roberson, seconded by Councilmember Myers, 'Approve the Consent Agenda,' motion carried, all voting yes.

CITIZEN BUSINESS:

Lisa Alexander, 1517 N. 3rd Ave., spoke about the 12 foot Blue Spruce tree that was recently donated to the City and planted in the commons park. She also presented a plaque in memory of her mother, Betty Knight Smith, who was a long time Kelso citizen.

Paul Crist, 140 N. Vista Way, spoke about a rundown motorhome being used as a rental home on his neighbor's property.

Rick Von Rock, 400 N. 7th Ave., spoke about having the forthcoming rate increase for solid waste occur at the same time a rate increase occurs for water. Public Works Director David Sypher commented that, under the RCW, the City is required to give different notifications for water rates and garbage rates.

COUNCIL BUSINESS:

Contract Award – West Main Realignment Project, Rotschy, Inc.: Upon motion by Council Member Lefebvre, seconded by Councilmember Schimmel, 'Award the contract to Rotschy, Inc.,' motion passed, all voting yes.

Contract Award – Sunrise Street Waterline Replacement Project, Brookhart

Excavation, LLC: Upon motion by Council Member Roberson, seconded by Council Member Lefebvre, ‘Award the contract to Brookhart Excavation, LLC,’ motion passed, all voting yes.

MOTION ITEMS:

Ordinance No. (1st Reading) – 2013 Budget Revision No. 2: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Myers, ‘Pass on 1st reading, ‘AN ORDINANCE OF THE CITY OF KELSO AMENDING THE 2013 BUDGET TO REFLECT REVENUES AND APPROPRIATE FUNDS TO COVER EXPENDITURES OVER AND ABOVE THOSE ANTICIPATED AT THE TIME SAID BUDGET WAS ADOPTED.’ Motion passed, all voting yes.

Ordinance No. 13-3804 – Public Records Policy: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Myers, ‘Adopt Ordinance No. 13-3804, ‘AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE 3205 CODIFIED AT KMC 2.26 PUBLIC RECORDS DISCLOSURE AND ADOPTING A NEW KMC 2.26 PUBLIC RECORDS DISCLOSURE TO REPLACE THE REPEALED CHAPTER.’ Motion passed, all voting yes.

Ordinance (2nd Reading) – Special Events Permit Timeline Chapter 12.24: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Lefebvre, seconded by Councilmember Roberson, ‘Pass on 2nd reading, ‘AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE 3573 CODIFIED AT KMC 12.24 PARADES AND ADOPTING A NEW KMC 12.24 SPECIAL EVENTS TO REPLACE THE REPEALED CHAPTER.’ Councilmember Archer commented about the Council being informed of all of the special events permits that are approved and denied by staff. Mayor Futch questioned certain language in the proposed ordinance. Lengthy discussion followed. **Upon motion by Councilmember Archer, seconded by Councilmember Schimmel, ‘Table the motion to pass the Ordinance on 2nd Reading,’ motion tabled, all voting yes.**

Ordinance No. 13-3805 – Amendment to Procurement Policy Code, Chapter 3.40:

The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Archer, ‘Adopt Ordinance No. 13-3805, ‘AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON AMENDING CHAPTER 3.40 OF THE KELSO MUNICIPAL CODE ESTABLISHING PURCHASING PROCEDURES.’ Motion passed, all voting yes.

Ordinance No. 13-3806 – Addition and Amendment to Contract Policy, Chapter 2.80: The Deputy Clerk read the proposed ordinance by title only. Upon motion by

Councilmember Schimmel, seconded by Councilmember Lefebvre, ‘Adopt Ordinance No. 13-3806, ‘AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON ADDING SECTION 2.80.035 RELATING TO GENERAL CONTRACT EXECUTION AND AMENDING KELSO MUNICIPAL CODE SECTIONS 2.80.050 AND 2.80.055 RELATING TO THE APPROVAL OF MINOR CONTRACTS AND ADMINISTRATION OF CHANGE ORDERS. Motion passed, all voting yes.

Resolution No. 13-1095 – Procurement Policy: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Lefebvre, seconded by Councilmember Schimmel, ‘Pass Resolution No. 13-1095, ‘A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON ADOPTING UPDATES TO THE CITY’S PROCUREMENT POLICIES AND PROCEDURES AND REPEALING RESOLUTION NO. 565 RELATING TO THE ADMINISTRATION OF CERTAIN PURCHASES BY THE CITY. Motion passed, all voting yes.

Resolution No. 13-1096 – Master Fee Schedule: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Lefebvre, seconded by Councilmember Archer, ‘Pass Resolution No. 13-1096, ‘A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO, WASHINGTON, CREATING AND APPROVING A MASTER FEE SCHEDULE, AND REPEALING RESOLUTION NO. 647 PERTAINING TO FINANCE DEPARTMENT FEES. Motion passed, all voting yes.

Ordinance No. (1st Reading) Repeal Library Charges Policy: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember Myers, seconded by Councilmember Lefebvre, ‘Pass on 1st reading, ‘AN ORDINANCE OF THE CITY OF KELSO, WA REPEALING ORDINANCE 01-3467 PERTAINING TO THE LIBRARY CHARGES POLICY. Motion passed, all voting yes.

The Regular Session was recessed at 7:20 p.m. to convene into the Transportation Benefit District Meeting. At 7:32 p.m., Council reconvened into Regular Session.

MANAGER’S REPORT:

Steve Taylor: 1) Briefed the Council about the City generated parks survey. 2) Reminded the Council of the exit conference with the State Auditors on September 6th, at 3:00 p.m. 3) Announced that there will be a ‘Ground Breaking/Ribbon Cutting Ceremony’ for the brownfield cleanup site located at 1124 North Pacific on September 11th, at 11:00 a.m. 4) Provided an update on the gate issue at the Library.

COUNCIL REPORTS:

Kim Lefebvre: No report.

Rick Roberson: No report.

Dan Myers: No report.

Gary Archer: No report.

Gary Schimmel: No report.

David Futcher: No report.

EXECUTIVE SESSION:

The Council convened into Executive Session at 7:35 p.m. to discuss a Collective Bargaining Agreement and a property acquisition. The Executive Session is expected to last approximately 10 minutes. The Attorney was present and no action was taken.

At 7:45 p.m., it was announced that the Executive Session will be extended approximately 5 more minutes.

The Council reconvened into Regular Session at 7:52 p.m.

There being no further business, Mayor Futcher adjourned the meeting at 7:52 p.m.

MAYOR

CITY CLERK

The Special Meeting of the Kelso City Council was called to order by Mayor David Fatcher. Councilmembers in attendance were: Fatcher, Myers, McDaniel, Roberson, Schimmel, and Archer. Councilmember Lefebvre was absent.

EXECUTIVE SESSION:

The Council convened into Executive Session at 5:01 p.m. to discuss an employee evaluation and a property acquisition. The Executive Session is expected to last approximately 2 ½ hours. The Attorney was not present and no action was taken.

Councilmember Schimmel left the Executive Session at 5:45 p.m.

The Council reconvened into Special Session at 7:30 p.m.

There being no further business, Mayor Fatcher adjourned the meeting at 7:30 p.m.

MAYOR

DEPUTY CLERK

PROCLAMATION

Constitution Week
September 17 - 23, 2013

WHEREAS, September 17, 2013, marks the two hundred twenty-sixth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE, I, David Futcher by virtue of the authority vested in me as Mayor of the City of Kelso do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

AND ask our citizens to reaffirm the ideals of the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

*In witness whereof, I have hereunto
set my hand and caused the seal of
the City of Kelso to be affixed this
17th day of September, 2013*

David Futcher, Mayor

Proclamation

National Recovery Month

September 2013

WHEREAS, behavioral health is an essential part of one's health and overall wellness; and

WHEREAS, prevention of mental and/or substance-use disorders works, treatment is effective, and people recover both in our area and around the nation; and

WHEREAS, preventing and overcoming mental and/or substance-use disorders is essential to achieving healthy lifestyles, both physically and emotionally; and

WHEREAS, we must encourage relatives and friends of people with mental and/or substance-use disorders to implement preventive measures, recognize the signs of a problem, and guide those in need to appropriate treatment and recovery support services; and

WHEREAS, according to the 2011 National Survey on Drug Use and Health, 2.3 million people aged 12 or older received specialty treatment for a substance-use disorder; 31.6 million adults aged 18 or older received mental health services. Given the serious nature of this public health problem, we must continue to reach the millions more who need help; and

WHEREAS, the cost of untreated and mistreated mental health and substance-abuse problems to American businesses, governments and families has grown to \$105 billion annually; and

WHEREAS, effective October 1, 2013, as a result of the Affordable Health Care Act, more than 11 million uninsured individuals with behavioral health needs will become eligible for affordable insurance coverage for their treatment needs; and

WHEREAS, to help more people achieve and sustain long-term recovery, the U.S. Department of Health and Human Services, the Substance Abuse and Mental Health Services Administration, the White House Office of National Drug Control Policy invites the City of Kelso, Washington to participate in

“National Recovery Month”

NOW, THEREFORE, I, David Futcher, Mayor of the City of Kelso call upon our citizens to observe this month with appropriate programs, activities, and ceremonies to support this year's Recovery Month.

In witness whereof, I have hereunto set my hand and caused the seal of the City of Kelso to be affixed this 17th day of September 2013.

David Futcher, Mayor

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Agreement U.S. Environmental Protection Agency (EPA) Grant No. 00J80801 for the cleanup of the former Terry's Salvage yard brownfield site 1124 N. Pacific Ave.

Agenda Item: _____

Dept. of Origin: Community Development

For Agenda of: September 17, 2013

Cost of Item: \$156,275

PRESENTED BY:

Nancy Malone
Planning Manager

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

U.S. Environmental Protection Agency Cooperative Agreement No. 00J80801

SUMMARY STATEMENT:

In 2004, the Department of Ecology did a site hazard assessment and listed the property addressed as 1124 N. Pacific Avenue, Kelso, WA, on the state's Hazardous Sites List. After this, Terry's Salvage ceased operation at the site. In 2010-2011 the city removed an abandoned building and scrap car parts from the site, which is now vacant, benefit of the WA State Department of Commerce's Neighborhood Stabilization Program Grant funds of \$77,499.72.

In 2009, Ecology awarded the city a \$200,000 Integrated Planning Grant and \$100,000 Environmental Assessment Grant. These grants funded the assessment of contamination and options for cleanup and possible redevelopment of the site, which was conducted by Maul Foster & Alongi, Inc.

The contamination was not as extensive as originally thought nor has the water table been affected. It was determined that the soil contamination is approximately 2 to 3 feet deep in some areas. In order to prepare the site for any type of development the soil must be removed and new fill material brought in.

In August of 2013, the city was awarded a Remedial Action Grant from the Department of Ecology for \$555,300. The Ecology Remedial Action Grant along with this U.S. Environmental Protection Agency Grant of \$156,275 will fund the removal of contaminated soil and prepare the site for redevelopment.

After the cleanup is complete, the city, together with Lower Columbia CAP, proposes cottage style, single-family housing for low to moderate income families.

RECOMMENDED ACTION:

Staff recommends council to approve the attached U.S. Environmental Protection Agency Agreement.

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 00J80801 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 08/05/2013
		TYPE OF ACTION New	MAILING DATE 08/12/2013
		PAYMENT METHOD:	ACH# PEND
		RECIPIENT TYPE: Municipal	
RECIPIENT: City of Kelso 203 S Pacific Avenue, #208 Kelso, WA 98626 EIN: 91-6001252		PAYEE: City of Kelso 203 S Pacific Avenue, #208 Kelso, WA 98626	
PROJECT MANAGER Nancy Malone 203 S Pacific Avenue, #208 Kelso, WA 98626 E-Mail: nmalone@kelso.gov Phone: (360) 423-9922		EPA PROJECT OFFICER Susan Morales 1200 Sixth Avenue, Suite 900 Seattle, WA 98101 E-Mail: Morales.Susan@epamail.epa.gov Phone: 206-553-7299	
EPA GRANT SPECIALIST Bob Phillips Grants Management, OMP-145 E-Mail: Phillips.Bob@epa.gov Phone: 206-553-6367			
PROJECT TITLE AND DESCRIPTION City of Kelso BF Cleanup This project provides funding to the recipient to address the contamination at the former Terry Salvage Yard located on 1124 N. Pacific Avenue in Kelso, WA. The work will include excavation and off-site disposal of impacted soils, backfill and grading, confirmation sampling and community involvement.			
BUDGET PERIOD 07/01/2013 - 06/30/2015	PROJECT PERIOD 07/01/2013 - 06/30/2015	TOTAL BUDGET PERIOD COST \$578,475.00	TOTAL PROJECT PERIOD COST \$578,475.00
NOTICE OF AWARD			
<p>Based on your Application dated 07/25/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$156,275. EPA agrees to cost-share 27.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$156,275. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101		ORGANIZATION / ADDRESS U.S. EPA, Region 10 Office of Environmental Cleanup 1200 Sixth Avenue, Suite 900 Seattle, WA 98101	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Armina K. Nolan - Manager - Grants and Interagency Agreements Unit			DATE 08/05/2013

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 156,275	\$ 156,275
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$ 422,200	\$ 422,200
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 578,475	\$ 578,475

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
TERRYAUTO	1310NEG037	13	E4	10N4AG7	301D79	4114	G065OQ00		156,275
									156,275

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$7,000
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$571,475
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$578,475
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>73.00</u> % Federal <u>27.00</u> %.)	\$578,475
12. Total Approved Assistance Amount	\$156,275
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$156,275
15. Total EPA Amount Awarded To Date	\$156,275

Administrative Conditions

1. Payment Methods

a. The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

Automated Standard Application for Payments (ASAP)

The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If your organization uses multiple bank accounts for EPA grants/cooperative agreements, you must enroll in ASAP. If you are interested in receiving funds electronically via ASAP, please complete the ASAP Initiate Enrollment form located at <http://www.epa.gov/ocfo/finservices/forms.htm> and email it to LVFC-grants@epa.gov or fax it to LVFC at 702-798-2423

Under this payment mechanism, the Recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the Recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, or by visiting www.fms.treas.gov/asap.

Electronic Funds Transfer (EFT)

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain your organization's banking information from your System for Award Management (SAM) registration. Upon completion of required Regional training, a Las Vegas Finance Center Representative will send you an email message with your EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at (702) 798-2485, or by visiting <http://www.epa.gov/ocfo/finservices/payinfo.htm>

NOTE: If your banking information is not correct or changes at any time prior to the end of your agreement, please update your SAM registration and notify the EPA Las Vegas Finance Center as soon as possible so the new banking information can be retrieved. This is vital to ensure proper and timely deposit of funds.

b. In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

2. Cost Principles/Indirect Costs Not Included (All Organizations)

The cost principles of OMB Circular A-21, "Cost Principles for Educational Institutions," relocated to 2 CFR Part 220, OMB Circular A-87, "State, Local or Indian Tribal Governments," relocated to 2 CFR Part 225, or OMB Circular A-122, "Cost Principles for Non-Profit Organizations," relocated to 2 CFR Part 230, are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

3. Federal Financial Report (FFR)

Recipients shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm>. All FFRs must be submitted to the Las Vegas Finance Center: **US EPA, LVFC, 4220 S. Maryland Pkwy Bldg C, Rm 503, Las Vegas, NV 89119, or by FAX to: 702-798-2423.**

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final

Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 30.62 and 40 CFR 31.43 if the recipient does not comply with this term and condition.

4. **Audit Requirements**

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

5. **Hotel-Motel Fire Safety Act**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. **Recycled Paper**

INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:

In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

7. **Lobbying**

ALL RECIPIENTS:

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000,

and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR 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 such expenditure.

PART 30 RECIPIENTS:

All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit 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.

8. Lobbying and Litigation

ALL RECIPIENTS:

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance 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 shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

9. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Drug-Free Workplace Certification for all EPA Recipients

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at <http://ecfr.gpoaccess.gov>.

11. 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 expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

12. Reimbursement Limitation

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

13. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

14. Trafficking Victim Protection Act of 2000 (TVPA) as Amended.

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' 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 subawards under the award.

15. DUNS and CCR Requirements (Updated 8/1/12)

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and
 - e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal

entity.

4. Subaward:

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

16. Subaward Reporting and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsr.gov.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsr.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - i. the total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if –

- i. in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. subawards, and
- ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization;
- iv. A domestic or foreign for-profit organization;
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. *Salary and bonus.*
- ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the

Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

17. Subawards

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

18. CIVIL RIGHTS OBLIGATIONS

GENERAL

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

19. Disadvantaged Business Enterprise Requirements (Effective May 27, 2008)

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is over \$250,000. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Washington Office of Minority and Women's Business Enterprises** as follows:

MBE: PURCHASED GOODS 8%; PURCHASED SERVICES 10%; PROFESSIONAL SERVICES 10%
WBE: PURCHASED GOODS 4%; PURCHASED SERVICES 4%; PROFESSIONAL SERVICES 4%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Washington Office of Minority and Women's Business Enterprises**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Objective/Goals of Loan Recipients

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure 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 recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) 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.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reporting period is **semiannual**, with reporting periods ending March 31st and September 30th. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30th and October 30th**.

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

Reports should be sent to the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: Luchey.Greg@epa.gov. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

20. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient'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. As of January 1, 2013, the limit is \$596.00 per day \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

NOTE: For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salary and Wages", and select "Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

21. Additional Recipient Contribution for Non-Competitive Program ONLY

The statutory requirement for recipient contribution is 20% of total project costs. However, in accordance with the application dated 7/29/13, the recipient agrees to contribute an amount greater than the statutory requirement. Reduction to this amount must be negotiated with the EPA Project Officer.

Programmatic Conditions

Region 10 - FY13 Cleanup Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields Cleanup Grants awarded under CERCLA § 104(k).

I. GENERAL FEDERAL REQUIREMENTS

Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients .

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2013 competition for Brownfields cleanup cooperative agreements .
 - b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
 - c. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
 - d. When the CAR recipient chooses to participate in a State or Tribal response program **that does not have a promulgated** program, then the CAR is required to consult with the EPA to ensure protectiveness of human health and the environment.
 - e. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include:
 - f. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
 - g. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.

B. Changes to Sites and Cleanup Methods

1. a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan.
- b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. For purposes of the Cleanup Grants, "sufficient progress in implementing a cooperative agreement" means that an appropriate remediation plan is in place, institutional control development, if necessary, has commenced, initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed and a solicitation for remediation services has been issued.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as monitoring, review of project phases, and approving substantive terms included in professional services contracts.
 - b. Substantial EPA involvement may include review of financial and program performance reports and monitoring all reporting, record-keeping, and other program requirements.
 - c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
 - c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional (s) to coordinate, direct, and oversee the brownfields assessment and cleanup activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
 - a. Summary of approved activities performed during the reporting quarter; summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - b. An update on project schedule and milestones.
 - c. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
 - d. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan. To the extent consistent with the EPA approved work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:
 - i. *Cleanup Start Date (interim measure to show grant progress)*
 - ii. *Acres per property*
 - iii. *Cleanup Completed Date*
 - iv. *Copy of No Further Action Letter or equivalent*
 - v. *Types of contaminants cleaned up*
 - vi. *Acres of greenspace planned/created*
 - vii. *Engineering/institutional controls required, what type and whether they are in place*
 - viii. *Cleanup plans*
 - ix. *Redevelopment underway*
 - x. *Funds leveraged*
 - xi. *Jobs leveraged*
 - xii. *Health monitoring studies, insurance, institutional controls funded*
 - xiii. *Lessons learned during planning and implementation; summary of project*
 - xiv. *Photos of events and sites worked on, including before and after.*
 - e. Documentation of the best efforts to identify and use clean diesel technologies, clean fuels, and/or other diesel emissions reductions practices.
 - f. When considering approaches to the cleanup of properties, EPA's recommendation of best practices should be implemented whenever possible.
 - i. Use energy efficient equipment to minimize energy consumption and use cleaner fuels to power machinery and auxiliary equipment.
 - ii. Minimize the generation of greenhouse gases by minimizing the generation and transport of airborne contaminants and dust.
 - iii. Minimize water use and impacts to water resources and employ best management practices for storm water.
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on the specific properties under this cooperative agreement.
3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as any interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture what work was performed at the site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. Refer to section II.D. quarterly reporting for additional types of information to include.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

CERCLA § 104(k)(9)(B)(iii) requires that the recipient of this cooperative agreement pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e. 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the EPA-approved work plan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:
 - a. Ensuring cleanup activities at a particular site are authorized by CERCLA § 104(k) and the EPA approved work plan;
 - b. Ensuring that a cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
 - c. Using a portion of the grant to purchase environmental insurance for the remediation of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section III.C;
 - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable in III.C.2; and carrying out community involvement pertaining to the cleanup activities.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
 - a. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
 - c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or addressing public or private drinking water supplies that have deteriorated through ordinary use);
 - d. Job training unrelated to performing a specific cleanup at a site covered by the grant;
 - e. To pay for a penalty or fine;
 - f. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;

- g. To pay for a response cost at a brownfields site for which the recipient of the grant is potentially liable under CERCLA § 107;
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
 - i. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by the CAR.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.
 - b. Ineligible grant administration costs include direct costs for :
 - (1) Preparation of applications for Brownfields grants;
 - (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
 - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
 - (5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
 - (6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
 - (7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
 - (8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

D. Grant Recipient Eligibility

- 1. The CAR may only cleanup sites *it solely owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term “owns” means fee simple title unless EPA approves a different arrangement.

E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA § 107

- 1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(7)(C). These continuing obligations include:

- (1) complying with any land use restrictions established or relied on in connection with the

response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

- (2) taking reasonable steps with respect to hazardous substance releases;
- (3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and
- (4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

F. Interest-Bearing Accounts and Program Income

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.
2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

IV. CLEANUP ENVIRONMENTAL REQUIREMENTS

A. Authorized Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives or equivalent state Brownfields program document which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

C. Community Relations and Public Involvement in Cleanup Activities

1. All cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanup is complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of Cleanup Activities

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. If changes to the expected cleanup are necessary based on public comment or other reasons, the CAR must consult with EPA and may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.
2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of Cleanup Activities

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanup is complete. This documentation needs to be included as part of the administrative record.

V. OTHER CLEANUP GRANT REQUIREMENTS

A. Inclusion of Special Terms and Conditions in Cleanup Documents

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:
 - a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.
 - b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental non-compliance at the site subject to this agreement.

B. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest or the appearance of the CAR's lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
 - (i) The affected party,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or
 - (iv) An organization which employs, or is about to employ, any of the above,has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VI. PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; "close out" refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

1. **Alternate 3.** (Approved budget does not include construction costs) The CAR may be paid in advance provided it has funds management controls in place which meet the requirements of 40 CFR 30.22 or 40 CFR §31.21, as applicable.

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved workplan.
2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.
 - a. The CAR must submit the following documentation:
 1. The Final Report as described in II.F.
 2. A Final Federal Financial Report (FFR - SF425). Submitted to:

US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119
<http://www.epa.gov/ocfo/finservices/payinfo.html>
 3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.
 - b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
 - c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, it may contact EPA for guidance. The Recipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/esa/whd/recovery/>

1. Applicability of the Davis Bacon prevailing wage requirements.

For the purposes of this term and condition, EPA has determined that the all construction,

alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If Recipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations.

- (a) Unless otherwise instructed by EPA on a project specific basis, the Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain wage determinations for specific localities at www.wdol.gov.
- (i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings Recipient shall use the "Heavy Construction" Classification.
 - (ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) Recipient shall use "Building Construction" classification.
 - (iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a Recipient, EPA determines that DB applies to a unique situation the Agency will advise the Recipient which General Wage Classification to use based on the nature of the construction activity at the site.

(b) Recipients shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the Recipient.
- (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of

closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

- (iii) If the Recipient carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its

subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients shall require that the contractor and subcontractors include the name of the Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Recipient, upon written request of the Award Official or an authorized

representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

(B) Each payroll submitted to the Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under

§ 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, Recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the

apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29

CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the Recipient, borrower or subgrantee and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The *Recipient* shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The *Recipient*, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a). The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in [29 CFR 5.6\(a\)\(6\)](#), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour

District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Back ground Memo regarding
Fixing the rates to be charged by the City of Kelso
for furnishing garbage service, effective Dec 1,
2013

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: September 17, 2013

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

Cost of Item: _____

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Background Memo

SUMMARY STATEMENT:

Attached is a Background memo for City Council information addressing the upcoming solid waste proposal on October 15, 2013.

FINANCIAL SUMMARY:

See attached Memo

RECOMMENDED ACTION:

No action required at this time



Public Works Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626



MEMO

To: Kelso City Council

From: David M. Sypher, P.E. PWD

Date: September 17, 2013

Subject: Solid Waste rate adjustment

On October 15th, 2013 Staff plans to propose an Ordinance providing necessary changes relating to KMC 8.04.090 reflecting rates to be charged by the City of Kelso for furnishing garbage service effective December 1, 2013.

In 1999, the City had negotiated a “flat rate” contract with only limited CPI growth. In 2009 the Solid Waste Fund had accumulated over \$620,000.00 in rate Stabilization Reserves. This reserve balance has enabled us to have **zero** rate increases to the public until 2010. Since then the City of Kelso has implemented a program of modest planned increases. This fund had provided for a limited rate increases as we adjust to past ten year flat rate and the costs of developing a new landfill.

There was a 6% increase cost in garbage service to the City from 1999 to 2009. However, the citizens experienced **no** increase in rates in the same time period. During that same period the consumer price index rose 37.7%.

Kelso’s residential rates for ten years through 2009 had been \$10.30/month, among the lowest in the State. The 2010 residential rate was increased to \$10.51/month per Resolution No. 09-1011 adopted by City Council December 15, 2009. Previous commercial container sizes and rates were not listed in the schedule and were added to the 2011 resolution. In 2010 the rate increase was only 2% and in 2011 the residential rate increased by 2.5% to \$10.77/month. There was no increase in 2012 and there was a 3% increase for 2013. All of these rate adjustments also encompass the affects of annual CPI growth.

The City Council received an update from the County at the September 3, 2013 council meeting regarding the increases in development costs for the new landfill. The effect of this new information alone will result in a rate increase of 8.4%. An additional amount is necessary as previously discussed with council to complete the transition from the ten year flat rate and CPI costs. Staff is recommending two different options as follows. Option one has the advantage of softening the immediate impact to citizens, while option two has the advantage of maintaining a



Public Works Department

203 S. Pacific Avenue, PO Box 819 Kelso, WA 98626



larger and more secure ending fund balance. Whichever option is selected, rates will be evaluated annually to facilitate any needed course corrections to compensate for changing variables.

OPTION ONE (target reserves to 12% of annual revenues.)

Base Year	Reserves required	Previous year Reserve Balance	Rate increase	Residential rate
2013	\$90,000.00	\$360,000.00	3% or \$0.32/mo.	\$11.09/mo.
2014	\$78,000.00	\$270,000.00	*9.5% or \$1.05/mo.	\$12.14/mo.
2015	\$41,500.00	\$192,000.00	3% or \$0.36/mo.	\$12.50/mo.
2016	\$4,000.00	\$150,500.00	3% or \$0.38/mo.	\$12.88/mo.

OPTION TWO (target reserves to 15% of annual revenues.)

Base Year	Reserves required	Previous year Reserve Balance	Rate increase	Residential rate
2013	\$90,000.00	\$360,000.00	3% or \$0.32/mo.	\$11.09/mo.
2014	\$54,000.00	\$270,000.00	*12.5% or \$1.39/mo.	\$12.48/mo.
2015	\$17,000.00	\$216,000.00	3% or \$0.37/mo.	\$12.85/mo.
2016	\$4,000.00	\$199,000.00	1% or \$0.13/mo.	\$12.98/mo.

*8.4% is not shown in the table above to affect reserves because it is passed through for landfill costs. Therefore, 1.1% for option #1 and 3.1% for option #2 is applied for rate stabilization.

Staff will be recommending that council adopt an ordinance reflecting their choice for a rate adjustment option at the October 15, 2013 City Council meeting.

AGENDA SUMMARY SHEET

Business of the City of Kelso City of Kelso, Washington

SUBJECT TITLE:

FIRST READING OF AN ORDINANCE
AMENDING KMC17.08.020 TO CHANGE THE
DEFINITION OF CULTURAL INSTITUTION

Agenda Item: _____

Dept. of Origin: Planning Department

For Agenda of: September 17, 2013

Cost of Item: N/A

PRESENTED BY:

Nancy Malone
Planning Manager

City Manager: Stephen Taylor

AGENDA ITEM ATTACHMENTS:

Proposed ordinance
Planning Commission 8/13/2013 meeting minutes
Staff Report
Victory Center Application materials

SUMMARY STATEMENT:

The Kelso Community Development Department has received an application from Leonid Pisarchuk on behalf of the Victory Center to requesting a text amendment to the definition section of the Kelso Municipal Code 17.08. The applicant is requesting that the definition of "Cultural Institution" to include the language "of human refinement such as customs, social behavior".

The Planning Commission held a public hearing and considered the application on August 13, 2013, and voted in favor of the requested text amendment in a 4-3 decision recommending approval to the City Council.

City staff does not recommend approval of the text amendment.

The text change is a legislative amendment to zoning code pursuant to KMC 18B.01.030. This change in definition would apply to all zones throughout the city.

FINANCIAL SUMMARY:

None

OPTIONS:

If the Council wishes to implement this code change, then approve the ordinance on first reading.

If the Council does not wish to implement this code change, do not approve the text change amendment.

RECOMMENDED ACTION:

Staff recommends council to make a motion not to approve the text change amendment.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO MUNICIPAL CODE CHAPTER 17.08.020 TO AMEND THE DEFINITION OF “CULTURAL INSTITUTION”.

WHEREAS, The Kelso Community Development Department has received an application from Leonid Pisarchuk on behalf of the Victory Center requesting a text amendment to the definition section of the Kelso Municipal Code 17.08. The applicant is requesting that the definition of “Cultural Institution” to include the language “of human refinement such as customs, social behavior”; and

WHEREAS, the matter was brought to the Planning Commission who conducted a public hearing, taking public testimony, and considered the matter on August 13, 2013; and

WHEREAS, the Planning Commission voted in favor of the requested text amendment in a 4-3 decision recommending approval to the City Council.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. AMEND KMC 17.08. That the definition of “Cultural Institution” as defined in KMC 17.08.020 DEFINITIONS is hereby amended to provide as follows:

“Cultural institution” means a building used primarily for the production, presentation, or exhibition of cultural disciplines **of human refinement such as customs, social behavior, such as** music, dance, theater, literature and the visual arts, or items of scientific interest.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2013.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____



Kelso Planning Commission Meeting Minutes
Wednesday, August 13, 2013
6:00pm – 7:53pm

Commissioners Present: Dan Jones, Clark Hislop, James Webb, Rick VonRock, Toby Tabor, James Webb, Patricia VanRollins

Staff Present: Janean Parker, City Attorney; Nancy Malone, Community Development Manager; Stephanie Helem, Recording Secretary

Call to Order:

Chair Patricia VanRollins called the meeting to order at 6:00 pm.

Minutes:

Commissioner VonRock made the motion, seconded by Commissioner Wade to approve the minutes of June 12, 2013. Motion carried, all in favor.

Public Hearing:

Commissioner VanRollins stated the purpose of tonight's public hearing. On December 4, 2012, the Kelso Community Development Department received an application from the Victory Center requesting a text amendment to the City's Ordinance, Title 17, definition section 17.08. The proposed amendment is to expand the definition of Cultural Institution from "a building used primarily for the production, presentation, or exhibition of cultural disciplines of music, dance, theater, literature and visual arts, or items of scientific interest" to add the language "human refinement such as customs, social behavior". Cultural institutions are allowed in all zoning districts except for Open Space.

Commissioner VanRollins addressed the commission with the appearance of fairness questions and outlined the Rules of Procedure for a Quasi-Judicial public hearing. Speaking time limits for proponents and opponents for the proposal will be given 30 minutes total. Each individual may speak for five minutes or less.

All members of the public speaking audience were administered an oath.

Commissioner Webb acknowledged he was on city council when the Victory Center was heard separate from this language change.

City Attorney Parker clarified this hearing is not going to determine the legal rights of any proponent or opponent. This is an application for a text change. The text change will apply to all zones and all properties throughout the city.

City Staff, Nancy Malone, Planning Manager, read portions from the staff report "Findings and Recommendations of the Administrative Official". The proposal does not appear to be consistent with the goals, and policies of the comprehensive plan or other zoning provisions. First, the adopted definition is consistent with common land use principles. Second, there are no changed conditions or circumstances, either described in the application or that the city is aware of, that warrant changing the definition from that determined by the hearing examiner to be reasonable in 2010 and adopted by the city in 2011. Third, the addition of proposed language would add ambiguity and not clarity to the definition. The Administrative Official hereby makes a recommendation that the zoning text

amendment to enhance the description of “Cultural Institution” to include “of human refinement such as customs, social behavior” be denied and the existing definition remain as is.

Proponents who spoke in favor of the Victory Center:

- Leonard Pisarchuk, 3514 Pacific Way, Longview, WA. Member of the Board for Victory Center. He would like the planning commission to consider three things. (1) During 3 year stay at this location there have been no incidents. No issues with parking. Didn't affect businesses in the negative. Good terms with neighbors in south Kelso. Very good support from citizens. (2) Document that was read said the proposal is vague and unclear. Very clear the goal we pursue. (3) If this is about language then please help us to find the right words to make provision for the Victory Center to stay where it is at. In three years lives of hundreds of people were impacted by this ministry.

Proponents who spoke in favor of the Victory Center staying at its existing location. Did not specifically address the text change proposal:

- Wallace Hall, 1101 S. 3rd, Kelso, WA.
- Jarold Lee Arionas (sp?), 2618 Fir St., Longview, WA.
- Justin Matherone (sp?), grew up at 506 Ash St, Kelso, WA.
- Morgan Cann, 208 Ostrander Rd, Kelso, WA. Victory Center Director.
- Vera, 2732 Fir St, Longview, WA.
- Mike Russell, 406 Ash St, Kelso, WA.
- No Name, No Address.
- Cary Jacobs, 17 St. Helens Lane, Longview, WA.
- Alicia Palechenko (sp?), Grew up here, lives in Vancouver, WA.
- Todd Kadwell, Lifelong Kelso Resident.
- Michael Bales, 353 Maranatha Rd., Kelso, WA.
- Valerie Ann Jacobs, Cooks at Victory Center.

Opponents: No opponents

Commission discussion followed. Background information was proved by city staff. In 2010 an application went to a hearings examiner because there was a clarification of a definition. There was an appeal that was filed and the hearings examiner ruled in favor of the city. At that point attorneys got involved and the Victory Center was given the option to apply for some type of text or zoning change or leave. They chose to apply for this text change.

City staff reminded everyone this is a text change only. If this text change is approved by the planning commission and city council the Victory Center will have to apply for an administrative use permit. This means another series of hearings.

Commission discussion followed.

The Commission voted on the recommendation to council for the zoning text amendment to enhance the description of cultural institutions to include ‘human refinement such as customs and social behavior’. Passed 4 to 3. Commissioners Webb, Hislop, Tabor, Wade in favor. Commissioners Jones, VanRollins, VonRock opposed.

The recommendation of the Planning Commission now moves to the city council.

Public Hearing Adjourned at 7:34pm.

A representative from the Victory Center requested this not be sent to council for 3 to 4 weeks as the Pastor will be out of town on business.
City staff confirmed this will probably be set for (city council) the first part of September.

Chair VanRollins called a 5 minute recess at 7:37pm.

Meeting was called back to order at 7:41pm.

Commission Business:

1. Question on why there was no opponents for the (Victory Center) text change. When there is a text change for zoning no public notices are sent out. A Public Hearing notice is published in the paper and notification sent to the applicant. Discussion followed.
2. Implemented an Emergency Moratorium at last city council meeting for medical marijuana and I-502. Will be taking this to Public Hearing the 20th of August. Discussion followed.
3. Shoreline Draft Plan Update. Plan went to Department of Ecology. Received comments from the Department of Ecology. Will be looking at some more changes. David Sherrard who was the consultant is no longer working on the plan with Parametrix. Jennifer Hughes with Parametrix is now the Planning Manager overseeing the Shoreline plan update.
4. Commissioner VonRock would like to discuss Solar Power code at the next meeting.

Adjournment:

There being no further business, Commissioner VonRock made the motion seconded by Commissioner Webb to adjourn at 7:53p.m.



~~Patricia VanRollins~~, Planning Commission Chair *Vice-Chair*
Richard Von Rock



Respectfully submitted:
Stephanie L. Helem, Recording Secretary

**CITY OF KELSO
COMMUNITY DEVELOPMENT DEPARTMENT
FINDINGS AND RECOMMENDATIONS
OF THE ADMINISTRATIVE OFFICIAL**

July 26, 2013

CONSIDERATION OF AN APPLICATION)	FILE NO. ZON 12-002
SUBMITTED BY LEONID PISARCHUK ON)	
BEHALF OF THE VICTORY CENTER)	
REQUESTING A ZONING TEXT AMEND-)	RECOMMENDATION FOR
MENT REDEFINING “CULTURAL INSTITU)	DENIAL
TION” IN CHAPTER 17.08 DEFINITIONS)	PARCEL NO. 21141

INTRODUCTION

The Kelso Community Development Department has received an application from Leonid Pisarchuk on behalf of the Victory Center to requesting a text amendment to the definition section of the Kelso Municipal Code 17.08. The applicant is requesting that the definition of “Cultural Institution” to include the language “of human refinement such as customs, social behavior”.

Applicant: Leonid Pisarchuk
3514 Pacific Way
Longview, WA 98632

Proponent: Victory Center
401 S. Pacific Avenue
Kelso, WA 98626

FINDINGS & ANALYSIS

1. Proposal.

The Victory Center which is represented by Leonid Pisarchuk is currently located at 401 S. Pacific. The applicant has applied for a text amendment to the definition section of the Kelso Municipal Code. This is not a site specific proposal. The applicant has specifically requested that the definition of “Cultural institution” be enlarged to include the language: “of human refinement such as customs, social behavior”. The existing definition provides:

“Cultural institution” means a building used primarily for the production, presentation, or exhibition of cultural disciplines such as music, dance, theater, literature and the visual arts, or items of scientific interest.

The revised definition as proposed would provide:

“Cultural institution” means a building used primarily for the production, presentation, or exhibition of cultural disciplines **of human refinement such as customs, social behavior**, music, dance, theater, literature and the visual arts, or items of scientific

interest.

2. **Zoning and Comprehensive Plan.**

Kelso Municipal Code Chapter 17.150 Amendments and Rezones specifically states the purpose as follows: From time to time a change in circumstances or conditions may warrant a change in the zoning text or map created by this title. The purpose of this chapter is to establish the procedures to amend the zoning text and/or map when the proposed change would be consistent with the goals, objectives and policies of the comprehensive plan and intent of this title. (17.150.010).

The applicant is requesting to expand the definition of "Cultural institution" to include the verbiage of human refinement such as customs, social behavior to the original definition, as a building used primarily for the production, presentation, or exhibition of cultural disciplines such as music, dance, theater, literature and the visual arts, or items of scientific interest.

Chapter 17.15 identifies the permitted uses in all zoning designations within the city. The type of use as identified within table 17.15.020 Educational, Cultural, or Government is permitted in the City as follows:

- (1) as an outright permitted use, typically called a Type I review process, it is permitted subject only to compliance with applicable development, building, and parking codes in the Commercial West Kelso, Commercial Specialty Retail, Commercial Major Retail and Industrial General Manufacturing zoning districts.
- (2) as an "Administrative Use**", typically called a Type II review process, it **may be** permitted in the Residential Single Family, Residential Multi-Family, Commercial Town Center, and Industrial Light Manufacturing zoning districts.
- (3) as a "Conditional Use***" process typically called a Type III review process, it **may be** permitted in the Commercial Neighborhood zoning district
- (4) The use is specifically not an allowed use in the Open Space zoning district

*Administrative Uses are generally allowed in the zoning district. However, the compatibility between a Type II use and the surrounding environment cannot be determined in advance. A Type II application shall be reviewed by the administrative official and may be conditioned in order to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the comprehensive plan. Occasionally, even with conditions, a Type II use may be incompatible at a particular location. If a Type II application cannot be adequately conditioned, it shall be denied.

**Conditional Uses are generally not appropriate throughout the zoning district but may be permitted at a particular location where it can be conditioned in such a way to ensure compatibility and compliance with the provisions of the zoning district and the goals, objectives and policies of the comprehensive plan. If a Type III application cannot be adequately conditioned, it shall be denied. Type III conditional use permit applications are decided by the hearing examiner after public hearing review. A conditional use permit may not be granted for a use in a district from which it is specifically prohibited.

While not a site specific proposal, the proponent is located in the area designated by the Kelso Comprehensive Plan as Commercial. Further, Commercial zones are the areas where the use is allowed outright or as an administrative use and as such is where the use is most compatible. The goal of the Commercial land use category is to centralize commercial services while providing improved vehicle and pedestrian access and circulation to the benefit of the business and customer, while attaining a higher level of commercial and retail services in the City. The following Comprehensive Plan goals and policies are applicable to the City's intent for the commercial areas:

Goal A: To centralize services while providing improved vehicle and pedestrian access and circulation to the benefit of the business and the customer.

Goal B: To attain a higher level of commercial and retail services in the City.

Commercial Policy #1 – Commercial uses should be centralized around the Interstate-Allen Street area and the existing Central Business District, including West Kelso, in order to minimize traffic movement and congestion.

Commercial Policy #2 – Commercial uses should be located to front on major and secondary arterials.

Commercial Policy #6 – Commercial development along South Pacific Avenue south of Cherry Street should be confined to those areas already developed. Existing business should be encouraged to improve their appearance and further lend their activities into the neighborhood area.

Commercial Policy #8 – The city should encourage, through the provision of improvements and areas, the siting of professional offices in the central business district.

Commercial Policy #10 – Existing vacant lands and buildings in commercially designated and zoned areas of the City should be utilized for commercial activities which enhance and compliment other retail and service uses.

Goal C: To improve the existing commercial areas of the city.

Goal D: To develop an overall design scheme for the downtown and West Kelso area.

Objectives

3. To amend the Kelso Zoning Ordinance to more clearly define the specific uses and standards within each commercial zoning classification.

4. To implement the findings and recommendations of the city's traffic study in order to smooth traffic flows through and around the commercial areas of Kelso.

Policies

1. The city and the downtown merchants should cooperate in the purchase, development, and maintenance of conveniently located off-street parking.

2. Warehouse uses in and around the downtown business area should not be allowed to expand or increase in number and should be encouraged to relocate to industrial zoned areas. If a warehouse business moves or goes out of business, alternative uses of the facility should be researched and established to provide for a greater variety of retail and service activities in downtown and West Kelso.

3. Existing warehouse building exteriors and yards should be improved and maintained so as to make them more compatible with adjacent and nearby commercial and residential uses.

6. The city should seek ways to expand and diversify the commercial uses in downtown and West Kelso. Incentives such as lowered off-street parking requirements combined with multiple use of large buildings are possible techniques to attract potential retail outlets.
7. If economically feasible, older buildings and former residences should be renovated to house new and different uses whose functions enhance other businesses in Kelso.
8. Multi-family housing is encouraged to locate in the downtown area and West Kelso, but only as a use secondary to commercial uses. This can be accomplished by a variety of methods: Use vacant lands for new structures with commercial uses on the lower floors and living units above; or encourage the turnover of incompatible or inactive uses, such as warehouses or abandoned buildings, to combination multi-family/professional office/retail facilities.

3. Background.

In 2010, the City's Hearings Examiner adopted definitions for "Cultural Center" and "Community Center" as part of an administrative appeal of a decision that the Victory Center as it was then constituted was not an allowed use in the City's town center. Prior to this, these terms were not defined within the zoning code. As a result of the examiner's findings, and consistent with land use principles, the City adopted definitions of the terms in 2011 as a part of its regular zoning update that incorporated the definitions that were adopted and used by the Hearings Examiner.

Cultural Institution was defined as "a building used primarily for the production, presentation, or exhibition of cultural disciplines such as music, dance, theater, literature and the visual arts, or items of scientific interest."

Community Center was defined as "a location where members of a community may gather for group activities, social support, public information, and other purposes. They may sometimes be open for the whole community or for a specialized group within the greater community." KMC 17.08.020.

4. Analysis.

It clear from the narrative that the proponent expects this text amendment to allow its particular use of the property as an outright use; however, the text amendment change itself does not determine whether any particular use is allowed and that question is not before the City. Instead, the City must evaluate the text amendment independent of any site specific use because the amendment will apply equally throughout all zones within the City. Furthermore, additional facts would be necessary to evaluate whether the applicant's use more closely resembled the proposed revised definition of cultural center or some other use defined in the code.

The proposal does not appear to be consistent with the goals, and policies of the comprehensive plan or other zoning provisions for the following reasons:

First, the adopted definition is consistent with common land use principles. In 2010, when the Planning Director determined that the term cultural center was not defined in the Zoning Code, he conducted a reviewed of the matter and through an administrative interpretation applied the following definition, which came from "Planning and Urban Design Standards, American Planning Association"; John Wiley and Sons, Inc.; Hoboken, New Jersey; 2006, Page 435: Cultural Facility is "A building used primarily for the production, presentation, or exhibition of cultural disciplines such as music, dance, theater, literature and the visual arts." And also, from the Babylon online dictionary, Cultural Center is "an organization, usually located in a building or complex, that promotes cultural arts. Cultural centers can be neighborhood community arts organizations, private facilities, government-sponsored, or activist-run." The intent was to distinguish this type of use, which supports pedestrian activity, as opposed to places where people assemble. Cultural Centers are listed as an allowed use in the CTC zone based on

this premise. Cultural Centers such as studios that display various forms of visual artistry, museums or some other type of historic center do not present the same types of impacts as places of assembly and, in fact, support pedestrian activity and the concept of downtown revitalization. There may be types of Cultural Centers that are places of assembly, such as centers for performing arts that would not likely be compatible with the small downtown scale of the zone, and the required site review would likely mandate that they be located elsewhere because of their inability to meet parking and other development regulations. The Hearings Examiner found the City's definition reasonable and it was proposed to the Planning Commission and City Council and included in the 2011 zoning code update. The proposal appears to expand the definition of enumerated cultural disciplines to allow other types of institutions to be included. It is unclear whether this expansion would include uses that had more assembly type functions and as such would have greater impacts than as currently defined.

Second, there are no changed conditions or circumstances, either described in the application or that the City is aware of, that warrant changing the definition from that determined by the hearing examiner to be reasonable in 2010 and adopted by the City in 2011. Generally text or zoning changes are warranted if the nature of an area changes over time or if changes in law or ambiguities are discovered through the application of the code that needs to be updated. No such circumstances have developed here.

Third, the addition of proposed language would add ambiguity and not clarity to the definition. Music, theater, art, and literature are commonly understood cultural disciplines. Museums, art galleries, and theaters are common uses that are often consistent with a vibrant and pedestrian friendly commercial zones. The words "such as" as currently included in the definition allows for other types of cultural disciplines as well. It is uncertain what uses would be included by expanding the definition to include "human refinement such as customs, social behavior". Such uses may very well overlap with uses that are currently addressed in other use categories such as Community Center uses. The proponent, from the statements in the application, wishes to make the case that this proposed change would include institutions such as the Victory Center. Whether or not this is so is not clear from the facts, and is not before the City in this application. At best, this added language would be subject to further administrative interpretation as to whether or not a proposed use was a cultural institution because it was producing or exhibiting social behavior. Because the proposed language is vague, it is ripe for further interpretation disputes. For the foregoing reasons, the application for text amendment should be denied.

RECOMMENDATION TO THE PLANNING COMMISSION

The Administrative Official hereby makes a recommendation that the zoning text amendment to enhance the description of "Cultural Institution" to include "of human refinement such as customs, social behavior" be denied and the existing definition remain as is.

7/26/13
Date

Nancy Malone
Nancy Malone
Community Development Manager

Public Hearing Notice

NOTICE IS HEREBY GIVEN that an open record public hearing is scheduled before the Kelso Planning Commission, Tuesday, August 13, 2013 at 6:00pm in the City Hall Council Chambers, 201 S Pacific Avenue, Kelso, WA 98626.

On December 4, 2012 the Kelso Community Development Department received an application, from Leonid Pisarchuk (Victory Center) requesting a text amendment to the City's Zoning Ordinance, Title 17 (definition section 17.08). The proposed amendment is to expand the definition of Cultural Institution from "a building used primarily for the production, presentation, or exhibition of cultural disciplines of music, dance, theater, literature and the visual arts, or items of scientific interest" to add the language "**human refinement such as customs, social behavior**" Cultural institutions are allowed in all zoning districts except for Open Space.

The hearing will allow the city to receive comments on the proposed text amendments. If you have any questions, please contact Nancy Malone, Kelso Community Development Planning Manager at (360) 423-9922. Be sure to reference file no. ZON12-002/SEP12-004.

The Council Chambers room is handicap accessible. Arrangements to reasonably accommodate special needs, including handicap accessibility or interpreter, will be made upon receiving 24-hour advance notice. Contact the City Clerks Office at (360) 423-0900.



COMMUNITY DEVELOPMENT

203 S. Pacific #208
P.O. Box 819
Kelso, Washington 98626

(360) 428-9922
FAX (360) 423-6591

Date: 12-4-12
File: SEPA12-004
Zoning: CTC
Reviewed: SZ

DEC 04 2012

COMMUNITY DEVELOPMENT

- Zoning _____
- Site Plan Review
- SEPA

MASTER LAND USE APPLICATION

- Type II Review
- Type III Review
- Type IV Review

Office Use Only

Office Use Only

CHECK ALL THAT APPLY AND ATTACH THE APPROPRIATE SUPPLEMENTAL FORM(S)

- | Zoning / Comp. Plan Amendment | | Subdivision | Other / |
|--|--|---|---|
| <input type="checkbox"/> Type I Use | <input type="checkbox"/> Admin. Adj. | <input type="checkbox"/> Exemption (SSE) | <input checked="" type="checkbox"/> Environmental Checklist |
| <input type="checkbox"/> Type II Administrative Use | <input type="checkbox"/> Variance | <input type="checkbox"/> Short Subdivision | <input type="checkbox"/> Appeal: |
| <input type="checkbox"/> Type III Conditional Use | <input type="checkbox"/> Modification | <input type="checkbox"/> Subdivision (Long) | <input type="checkbox"/> JARPA: |
| <input type="checkbox"/> Site Plan | <input type="checkbox"/> PUD | <input type="checkbox"/> Binding Site Plan | <input type="checkbox"/> Substantial Development |
| <input type="checkbox"/> Design Review | <input type="checkbox"/> Nonconforming Use | <input type="checkbox"/> Alteration/Vacation | <input type="checkbox"/> Critical Area |
| <input checked="" type="checkbox"/> Rezone / Comp. Plan Amend. | <input type="checkbox"/> Interpretation | <input type="checkbox"/> Subdivision Variance | <input type="checkbox"/> Shoreline Exemption |
| <input type="checkbox"/> Annexation | <input checked="" type="checkbox"/> Text Amendment | <input type="checkbox"/> Sign Permit | <input type="checkbox"/> Reduce Resource Setback |

Type of Project Commercial Industrial Residential Subdivision/Legal Description _____
 Property Address: 401 S. Pacific, Kelso WA
 Parcel Number(s): 21141 Will project be in the Flood Plain (yes/no) _____
 Any part of this property within 200 feet of a shoreline of statewide significance (yes/no) _____
 Will there be any filling, grading or excavation associated with the project (yes/no) If yes, quantity of earthwork _____
 Project Description zoning Text Amendment - Victory Center - Title 17
SEPA Review

Applicant Information: (Please Check Contact Person)

The property owner(s), by signing this form, hereby state as true that they are the owner(s) of the property that is the subject of this application, have reviewed the proposal as presented in the application, and wish to pursue the change(s) in land use.

Applicant (Property Owner? Y/N): Leonid Pisarchuk Day Phone: (360) 431-3090
 Company (if any): Kelso Church of Truth Owner of Parcel(s): (Circle) A B C D
 Address: 401 S Pacific City: Kelso State: WA ZIP: 98626
 Signature: Pisarchuk Date: 11/28/2012

Representative of Applicant (if any): _____
 Company: _____ Day Phone: (_____) _____
 Address: _____ City: _____ State: _____ ZIP: _____

Property Owner (If different): _____ Day Phone: (_____) _____
 Company (if any): _____ Owner of Parcel(s): (Circle) A B C D
 Address: _____ City: _____ State: _____ ZIP: _____
 Signature: _____ Date: _____

Property Owner (If different): Boyd REAL ESTATE INVESTMENTS Day Phone: (_____) _____
 Company (if any): KEVIN G BOYD, PRESIDENT Owner of Parcel(s): (Circle) A B C D
 Address: 3177 NE 82ND ST City: SEATTLE State: WA ZIP: 98115
 Signature: Kevin G Boyd Date: 11/20/2012

If there are additional property owners, provide an attachment in the same format and with the same declaration.



NARRATIVE FORM

Kelso Community Development
203 S. Pacific Ave. #208 - Kelso, WA 98626
360-423-9922 • 360-423-6591 • www.kelso.gov

RECEIVED
CITY OF KELSO
DEC 04 2012
COMMUNITY
DEVELOPMENT

Project #	Description:
Parcel Number(s)	
Owner(s)	

The Narrative Form is designed to help you and the application reviewer understand how your project meets the legal requirements in the *Kelso Municipal Codes*. In addition to this narrative form you may be asked to fill out other forms that apply to your proposal. You should refer to the appropriate sections of the ordinance, when applicable. You can obtain a copy of the ordinance in our offices, or access it on the internet at www.kelso.gov (click on City of Kelso Code and Charter).

Please tell us the Who, What, Where, When, and Why of your proposal. A checklist for content is provided below. If you address each of the items identified below, the narrative will be complete. Some of the questions may not apply. The area provided for your narrative continues on the second page of this form. You may attach additional pages if needed.

Narrative Content:

- Describe the uses and structures, if any that are proposed.
- Describe the size of the structures and scope of the each use, if any.
- Describe who will be using the structures and implementing the uses (for example; number of people, private or public, any fees . . .)
- Describe timelines for construction and completion of structures, if any.
- Describe timelines that apply to uses (for example: when the uses will take place, how frequently, hours of operation . . .)
- Describe the current use of the area and surrounding area, if any. Please include only those uses that are immediately adjoining your proposal and those which are in the vicinity and may be affected by your proposal.
- Describe the structures currently on site and in the surrounding area (for example: how many, what size . . .)

see attached

NARRATIVE

RECEIVED
CITY OF KELSO
DEC 04 2012
COMMUNITY
DEVELOPMENT

The reason for the suggested amendment is to provide a clearer and more comprehensive definition of the term Cultural institution in **17.08.040**. This request meets the criteria in **18B.10.04C** as it does not interfere with any other city of Kelso plan goals or policies.

The structure: Existing 6K+/- square foot building.

The use: used for presentations, music, dance, lectures, events, banquets, and education to transmit knowledge to succeeding generations

Depending on event, may be open to the public or by invitation. The use of the structure to be implemented by staff/volunteers. Volume will vary depending on events, 10-150 people.

Time lines for construction: structure is existing.

Timelines: Times of operation vary depending on planed events, can be open from 9am to 9pm Tuesday through Sunday.

Current use is a cultural and educational center.

Structure is located on a corner of S. Pacific and Pine. Behind the structure: bar-will not be affected

Next to the structure: Vacant three story building-will not be affected.

Site consists of one 6k +/- square foot building, adjacent to a three story building and a single story building behind the structure.

AGENDA SUMMARY SHEET

AGENDA ITEM: Ordinance 2nd reading.
Budget revision #2 for the 2013 fiscal year.

SUBMITTED BY: Brian Butterfield

AGENDA ITEM # _____

FOR AGENDA OF: 9/17/2013

ORIGINATING DEPT: Finance

DATE SUBMITTED: 9/12/2013

COST OF ITEM: _____

AMT. BUDGETED _____

CITY ATTY. APPROVAL _____

CITY MGR. APPROVAL _____

AGENDA ITEM PAPERWORK:

SUMMARY STATEMENT/DEPT. RECOMMENDATION:

The major highlights of this revised budget include anticipated grant revenues for the clean up of the former Terry's Salvage Yard. The rest of the revisions have to do with reallocating monies to new capital projects from monies previously allocated to lower priority projects.

Revisions include the following:

General Fund:

- \$567,700 increase in expenditures for the clean up of the former Terry's Salvage Yard.
Increase will be funded entirely by grants.

Water Capital Fund:

- \$1,045,000 decrease in water related capital expenditures.

Sewer Capital Fund:

- \$801,300 increase in sewer related capital projects. These projects include the Ayers/Harris Street Sewer Replacements for \$652,000 and the 1st Avenue sewer replacement project for \$250,000.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO AMENDING THE 2013 BUDGET TO REFLECT REVENUES AND APPROPRIATE FUNDS TO COVER EXPENDITURES OVER AND ABOVE THOSE ANTICIPATED AT THE TIME SAID BUDGET WAS ADOPTED.

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That by reason of the inability of the City and its officials to foresee and compute with accuracy the actual revenue and necessary expenditures of public funds for the current expenses of the City, it is deemed necessary to make the following amendment to the budget by adjusting the following line items by the amounts set forth below for the 2013 Budget, to-wit:

GENERAL FUND

Revenues

001-00-333-00-00	EPA Brownfield Grant	\$ 56,770.00
001-00-334-00-00	DOE Remedial Action Grant	<u>\$ 510,930.00</u>
		\$ 567,700.00

Expenditures

001-13-539-90-41-1	Remedial Action Grant	\$ 567,700.00
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WATER/SEWER FUND

Revenues

403-25-308-00-00	Beginning Fund Balance	\$ 166,500.00
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Expenditures

403-25-597-00-01-0	Transfer to Water Capital Fund	\$ (600,000.00)
403-25-597-10-01-0	Transfer to Sewer Capital Fund	<u>\$ 766,500.00</u>
		\$ 166,500.00

WATER CAPITAL RESERVE FUND

Revenues

404-17-308-00-00	Beginning Fund Balance	\$ (445,000.00)
404-17-397-00-00	Transfer From Water/Sewer	<u>\$ (600,000.00)</u>
		\$ (1,045,000.00)

Expenditures

404-17-594-09-00-1	Mill Street Test Well	\$ 15,000.00
404-17-594-10-00-2	Water Master Plan	\$ 35,000.00
404-17-594-11-00-1	AMI	\$ (1,300,000.00)
404-17-594-13-00-1	Clydesdale Court	\$ (30,000.00)
404-17-594-13-00-2	N.E 20 th Avenue Waterline	\$ (20,000.00)
404-17-594-13-00-3	Ranney Well Generator	\$ (80,000.00)
404-17-594-13-00-4	Pump Station Meter Installation	\$ 5,000.00
404-17-594-13-00-5	Backwash Recovery Evaluation	\$ (50,000.00)
404-17-594-13-00-6	Longview Intertie	\$ 50,000.00
404-17-594-13-00-7	Sunrise Waterline	\$ 140,000.00
404-17-594-13-00-8	1 st Avenue Waterline	\$ 150,000.00
404-17-594-13-00-9	Source Capacity Study	<u>\$ 40,000.00</u>
		\$ (1,045,000.00)

SEWER CAPITAL RESERVE FUND

Revenues

408-28-308-00-00	Beginning Fund Balance	\$ 34,800.00
408-28-397-00-00	Transfer From Water/Sewer Fund	<u>\$ 766,500.00</u>
		\$ 801,300.00

Expenditures

408-28-508-00-00-0	Ending Fund Balance	\$ (55,200.00)
408-28-535-10-00-1	N. Kelso Sewer Rehab Phase V	\$ 5,000.00
408-28-594-09-00-1	Catlin Pump Station Pump Replacement	\$ (10,000.00)
408-28-594-12-00-1	Telemetry	\$ 45,000.00
408-28-594-13-00-1	Clark St. Pump Station Pump Replacement	\$ (10,000.00)
408-28-594-13-00-2	Pump Station UST Evaluation	\$ (17,000.00)
408-28-594-13-00-3	Manasco Drive Interceptor	\$ (70,000.00)
408-28-594-13-00-4	Coweeman Lane Sewer Replacement	\$ (34,000.00)
408-28-594-13-00-5	Pump Station Meter Installation	\$ 10,000.00
408-28-594-13-00-7	Ayers/Harris Street Sewer Replacement	\$ 652,500.00
408-28-594-13-00-8	1 st Avenue Sewer Replacement	\$ 250,000.00
408-28-594-13-00-9	Manhole Lining Project	<u>\$ 35,000.00</u>
		\$ 801,300.00

SECTION 2. It is hereby ordered that the aforesaid sum be and the same is hereby appropriated in excess of the budget of the City of Kelso for 2013 and further that said budget be and the same is hereby amended accordingly.

SECTION 3. This Ordinance shall be in full force and effect five days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of September 2013.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: AN ORDINANCE OF THE CITY OF KELSO, WASHINGTON REPEALING ORDINANCE 01-3467 PERTAINING TO THE LIBRARY CHARGES POLICY.

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: Septmeber 17, 2013

Originator: _____

PRESENTED BY:

Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Proposed Ordinance

SUMMARY STATEMENT:

Ordinance 01-3467 was adopted in 2001 and established charges for library services. The proposed ordinance is a housekeeping item which will repeal Ordinance 01-3467 and allow library charges to be included in the City's Master Fee Schedule.

RECOMMENDED ACTION:

Make a motion to approve Ordinance repealing Ordinance 01-3467 pertaining to the Library Charges Policy.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO, WA REPEALING
ORDINANCE 01-3467 PERTAINING TO THE LIBRARY CHARGES
POLICY.**

WHEREAS, Ordinance 01-3467 was adopted in 2001 to establish and update charges for City library services and assist in the recovery of costs for the provision of said services; and

WHEREAS, the City has established a Master Fee Schedule and desires to include the charges for library services within said schedule in lieu of a separate ordinance;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. REPEALER. That Ordinance No. 01-3467 is hereby repealed in its entirety.

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____
_____, 2013.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED:_____

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: An Ordinance of the City of Kelso repealing Ordinance 3573 codified at KMC 12.24 Parades and adopting a new KMC 12.24 Special Events to replace the repealed chapter.

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: September 17, 2013

Originator: _____

PRESENTED BY:

Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Ordinance

Exhibit A – Chapter 12.24 Special Events

Exhibit B – Redlined Version Chapter 12.24 Special Events

SUMMARY STATEMENT:

In 2005, Ordinance 3573 was adopted to address the use of the public right-of-way for special events but was limited to only addressing events that could be classified as a parade. The proposed code changes are intended to expand the scope of the code provisions to address other uses of the right-of-way, clarify and consolidate the permitting process for these events, protect the public's investment in infrastructure and facilities, and mitigate other potential risks associated with the assemblage of large groups.

After receiving Council's feedback regarding the proposed changes several modifications were made to the language contained in this chapter. Section 12.24.010 now includes a clearer explanation of what "Special Event" means, 12.24.035 contains a more exhaustive list of the types of events that may qualify for a permit exemption, and 12.24.050 was altered to provide an explanation of the requirement that an application be submitted 45 days in advance of an event as well as addressing the submission of an application less than 45 days prior to the event. Several minor changes were also made throughout the chapter to ensure internal consistency with the above mentioned changes. The existing chapter 12.24 Parades is included in previous council packets for your reference.

RECOMMENDED ACTION:

Make a motion to approve Ordinance amending KMC Chapter 12.24 on second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KELSO REPEALING ORDINANCE 3573 CODIFIED AT KMC 12.24 PARADES AND ADOPTING A NEW KMC 12.24 SPECIAL EVENTS TO REPLACE THE REPEALED CHAPTER

WHEREAS, Ordinance 3573 was adopted in 2005 to address the use of the public right-of-way for special events limited to the definition of parade; and

WHEREAS, the City wishes to expand the scope of the code provisions to encompass other uses of the right-of-way; and

WHEREAS, the City wishes to clarify and consolidate the permitting process for the use of the right-of-way for special events; and

WHEREAS, the City Council wishes to update the City’s municipal code to better serve the needs of the community, protect the public’s investment in infrastructure and facilities, and mitigate potential risks associated with the assemblage of large groups by adopting policies and procedures that address a comprehensive list of special events that may impact any City owned property, including right-of-ways;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. REPEALER. That Ordinance No. 3753, codified at Kelso Municipal Code Chapter 12.24 Parades is hereby repealed in its entirety and replaced as set forth herein.

SECTION 2. NEW CHAPTER 12.24 KMC. That a new Kelso Municipal Code Chapter 12.24—Special Events—is hereby adopted as set forth in Exhibit A attached hereto and incorporated by this reference.

SECTION 3. SAVINGS CLAUSE. That Ordinance No. 3753 that is repealed by this Ordinance shall remain in full force and effect until the effective date of this Ordinance.

SECTION 4. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 5. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2013.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

Exhibit A

Chapter 12.24 SPECIAL EVENTS

Sections:

- [12.24.010](#) Definitions.
- [12.24.020](#) Permit – Required.
- [12.24.030](#) Permit – Application – Fee.
- [12.24.035](#) Permit – Exceptions.
- [12.24.040](#) Permit – Application – Contents.
- [12.24.050](#) Permit – Application – Filing.
- [12.24.060](#) Bond required.
- [12.24.070](#) Insurance required – Hold harmless/indemnification.
- [12.24.080](#) Permit – Issuance standards.
- [12.24.090](#) Traffic control.
- [12.24.100](#) Appeal procedure.
- [12.24.110](#) Permit revocation or suspension.
- [12.24.120](#) Rules and policy.
- [12.24.130](#) Violation – Penalty.

12.24.010 Definitions.

- A. “Applicant” means the person, firm or entity making application for a permit.
- B. “City manager” shall mean the city manager or his/her designee.
- C. “Parade” means any march or procession consisting of people, animals, bicycles, vehicles, or combination thereof, except wedding processions and funeral processions, upon any public street or sidewalk which does not comply with adopted traffic regulations or controls.
- D. “Run” means an organized procession or race consisting of people, bicycles, or other vehicular devices or combination thereof upon the public street or sidewalk.
- E. “Public property” means a street or other public place (i.e., park) under the control and authority of the City.
- F. “Private event” means an event which uses public property for the purpose of monetary or personal gain by any person, partnership, group, organization, company or corporation or which is closed to the general public.
- G. “Special event” means:

1. a gathering of persons on public facilities or public rights of way that disrupts the ordinary use of public facilities, property, or rights of way, or significantly impacts the need for City-provided emergency services, subject to the exemptions at KMC 12.24.035.
2. a gathering of more than 50 persons on privately owned property that disrupts the ordinary use of the public facilities or rights of way or significantly impacts the need for City-provided emergency services, subject to the exemptions at KMC 12.24.035.
3. A private event.
4. Special events includes without limitation parades, runs, sporting events, street dances, shows or exhibitions, car shows, street fairs, block parties, or other activity, demonstration or exhibitions.

H. "Street" or "streets" means any public roadway, sidewalk, or portions thereof in the City of Kelso dedicated to the public use.

12.24.020 Permit – Required.

No person shall conduct a special event upon public property unless a permit has been obtained from the community development director.

12.24.030 Permit – Application – Fee.

The fee for a special event shall be determined by resolution.

A. No fee shall be imposed when prohibited by the First and Fourteenth Amendments to the United States Constitution, or Article I, Section 3, 4, 5 or 11 of the Washington Constitution. Political or religious activity intended primarily for the communication or expression of ideas shall be presumed to be a constitutionally protected event. Factors that may be considered in evaluating whether or not the fee applies include the nature of the event; the extent of commercial activity, such as the sales of food, goods, and services; product advertising or promotion, or other business participation in the event; the use or application of any funds raised; if part of an annual tradition or a series, previous events in the sequence; and the public perception of the event.

12.24.035 Permit – Exceptions.

The following activities are exempt from the requirement to obtain a special events permit, although such activities must still comply with all other applicable laws:

A. A funeral procession by a licensed mortuary;

B. Activities conducted by a governmental agency acting within the scope of its authority; and

C. Lawful picketing on sidewalks.

D. Pedestrian processions along a route that is restricted to sidewalks, and crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls;

E. Indoor assembly of persons where the facility that is to be used has been approved for such assembly pursuant to the requirements of KMC Title 15, Buildings and Construction, and adequate on-site parking is provided pursuant to KMC Title 17, Planning and Zoning;

F. Outdoor assembly of persons typical to a school, public park, or other facility that is consistent with uses allowed in the underlying zone;

G. Activities and events deemed by the Director to be exempt from a special events permit.

12.24.040 Permit – Application – Contents.

The application for a special event permit shall include the following:

- A. The name, address, and telephone number of the applicant and any event organizer, if different than the applicant;
- B. Payment of the applicable special event permit fee
- C. A certification that the applicant will be financially responsible for any City fees or costs that may be imposed for the special event, including the posting of the bond required in KMC 12.24.060, and compliance with the insurance requirements in KMC 12.24.070;
- D. A certification that the applicant will comply with the hold harmless and indemnification provisions in KMC 12.24.070;
- E. If the special event is designed to be held by, on behalf of, or for any organization other than the applicant, the applicant for the special event permit shall file a written communication from such organization:
 - 1. Authorizing the applicant to apply for the special event permit on its behalf;
 - 2. Certifying that the applicant will be financially responsible for any costs or fees that may be imposed for the special event;
 - 3. A copy of the tax exemption letter issued for any applicant claiming to be a tax-exempt nonprofit organization;

- F. A statement of the purpose of the special event;
- G. The proposed location for the special event, including both a map and written narrative, which shall include the locations for assembly, production, viewing, disbanding, parking, staging and any other activities related to the special event;
- H. Dates and times when the special event and associated activities are to be conducted;
- I. Proposed alternate routes, sites or times, where applicable;
- J. The approximate number of persons, animals or vehicles that will constitute the special event;
- K. The kinds of animals anticipated to be part of the special event;
- L. A description of the types of vehicles to be used in the special event;
- M. The number of bands or other musical units and the nature of any equipment to be used to produce sounds or noise;
- N. The number and location of portable sanitation facilities;
- O. Other equipment or services necessary to conduct the special event with due regard for participant and public health and safety;
- P. The number of persons proposed or required to monitor or facilitate the special event and provide spectator or participant control and direction for special events using City streets, sidewalks, or facilities;
- Q. Provisions for first aid or emergency medical services, or both, based on special event risk factors;
- R. Insurance and surety bond information; provided however, that if the applicant requests a modification of the insurance limits set forth in KMC 12.24.070, the applicant shall submit proof of insurance as required by the Director prior to permit issuance;
- S. Any special or unusual requirements that may be imposed or created by virtue of the proposed special event activity; and
- T. Any other information required by the community development director.

12.24.050 Permit – Application – Filing.

Any person wishing to sponsor a special event shall apply for a special events permit by filing a completed application

with the Department at least 45 days prior to the date on which the event is to begin in order to provide adequate notice to public safety and other City personnel and to accommodate potential modifications to an applicant's event proposal. The community development director shall obtain review and approval of the permit from appropriate City departments and other agencies to include police, fire, public works, building and planning, risk management, and others as may be determined necessary by the Director. The Director shall issue an approval, approval with conditions, or denial no later than 21 days after receiving a complete application. The Department may accept an application for a special event up to 30 days prior to the event and shall issue a decision on that application no later than 7 days prior to the event; however in the event of an appeal of that decision, the City may not be able to schedule the hearing on the appeal prior to the event.

12.24.060 Bond required.

The community development director may require a cash deposit or performance bond in an amount determined by the director to be necessary to guarantee that the public property will be cleaned and returned to the condition in which it was found. The community development director shall determine the amount of bond or deposit by considering type of event, projected number of participants and spectators, the sponsor's experience, and other factors related to the condition and use of the City property.

12.24.070 Insurance required – Hold harmless/indemnification.

A. The applicant shall provide the City with a certificate of insurance demonstrating proof of liability insurance with a combined single limit of \$1,000,000 per occurrence, and \$2,000,000 in aggregate or such other amounts as may be as may be determined by the Director. Evidence of insurance shall be filed with the application and shall name the City of Kelso as an additional insured. Depending upon the nature of the special event and its risk to the public and private individuals, the community development director may increase or reduce the liability limits for a given event after consultation with the City's insurance carrier.

B. The applicant shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the applicant's event, or from any activity, work or thing done, permitted, or suffered by applicant which arises from the applicant's event, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

12.24.080 Permit – Issuance or denial.

A. The Director shall approve, conditionally approve, or deny an application based on the recommendations of City departments involved in the review process of the application for a special events permit and the grounds specified in this Chapter. If the application is denied or conditionally approved, the Director shall inform the applicant of the

grounds for denial, or the reason for a change in the date, time, route, or location of the event. The applicant shall be notified of any permit conditions at the time the application is approved.

B. The Director may condition the issuance of a special events permit by imposing reasonable requirements concerning time, place, and manner of the event, and such requirements as are necessary to protect the safety and rights of persons and property, and the control of traffic. Such conditions include but are not limited to the following:

1. Alteration of the date, time, hours of operation, route, or location of the event proposed on the event application.
2. Conditions concerning the area of assembly and disbanding of an event along a route.
3. Conditions concerning accommodation of pedestrian or vehicular traffic, including restricting the event to only a portion of a street.
4. Conditions where traffic congestion may be anticipated, encouraging use of transit and carpooling.
5. Requirements for the use of traffic cones or barricades.
6. Requirements for the provision of first aid and sanitary facilities.
7. Requirements for the provision of fire, police, emergency medical protection, and parks and public works crews for maintenance and cleanup, if necessary.
8. Requirements for coordination with the Fire Department and emergency personnel for emergency treatment and evacuation of people who may need immediate care, cardiopulmonary resuscitation, or ambulance service; emergency communication; fire suppression equipment within structures; and maintenance of unobstructed emergency passageways.
9. Requirement for use of personnel to monitor the event and provide notice of permit conditions to event participants.
10. Restrictions on the number and type of vehicles, animals, or structures at an event.
11. Compliance with animal protection ordinances and laws.
12. Requirements for use of garbage containers, cleanup, and restoration of City and private property.
13. Restrictions on the use of amplified sound.
14. Notice to residents and/or businesses regarding any activity that would require a street closure.

C. The following conditions may be grounds for permit denial:

1. The applicant fails to submit a completed application within the required timeline;
2. The time, route, or size of the event will unreasonably disrupt the movement of traffic along streets;
3. The size or nature of the event requires supervision by a significant number of police officers that causes unreasonable expense or diversion of police duties;
4. The applicant has failed to remit all fees, documents, or proof of bonds;

5. The applicant has failed to conduct a previously authorized special event in accordance with law or the terms of a permit, or both;
6. The applicant has failed to provide sufficient safety, health or sanitation equipment services, or facilities;
7. The applicant has not provided sufficient off-site parking or shuttle service, or both, when required to minimize substantial adverse impacts on general parking and traffic circulation caused by the event;
8. The special event will substantially interfere with any other special event for which a permit has already been granted or with the provision of City services in support of other scheduled special events or governmental functions;
9. The special event would block traffic lanes or close streets during peak commuter hours on weekdays between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. on streets designated as arterials by the City's public works department.

12.24.090 Traffic control.

The community development director may require any reasonable and necessary traffic control with the applicant responsible for the expense. The community development director shall notify the applicant of any City-projected traffic control expense and collect this amount before a permit is issued

12.24.100 Appeal procedure.

Upon denial of a permit by the community development director, an applicant may appeal to the city council by filing a written notice of the appeal within 10 days from the community development director's decision. Upon such appeal, the city council may reverse, affirm, or modify the community development director's determination.

12.24.110 Permit revocation or suspension.

The special event permit issued under this chapter is temporary and vests no permanent rights in the applicant, and may be immediately revoked or suspended by the community development director if:

- A. The applicant has made a misstatement of material fact in the information supplied;
- B. The applicant has failed to fulfill a term or condition of the permit in a timely manner;
- C. The applicant requests the cancellation of the permit or cancels the event;
- D. The activity endangers or threatens persons or property, or otherwise jeopardizes the health, safety or welfare of persons or property;
- E. The activity conducted is in violation of any of the terms or conditions of the special event permit;

F. An emergency or occurrence requires the cancellation or termination of the event in order to protect the public health or safety; or

G. The applicant fails to prepay expenses.

The City shall refund the permit fee in the event of revocation caused by an emergency or supervening occurrence. All other refunds shall be at the discretion of the community development director

12.24.120 Rules and policy.

To implement the special event permit, the community development director may develop and adopt rules, policies and forms consistent with this chapter. All adopted rules, policies and forms shall be filed with the city clerk.

12.24.130 Violation – Penalty.

Violation of this chapter is a class 1 civil infraction, punishable by a maximum penalty of two hundred and fifty dollars, plus statutory assessments.

Exhibit B

12.24.010 Definitions.

...
G. "Special event" means:

1. a gathering of persons on public facilities or public rights of way that disrupts the ordinary use of public facilities, property, or rights of way, or significantly impacts the need for City-provided emergency services, subject to the exemptions at KMC 12.24.035.
2. a gathering of more than 50 persons on privately owned property that disrupts the ordinary use of the public facilities or rights of way or significantly impacts the need for City-provided emergency services, subject to the exemptions at KMC 12.24.035.

- ~~1. Any activity of a temporary nature on public property which affects the ordinary use of public rights of way, public parking lots, public parks, intersections, sidewalks or streets, or which would significantly impact the need for City-provided emergency services such as police, fire or medical aid, for purposes which include, but are not limited to, parades, walks/runs, street dances, fundraisers, sales, auctions, bikeathons, shows or exhibitions, filming/movie events, carnivals, circuses, car shows, horse shows, fairs and block parties, or other activity, demonstration or exhibition; or~~
- ~~2. Any activity, function, or event, which is open to the general public.~~

3. A private event.

4. Special events includes without limitation parades, runs, sporting events street dances, shows or exhibitions, car shows, street fairs, block parties, or other activity, demonstration or exhibitions.

H. "Street" or "streets" means any public roadway, sidewalk, or portions thereof in the City of Kelso dedicated to the public use.

12.24.035 Permit – Exceptions.

The following activities are exempt from the requirement to obtain a special events permit, although such activities

must still comply with all other applicable laws:

- A. A funeral procession by a licensed mortuary;
- B. Activities conducted by a governmental agency acting within the scope of its authority; and
- C. Lawful picketing on sidewalks.
- D. Pedestrian processions along a route that is restricted to sidewalks, and crossing streets only at pedestrian crosswalks in accordance with traffic regulations and controls;
- E. Indoor assembly of persons where the facility that is to be used has been approved for such assembly pursuant to the requirements of KMC Title 15, Buildings and Construction, and adequate on-site parking is provided pursuant to KMC Title 17, Planning and Zoning;
- F. Outdoor assembly of persons typical to a school, public park, or other facility that is consistent with uses allowed in the underlying zone;
- G. Activities and events deemed by the Director to be exempt from a special events permit.

12.24.040 Permit – Application – Contents.

...
V. Insurance and surety bond information; provided however, that if the applicant requests a modification of the insurance limits set forth in KMC 12.24.070, the applicant shall submit proof of insurance as required by the Director prior to permit issuance.

W. Any special or unusual requirements that may be imposed or created by virtue of the proposed special event activity; and

X. Any other information required by the community development director

12.24.050 Permit – Application – Filing.

Any person wishing to sponsor a special event shall apply for a special events permit by filing a completed application with the Department at least 45 days prior to the date on which the event is to begin in order to provide adequate notice to public safety and other City personnel and to accommodate potential modifications to an applicant's event proposal. . A completed application for a special event permit shall be filed with the community development department at least ~~six weeks before the date on which the event will occur.~~ The community development director shall obtain review and approval of the permit from appropriate City departments and other agencies to include police, fire, public works,

building and planning, risk management, and others as may be determined necessary by the Director.

The Director shall issue an approval, approval with conditions, or denial no later than 21 days after receiving a complete application. The Department may accept an application for a special event up to 30 days prior to the event and shall issue a decision on that application no later than 7 days prior to the event; however in the event of an appeal of that decision, the City may not be able to schedule the hearing on the appeal prior to the event.

The Director

~~7~~

~~shall notify the applicant of approval, conditional approval, or denial within three weeks of submitting a complete application.~~

12.24.070 Insurance required – Hold harmless/indemnification.

A. The applicant shall provide the City with a certificate of insurance demonstrating proof of liability insurance with a combined single limit of \$1,000,000 per occurrence, and \$2,000,000 in aggregate or such other amounts as may be ~~established by the City's insurance carrier~~determined by the Director. Evidence of insurance shall be filed with the application and shall name the City of Kelso as an additional insured. Depending upon the nature of the special event and its risk to the public and private individuals, the community development director may increase or reduce the liability limits for a given event after consultation with the City's insurance carrier.

B. The applicant shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of the applicant's event, or from any activity, work or thing done, permitted, or suffered by applicant which arises from the applicant's event, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Interlocal Agreement with Association of Washington Cities Employee Benefit Trust for the provision of health and welfare benefits for City employees and their beneficiaries

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: _____ September 17, 2013

Originator: _____

Receiving

PRESENTED BY:

Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Resolution
Interlocal Agreement

SUMMARY STATEMENT:

The City currently partners with the Association of Washington Cities to provide a variety of health and welfare insurance packages to city employees and their families through the Employee Benefit Trust. On July 25, 2013, the AWC Employee Benefit Trust Board of Trustees voted to move from a fully insured benefit program to a self-insured model beginning January 1, 2014. The move was made to ensure cost savings and continued competitive rates for member cities. In order to conduct business as a self-insured program, the Trust is now required to comply with RCW 48.62 and WAC 200-110 which involves following the state law and rules administered by the Washington State Risk Manager. One of those requirements is that each member must approve, by resolution, an Interlocal Agreement authorizing the City to participate in the self-insured program. The impact of this move to employees and the City will be negligible in the short term as coverage and costs will remain the same.

RECOMMENDED ACTION:

Move to adopt the Resolution approving the interlocal agreement with the Association of Washington Cities Employee Benefit Trust.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KELSO,
WASHINGTON ENTERING INTO AN AGREEMENT WITH THE
ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT
TRUST FOR THE PURPOSE OF PROVIDING HEALTH AND
WELFARE BENEFITS TO CITY EMPLOYEES AND THEIR
BENEFICIARIES**

WHEREAS, the Association of Washington Cities Employee Benefit Trust (the “Trust”) is an entity to which contributions by cities and towns and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust (“Participating Cities and Towns,” and “Participating Non-City Entities”) and their employees can be paid and through which the Board of Trustees of the Trust (“Trustees”) provides one or more insured health and welfare benefit plans or programs to Participating Cities and Towns’ and Non-City Entities’ employees, their dependents and other beneficiaries (“Beneficiaries”), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code, providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and Participating Cities and Towns and Non-City Entities have determined that it is in the best interest of Participating Cities and Towns and Non-City Entities to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which other insured health and welfare benefit program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, the Association of Washington Cities Employee Benefit Trust Interlocal Agreement (the “Interlocal Agreement”) attached hereto creates a joint self-insured health and welfare benefit program (the “Health Care Program”) to be administered by the Trustees for the purposes of providing self-insured health benefits to Beneficiaries; and

WHEREAS, WAC 200-110-030 requires every local government entity participating in a joint self-insurance health and welfare benefit program to adopt such program by resolution; and

WHEREAS, Chapter 48.62 requires Health Care Program assets to be managed

consistent with existing authority over use of municipal funds in RCW 35.39.030. The Trust will manage Health Care Program reserves in compliance with Chapter 48.62 RCW; RCW 35.39.030, and the Health Care Program Investment Policy; and

WHEREAS, all premium contributions for use in the Health Care Program are deposited into a designated account within the Trust, the Health Care Program Account (the "HCP Account"), and the HCP Account represents a pool of funds that is independent of all other Trust or AWC funds; and

WHEREAS, the Trust intends to manage the HCP Account assets in compliance with federal and state laws and the Interlocal Agreement; and

WHEREAS, the City of Kelso believes it is in the best interest of the Health Care Program to allow the Trust to manage the HCP Account;

NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Interlocal Agreement creating the Health Care Program attached hereto and incorporated herein as Exhibit "A" is hereby adopted.

SECTION 2. By adopting such Agreement, the City of Kelso acknowledges that it shall be subject to assessments as required by the Health Care Program.

SECTION 3. This resolution shall be effective immediately upon its adoption.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2013.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**ASSOCIATION OF WASHINGTON CITIES EMPLOYEE BENEFIT TRUST
HEALTH CARE PROGRAM
INTERLOCAL AGREEMENT**

This Agreement is made and entered into in the State of Washington by and among the Association of Washington Cities Employee Benefit Trust (the “Trust”) and cities and towns, and non-city entities organized and existing under the Constitution or laws of the State of Washington and who are members of the Trust (“Participating Cities and Towns,” or “Participating Non-City Entities”), all of whom are signatories to this Agreement.

RECITALS

WHEREAS, the Trust is an entity to which contributions by Participating Cities and Towns and Non-City Entities (defined below) and Participating Employees (defined below) are paid and through which the Board of Trustees provides one or more insured health and welfare benefit plans or programs to Participating Employees, their covered dependents and other beneficiaries (“Beneficiaries”), on whose behalf the contributions were paid; and

WHEREAS, the Trust qualifies as a voluntary employee beneficiary association within the meaning of Section 501(c)(9) of the Internal Revenue Code (“VEBA”), providing for the payment of life, sick, accident or other benefits to Beneficiaries; and

WHEREAS, the Trust and the Participating Cities and Towns have determined that it is in the best interest of Participating Cities and Towns to jointly self-insure certain health benefit plans and programs for Beneficiaries through a designated account within the Trust, while at the same time having the Trust continue as the entity to which health and welfare benefit plan or program contributions are paid and through which insured health and welfare benefit plans and programs are provided to Beneficiaries; and

WHEREAS, it appears economically feasible and practical for the parties to this Agreement (defined below) to do so; and

WHEREAS, Chapter 48.62 RCW provides that two or more local government entities may, by Interlocal agreement under Chapter 39.34 RCW, jointly self-insure health benefit plans and programs, and/or jointly hire risk management services for such plans or programs by any one or more of certain specified methods; and

WHEREAS, each local government entity that is a signatory hereto, as required by WAC 200-110-030, acts upon the authority of a resolution adopting this Agreement and the Health Care Program (defined below) created herein;

NOW, THEREFORE, for and in consideration of all of the mutual benefits, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

The following are definitions of terms used in the Agreement. Unless indicated otherwise, other terms are defined where they are first used. Defined terms are capitalized when used in the defined context.

- 1.1 **Agreement** means this Interlocal Agreement entered into under the authority of Chapter 39.34 RCW and as required by RCW 48.62.031(2) between the Trust and Participating Employers.
- 1.2 **Association of Washington Cities** or **AWC** means the Association of Washington Cities, a not-for-profit membership association established pursuant to the laws of the state of Washington for the purpose of providing various services to and on behalf of its member cities.
- 1.3 **Association of Washington Cities Employee Benefit Trust** or the **Trust** means the trust and all property and money held by such entity, including all contract rights and records, established for the sole purpose of providing life, sick accident or other health and welfare benefits to Participating Employees, their covered dependents and other beneficiaries, and which is approved by the Internal Revenue Service as a VEBA.
- 1.4 **Employee Benefits Advisory Committee** or **EBAC** means the committee defined in Article V of the Trust Agreement that may be delegated responsibility by the Board of Trustees, including but not limited to: overseeing the operations of the Health Care Program, analyzing and developing annual premium levels and benefit coverage changes for recommendation to the Board of Trustees and performing other duties necessary to ensure that the needs of Participating Employers are met and the long-term financial health of the Health Care Program is maintained.
- 1.5 **Health Care Program** means the joint self-insurance program offering self-insured health benefit options through the HCP Account.
- 1.6 **HCP Account** means a designated account within the Trust and created by this Agreement, the Trust Agreement and Trust Health Care Program policies all under the authority of Chapter 48.62 RCW to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries and further described in Article 6.
- 1.7 **Non-City Entity** means any public agency, public corporation, intergovernmental agency or political subdivision, within the state of Washington that meets the requirements of Article IX, Section 1(c)(ii) and (iii) of the Trust Agreement for participation in the Health Care Program.
- 1.8 **Participating City** means any city or town within the state of Washington that meets the requirements of Article IX, Section 1(a) or Section 1(b) of the Trust Agreement.

- 1.9 **Participating Employee** means any individual employed by a Participating Employer and for whom the Participating Employer makes contributions to the Trust, and any individual who may have been so employed but is subsequently laid off, terminated, or retired.
- 1.10 **Participating Employer** means a Participating City or Non-City Entity that is also a party to this Agreement.
- 1.11 **Resolution** means the resolution adopted by each Participating City or Non-City Entity that authorizes the Health Care Program.
- 1.12 **State Risk Manager** or **Risk Manager** means the risk manager of the Risk Management Division within the Department of Enterprise Services.
- 1.13 **Stop Loss Insurance** or **Reinsurance** means a promise by an insurance company that it will cover losses of the Health Care Program over and above an agreed-upon individual or aggregated amount, which definition shall be modified by any changes to the definition of stop loss insurance in WAC 200-110-020.
- 1.14 **Third-Party Administrator** means the independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services to the Health Care Program: pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.
- 1.15 **Trust Agreement** means the Trust Agreement Governing the Trust amended and restated July 1, 2013, and any subsequent amendments thereto.
- 1.16 **Trustees** or **Board of Trustees** means the following individuals and their successors, who together, govern the Trust and the Health Care Program:
- 1.16.1 the AWC President and the AWC Vice President;
 - 1.16.2 the EBAC Chair and the EBAC Vice Chair; and
 - 1.16.3 an individual elected pursuant to the procedures in Article III, Section 5 of the Trust Agreement to serve as the trustee from one of the following regions:
 - (a) North East Region (known as the “North East Region Trustee”);
 - (b) North West Region (known as the “North West Region Trustee”);
 - (c) South East Region (known as the “South East Region Trustee”); and
 - (d) South West Region (known as the “South West Region Trustee”).

Individuals from Non-City Entities are not eligible to serve as Trustees.

ARTICLE 2

PURPOSE

This Agreement is entered into for the purpose of authorizing the Health Care Program created by the Trust to provide self-insured health benefits to Participating Employees, their covered dependents and other beneficiaries. The Health Care Program shall comply with the statutory provisions found in Chapters 48.62 and 39.34 RCW and the regulatory requirements contained in WAC 200-110 applicable to joint self-insurance programs.

ARTICLE 3

PARTIES

Each party to this Agreement certifies that it intends to participate in the Health Care Program. Participating Employers are signatories of this Agreement to become effective on a date to be mutually determined (the "Effective Date") and with such other Participating Cities and Non-City Entities as may later be added to and become signatories to this Agreement.

ARTICLE 4

DURATION OF AGREEMENT

- 4.1 This Agreement shall become effective on the Effective Date.
- 4.2 This Agreement shall have perpetual duration unless terminated as hereinafter provided.

ARTICLE 5

MEMBERSHIP COMPOSITION

The Health Care Program shall be open to Participating Cities and Non-City Entities. Participation in the Health Care Program is voluntary and not a requirement of AWC membership. The Board of Trustees shall provide for the reasonable admission of new Participating Cities and Non-City Entities.

ARTICLE 6

HCP ACCOUNT

- 6.1 All premium contributions by Participating Employers, Non-City Entities and Participating Employees for use in the Health Care Program are deposited into the HCP Account.
- 6.2 The HCP Account represents a pool of funds that is independent of all other Trust or AWC funds and independent of all other Participating Employer and Non-City Entity funds. The funds deposited into the HCP Account are held, managed and expended only for the Health Care Program and reasonable expenses, consistent with applicable state

and federal statutes and rules governing joint self-insurance programs and self-insurance programs generally.

- 6.3 The HCP Account is subject to audit by the State Auditor's Office.

ARTICLE 7

TRUSTEE POWERS RELATED TO HEALTH CARE PROGRAM

The Board of Trustees is provided with the powers and functions established under RCW 48.62.031 to accomplish the following:

- 7.1 Promote the economical and efficient means by which health benefits coverage is made available to Participating Employers and Non-City Entities and provided to Participating Employees, their covered dependents and other beneficiaries;
- 7.2 Protect the financial integrity of the Health Care Program through purchase of Stop Loss Insurance or Reinsurance in such form and amount as needed;
- 7.3 Contract for or otherwise provide risk management and loss control services;
- 7.4 Contract for or otherwise provide legal counsel for the defense of claims and other legal services;
- 7.5 Consult with the state insurance commissioner and the State Risk Manager;
- 7.6 Obligate the Participating Employers and Non-City Entities to pledge revenues or contribute money to secure the obligations or pay the expenses of the Health Care Program, including the establishment of a reserve or fund for coverage; and
- 7.7 Exercise all other powers and perform all other functions reasonably necessary to carry out the purposes of the Health Care Program, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 8

ORGANIZATION OF HEALTH CARE PROGRAM

- 8.1 The operations of the Health Care Program are managed by the Board of Trustees or its delegates. The Trustees or any delegates review and analyze Health Care Program-related matters and make operational decisions regarding premium contributions, reserves, plan options and benefits in compliance with Chapter 48.62 RCW.
- 8.2 The Board of Trustees has decision authority consistent with the Trust Agreement, Health Care Program policies, Chapter 48.62 RCW and Chapter 200-110 WAC.

ARTICLE 9

RESPONSIBILITIES OF THE TRUSTEES

- 9.1 The Board of Trustees shall discharge its responsibilities under this Agreement as follows:
- 9.1.1 Provide for the efficient management and operation of the Health Care Program;
 - 9.1.2 Provide for health benefit coverage options for Participating Employees, their covered dependents and other beneficiaries;
 - 9.1.3 Determine the level of Stop Loss Insurance or Reinsurance coverage for claims expenses above the amounts deemed appropriate for self-insurance;
 - 9.1.4 Ensure that the Health Care Program meets required state and federal statutes and rules;
 - 9.1.5 Contract with vendors required to meet the responsibilities established by the Trust Agreement, Health Care Program policies, and applicable state and federal statutes and rules;
 - 9.1.6 Maintain the balance between meeting the Health Care Program needs of Participating Employers and the long-term financial integrity of the Health Care Program;
 - 9.1.7 Prepare an annual financial report on the operations of the Health Care Program; and
 - 9.1.8 Provide for other services deemed appropriate by the Board of Trustees to meet the purposes of this Agreement.
- 9.2 The Board of Trustees may delegate the responsibilities described in this Article 9 to the EBAC or other delegates at its complete discretion.

ARTICLE 10

RESPONSIBILITIES OF THE PARTICIPATING EMPLOYERS

In order to participate in the Health Care Program, Participating Employers shall:

- 10.1 Be a Participating City or Non-City Entity in good standing and comply with the requirements of admission or qualification as established by the Board of Trustees;
- 10.2 Adopt this Agreement by Resolution, agreeing to its terms and provisions;
- 10.3 Submit the Resolution and Agreement to the Trust;

- 10.4 Read the terms, conditions and representations set forth in the application agreement related to participation in the Health Care Program;
- 10.5 Designate an employee of the Participating Employer to be a contact person for all matters relating to the Participating Employer's participation in the Health Care Program;
- 10.6 Pay premiums for the Health Care Program to the Third-Party Administrator no later than the tenth day of the month in which the premium is due;
- 10.7 By formal action of the legislative body of the Participating Employer, approve policies and procedures necessary to secure protected health information ("PHI") in accordance with Chapter 70.02 RCW and the Health Insurance Portability and Accountability Act ("HIPAA") privacy and security rules, codified at 45 C.F.R. Parts 160-164;
- 10.8 Provide the Health Care Program with such information or assistance as is necessary for the Health Care Program to meet its responsibilities under this Agreement; and
- 10.9 Cooperate with and assist the Health Care Program and any insurer of Stop Loss Insurance or Reinsurance, in all matters relating to the administration and operation of the Health Care Program and all matters relating to this Agreement.
- 10.10 Comply with all bylaws, rules, regulations and policies adopted by the Board of Trustees relating to the Health Care Program.

ARTICLE 11

RESERVE FUND INVESTMENT

All reserve fund investments from the HCP Account shall be made in a manner that is consistent with RCW 48.62.111, Chapter 39.59 RCW, WAC 200-110-090 and the Health Care Program Investment Policy.

ARTICLE 12

FINANCIAL RECORDS

- 12.1 The Board of Trustees shall develop estimated revenue and expenditures to establish a budget for each fiscal year covering January 1 through December 31 annually. Actual Health Care Program revenues and expenditures shall be monitored monthly by the Board of Trustees and reported at its quarterly meetings.
- 12.2 The accounting records of the Health Care Program are maintained in accordance with methods prescribed by the State Auditor's office under the authority of Chapter 43.09 RCW. The Health Care Program also follows applicable accounting standards established by the Governmental Accounting Standards Board ("GASB"). Year-end financial reporting is done on an accrual basis and submitted to the Office of the State Auditor as required by Chapter 200-110 WAC. Once reviewed and approved by the

Office of the State Auditor the year-end financial report is transmitted to the Office of the State Risk Manager.

- 12.3 Financial records of the Health Care Program shall be subject to audit by the Office of the State Auditor. Year-end financial reports and audit results shall be made available to interested parties. The Health Care Program shall provide financial information as required by state statute and rule to the Office of the State Risk Manager.

ARTICLE 13

PARTICIPATING EMPLOYER TERMINATION AND WITHDRAWAL

- 13.1 A Participating Employer must remain in good standing with the Trust and adhere to the requirements of this Agreement. In the event that a Participating Employer fails to be a Participating City or Non-City Entity in good standing, participation in the Health Care Program shall automatically terminate without notice as shall all health and welfare benefits provided through the Health Care Program.
- 13.2 The Board of Trustees may take action to terminate membership or deny membership in the Health Care Program where it determines that such termination or denial is in the best interest of the Health Care Program
- 13.3 When a Participating Employer's eligibility in the Health Care Program is affected due to merger or annexation, the affected Participating Employer may petition the Board of Trustees to remain in the Health Care Program.
- 13.4 A Participating Employer may only withdraw its participation in the Health Care Program at the end of the calendar year and must provide written notice to the Trust at least thirty-one (31) days in advance of the end of the calendar year (December 31st).
- 13.5 In the event of withdrawal or non-renewal, the Health Care Program will cover any of the Participating Employer's remaining outstanding Health Care Program claims expenses incurred prior to the Participating Employer's withdrawal from or non-renewal in the Health Care Program.
- 13.6 No Participating Employer, because of withdrawal or any other reason, has any right or interest in the HCP Account because of its nature as a rate stabilization fund. In the event any Participating Employer withdraws from the Health Care Program, its Participating Employees, their covered dependents and other beneficiaries and any Consolidated Omnibus Budget Reconciliation Act of 1985 as amended (COBRA) participants and contract personnel and dependents approved by the Board of Trustees, shall forfeit all right and interest to the HCP Account.

ARTICLE 14

TERMINATION OF HEALTH CARE PROGRAM

- 14.1 In the event the Health Care Program is terminated, the Board of Trustees shall distribute the remaining funds in the HCP Account to the Trust or any successor association authorized by Chapter 39.34 RCW for like purposes for use in any program with similar purposes.
- 14.2 Upon termination, this Agreement and the HCP Account shall continue for the purpose of paying remaining outstanding claims and expenses and fulfilling all other functions necessary to complete the business of the Health Care Program.

ARTICLE 15

MEETINGS, NOTICES AND COMMUNICATIONS

- 15.1 The Board of Trustees and the EBAC, if any responsibilities for Trust management have been delegated thereto, shall provide notice of their regular and special meetings and hold their meetings in accordance with Chapter 42.30, RCW Open Public Meetings Act.
- 15.2 Communications with Participating Employers may occur using mail, email or posting on the Health Care Program website. The website shall be partitioned to provide information for the general public and information specific to Participating Employers and their employees.
- 15.3 Communications may come directly from the Health Care Program, through the Third-Party Administrator or through another vendor on behalf of the Health Care Program.

ARTICLE 16

AMENDMENTS TO INTERLOCAL AGREEMENT

- 16.1 The Board of Trustees shall review and analyze any proposed amendment to this Agreement. An amendment may be proposed for review by any party to this Agreement.
- 16.2 The Board of Trustees upon its discretion may take action by resolution on any amendment at any regular meeting of the Board of Trustees.

ARTICLE 17

PROHIBITION ON ASSIGNMENT

- 17.1 No Participating Employer may assign any right or claim of interest it may have under this Agreement.

- 17.2 No creditor, assignee or third-party beneficiary of any employer shall have the right, claim or title to any party, share, interest, premium or asset of the Trust, HCP Account or the Health Care Program.

ARTICLE 18

HEALTH CLAIM DISPUTES AND APPEALS

In the event that a dispute arises over a health claim, the procedures, adjudication requirements and administrative remedies shall be found in the Health Care Program's plan document applicable to the Health Care Program covering the claimant.

ARTICLE 19

PLAN ADMINISTRATION DISPUTES AND APPEALS

- 19.1 In the event that a dispute arises between a Participating Employer and the Health Care Program, the Participating Employer shall document the circumstances causing the dispute and submit a written request for review of the disputed circumstances to the Board of Trustees. Upon review of such information, the Board of Trustees shall attempt to resolve the dispute.
- 19.2 If the Board of Trustees' resolution to the dispute is deemed unsatisfactory, then alternative dispute resolution through mediation or binding arbitration may be necessary.

ARTICLE 20

ENFORCEMENT OF TERMS OF AGREEMENT

- 20.1 The Board of Trustees may enforce the terms of this Agreement.
- 20.2 In the event legal action is initiated to enforce any term or provision of this Agreement against any present or previous Participating Employer, the prevailing party shall receive such reimbursement of costs as the court deems reasonable for attorneys' fees and costs related to the relevant legal action.

ARTICLE 21

DEFAULT

- 21.1 If any Participating Employer fails to perform any term or condition of this Agreement and such failure continues for a period of sixty (60) days after the Board of Trustees has given the Participating Employer written notice describing such failure, the Participating Employer shall be considered in default.
- 21.2 Upon default, the Board of Trustees may immediately cancel the Participating Employer's participation in the Health Care Program without additional notice or exercise some other remedy otherwise provided by law.

- 21.3 The rights and remedies of the Board of Trustees are cumulative in nature and pursuit of any particular remedy shall not be deemed an election of remedies or a waiver of any other remedies available hereunder or otherwise available by law.

ARTICLE 22

NO WAIVERS

No waiver or forbearance of a breach of any covenant, term, or condition of this Agreement shall be construed to be a waiver or forbearance of any other or subsequent breach of the same or of any other covenant, term or condition, and the acceptance of any performance hereunder, or the payment of any sum of money after the same has become due or at a time when any other default exists hereunder, shall not constitute a waiver or right to demand payment of all sums owing or a waiver of any other default then or thereafter existing.

ARTICLE 23

CONTRACT MANAGEMENT

The Health Care Program shall designate a person to whom the State Risk Manager shall forward legal process served upon the Risk Manager; **The AWC Chief Executive Officer** (designee or successor). **The Health Care Program Director** shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

ARTICLE 24

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

ARTICLE 25

COUNTERPART COPIES

This Agreement may be signed in counterpart or duplicate copies and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

ARTICLE 26

HEADINGS

The Article and Section headings in this Agreement are inserted for convenience only and are not intended to be used in the interpretation of the contents of the Articles and Sections they introduce.

ARTICLE 27

AGREEMENT COMPLETE

This Agreement and the documents referenced herein contains all the terms and conditions agreed to by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement.

Association of Washington Cities
Employee Benefit Trust

Participating Employer

Signature: 

Signature: _____

Name: **Michael A. McCarty**

Name (print): _____

Title: Chief Executive Officer

Title: _____

Date: August 30, 2013

Date: _____

Effective Date: January 1, 2014

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Resolution finding a specific emergency and approving contracts for certain emergency work without formal bidding.

Agenda Item: _____

Dept. of Origin: Public Works – Operations

For Agenda of: September 17, 2013

Cost of Item: \$7,538.33 plus tax

City Manager: Steve Taylor

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

AGENDA ITEM ATTACHEMENTS:

Proposed Resolution

SUMMARY STATEMENT:

This project is for the replacement of a Water Treatment Distribution motor. On August 28th at 10:00pm a Mylar balloon connected with PUD power lines and caused one Phase of power to short out near our Water Treatment Plant. This resulted in one of our Water Treatment Plant's 75 HP motors getting fried. We have three pumps and motors for redundancy. During high flows, two pumps can be required to keep up with demand. A replacement motor was located in Los Angeles. The installed cost is \$ 7538.33 excluding sales tax. City staff lacks the equipment and resources to immediately repair the Motor. This was an unbudgeted expense. Installation of the Motor will occur upon its arrival.

FINANCIAL SUMMARY:

The installed cost is \$ 7538.33 excluding sales tax.

RECOMMENDED ACTION:

Move to adopt this Resolution for emergency contract work performed at our Water Treatment Plant without formal bidding.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF KELSO FINDING THE REPLACEMENT OF A WATER TREATMENT DISTRIBUTION MOTOR TO BE A SPECIFIC EMERGENCY AND APPROVE CONTRACT FOR EMERGENCY REPAIR WORK WITHOUT FORMAL BIDDING.

WHEREAS, the law at RCW 39.04.280 recognizes emergencies which may justify exemption from bidding requirements on public works projects upon subsequent findings of the existence of the emergency; and

WHEREAS, the City has a duty to maintain the Water system in to protect the public health, safety and welfare of its users; and

WHEREAS, the disabled distribution motor had the potential to cause a shortage of Water to the public for basic domestic use and fire protection potentially resulting in loss of property or life; and

WHEREAS, as a result of the foregoing emergency, the City of Kelso entered into the following contract in the absence of taking formal bids:

1. "Northwest Motor Service" entered into a contract with the City of Kelso for the acquisition and installation of a distribution motor, and to take all actions necessary in order to protect the public health and safety of its citizens.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO RESOLVE AS FOLLOWS:

Section 1. Factual Findings in Support of Contract Award. The City Council finds the following:

1. This project is for the replacement of a Water Treatment Distribution motor. On August 28th at 10pm a Mylar balloon contacted the PUD power lines and caused one Phase of power to short out near our Water Treatment Plant. This resulted in one of

our Water Treatment Plant 75 HP motors getting fried. We have three pumps and motors for redundancy. During high flows, two pumps can be required to keep up with demand. A motor was located in Los Angeles. The installed cost is \$ 7538.33 excluding sales tax. City staff lacks the equipment and resources to immediately repair the Motor. This was an unbudgeted expense. Installation of the Motor will occur upon its arrival.

2. City staff lacked the equipment and resources to immediately make the necessary repairs.

Section 2. Existence of Emergency. The City Council finds that the conditions created by the disabled motor constituted an emergency that justified the waiver of the competitive bidding requirements and the immediate award of the contracts for repair services to address the emergency situation without formal public bidding.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2013.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY