LAKEWOOD CITY COUNCIL
STUDY SESSION AGENDA

Monday, November 23, 2015
7:00 P.M.
City of Lakewood
City Council Chambers
6000 Main Street SW
Lakewood, WA 98499

Page No.

CALL TO ORDER

ITEMS FOR DISCUSSION:

(3) 1. Review of flood plain and critical area code regulations. – (Memorandum)

(60) 2. Review of Waste Connections franchise. – (Memorandum)

(134) 3. Review of Puget Sound Energy franchise. – (Memorandum)

(153) 4. Review of the Community Safety and Resource Team program. – (Memorandum)

(165) 5. Review of the Greater Lakes Mental Healthcare agreement for mental health services. – (Memorandum)

REPORTS BY THE CITY MANAGER

ITEMS TENTATIVELY SCHEDULED FOR THE DECEMBER 7, 2015 REGULAR CITY COUNCIL MEETING:

1. Business showcase. - Robi's Camera Center & Custom Framing – *Ron Austin, Owner and Tod Wolf, Operations Manager*

2. Appointing members to the Landmarks & Heritage Advisory Board. – (Motion-Consent Agenda)

3. Confirming the City Manager's appointment of Stafford Smith and Phil Olbrechts as Hearings Examiners and approving agreements for said services. – (Motion – Consent Agenda)

The City Council Chambers is accessible to persons with disabilities. Equipment is available for the hearing impaired. Persons requesting special accommodations or language interpreters should contact the City Clerk's Office, 589-2489, as soon as possible in advance of the Council meeting so that an attempt to provide the special accommodations can be made.

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The Council Chambers will be closed 15 minutes after adjournment of the meeting.

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4. Reappointing Don Anderson to the Pierce Transit Board from January 1, 2016 through December 31, 2018. – (Motion – Consent Agenda)

5. Authorizing the execution of an agreement with Greater Lakes Mental Healthcare, in the amount of $76,373, to provide mental health services from January 1, 2016 through December 31, 2016. – (Motion – Consent Agenda)

6. Authorizing the execution of an agreement with Giovanna Franklin, in the amount of $82,200, for prosecution services from January 4, 2016 through December 31, 2016. – (Motion –Consent Agenda)

7. Authorizing the execution of an agreement with Lisa Elliott, in the amount of $43,680, for prosecution services from January 4, 2016 through December 31, 2016. – (Motion –Consent Agenda)

8. Granting a franchise to Waste Connections for garbage, recycling and yard waste collection services. – (Ordinance – Regular Agenda)

9. Adopting the 2015 Comprehensive Plan amendments and land use map. – (Ordinance – Regular Agenda)

10. Amending Titles 14A and 18A of the Lakewood Municipal Code relative to flood plain and critical area regulations. – (Ordinance – Regular Agenda)

11. Authorizing the execution of an agreement with the Humane Society for Tacoma-Pierce County relative to animal sheltering services. – (Motion – Regular Agenda)

COUNCIL COMMENTS

ADJOURNMENT

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To: Mayor and City Councilmembers

From: Frank A. Fiori, Current Planning Manager

Through: David Bugher, Assistant City Manager for Development Services & John J. Caulfield, City Manager

Date: November 23, 2015 (Study Session)

Subject: Flood Hazard Overlay Zone and Critical Areas Ordinance Amendments

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BACKGROUND:

The Washington State Growth Management Act (GMA) requires that cities periodically review and update their Critical Area Ordinances (CAO) to ensure that they are in compliance with current regulations and legislative changes that may have occurred. The City of Lakewood is scheduled to have reviewed and made necessary updates to their CAO in June of 2015. City staff has been working with staff from the Department of Ecology and have prepared draft amendments to the Lakewood Municipal Code (LMC) Title 18A and Title 14A which are believed will bring the City's CAO into compliance.

As a participating jurisdiction in the National Flood Insurance Program (NFIP), the City of Lakewood is also required to maintain a floodplain management program and associated ordinances that meet the requirements of the NFIP as established by the Federal Emergency Management Agency (FEMA). The City is currently in compliance with NFIP requirements; however, two actions since the City last updated the codes associated with their floodplain management program will require the City to review their codes and make amendments as necessary.

1. The Federal Emergency Management Agency (FEMA) has recently completed a new preliminary Flood Insurance Study and the creation of new Flood Insurance Rate Maps (FIRM) for Pierce County.

2. The National Marine Fisheries Service (NMFS) filed legal action against FEMA over the implementation of the NFIP in the Puget Sound Basin. The NMFS prevailed in

the action and as a result a Biological Opinion (BiOp) was prepared that provided guidance to FEMA regarding the implementation of the NFIP.

In order to continue participation in the NFIP local jurisdictions within the Puget Sound Basin must meet the procedural and substantive requirements of the BiOp. It is the responsibility of FEMA to review the codes of local jurisdictions and determine whether or not they meet the requirements of the BiOp. City staff has been preparing amendments to both LMC Title 18A and Tile 14A using a model ordinance prepared by FEMA, and guidance documents provided by Ecology, in determining what amendments may be necessary to meet the requirements of the BiOp as well as the requirements of the NFIP.

PROPOSED AMENDMENTS/ UPDATES:

Below is a summary of the amendments to the Lakewood Municipal Code (LMC) Title 18A, and Title 14A, to bring City code into compliance with the National Flood Insurance Program (NFIP), Endangered Species Act (ESA) Biological Opinion (BiOp) and State requirements for periodic review of Critical Area Ordinances as required by the Growth Management Act.

Proposed Amendments to comply with NFIP

18A.40.110 – Purpose: Language added in regard to qualifying Lakewood to participate in the flood insurance program and maintaining the quality of water.

18A.40.130 – Administration – Flood Hazard Overlay: Language added in regard to the requirement for a floodplain development permit. Added language in regard to certificates of occupancy and final inspections.

18A40.140.B – Added language in regard to vegetation within an altered or relocated watercourse.

18A.40.170.A.3.c Utilities: Added language requiring a habitat impact assessment as a condition of approval for a septic system in the floodplain.

18A.40.170.6 – Added language in regard to repairs, replacement, reconstruction or improvements within floodways.

18A.40.170.B.8 – Recreational Vehicle (RV) Parks; Added language in regard to requirements for recreational vehicles in RV parks.

18A.40.180 – Allowable Activities Within the Regulatory Floodplain: New section clarifying the types of activities that can occur without a floodplain development permit.

18A.40.190 – Definitions: Added language stating that definitions found in 14A.165 also apply.

Proposed Amendments to comply with the Endangered Species Act (ESA) Biological Opinion

18A.40.110 – Purpose: Language added in regard to retaining natural channel, shoreline and floodplain creation processes. Preventing or minimizing loss of hydraulic, geomorphic and ecological functions of floodplains and stream channels.

18A.40.130 – Administration – Flood Hazard Overlay: Language added in regard to certificates of occupancy and final inspections, and the information required when submitting an application for a floodplain development permit.

18A.40.150 – Interpretation of FIRM Boundaries: Language added in regard to requests for map amendments, Conditional Letters of Map Revision, ability of an applicant to request map amendments and consideration of cumulative effects of anticipated future land use changes.

18A.40.170.A.5 – Provisions for Floodplain Reduction: Added language requiring a note on subdivision plats in reference to floodplains.

18A.40.170.B.9 – Added language in regard to the location of structures on buildable sites, the use of low impact development techniques and the amount of impervious surface.

18A.40.170.B.10 – Added language in regard to hazardous materials in the floodplain.

14A.154.050.A – Added language in regard to removal of vegetation within buffers and listed buffer widths based on the State typing of streams.

14A.154.050.B – Added language in regard to the requirements of a Habitat Impact Assessment.

14A.154.050.C – Added language in regard to the requirements for a habitat Mitigation Plan.

14A.154.050.E – Added language in regard to providing compensatory storage if necessary.

14A.165.010 – Definitions: Added or amended definitions as necessary.

Proposed Amendments to Comply with WAC 173-22-035, Wetland Identification and Delineation

14A.162.020 - Designation of Wetland Areas – Amended and updated the method for identifying and delineating wetlands based on federal wetlands delineation methods.

14A.162.030 - Wetland Categories – Amended the point system for categorizing wetlands based on changes to the State Wetland Rating System.

14A.162.080 - §A. Added new language in regard to buffer widths and new tables based on State regulations; §B.1.g. changed 25% to 75% in regard to minimum buffer widths; §B.2 changed 35% to 25% in regard to maximum reduction in buffer width to comply with state regulations.

General Amendments

14A.154.020 – Designation of Critical Fish and Wildlife Habitat Areas: Deleted language referencing Appendix B. References are already included for CFR and WAC.

DISCUSSION:

The proposed updated FIRM will increase the amount of land within the City that is classified as being in a special flood hazard area, in particular lands along Clover Creek in the Racquet Club Estates and Springbrook neighborhoods. The proposed amendments will bring the City's flood hazard area and critical area ordinances into compliance with the national Flood Insurance Program (NFIP), Federal Emergency Management Agency (FEMA), Endangered Species Act (ESA) and the Growth Management Act (GMA).

DRAFT UPDATES:

The proposed amendments to Title 18A and Title 14A were introduced to the Planning Commission at their August 19, 2015 meeting, and the proposed amendments were reviewed and discussed by the Planning Commission at their October 7, 2015 meeting. Notices were mailed to 378 property owners whose property may be affected by the new flood hazard boundaries and a public hearing was conducted by the Planning Commission on November 4, 2015. The Planning Commission voted to keep the public hearing open until their November 18, 2015 meeting due to the fact that staff was still working out final changes with FEMA.

The proposed amendments to Title 18A and 14A were submitted to FEMA and Ecology for review and comment. All of the proposed amendments have met with the approval of Ecology. The proposed amendments have been sent to the Washington Department of Commerce for distribution in accordance with RCW 36.70A.106.

ORDINANCE NO. 6XX

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Titles 14A and 18A relative to Floodplain and Critical Area Regulations.

WHEREAS, The Washington State Growth Management Act (GMA) requires that cities periodically review and update their Critical Area Ordinances (CAO) to ensure that they are in compliance with current regulations and legislative changes that may have occurred; and

WHEREAS, the City of Lakewood is a participating jurisdiction in the National Flood Insurance Program (NFIP), and is therefore required to maintain a floodplain management program and associated ordinances that meet the requirements of the NFIP as established by the Federal Emergency Management Agency (FEMA) which have changed since the City last reviewed its regulations; and,

WHEREAS, the Planning Commission has held public hearings and meetings on October 7, 2015, November 4, 2015 and November 18, 2015. The Planning Commission has found that the proposed changes to the Land Use and Development Code are consistent with the adopted Lakewood Comprehensive Plan and will not adversely affect the public health , safety and general welfare of the citizens of the city; and,

WHEREAS, the Planning Commission has found affirmatively that the proposed amendments satisfy the applicable findings of LMC 18A.02.415;

WHEREAS these proposed amendments were submitted to FEMA and the Washington State Department of Ecology for review and comment, and the Washington State Department of Commerce as required by RCW 36.70A.106;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1: Section 14A.154.020 LMC entitled "Designation of Critical Fish and Wildlife Habitat Areas" is amended to read as follows:

A. General. This Chapter applies to proposed regulated activities within critical fish and wildlife habitat areas. Critical fish and wildlife habitat areas are those areas identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both.

B. Identification of Critical Fish and Wildlife Species and Habitats.

1. Critical Fish and Wildlife Habitat Areas.

a) Federal and State-Listed Species and their Associated Habitats. Areas which have a primary association with federally or state listed endangered, threatened, or sensitive species of fish or wildlife (specified in 50 CFR 17.11, 50

CFR 17.12, WAC 232-12-014 and WAC 232-12-297) and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. ~~Endangered, threatened, or sensitive species found in Lakewood are listed in Appendix B.~~

b) Habitats and Species of Local Importance, including the following:

(1) Areas with which state listed monitor or candidate species or federally listed candidate species have a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. ~~Special status and monitored species potentially found in Lakewood are listed in Appendix B.~~

(2) Documented habitat areas or outstanding potential habitat areas for fish and wildlife species. These areas include specific habitat types which are infrequent in occurrence in Pierce County and Lakewood, and may provide specific habitats with which endangered, threatened, sensitive, candidate, or monitor species have a primary association, such as breeding habitat, winter range, and movement corridors. These areas include the following:

(a) Priority Oregon White Oak Woodlands
(b) Prairies
(c) Old growth forests
(d) Caves
(e) Cliffs
(f) Snag-rich areas
(g) Rivers and streams with critical fisheries ~~as specifically set forth in 14A.154.050 B.~~;
(h) Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
(i) Waters of the state, including all water bodies classified by the Washington Department of Natural Resources (DNR) water typing classification system as detailed in WAC 222-16-030, together with associated riparian areas;
(j) Lakes, ponds, streams, and rivers planted with game fish by a governmental entity or tribal entity;
(k) State natural area preserves and natural resource conservation areas.

2. Mapping.

The resources listed below provide information on fish and wildlife habitat areas:

a. Puget Sound Environmental Atlas, Puget Sound Water Quality Authority.

b. The following Washington Department of Natural Resources documents and data sources:

1. Stream Typing Maps.
2. Natural Heritage Data Base.

c. The following Washington Department of Wildlife documents and data sources:

1. Priority Habitats and Species Program.
2. Non-game Data Base.
3. Washington Rivers Information System.

d. The following Washington Department of Fisheries documents:

1. Water Resource Index Areas (WRIA).

Section 2: Section 14A.154.030 LMC entitled "Habitat Protection Standards" is amended to read as follows:

A. Education and Information.

A voluntary education program to explain the need for and methods of habitat management will help provide for long-term protection and enhancement of critical fish and wildlife habitat areas. By informing citizens of the declining populations of several fish and wildlife species in Pierce County, the diminishing animal habitat available, and the management techniques that individuals can use to preserve and restore fish and wildlife habitat areas, the City can foster good stewardship of the land by property owners.

1. The Department will provide educational materials and lists of additional sources of information to applicants proposing regulated activities in the vicinity of critical fish and wildlife habitat areas. Materials will be selected from a variety of state and local resources.

2. The Department will accumulate information on the number of proposed activities associated with fish and wildlife habitat areas as identified by this Chapter and indicated by County maps to be in the vicinity of identified critical fish and wildlife habitats pursuant to 14A.154.020. Information shall include the number of single family residences and other development occurring in the vicinity of critical fish and wildlife areas. Based on this information, additional regulations may be developed.

B. Use of Existing Procedures and Laws~~?~~,Biological Assessments.

The primary procedures used to implement this Chapter shall include this Chapter itself, the City~~?~~' s Land Use and Development Code ~~(particularly Section 18A.40.200 relating to riparian areas)~~, the State Environmental Policy Act (RCW 43.21C), the City's

Environmental Regulations, the State Shorelines Management Act (RCW 90.58), and the City's Shoreline Management Regulations.

Regulated activities subject to environmental review shall be reviewed with consideration for impacts on critical fish and wildlife habitat as identified in this Title. The Community Development Director may require a biological assessment prepared by a qualified wildlife biologist whenever the Director finds that a project site may contain, affect, or be affected by, species or habitats designated in this Chapter. Biological assessments shall be prepared in accordance with ~~Appendix A~~ LMC 14A.154.050.B, and are subject to the review and approval of the Director.

Projects undergoing review for fish and wildlife considerations shall be routed to the Washington Department of Fish and Wildlife, the Washington Department of Ecology, the US Fish and Wildlife Service, the US Army Corps of Engineers and any other appropriate state and federal agencies. These agencies will have an opportunity to provide specific habitat information on proposed development sites, advise the City of their jurisdiction and applicable permit requirements, and suggest appropriate project modifications and or other mitigation.

The City shall give substantial weight to the management recommendations contained in the Washington Department of Fish and Wildlife Priority Habitats and Species Program, particularly the management recommendations for Oregon White Oak Woodlands.

Section 3: Section 14A.154.040 LMC entitled "Title and Plat Notification" is amended to read as follows:

For regulated activities where a Habitat Assessment or Habitat Management Plan has been prepared as part of the proposal's environmental review, the owner of the site shall record a notice of the reports with the Pierce County Auditor so that information is known if the property ownership changes.

A. Title Notification.

The owner of any site where a habitat assessment or habitat management plan has been prepared for a development proposal shall record a notice with the Pierce County Auditor in the form set forth below:

Form of Notice:

FISH AND WILDLIFE HABITAT AREA NOTICE

*Parcel Number:*_____

*Address:*_____

Legal Description: _____

*Present Owner:*_____

Notice: This site lies within/ contains a critical fish and wildlife habitat area as defined by Chapter 14A.154 of the Lakewood Municipal Code. The site was the subject of a development proposal for _____
application number _____
*filed on*_____ *(date).*
Restrictions on use or alteration of the site may exist due to natural conditions of the site and resulting regulation. Review of such application has provided information on the location of the fish and wildlife habitat area and any restriction on use.

_____
Signature of Owner(s)

_____
Date

(NOTARY ACKNOWLEDGMENT)

B. Plat Notification.

For all proposed short subdivision and subdivision proposals within critical fish and wildlife habitat areas, the applicant shall include a note on the face of the plat. ~~The note shall be as set forth below:~~

Section 4: Section 14A.154.050 LMC entitled "Habitat Protection for Rivers and Streams" is amended to read as follows:

Regulated activities proposed along rivers and streams shall provide for habitat protection.

A. Habitat Protection for Rivers and Streams Shall be Provided Through Buffers.

1. The buffer, consisting of undisturbed natural vegetation, shall be required along all streams, as classified by the DNR water typing classification system (WAC 222-16-030). The buffer shall extend landward from the ordinary high water mark of the water body.

   a. Outside of the buffer removal of native vegetation shall not exceed 35 percent of the surface area of the portion of the site in the Regulatory Floodplain. Native vegetation within the buffer portion of the property can be counted toward this requirement.

2. The buffer of a river or stream shall not extend landward beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent

structure which reduces the impact proposed activities would have on the river or stream.

3. Buffer widths shall be as established by the City of Lakewood Shoreline Master Program (SMP) as contained in Chapter 4, Section C of the SMP.

4. If a proposed project does not meet the criteria established in LMC 18A.40.180.A. and B. a habitat impact assessment shall be conducted in accordance with Section 14A.154.050.C, and if necessary, a habitat mitigation plan shall be prepared and implemented in accordance with the provisions of this chapter.

~~B. Critical Fishery Rivers and Streams Requiring Buffers. The following river and stream (segments) have been identified by the various Indian tribes, particularly the Puyallup Tribe, as being critical to anadramous fish and, therefore, requiring a larger buffer protection. Critical fishery rivers and streams include:~~

~~Stream Name~~	~~WRIA#~~	~~Buffer Width In Feet~~	~~Tribe Identifying~~
~~Chambers Creek~~	~~12.0007~~	~~150~~	~~Puyallup~~
~~Clover Creek~~	~~12.0007~~	~~50~~	

~~C~~ B. ~~Other Rivers and Streams Requiring Buffers. For rivers and streams other than Chambers and Clover Creek, a habitat protection buffer shall be provided as outlined in LMC Section 18A.40.230 (Riparian Overlay Zone), or 35 feet, whichever is greater.~~ Habitat Impact Assessment.

Unless allowed under Sec. 18A.40.180, a permit application to develop in the Regulatory Floodplain shall include an assessment of the impact of the project on water quality and aquatic and riparian habitat. The assessment shall be:

1. A biological evaluation or biological assessment that has received concurrence from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act; or

2. Documentation that the activity fits within a habitat conservation plan approved pursuant to Section 10 of the Endangered Species Act; or

3. Documentation that the activity fits within Section 4(d) of the Endangered Species Act; or

4. An assessment prepared in accordance with the most current Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA (Federal Emergency Management Agency) Region X. The assessment shall determine if the project would adversely affect:

a. The primary constituent elements identified when a species is listed as threatened or endangered,
b. Essential fish habitat designated by the National Marine Fisheries Service,
c. Fish and wildlife habitat conservation areas,
d. Vegetation communities and habitat structures,
e. Water quality,
f. Water quantity, including flood and low flow depths, volumes and velocities,
g. The channel's natural planform pattern and migration processes,
h. Spawning substrate, if applicable, and/or,
i. Floodplain refugia, if applicable.

C. Habitat Mitigation Plan

1. If the assessment conducted under Sec. 14A.154.050.C concludes the proposed project is expected to have an adverse effect on water quality and/or aquatic or riparian habitat or habitat functions, the applicant shall provide a plan to mitigate those impacts, in accordance with the current Regional Guidance for Floodplain Habitat Assessment and Mitigation, FEMA (Federal Emergency Management Agency) Region X.

a. If the proposed project is located outside of the protected area, the mitigation plan shall include such avoidance, minimization, restoration, or compensation measures as are appropriate for the situation.

b. If the proposed project is located within the protected area, the mitigation plan shall include such appropriate measures as are needed to ensure that there is no adverse effect due to the project. Minimization measures are not allowed in the protected area, unless they, in combination with other measures result in no adverse effect. No compensatory mitigation is allowed in the Protected Area.

2. The plan's habitat mitigation activities shall be incorporated into the proposed project. The floodplain development permit shall be based on the redesigned project and its mitigation components.

3. A certificate of occupancy or final inspection approval for a project shall not be issued until all work identified in the biological evaluation, biological assessment, or mitigation plan has been completed or the applicant has provided the necessary assurances that unfinished portions of the project will be completed.

D. Compensatory Storage

New development shall not reduce the effective flood storage volume of the Regulatory Floodplain. A development proposal shall provide compensatory storage if grading or other activity displaces any effective flood storage volume. Compensatory storage shall:

1. Provide equivalent volume at equivalent elevations to that being displaced. For this purpose, "equivalent elevation" means having similar relationship to ordinary high water and to the best available 10-year, 50-year and 100-year water surface profiles;

2. Be hydraulically connected to the source of the flooding; and

3. Provide compensatory storage in the same construction season as when the displacement of flood storage volume occurs and before flood season begins.

4. The newly created storage area shall be graded and vegetated to allow fish access during flood events without creating fish stranding sites.

Section 5: Section 14A.158.020 LMC entitled "Designation" is amended to read as follows:

All Areas of Special Flood Hazard shall be as identified in the scientific and engineering report entitled "The Flood Insurance Study for Pierce County," dated August 19, 1987, or as amended, with accompanying Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency (FEMA). A copy of which shall be maintained with the City Clerk

Section 6: Section 14A.162.020 LMC entitled "Designation of Wetland Areas" is amended to read as follows:

~~The City will require the use of the following documents to determine the presence or absence of potential wetlands:~~

~~a. Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Corps of Engineers Wetlands Delineation Manual, 1987 Edition and corresponding guidance letters; and~~
~~b. Washington State Wetlands Identification and Delineation Manual, March 1997 Edition (DOE Publication 96-94).~~

Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the City meeting the wetland designation criteria in that procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

Section 7: Section 14A.162.030 LMC entitled "Wetland Categories" is amended to read as follows:

In order to provide information on the functions and values of wetlands in a time- and cost-effective way, wetland analysis reports shall categorize wetlands by their attributes and characteristics. Wetlands shall be rated using the latest adopted version of the *Washington State Wetland Rating System for Western Washington* published by the Washington State Department of Ecology. ("State Wetland Rating System").

The State Wetland Rating System provides the detailed criteria for establishing wetland categories. Wetlands are generally designated as follows:

Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. Generally, these wetlands are not common and make up a small percentage of the wetlands in the region. The following are considered Category I wetlands:

- Bogs
- Mature and Old-growth Forested Wetlands
- Wetlands That Perform Many Functions Very Well- Wetlands scoring ~~70~~ 23-27 points ~~or more (out of 100)~~ using the *Washington State Wetland Rating System for Western Washington*, Ecology Publication ~~# 04-06-025~~ #14-06-029.

Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands in western Washington include ~~?~~Wetlands That Perform Functions Well~~?-~~ Wetlands scoring between ~~51-69~~ 20-22 points ~~(out of 100)~~ using the *Washington State Wetland Rating System for Western Washington*. Wetlands scoring ~~51-69~~ 20-22 points were judged to perform most functions relatively well, or performed one group of functions very well and the other two moderately well.

Category III wetlands are wetlands with a moderate level of functions (scores between ~~30 -50~~ 16-19 points) using the *Washington State Wetland Rating System for Western Washington.* Category III wetlands usually have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

Category IV wetlands have the lowest levels of functions (scores ~~less than 30~~ between 9-15 points) and are often heavily disturbed. These are wetlands that we should be able to replace, and in some cases be able to improve. These wetlands may provide some important functions.

Section 8: Section 14A.162.080 LMC entitled "Protection Standards - Establishing Buffers" is amended to read as follows:

A. ~~Buffer widths shall be determined according to the following table:~~

~~Wetland Category~~	~~Buffer Width~~
~~I~~	~~200 feet~~

~~II 100 feet~~
~~III 75 feet~~
~~IV 50 feet~~

Buffer Requirements**.** The buffer widths in Table 14.1 have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington state wetland rating system for western Washington.

1. The use of the buffer widths in Table 14.1 requires the implementation of the measures in Table 14.2, where applicable, to minimize the impacts of the adjacent land uses.

2. If an applicant chooses not to apply the mitigation measures in Table 14.2, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.

3. The buffer widths in Table 14.1 assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community, or the buffer should be widened to ensure that adequate functions of the buffer are provided.

4. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

Table 14.1 Wetland Buffer Requirements

	Buffer width (in feet) based on habitat score			
Wetland Category	**3-4**	**5**	**6-7**	**8-9**
Category I: Based on total score	75	105	165	225
Category I: Bogs and Wetlands of High Conservation Value	190			225
Category I: Coastal Lagoons	150		165	225

Category I: Interdunal				225 ft
Category I: Forested	75	105	165	225
Category I: Estuarine	150 (buffer width not based on habitat scores)			
Category II: Based on score	75	105	165	225
Category II: Interdunal Wetlands	110		165	225
Category II: Estuarine	110 (buffer width not based on habitat scores)			
Category III (all)	60	105	165	225
Category IV (all)	40			

Table 14.2 Required measures to minimize impacts to wetlands

(Measures are required if applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management

Disturbance	Required Measures to Minimize Impacts
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Intensity Development techniques (for more information refer to the drainage ordinance and manual)
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust
Disruption of corridors or connections	• Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

B. Buffer widths may be modified by averaging, reducing, or increasing.

1. Buffer width averaging may be allowed only where the applicant demonstrates the following:

a. Buffer encroachment is unavoidable.

b. A habitat assessment has been submitted which demonstrates that the site does not provide habitat for any endangered, threatened, or sensitive fish or animal species; or,

c. For wetlands and/or required buffers associated with documented habitat for endangered, threatened, or sensitive fish, or wildlife species, a habitat assessment report has been submitted that demonstrates that the buffer modification will not result in an adverse impact to the species of study.

d. The wetland contains variations in sensitivity due to existing physical characteristics; and

e. Width averaging will not adversely impact the wetland or critical fish and wildlife habitat; and

f. The total buffer area after averaging is no less than the buffer area prior to averaging; and

g. The minimum buffer width will not be less than ~~twenty-five~~ seventy-five percent of the widths established in 14A.162.080.A above.

h. The averaging is accomplished within the project boundaries.

i. Buffer width averaging shall only be permitted where it is shown that there is no feasible alternatives to the site design that could be accomplished without buffer averaging.

2. Buffer width reduction may be allowed only where the applicant demonstrates the following circumstances. Such reduction shall not result in greater than a ~~thirty-five~~ twenty-five percent (~~3~~ 25%) reduction in the buffer width established in 14A.162.080.A. and shall result in a buffer no less than 30 feet in any case.

a. The proposed buffer area is extensively vegetated and has less than fifteen percent slopes, and the reduction will not result in adverse impacts to the wetland; or

b. The project includes a buffer enhancement plan, as part of the mitigation required by Section 14A.162.100. The buffer enhancement plan shall use plant species which are indigenous to the project area, and shall substantiate that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetland functional values; or

c. The acreage included in the buffer would substantially exceed the size of the wetland and the reduction will not result in adverse impacts to the wetland or the project includes a buffer enhancement plan which ensures that the reduction will not result in adverse impacts to the wetland.

3. The Department may require increased buffer width when a larger buffer is necessary to protect wetland functions and values based on local conditions. This determination shall be reasonably related to protection of the functions and values of the regulated wetland. Such determination shall demonstrate that:

a. A larger buffer is necessary to maintain viable populations of existing species; or

b. The wetland is used by species listed by the federal government or the state as endangered, threatened, sensitive or as documented priority species or habitats, or essential or outstanding potential sites such as heron rookeries or raptor nesting areas; or

c. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

d. The adjacent land has minimal vegetative cover or slopes greater than fifteen percent.

C. Buffers shall be measured perpendicular from the wetland edge.

D. When buffer boundaries have been determined, they shall be marked in the field by a licensed surveyor. The markers shall be clearly visible, durable, and permanently affixed to the ground.

E. A building setback line of eight (8) feet shall be required from the edge of a buffer.

F. Except as otherwise specified, buffers shall be retained in a natural condition.

G. A wetland buffer shall not be required to extend beyond an existing substantial improvement such as an improved road, dike, levee, or a permanent structure, where the existing improvement obviates the beneficial impact that the buffer would provide for the wetland.

Section 9: Section 14A.162.090 LMC entitled "Protection Standards ~~as~~ for Allowing Regulated Activities in Wetlands and Buffers" is amended to read as follows:

A. Regulated activities in Category III and IV wetlands and/or buffers for Category III and IV wetlands may be allowed when the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100;

B. The placement of access roads, utility lines, and utility poles may be allowed in buffers for Category II wetlands if the following conditions are met:

1. There is no feasible alternative location for an access road and/or utilities to the site; and

2. The applicant demonstrates that all adverse impacts to wetlands will be mitigated according to a mitigation plan which complies with ~~Appendix C~~ 14A.162.100.

C. The following activities may be allowed in a buffer without a complete mitigation plan if the applicant demonstrates to the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100. In cases that require environmental review, a threshold environmental determination may not be made until the Department is satisfied that adequate mitigation will occur. The allowed activities are as follows:

1. One well and necessary appurtenances, including a pump and appropriately sized pump house, but not including a water storage tank (unless the water storage tank

can be contained within the pump house), may be allowed on each site in a buffer if all the following conditions are met:

a. The pump house is a one story building with a ground area of less than 220 square feet; and

b. The well is more than 75 feet deep; and

c. For Category I and II wetlands, the minimum distance from the well and appurtenances to the wetland edge is no less than fifty percent of the buffer widths established in the table in Section 14.162.070 A.; and

d. Access to the well and pump house shall be by a pervious trail for pedestrian traffic only, or, if necessary, by an unimproved access for a maintenance vehicle.

2. Pervious walkways and trails and associated viewing platforms, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. Raised boardwalks utilizing non-treated pilings may be acceptable. I~~i~~n the case of Category I wetlands the minimum distance from the wetland edge is no less than fifty percent of the buffer width established in the table in Section 14.162.070 A.

3. The placement of utility lines which do not require excavation, or utility poles, in any part of a buffer for a Category II, III, or IV wetland. They may be placed in a buffer for a Category I wetland, provided that the minimum distance from the wetland edge is no less than fifty percent of the Category I buffer width established in the table in Section 14.162.070 A.

4. Activities within that area of a buffer in which a direct line to the wetland is obstructed by an existing substantial improvement such as an improved road or a permanent structure, the presence of which significantly reduces the likely impact of the proposed activity on the wetland.

A zoning certification, building permit, and/or site development permit shall not be issued for these regulated activities until the applicant demonstrates to the satisfaction of the Department that all adverse impacts to wetlands will be mitigated according to Section 14A.162.100.

D. Reasonable Use Exception- Category I and II Wetlands: Regulated activities in Category I and II wetlands and/or buffers for Category I and II wetlands may be allowed only if, following a public hearing, the Hearing Examiner determines that a reasonable use

exception is warranted pursuant to LMC Section 14A.142.080, and the following criteria are met:

1. No reasonable use with less impact on the wetland is possible; and

2. There is no feasible on-site alternative to the proposed activities, including phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning and density considerations, that would allow a reasonable economic use with less adverse impacts to wetlands; and

3. The proposed activities will result in minimum feasible alteration or impairment to the wetland's functional characteristics and existing contours, vegetation, fish and wildlife resources, and hydrological conditions; and

4. The disturbance of wetlands has been minimized by locating any necessary activities outside the wetland to the extent possible; and

5. The proposed activities will not jeopardize the continued existence of species listed by the federal government or the state as endangered, threatened, sensitive, or documented priority species or priority habitats; and

6. The proposed activities will not cause significant degradation of groundwater or surface water quality; and

7. The proposed activities comply with all state, local and federal laws, including, but not limited to, those related to sediment control, pollution control, floodplain restrictions, and on-site wastewater disposal; and

8. Any and all regulated activities in wetlands and buffers will be mitigated according to Section 14A.162.100. The Examiner may require the preparation of a formal mitigation plan; and

9. There will be no damage to nearby public or private property and no threat to the health or safety of people on or off the property; and

10. The inability to derive reasonable economic use of the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of this Chapter.

E. Reasonable Use Provision, Categories III and IV Wetlands: If an applicant for a regulated activity on a Category III or IV wetland and/or associated buffer cannot obtain permission through the procedures described in 14A.162.090 A. and 14A.162.090 C., the activity may be allowed if, following a public hearing, the Hearing Examiner determines the criteria of 14.162.090 D. are met.

Section 10: Section 14A.162.100 LMC entitled "Mitigation" is amended to read as follows:

A. All activities in wetlands and/or buffers shall be mitigated according to this Section. ~~Usually,~~ M~~m~~itigation sequencing is used to determine the type and extent of mitigation and is considered in order of preference, however there may be circumstances when an alternative mitigation strategy is preferable such as a mitigation bank, in-lieu fee program, or advance mitigation project that is implemented according to federal and state rules, state policy and state water quality regulations.

The order of preference for mitigation is:

1. Avoiding the impact altogether by not taking a certain action or parts of actions, and providing specified buffers and setbacks. Provision of specified buffers and setbacks is the expected method of mitigation unless an activity is listed as exempt, a reasonable use exception has been granted according to the provisions of this Chapter, or an appropriate alternative mitigation program has been approved through a formal mitigation plan.

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to reduce impacts;

3. The following types of mitigation (no order of preference):

   a. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

   b. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

   c. Compensating for the impact by replacing or providing substitute resources or environments~~., however compensatory mitigation shall not be required for reasonable use exceptions~~;

4. Monitoring the impact and compensation and taking appropriate corrective measures.

5. Mitigation for individual actions may include a combination of the above measures.

~~B. Regulated activities which occur in buffers or within Category III and IV wetlands shall be mitigated according to a mitigation plan approved by the Department. See Appendix D for specific requirements of this mitigation plan. Where environmental review is required, a threshold determination may not be made prior to Department review and approval of the mitigation plan.~~

~~C. Compensatory mitigation shall be required for filling wetlands and for other regulated activities in wetlands (except where the filling or other regulated activity has been found to be necessary to provide for reasonable use of a property through the reasonable use exception process). Compensatory mitigation programs shall meet the following minimum requirements:~~

~~1. A wetland specialist shall develop a compensatory mitigation plan that provides for construction, maintenance, and monitoring of any replacement wetlands;~~

~~2. The applicant and/or applicant's representatives shall demonstrate to the Department sufficient scientific expertise to carry out the compensation project;~~

~~3. The compensation area shall be provided with permanent protection and management to avoid further degradation and to provide for the long-term persistence of the compensation area as designed.~~

~~4. The compensatory mitigation plan shall be completed in two phases, a conceptual phase and a detailed phase.~~

~~a. Conceptual Phase. The applicant shall submit to the Department a conceptual mitigation plan for compensatory mitigation. Where environmental review is required, the Department shall not make a threshold determination prior to Department review of the conceptual mitigation plan. See Appendix E for specific requirements of the conceptual mitigation plan.~~

~~b. Detailed Phase. Following the Department's approval of the conceptual mitigation plan, the applicant shall submit a detailed mitigation plan for compensatory mitigation to the Department. See Appendix F for specific requirements of the detailed mitigation plan.~~

B. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with *Wetland Mitigation in Washington State–Part 2: Developing Mitigation Plans—Version 1*, (Ecology Publication #06-06-011b, Olympia, WA, March 2006, or as revised), and *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)* (Publication #09-06-32, Olympia, WA, December 2009).

1. Mitigation ratios shall be consistent with Paragraph 3 below.
2. Mitigation requirements may also be determined using the credit/debit tool described in *Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report* (Ecology Publication #10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection H of this Chapter.

3. Wetland Mitigation Ratios[1]:

Category and Type of Wetland	**Creation or Re-establishment**	**Rehabilitation**	**Enhancement**
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

[1] Ratios for rehabilitation and enhancement may be reduced when combined with 1:1 replacement through creation or re-establishment. See Table 1a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance –Version 1*, (Ecology Publication #06-06-011a, Olympia, WA, March 2006 or as revised).

~~5~~ 4. The detailed mitigation plan shall be signed by the wetland specialist to indicate that the plan is according to specifications determined by the wetland specialist. A signed original mitigation plan shall be submitted to the Department.

~~6~~ 5. Approval of the detailed mitigation plan shall be signified by a notarized memorandum of agreement signed by the applicant and Department Director or designate, and recorded with the County Auditor. The agreement shall refer to all requirements for the mitigation project.

~~7~~ 6. The mitigation project shall be completed according to a schedule agreed upon between the Department and the applicant.

~~8~~ 7. Wetland mitigation shall occur according to the approved wetland mitigation plan, and shall be consistent with provisions of this Chapter.

~~9~~ 8. On completion of construction for the wetland mitigation project, the wetland specialist shall notify the Department. The Department will inspect and review the construction project prior to acceptance.

Section 11: Section 14A.165.010 LMC entitled “Definitions” is amended to read as follows:

For the purpose of this Title, in addition to the definitions in Chapter 18A.90 LMC, the following definitions shall apply:

"Abutting" means bordering upon, to touch upon, in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

"Activity" means any use conducted on a site.

"Agricultural activities" means the production of crops and/or raising or keeping livestock, including operation and maintenance of farm and stock ponds, drainage ditches, irrigation systems, and normal operation, maintenance and repair of existing serviceable agricultural structures, facilities or improved areas, and the practice of aquaculture. Forest practices regulated under Chapter 76.09 RCW, Title 222 WAC are not included in this definition.

"Alluvial geologic unit" means geologically recent stream, lake, swamp and beach deposits of gravel, sand, silt and peat.

"Animal Containment Area" means a site where two or more animal units of large animals per acre or .75 of an animal unit of small animals per acre are kept, and where a high volume of waste material is deposited in quantities capable of impacting groundwater resources.

"Animal Unit" means the equivalent of 1000 pounds of animal.

"Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development on a site.

"Aquifer" means a saturated geologic formation which will yield a sufficient quantity of water to serve as a private or public water supply.

"Aquifer recharge area" means areas where the prevailing geologic conditions allow infiltration rates which create a high potential for contamination of groundwater resources or contribute significantly to the replenishment of groundwater with potential to be used for potable water. For the purposes of this Title, all of the area located within the Clover/Chambers Creek Basin boundary or the two highest DRASTIC zone boundaries is included in the aquifer recharge area.

“Aquifer Susceptibility” means the ease with which contaminants can move from the land surface to the aquifer based solely on the types of surface and subsurface materials in the area. Susceptibility usually defines the rate at which a contaminant will reach an aquifer unimpeded by chemical interactions with the vadose zone media.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the "100-year flood." The area subject to the base flood is the Special Flood Hazard Area designated on Flood Insurance Rate Maps as Zones “A” or “V”.

“Base Flood Elevation” means the elevation of the base flood above the datum of the effective firm.

“Basement” means any area of a structure having its floor sub-grade (below ground level) on all sides.

"Best management plan" means a plan developed for a property which specifies best management practices for the control of animal wastes, stormwater runoff, and erosion.

"Buffer" means an area contiguous with a critical area that is required for the integrity, maintenance, function, and structural stability of the critical area.

"Building footprint" means the horizontal area measured within the outside of the exterior walls of the ground floor of all principal and accessory buildings on a lot.

“Channel Migration Area” means that area within the lateral extent of likely stream channel movement due to stream bank destabilization and erosion, rapid stream incision, aggradation, avulsions, and shifts in location of stream channels plus 50 feet.

"Class" means one of the wetland classes used to categorize wetlands by their attributes and characteristics. Wetlands shall be rated using the latest adopted version of the Washington State Wetland Rating System for Western Washington published by the Washington State Department of Ecology.

“Class I Injection Well” means a well used to inject industrial, commercial, or municipal waste fluids beneath the lowermost formation containing, within 1/4 mile of the well bore, and underground source of drinking water.

“Class II Injection Well” means a well used to inject fluids:
Brought to the surface in connection with conventional oil or natural gas exploration or production and may be commingled with wastewater’s from gas plants that are an integral part of production operations, unless those waters are classified as dangerous wastes at the time of injection. For enhanced recovery of oil or natural gas; or for storage of hydrocarbons that are liquid at standard temperature and pressure.

“Class III Injection Well” means a well used for extraction of minerals, including but not limited to the injection of fluids for: In-situ production of uranium or other metals that have not been conventionally mined; Mining of sulfur by Frasch process; or Solution mining of salts or potash.

“Class IV Injection Wells” means a well used to inject dangerous or radioactive waste fluids.

“Class V Injection Wells” means all injection wells not included in Classes I, II, III, or IV.

"Classification" means defining value and hazard categories to which critical areas and natural resource lands will be assigned.

"Clearing" means the cutting, moving on site, or removal of standing or fallen timber; the removal or moving on site of stumps; or the cutting or removal of brush, grass, ground cover, or other vegetative matter from a site in a way which exposes the earth’s surface of the site. In addition to the above, clearing is an activity which does not require reforestation per an approved Forest Practices Application/notification issued by the Department of Natural Resources.

"Cliff" means a steep vertical or overhanging face of rock or earth greater than 25 feet in height.

"Compensatory mitigation" means mitigation to compensate for loss of wetland habitat due to filling of wetlands or other regulated activities in wetlands.

"Confined aquifer" means an aquifer bounded above and below by beds of
distinctly lower permeability than that of the aquifer itself and that contains ground water under sufficient pressure for the water to rise above the top of the aquifer.

"Confining Formation" means the relatively impermeable formation immediately overlying an artesian aquifer.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally or occurs at concentrations and duration as to be injurious to human health or welfare or shown to be ecologically damaging.

"Critical Aquifer Recharge Area" means areas that are determined to have a critical recharging effect on aquifers used as a source for potable water, and are vulnerable to contamination from recharge.

"Critical areas" means wetlands, flood hazard areas, fish and wildlife habitat areas, aquifer recharge areas, and geologically hazardous areas as defined in this chapter.

"Critical facilities" means those facilities occupied by populations or which handle dangerous substances including but not limited to hospitals, medical facilities; structures housing, supporting or containing toxic or explosive substances; covered public assembly structures; school buildings through secondary including day-care centers; buildings for colleges or adult education; jails and detention facilities; and all structures with occupancy of greater than 5,000 people.

"Degraded" means to have suffered a decrease in naturally occurring functions and values due to activities undertaken or managed by persons, on or off a site.

"Delineation" means identification of wetlands and their boundaries done in accordance with the approved federal wetland delineation manual and applicable regional supplements. ~~a wetland~~

~~study conducted in accordance with the most current Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1989 edition (Unified Federal Manual) and the most current Washington State Wetlands Identification and Delineation Manual, March 1997 Edition (DOE Publication 96-94)~~.

"Delineation report" means a written document prepared by a wetland specialist which includes data sheets, findings of the delineation and a site plan which identifies the wetland boundaries.

"Department" means the City of Lakewood Department of Community Development.

"Designation" means taking formal legislative and/or administrative action to adopt classifications, inventories, and regulations.

“Developed Lot” means any lot developed with a primary use and structure(s), not generally subject to further development with additional units or other primary uses.

"Development" means any human-induced change to improved or unimproved real property including, but not limited to, the construction of buildings or other structures, placement of manufactured home/mobile, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, ~~or the~~ subdivision of property, removal of substantial amounts of vegetation, or alteration of natural site characteristics.

"Director" means the Director of the Department of Community Development or his/her designee.

"DRASTIC" means a model developed by the National Water Well Association and Environmental Protection Agency used to measure aquifer susceptibility.

“Dry Floodproofing” means any combination of structural and non-structural measures that prevent flood waters from entering a str~~t~~ucture.

"Ecotone" means a transition area between two adjacent vegetation communities.

“Elevation Certificate” means the official form (FEMA form 81-31) used to provide elevation information necessary to ensure compliance with provisions of this ordinance and determine the proper flood insurance premium rate.

"Erosion" means the wearing away of the earth's surface as a result of the movement of wind, water, or ice.

"Erosion hazard areas" means those areas that because of natural characteristics, including vegetative cover, soil texture, slope, gradient, and rainfall patterns, or human-induced changes to such characteristics, are vulnerable to erosion.

"Earth/earth material" means naturally occurring rock, soil, stone, sediment, or combination thereof.

"Enhancement" means actions performed to improve the condition of existing degraded wetlands and/or buffers so that the quality of wetland functions increases (e.g., increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, removing non-indigenous plant or animal species, removing fill material or solid waste).

"Excavation" means the mechanical removal of earth material.

“Existing” means those uses legally established prior to incorporation whether conforming or nonconforming.

"Extirpation" means the elimination of a species from a portion of its original geographic range.

"Fill/fill material" means a deposit of earth material, placed by human or mechanical means.

"Filling" means the act of placing fill material on any surface, including temporary stockpiling of fill material.

"Fish and wildlife habitat areas" means those areas identified as being of critical importance to maintenance of fish, wildlife, and plant species, including: areas with which endangered, threatened, and sensitive species have a primary association; habitats and species of local importance; naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat; waters of the state; lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity, or private organization; state natural area preserves and natural resource conservation areas.

"Fisheries biologist" means a professional with a degree in fisheries, or certification by the American Fisheries Society, or with five years professional experience as a fisheries biologist.

"Flood or Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or

2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Floodfringe" means the area subject to inundation by the base flood, but outside the limits of the floodway, and which may provide needed temporary storage capacity for flood waters.

"Flood hazard areas" means areas of land located in floodplains which are subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like.

“Flood Insurance Rate Map (FIRM)” means the official map on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

"Floodplain" means the total area subject to inundation by the base flood, including the floodfringe and the floodway areas.

“Flood Protection Elevation” (FPE) means the elevation above the datum of the effective FIRM to which new and substantially improved structures must be protected from flood damage.

"Floodway" means the channel of a river, or other watercourse, and the land areas that must be reserved in order to convey and discharge the base flood without cumulatively increasing the water surface elevation by more than one foot, and those areas designated as deep and/or fast-flowing water.

“Geological assessment" means an assessment prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering or prepared by a professional geologist, hydrologist, or soils scientist, who has earned the related bachelor's degree from an accredited college or university, or equivalent educational training, and has a minimum of five (5) years experience assessing the relevant geologic hazard. A geological assessment must detail the surface and subsurface conditions of a site and delineate the areas of a property that might be subject to specified geologic hazards.

"Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, may pose a risk to the siting commercial, residential, or industrial development consistent with public health or safety concerns.

"Geotechnical report" means a report prepared by a professional engineer licensed by the State of Washington with expertise in geotechnical engineering, evaluating the site conditions and mitigating measures necessary to reduce the risks associated with development in geologically hazardous areas.

“Grading" means any excavating, filling, clearing, creating (or combination thereof) of impervious surfaces.

"Ground amplification" means an increase in the intensity of earthquake induced ground shaking which occurs at a site whereby thick deposits of unconsolidated soil or surficial geologic materials are present.

"Groundwater" means all water found beneath the ground surface, including slowly-moving subsurface water present in aquifers and recharge areas.

“Groundwater Management Area” means a specific geographic area or subarea designated pursuant to Chapter 173-100 WAC for which a ground water management program is required.

“Groundwater management program” means a comprehensive program designed to protect ground water quality, to assure ground water quantity, and to provide for efficient management of water resources while recognizing existing ground water rights and meeting future needs consistent with local and state objectives, policies and authorities within a designated ground water management area or subarea and developed pursuant to Chapter 173-100 WAC.

"Habitat assessment" means a report prepared by a professional wildlife biologist or fisheries biologist, which identifies the presence of fish and wildlife habitat conservation areas in the vicinity of the proposed development site.

"Habitat management plan" means a report prepared by a professional wildlife biologist or fisheries biologist, which discusses and evaluates the measures necessary to maintain fish and wildlife habitat conservation areas on a proposed development site.

"Habitat of local importance" means an area, range or habitat within which a species has a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. Examples include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These areas may also include habitats that are of limited availability or high vulnerability to alteration. The Lakewood City Council may designate specific Habitats of Local Importance by ordinance or resolution.

"Hazardous Substance(s)" means any liquid, solid, gas, or sludge, including any materials, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in Chapter 173-303-090 or 173-303-100 WAC.

"Hazardous Substance Processing or Handling" means the use, storage, manufacture, or other land use activity involving hazardous substances, but does not include individually packaged household consumer products or quantities of hazardous substances of less than five (5) gallons in volume per container. Hazardous substances shall not be disposed on-site unless in compliance with Dangerous Waste Regulations, Ch. 173-303 WAC, and any pertinent local ordinances, such as sewer discharge standards.

"Hazardous waste" means and includes all dangerous waste and extremely hazardous waste as designated pursuant to Chapter 70.105 RCW and Chapter 173-303 WAC.

1. "Dangerous waste" means any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

a. Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

b. Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

2. "Extremely hazardous waste" means any waste which:

c. Will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of humans or wildlife, and

d. Is disposed of at a disposal site in such quantities as would present an extreme hazard to humans or the environment.

"Hazardous Waste Treatment and Storage Facility" means a facility that treats and stores hazardous waste and is authorized pursuant to Ch. 70.105 RCW, Ch. 173-303 WAC. It includes all contiguous land and structures used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of hazardous waste. Treatment includes using physical, chemical, or biological processing of hazardous wastes to make such waste non-dangerous or less dangerous and safer for transport, amenable for energy or material resource recovery. Storage includes the holding of waste for a temporary period but not the accumulation of waste on the site of generation as long as the storage complies with applicable requirements of Ch. 173-303 WAC.

<u>“Historic Structure” means a structure that:</u>

<u>A. Is listed on the National Register of Historic Places, the Washington Heritage Register, or the Washington Heritage Barn Register, or</u>

<u>B. Has been certified to contribute to the historical significance of a registered historic district.</u>

"Hydrologically isolated wetland" means a wetland which:

1. Is not contiguous to any 100-year floodplain of a lake, river or stream; and
2. Has no contiguous surface hydrology, hydric soil or hydrophytic vegetation between the wetland and any other wetland or stream system.

"Hydrogeologic Assessment" means a report detailing the subsurface conditions of a site and which indicates the susceptibility and potential for contamination of groundwater supplies.

"Hydrologic soil groups" means soils grouped according to their runoff-producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups: A, with low runoff potential and a high rate of water transmission; B with moderate infiltration potential and rate of water transmission; C, with a slow infiltration

potential and rate of water transmission; and D, with a high runoff potential and very slow infiltration and water transmission rates.

“Hyporheic Zone” means a saturated layer of rock or sediment beneath and/or adjacent to a stream channel that contains some proportion of channel water or that has been altered by channel water infiltration.

"Impervious Surface" means natural or human-produced material on the ground that does not allow surface water to penetrate into the soil. Impervious surfaces may consist of buildings, parking areas, driveways, roads, sidewalks, and any other areas of concrete, asphalt, plastic, etc.

"Infiltration" means the downward entry of water into the immediate surface of soil.

"In-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics and functions and values are intended to replicate those destroyed or degraded by a regulated activity.

"Lakes" means impoundments of open water 20 acres or larger in size.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land and which is not a landspreading disposal facility.

"Landslide" means the abrupt downslope movement of soil, rocks, or other surface matter on a site. Landslides may include, but are not limited to, slumps, mudflows, earthflows, rockfalls, and snow avalanches.

"Landslide hazard areas" means areas which are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors.

"Large Animal" means an animal with an average weight of 100 pounds or more.

"Liquefaction" means a process by which a water-saturated granular (sandy) soil layer loses strength because of ground shaking commonly caused by an earthquake.

"Long-term commercial significance" means the growing capacity, productivity, and soil composition of land which makes it suitable for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of land.

"Minerals" means gravel, sand, and valuable metallic substances.

"Mineral resource lands" means lands primarily devoted to the extraction of minerals or which have known or potential long-term commercial significance for the extraction of minerals.

"Mitigation" means to avoid, minimize or compensate for adverse environmental impacts. "Mitigation" includes:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and taking appropriate corrective measures.

<u>"Natural Floodplain Functions" means the contribution that a floodplain makes to support habitat, including but not limited to providing flood storage and conveyance, reducing flood velocities, reducing sedimentation, filtering nutrients and impurities from runoff, processing organic wastes, moderating temperature fluctuations and providing breeding and feeding grounds for aquatic and riparian species.</u>

"Natural resource lands" means mineral resource lands which have long-term commercial significance.

<u>"New Construction" for flood hazard purposes refers to structures for which the "start of construction" commenced on or after the effective date of this ordinance.</u>

"Oregon White Oak" means the species Quercus Garryana, also known as a Garry Oak. All references to Oak trees in this Chapter refer to Oregon White Oak. See also "Priority Oregon White Oak Woodland."

"Old growth forests" means stands of at least 2 tree species, forming a multi-layered canopy with occasional small openings; with at least 20 trees/ha (8 trees/acre) > 81 cm (32 in) dbh or > 200 years of age; and > 10 snags/ha (4 snags/acre) over 51 cm (20 in) diameter and 4.6 m (15 ft) tall; with numerous downed logs, including 10 logs/ha (4 logs/acre) > 61 cm (24 in) diameter and > 15 m (50 ft) long. High elevation stands (> 762m [2500ft]) may have lesser dbh [> 76 cm (30 in)], fewer snags [> 0.6/ha (1.5/acre)], and fewer large downed logs [0.8 logs/ha (2 logs/acre) that are > 61 cm (24 in) diameter and > 15 m (50 ft) long

"Ordinary high water" means that mark on all lakes, streams, ponds, and tidal water that will be found by examining the bed and banks and ascertaining where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on the effective date of this Chapter or as it may naturally change thereafter. Provided,

that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the mean high water.

"Out-of-kind mitigation" means to replace wetlands with substitute wetlands whose characteristics do not approximate those destroyed or degraded by a regulated activity.

"Perched ground water" means ground water in a saturated zone is separated from the main body of ground water by unsaturated rock.

"Permanent erosion control" means continuous on-site and off-site control measures that are needed to control conveyance and/or deposition of earth, turbidity or pollutants after development, construction, or restoration.

"Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer and is independent of the force causing movement.

"Permeable Surfaces" mean sand, gravel, and other penetrable deposits on the ground which permit movement of groundwater through the pore spaces, and which permit the movement of fluid to the groundwater.

"Person" means an individual, firm, company, partnership, association, corporation, or other legal entity.

"Ponds" means naturally occurring impoundments of open water less than 20 acres in size and larger than 2,500 square feet which maintain standing water throughout the year.

“Potable water" means water that is safe and palatable for human use.

"Prairies" means open areas predominated by native, drought-resistant, grasses, forbs (flowering non-woody plants) and herbs. In Pierce County, prairies are an unusual vegetation regime found in areas of extremely well-drained soils.

“Priority Oregon White Oak Woodland” means forested areas of pure oak, or of oak/conifer associations 1 acre or larger, and all oak trees located within, where oak canopy coverage of the area is at least 25%. Stands of oaks less than 1 acre in size may also be considered priority habitat when found to be particularly valuable to fish and wildlife (i.e.; they contain many cavities, have a large diameter at breast height (dbh), are used by priority species, or have a large canopy).

"Private organization" means a nonprofit corporation organized pursuant to RCW 24.03, which includes the planting of game fish among its purposes for organizing as a nonprofit corporation.

<u>“Protected Area” means the lands that lie within the boundaries of the floodway, the riparian habitat zone and the channel migration area. Because of the impact that development can have on flood heights and velocities and habitat, special rules apply in the Protected Area.</u>

"Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

"Qualified ground water scientist" means a hydrogeologist, geologist, engineer, or other scientist who meets all the following criteria:

A. Has received a baccalaureate or post-graduate degree in the natural sciences or engineering; and
B. Has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, profession certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water vulnerability.

"Recharge" means the process involved in the absorption and addition of water to ground water.

"Regolith" means any body of loose, noncemented particles overlying and usually covering the bedrock.

"Restoration" means the re-establishment of a ecological and/or habitat resources and features from a previously disturbed or degraded critical area site.

“Regulated activities" include, but are not limited to, any activities which are directly undertaken or originate in a regulated critical area or resource land or their buffer that require any of the following entitlements from the City: building permit, commercial or residential; binding site plan; boundary line adjustment; conditional use permit; franchise right-of-way construction permit; site development permit; master plan development; right-of-way permit; shoreline conditional use permit; shoreline environmental redesignation; shoreline substantial development permit; shoreline variance; large lot subdivision, short subdivision; special use permit; subdivision; unclassified use permit; utility and other use permit; variance; zone reclassification; or any subsequently adopted permit or required approval not expressly exempted by this Chapter. Regulated activities also include those specific activities listed in Section 14A.142.060.

<u>“Regulatory Floodplain” means the area of the Special Flood Hazard Area and all Protected Areas within the jurisdiction of the City of Lakewood.</u>

"Recessional outwash geologic unit" means sand and gravel materials deposited by melt-water streams from receding glaciers.

<u>“Riparian” means of, adjacent to, or living on, the bank of a river, lake, pond, ocean, sound, or other water body.</u>

"Seismic hazard areas" means areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement, or soil liquefaction.

"Short subdivision" or "short plat" means the division or redivision of land into four or fewer lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

"Site" means a lot, parcel, tract, or combination of lots, parcels, or tracts where a development is proposed.

"Slope" means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance.

"Slump" means the downward and outward movement of a mass of bedrock or regolith along a distinct surface of failure.

"Snag-rich areas" means forested areas which contain concentrations of standing dead trees, averaging ten snags or greater per acre, and averaging greater than 15 inches in diameter at breast height.

"Soil Survey" means the most recent National Cooperative Soil Survey for the local area or county by the Soil Conservation Service, United States Department of Agriculture.

"Sole Source Aquifer" means an area designated by the U.S. Environmental Protection Agency under the Safe Drinking Water Act of 1974, Section 1424(e). The aquifer(s) must supply 50% or more of the drinking water for an area without a sufficient replacement available.

<u>“Special Flood Hazard Area (SFHA)” means the land subject to inundation by the base flood. Special Flood Hazard Areas are designated on Flood Insurance Rate Maps with the letters “A” or “V”, including AE, AO, AH, A1-99, and VE. The Special Flood Hazard Area is also referred to as the area of special flood hazard or SFHA.</u>

"Species of local importance" means species that are of local concern due to their population status or their sensitivity to habitat manipulation.

<u>“Start of Construction” for flood hazard purposes includes substantial improvements, and means the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement that occurred before the permit’s expiration date. The actual start is either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation.</u>

<u>Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the excavation for a basement, footing, piers, or foundations or the erection of temporary forms; not does it include the installation on property of accessory structures not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.</u>

"Stockpiling" means the placement of material with the intent to remove it at a later time.

"Subdivision" or "formal subdivision" means the division or redivision of land into five (5) or more lots, tracts, parcels, sites, or division for the purpose of sale, lease, or transfer of ownership.

“Substantial Damage” for flood hazard purposes means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

"Substrate" means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of a wetland.

"Temporary erosion control" means on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.

"Toe of slope" means a distinct topographic break in slope at the lower-most limit of the landslide or erosion hazard area.

"Top of slope" means a distinct topographic break in slope at the uppermost limit of the landslide or erosion hazard area.

"TPCHD" means the Tacoma-Pierce County Health Department.

"Underground Tank" means any one or a combination of tanks (including underground pipes connected thereto) which are used to contain or dispense an accumulation of hazardous substances or hazardous wastes, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground.

"Unconfined aquifer" means an aquifer not bounded above by a bed of distinctly lower permeability than that of the aquifer itself and containing ground water under pressure approximately equal to that of the atmosphere. This term is synonymous with the term "water table aquifer".

"Utility line" means pipe, conduit, cable or other similar facility by which services are conveyed to the public or individual recipients. Such services shall include, but are not limited to, water supply, electric power, gas, communications and sanitary sewers.

“Vadose Zone” is the distance between the land surface and the uppermost aquifer. This distance is also defined as the “depth to water” zone or unsaturated zone.

"View corridor" means an area which affords views of lakes, mountains, or other scenic amenities normally enjoyed by residential property owners.

“Water Typing” means a system for classifying water bodies according to their size and fish habitat characteristics. The Washington Department of Natural Resources” Forest Practices Water Typing classification system defines four water types:

A. Type “S” = Shoreline: Streams that are designated “shorelines of the State,” including marine shorelines.

B. Type “F” = Fish: Streams that are known to be used by fish or meet the physical criteria to be potentially used by fish.

C. Type “Np” = Non-Fish Perennial streams.

D. Type “Ns” = Non-Fish Seasonal Streams.

“Wellhead Protection Area” means the surface and subsurface area surrounding a well or well field that supplies a public water systems through which contaminants are likely to pass and eventually reach the water well(s) as designated under the Federal Clean Water Act.

"Water table" means that surface in an unconfined aquifer at which the pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the aquifer just far enough to hold standing water.

"Well" means a bored, drilled or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

"Urban governmental services" include those governmental services historically and typically delivered by cities, and includes storm and sanitary sewer systems, domestic water systems, street cleaning services, and other public utilities associated with urban areas and normally not associated with non-urban areas.

"Urban growth" refers to growth that makes intensive use of the land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources. When allowed to spread over wide areas, urban growth typically requires urban governmental services. `Characterized by urban growth' refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

"Wetland" or "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands generally do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However,

wetlands may include those artificial wetlands intentionally created from non-wetland areas created to mitigate conversion of wetlands~~, if permitted by the City~~.

"Wetland specialist" means a person with experience and training in wetlands issues, and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include:

1. Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife, agriculture or related field, and two years of related work experience, including a minimum of one year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of related work experience; or,

2. Four years of related work experience and training, with a minimum of two years experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans.

The person should be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, The City Site Development Regulations, The City Wetland Management Policies, and the requirements of this Chapter.

"Wildlife biologist" means a professional with a degree in wildlife, or certification by The Wildlife Society, or with five years professional experience as a wildlife biologist.

Section 12: Section 18A.40.110 LMC entitled "Purpose – Floor Hazard Overlay" is amended to read as follows:

The Flood Hazard overlay (FHO) is intended to identify and recognize those areas of the city subject to the hazards of periodic flooding and to establish special standards and regulations to guide development and reduce personal injury, property damage and loss of life from flooding in those areas. This overlay shall apply to all areas of special flood hazards within the incorporated areas of the City of Lakewood as identified on Flood Insurance Rate Maps, Flood Boundary Maps, and Floodway Maps. In advancing these principles and the general purposes of the comprehensive plan, the specific objectives are to:

A. Promote the general health, welfare and safety of the city's residents, and protect human life, and property from the dangers of flooding.

B. Prevent the establishment of certain structures and land uses unsuitable for human habitation because of the danger of flooding, unsanitary conditions or other hazards.

C. Minimize the need for rescue and relief efforts associated with flooding.

D. Help maintain a stable tax base by providing for sound use and development in flood-prone areas and to minimize prolonged business interruptions, and future flood blight areas.

E. Minimize damage to public facilities and utilities located in flood hazard areas.

F. Ensure that potential home and business buyers are notified that property is in a flood area.

G. Minimize expenditure of public money for costly flood relief, damage repair and flood control projects.

H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

I. Qualify the City of Lakewood for participation in the National Flood Insurance Program, thereby giving citizens and businesses the opportunity to purchase flood insurance.

J. Maintain the quality of water in rivers, streams, and lakes and their floodplains so as to protect public water supplies, areas of the Public Trust, and wildlife habitat protected by the Federal Endangered Species Act.

K. Retain the natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and endangered species.

L. Prevent or minimize loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels.

Section 13: Section 18A.40.120 LMC entitled "Applicablity – Flood Hazard Overlay" is amended to read as follows:

A. Establishment of Flood Zones. This section shall apply to t~~T~~he areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in a scientific engineering report entitled "The Flood Insurance Study for the Unincorporated Areas of Pierce County, WA, Vols. 1 and 2," dated August 19, 1987, as amended with an accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary Maps, and any revisions thereto, and all Protected Areas within the City are hereby adopted by reference and declared to be a part of this section. The Flood Insurance Study shall be kept on file by the City Engineer. The best available information for flood hazard area identification, as outlined in this section, shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized in administration of this section.

B. Noncompliance. No structure or land shall hereafter be developed, converted, altered, constructed, or located without full compliance with the terms of this section and other applicable regulations. Violations of the provisions of this section are subject to the penalties identified in this title.

C. Abrogation and Greater Restrictions. This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and other code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

D. Interpretation of FIRM Boundaries. The Community Development Director shall make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards. In the interpretation and application of this section, all provisions shall be:

1. Considered to constitute minimum requirements.
2. Liberally construed in favor of the public trust.
3. Deemed neither to limit nor repeal any other powers granted under state statutes. A party contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretations as provided in this code.

E. Disclaimer of Liability. The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the City of Lakewood, or any officer or employee thereof, or FEMA for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

Section 14: Section 18A.40.130 LMC entitled "Administration – Flood Hazard Overlay" is amended to read as follows:

A. Establishment of Building Permit and Land-Use Permit. A building permit and zoning certification shall be required in conformance with the provisions of this section for all structures including manufactured homes and all other development including fill and other activities. ~~Application for a building, land-use, or grading permit shall be made to the City on forms prescribed by the City, which shall specifically include the following information:~~

A certificate of occupancy or final inspection approval for a new or substantially improved structure or an addition shall not be issued until:

1. The applicant provides a completed, signed and sealed Elevation or Floodproofing Certificate showing finished construction data in accordance with this ordinance.
2. If a mitigation plan is required, all work identified in the plan has been completed according to the plan's schedule.
3. The applicant provides copies of all required Federal, State and local permits as noted in the application.
4. All provisions of this ordinance have been met.

~~1. Elevation in relation to mean sea level, of the lowest floor, including basement, of all structures.~~
~~2. Elevation in relation to mean sea level to which any non-residential structure that has been floodproofed.~~
~~3. Certification by a registered professional engineer or architect that any non-residential floodproofed structure meets the floodproofing criteria in LMC 18A.40.170.B.2,~~

~~Provisions for Flood Hazard Reduction, Specific Standards.~~
~~4. Description of the extent to which any water course will be altred or relocated as a result of proposed development.~~

B. A floodplain development permit shall be obtained before any construction or development begins within the Regulatory Floodplain. Application for a floodplain development permit shall be made on forms prescribed by the City and shall include:

1. A site plan, drawn to scale, showing:

a. The nature, location, dimensions and elevations of the property in question.
b. Names and location of all lakes, water bodies, water ways and drainage facilities within 300 feet of the site.
c. The elevations of the 10, 50, 100 and 500 year floods, where the data are available.
d. The boundaries of the Regulatory Floodplain, SFHA, floodway, riparian habitat zone, and channel migration area delineated in accordance with the provisions of this ordinance.
e. The proposed drainage system including, but not limited to, storm sewers, overland flow paths, detention facilities and roads.
f. Existing and proposed structures, fill, pavement and other impervious surfaces, and sites for storage of materials.
g. All wetlands.
h. Designated fish and wildlife habitat conservation areas.
i. Existing vegetation and proposed vegetation.
j. Description of the extent to which any water course will be altered or relocated as a result of proposed development.

2. If the proposed project involves regrading, excavation or filling, the site plan shall include proposed post-development terrain at one foot contour intervals.

3. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged structure that will be elevated, the application shall include the flood protection elevation (FPE) for the building and site and the proposed elevations of the following:

a. The top of bottom floor (including basement, crawlspace or enclosure floor)
b. The top of the next higher floor.
c. The top of the slab of an attached garage.
d. The lowest elevation of machinery or equipment servicing the structure.
e. The lowest adjacent (finished) grade next to the structure.
f. The highest adjacent (finished) grade next to structure.
g. The lowest adjacent grade at the lowest elevation of a deck or stairs, including structural support.

4. If the proposed project includes dry floodproofing of a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure, the application shall include the flood protection elevation (FPE) for the building site. The elevation shall be noted in relation to the datum of the effective FIRM and the applicant shall provide certification by a registered professional engineer or licensed architect that the dry floodproofing methods meet the criteria in accordance with this ordinance.

5. If there has been no start of construction, a floodplain development permit shall expire one year after the date of issuance. Where the applicant documents a need for an extension beyond this period due to circumstances beyond the applicant's control, the Community Development Director may authorize one or more extensions.

~~B~~C. Administrative Officials. The Community Development Director, the City Engineer and the Building Official shall jointly administer and implement this section by granting or denying permit applications in accordance with its provisions.

~~C~~D. Duties and Responsibilities. The duties of the administrative officials shall include, but not be limited to the following:

1. Review all permit and land-use applications to determine that the requirements of this section have been satisfied.

2. Review all applications to insure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

3. Review all applications in the area of special flood hazard to determine if the proposed development adversely affects the flood-carrying capacity of the area.

4. Review all applications to determine if the proposed development is located in the ~~floodway~~ special flood hazard area or protected area ~~If located in the floodway, assure that the encroachment provisions herein are met.~~ and ensure that the provisions of this ordinance are met.

~~D~~E. Use of Other Base Flood Data. When base flood elevation data has not been established, the City shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other development in Zone A comply with LMC 18A.40.170.B.1, Residential Construction, LMC 18A.40.170.B.2, Non-Residential Construction, and LMC 18A.40.170.B.3, Manufactured Homes.

~~E~~F. Information to be Obtained and Maintained.

1. Where base flood elevation data is provided by FEMA or required by this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor,

including basement, of all new or substantially improved structures and whether or not the structure contains a basement.

2. For all new or substantially improved flood-proofed structures:

a. Verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed; and
b. Maintain the flood-proofing certifications required in LMC 18A.40.170, Provisions For Flood Hazard Reduction.

3. Maintain for public inspection all records pertaining to the provisions of this section.

4. The Floodplain Administrator shall submit reports to include the projects for which they issue floodplain development permits, including effects to flood storage, fish habitat and all indirect effects of development and mitigation provided, to FEMA as required for the National Flood Insurance Program.

Section 15: Section 18A.40.140 LMC entitled "alteration of Watercourses – Flood Hazard Overlay" is amended to read as follows:

A. The floodplain administrator shall ~~N~~ notify adjacent jurisdictions and the state Department of Ecology or successor agency prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

B. Require that maintenance be provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished. If the maintenance program does not call for cutting of native vegetation, the system shall be oversized at the time of construction to compensate for said vegetation growth or any other natural factor that may need future maintenance.

C. An applicant for a project that will alter or relocate a watercourse shall submit a request for a Conditional Letter of Map Revision (CLOMR) where required by FEMA. The City shall not grant any permit unless FEMA issues the CLOMR and the provisions of the letter are made a part of the permit requirements.

Section 16: Section 18A.40.150 LMC entitled "Interpretation of FIRM Boundaries" is amended to read as follows:

A. The City Engineer shall interpret the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions.

B. Any person contesting a flood area boundary may appeal the interpretation as provided in this title.

C. An appeal of the location of a flood area boundary shall consider all technical evaluations, all relevant factors, standards specified in other sections of this title, and:

1. The danger that material may be swept onto other lands to the injury of others.
2. The danger potential to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed facility to the community.
5. The necessity to the facility of a waterfront location, where applicable.
6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets and bridges.

D. The City may attach such conditions to the granting of variances hereunder as deemed necessary to further the purposes of this section.

E. The City shall maintain records of all appeal actions and report any variances to FEMA upon request.

F. All requests to FEMA to revise or change the flood hazard data, including requests for a Letter of Map Revision and a Conditional Letter of Map Revision shall be reviewed by the Administrative Officials prior to submittal to FEMA.

1. The Administrative Officials shall not sign any Community Acknowledgment Form for any requests based on filling or other development, unless the applicant for the letter documents that such filling or development is in compliance with this ordinance.

2. The Administrative Officials shall not approve a request to revise or change a floodway delineation until FEMA has issued a Conditional Letter of Map Revision that approves the change.

G. If an applicant disagrees with the regulatory data prescribed by this ordinance, he/she may submit a detailed technical study needed to replace existing data with better data in accordance with FEMA mapping guidelines. If the data in question are shown on the published FIRM, the submittal must also include a request to FEMA for a Conditional Letter of Map Revision.

H. All new hydrologic and hydraulic flood studies conducted pursuant to this section shall consider future conditions and the cumulative effects from anticipated future land use changes.

This review shall be in accordance with Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region X, 2012.

Section 17: Section 18A.40.160 LMC entitled "Variances – Flood Hazard Overlay" is amended to read as follows:

A. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

B. Variances shall not be issued within a designated floodway if the proposed development would result in any increase in flood levels during the base flood discharge.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

D. Variances shall only be issued upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

E. Any applicant to whom a variance is granted shall be given written notice of the required lowest floor elevation stated in feet below the base flood elevation ~~and~~. Applicants shall be made aware that the cost of flood insurance will be commensurate with the risk resulting from the reduced lowest flood elevation.

F. Variance Time Limit. Authorization of a variance shall be void after six (6) months unless the new construction, substantial improvement or approved activity has taken place. However, the Community Development Director may, at his discretion, extend authorization for one (1) additional six (6) month period upon request.

Section 18: Section 18A.40.170 LMC entitled "Provision for Flood Hazard Reduction" is amended to read as follows:

A. General Standards. In all areas of special flood hazards, the following standards shall apply for all new construction and substantial improvements, or other development:

1. Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes must be anchored to prevent flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

(1) Over-the-top ties provided at each end of the manufactured home, with two (2) additional ties per side at intermediate locations and manufactured homes less than fifty (50) feet long requiring one (1) additional tie per side.

(2) Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points and manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side.

(3) All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and

(4) Additions to the manufactured home shall be similarly anchored.

c. An alternative method of anchoring may involve a system designed to withstand a wind force of ninety (90) miles per hour or greater. Certification <u>by a registered architect or engineer</u> must be provided to the Building Official that this standard has been met.

2. Construction Materials and Methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

3. Utilities.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

<u>b. Water wells shall be located on high ground that is not in the floodway.</u>

<u>c</u>. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and

d. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4. Use of Openings in Enclosures Below a Structure's Lowest Floor. All new construction and substantial improvements, which have fully enclosed areas below the lowest floor that are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in those areas. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

5. Subdivision Proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All public utilities and facilities serving subdivision proposals, such as sewer, gas, electrical, and water systems, shall be located and constructed to minimize flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Base flood elevation data shall be provided for subdivision proposals and other proposed developments that contain more than fifty (50) lots or five (5) acres, whichever is less.

e. The final recorded subdivision plat shall include a notice that part of the property is in the SFHA, riparian habitat zone and/or channel migration area, as appropriate.

6. Review of Building Permits. Where elevation data is not available either through Flood Insurance Study or from another authoritative source, applications for building and land use permits shall be reviewed to assure that proposed construction will be reasonable safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

7. Encroachments. It must be demonstrated that the cumulative effect of any proposed development, where combined with all other existing and anticipated development, shall

not increase the water surface elevation of the base flood more than one (1) foot at any point.

B. Specific Standards. In all areas of special flood hazards the following provisions apply:

1. Residential Construction. New construction and substantial improvement of any residential structure shall elevate the lowest floor, including basement, at least one (1) foot above the base flood elevation.

2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either elevate the lowest floor, including basement, at least one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, shall:

a. Be flood-proofed so that below one (1) foot above the base flood level the structure is watertight, with walls substantially impermeable to the passage of water.

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with the standards of this subsection. Such certification shall be provided to the City for review and approval.

d. Non-residential structures that are elevated and are not flood-proofed must meet the same standards for space below the lowest floor as described in this section.

e. Applicants flood-proofing non-residential buildings shall be advised that flood insurance premiums will be based on rates that are one (1) foot below the flood-proofed level (e.g., a building flood-proofed to the base flood level will be rated as one (1) foot below).

3. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1-A30, AH, and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation.

a. Manufactured homes shall be securely anchored to an adequately anchored foundation system so that:

(1) The lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation; or

(2) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength

that are no less than thirty-six (36) inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

b. New manufactured home parks and subdivisions. The following provisions apply for expansions to existing manufactured home parks and subdivisions. They also apply to ~~or for~~ existing manufactured home parks and subdivision where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds fifty (50) percent of the value of the streets, utilities and pads before repair, reconstruction or improvement has commen~~d~~ ced~~; and for~~ The same provisions apply to manufactured homes not placed in a manufactured home park or subdivision:

(1) Pads or lots are elevated on compacted fill to or above the base flood level (insurance can be waived).

(2) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base level (insurance required).

(3) Adequate surface drainage and access for hauler are provided; and

(4) In the instance of elevation on piers or pilings where:
(a) lots are large enough to permit steps.
(b) pier and piling foundations are placed in stable soil no more than ten (10) feet apart.
(c) reinforcement is provided for piers and pilings more than six (6) feet above the ground level.

4. Accessory Structures and Uses.

a. New construction and substantial improvement of residential accessory structures in special flood hazard areas are not subject to the requirements of this section, provided that:

(1) The floor area of all floors of the accessory structure totals one thousand (1,000) square feet or less.
(2) The accessory structure shall not be used for human habitation.
(3) The accessory structure shall be designed to have low flood damage potential.
(4) The accessory structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
(5) The accessory structure shall be firmly anchored to prevent

flotation that may result in damage to other structures.
(6) All service facilities, such as electrical and heating equipment associated with the accessory structure, shall be elevated or floodproofed.

b. If it is determined that the accessory structure may cause significant flood risk, all requirements of this section shall be satisfied.

c. When accessory structures built under the provisions of this section exceed a value greater than ten (10) percent of the value of the principal residential structure, substantial increases in insurance rates may result.

5. Critical Facilities. Construction of new critical facilities shall be, to the greatest extent possible, located outside the limits of the special flood hazard area. Construction of new critical facilities shall be permissible within the one hundred (100) year floodplain if no feasible alternative site is available. Critical facilities constructed within the one hundred (100) year floodplain shall have the lowest floor elevated three (3) feet or more above the level of the one hundred (100) year base flood elevation at the site. Flood-proofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. All access routes to critical facilities shall be elevated to at least one (1) foot above the base flood elevation, to the greatest extent possible.

6. Floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris, potential projectiles, and erosion potential. The following provisions apply:

a. Encroachments, including fill, new construction, substantial improvements, and other development, shall be prohibited, except for:
(1) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area.
(2) Repairs, reconstruction or improvements to a structure, the cost of which does not exceed fifty (50) percent of the fair market value of the structure either before the repair, or reconstruction is started, or if the structure has been damaged, and is being restored, before the damage occurred.
(3) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications, which are solely necessary to assure safe living conditions.
(4) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places <u>that do not increase the building's dimensions</u>.
~~(5) New construction or substantial improvements which has been certified by a registered professional engineer demonstrating that encroachments will not result in any increase in flood levels during the occurrence of the base flood discharge.~~

(5) Repairs, replacement, reconstruction or improvements to existing farmhouses located in designated floodways and on designated agricultural lands that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-075.
(6) Repairs, replacement, reconstruction or improvements to substantially damaged residential dwellings other than farmhouses that do not increase the building's total square footage of encroachment and are consistent with all requirements of WAC 173-158-075.
(7) Prior to the repair or replacement of a substantially damaged residential structure located within a floodway a recommendation shall be obtained from the Washington Department of Ecology in accordance with WAC 173-158-076.
(8) The applicant shall provide a certification by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed development would not result in any increase in flood levels during the occurrence of the base flood discharge.

b. All new construction and substantial improvements permitted pursuant to LMC 18A.40.170.B.6(a), Specific Standards, Floodways., shall comply with all applicable flood hazard reduction provisions of LMC 18A.40.170.B, Provisions For Flood Hazard Reduction, Specific Standards.

c. In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

7. Shallow Flooding Areas (AO Zones). Shallow flooding areas appear on FIRM as AO zones with depth designations. The base flood depths in these zones range from one (1) to three (3) feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In all areas of special flood hazards designated as areas of shallow flooding, the following provisions shall apply:

a. All new construction and substantial improvements of residential structures and manufactured homes shall have the lowest floor, including the basement, elevated one (1) foot above the highest grade adjacent to the building site or above the depth number specified on the FIRM; at least two (2) feet if no depth number is specified.

b. All new construction and substantial improvements of non-residential structures shall:

(1) Have the lowest floor, including basement, elevated one (1) foot above the highest adjacent grade of the building site or above the depth number specified on the FIRM, at least two (2) feet if no depth number is specified, or;
(2) Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect.

c. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

8. Recreational Vehicle (RV) Parks.

a. All new RV park proposals shall be consistent with the need to minimize flood damage.

b. All public utilities and facilities serving RV parks, such as sewer, electrical, and water systems, shall be located and constructed to minimize flood damage.

c. All RV park proposals shall have adequate drainage provided to reduce exposure to flood damage.

d. Base flood elevation data shall be provided for any RV park that is five (5) acres or greater in size.

e. Recreational vehicles placed on sites shall be on the site for fewer than 180 consecutive days. To be allowed for longer periods recreational vehicles must be fully licensed and ready for highway use, on their wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or meet the requirements of Section 18A.40.170.B.3.

9. Site Design

A. Structures and other development shall be located to avoid flood damage.

1. If a lot has a buildable site out of the Regulatory Floodplain, all new structures shall be located in that area.

2. If a lot does not have a buildable site out of the Regulatory Floodplain, all new structures, pavement and other development must be sited in the location that has the least impact on habitat by locating the structures as far from the water body as possible or placing the structures on the highest land and lot.

3. A minimum setback of 15 feet from the Protected Area shall be required for all structures.

B. All new development shall be designed and located to minimize the impact on flood flows, flood storage, water quality and habitat.

1. Stormwater and drainage features shall incorporate low impact development techniques that mimic pre-development hydrologic conditions. Such methods include stormwater infiltration, rain gardens, grass swales, filter strips, disconnected impervious areas, permeable pavement and vegetative roof systems.

2. If the proposed project will create new impervious surfaces so that more than 10 percent of the portion of the parcel in the Regulatory Floodplain is covered by impervious surface, the applicant shall demonstrate that there will be no net increase in the rate and volume of stormwater surface runoff that leaves the site or that the adverse impact is mitigated.

10. Hazardous Materials

No new development shall create a threat to public health, public safety, or water quality. Chemicals, explosives, gasoline, propane, buoyant materials, animal wastes, fertilizers, flammable liquids, pollutants, or other materials that are hazardous, toxic, or a threat to water quality are prohibited from the Regulatory Floodplain. This prohibition does not apply to small quantities of these materials kept for normal household use.

Section 19: Section 18A.40.180 LMC entitled "Allowable Activities Within the Regulatory Floodplain" is created to read as follows:

A. Activities that do not meet the definition of "development" are allowed in the Regulatory Floodplain without the need for a floodplain development permit under this ordinance, provided all other Federal, State and local requirements are met. Activities include, but are not limited to, the following.

1. Routine maintenance of landscaping that does not involve grading, excavation or filling.

2. Removal of noxious weeds and hazard trees and replacement of non-native vegetation with native vegetation.

3. Normal maintenance of structures, such as re-roofing and replacing siding, provided that such work does not qualify as a substantial improvement.

4. Normal maintenance of above ground public utilities and facilities, such as replacing downed power lines.

5. Normal street and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, but not expansion of paved areas.

6. Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility.

Plowing and other normal farm practices (other than structures or filling) on farms in existence as of the effective date of this ordinance.

B. The following activities are allowed in the Regulatory Floodplain without the analysis required in Sec.18A.40.170.B.6(5) or the habitat impact assessment required under LMC 14A.154.050.C, providing all other provisions of this ordinance are met, including obtaining a floodplain development permit:

1. Repairs or remodeling of an existing structure, provided that the repairs or remodeling are not a substantial improvement or a repair of substantial damage.

2. Expansion of an existing structure that is no greater than ten percent beyond its existing footprint, provided that the repairs or remodeling are not a substantial improvement or a repair of substantial damage. This measurement is counted cumulatively from the effective date of this ordinance or September 22, 2011, whichever is earlier. If the structure is in the floodway, there shall be no change in the dimensions perpendicular to flow.

3. Activities with the sole purpose of creating, restoring or enhancing natural functions associated with floodplains, streams, lakes, estuaries, marine areas, habitat, and riparian areas that meet Federal and State standards, provided the activities do not include structures, grading, fill or impervious surfaces.

4.Development of open space and recreational facilities, such as parks, trails and hunting grounds, that do not include structures, grading, fill, impervious surfaces or removal of more than 5% of the native vegetation on that portion of the property in the Regulatory Floodplain.

Section 20: Section 18A.40.190 LMC entitled "Definitions" is amended to read as follows:

In addition to the definitions under this title, Chapter 18A.90, the definitions in Chapter 14A.165 LMC shall apply.

~~DEVELOPMENT (for the purposes of Flood Hazard). Any constructed changes to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavator, or drilling operations.~~

"Development" means any human-induced change to improved or unimproved real property including, but not limited to, the construction of buildings or other structures, placement of manufactured home/mobile, mining, dredging, clearing, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, or the subdivision of property, removal of substantial amounts of vegetation, or alteration of natural site characteristics.

~~LOWEST FLOOR. For flood purposes, any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a lowest floor.~~

LOWEST FLOOR - For flood purposes the lowest floor of the lowest enclosed area (including basement or crawl space). An unfinished or flood resistant enclosure, useable for parking of vehicles, building access or storage in an area other than a basement area, is not considered a structure's lowest floor, provided that such enclosure is compliant with Section 189A.40.170.A.4, (i.e provided there are adequate openings to allow floodwaters into the area).

Section 21: Severability. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause, or phrase of this ordinance.

Section 22: Effective Date. This ordinance shall take place thirty (30) days after its publication or publication of a summary of its intent and contents.

ADOPTED by the City Council this __ day of November, 2015.

CITY OF LAKEWOOD

_____

Don Anderson, Mayor

Attest:

_____

Alice M. Bush, MMC, City Clerk

Approved as to Form:

_____

Heidi A. Wachter City Attorney

TO: Mayor and City Councilmembers

FROM: Heidi A. Wachter, City Attorney; Adam Lincoln, Management Analyst

THROUGH: John J. Caulfield, City Manager

DATE: November 23, 2015

SUBJECT: City of Lakewood and Waste Connections Franchise Update

Purpose: The agreement with Waste Connections for solid waste collection expires in 2016 and, in an effort to ensure high quality service to residents and businesses, a thorough analysis was conducted to review costs and services of solid waste hauling in the City. The analysis covers the history of the franchise agreement with Waste Connections and proposes that a new franchise agreement be put in place to replace the existing agreement. Table 1, attached, provides the history of the franchise agreement.

Background: At the time of incorporation, LeMay Inc. held the certificate to haul solid waste in the portion of unincorporated Pierce County which became the City of Lakewood and was, accordingly, collecting solid waste for that area. Shortly after incorporation, in April of 1996, the City opted to contract with LeMay Inc., rather than bring the service in-house or consider other service providers. The original agreement has been updated on three occasions, as follows:

- In 1998 the agreement was extended to 2016.
- In 1999 the City tied rate increases to the Consumer Price Index.
- In 2001 an addendum was adopted that provides language to support LeMay Inc. in obtaining the Washington Utilities and Transportation Commission (WUTC) certificate for the territory in Lakewood. The certificate is the legal authority a hauler needs for permission to be the sole service provider for a given territory. The WUTC is the authorizing body from which this authority is granted. The addendum meant that the City will not seek the certificate for itself once the agreement expires, but rather will help to ensure that LeMay Inc. will continue to have the sole right to service the City of Lakewood.

  This addendum is problematic for a couple of reasons. First, it presumes that a certificate exists in the first place when in actuality there is not a certificate. The certificate was removed upon entering the original agreement with Waste Connections and following the expiration of the agreement it would be up to the City to contact the WUTC and ask that they offer a new certificate for the Lakewood territory. Secondly, the WUTC is the body

with the authority to offer the new certificate to a service provider. Additionally the WUTC typically offers the certificates to the previous holder, which would be LeMay Inc.

In addition to changes to the language of the agreement, the service provider was purchased by Waste Connections on November 8, 2008. Today the City is operating under an agreement reached in 1996, and subsequently amended several times, with a different service provider. A new agreement provides the opportunity to address solid waste collection holistically, taking advantage of current best practices and fully incorporating services available through the new provider.

Cost and Service Analysis: The City conducted a rate analysis with the help of two solid waste industry experts. The analysis compared rates for the City of Lakewood with eight other municipalities, including: DuPont, Federal Way, Kirkland, Mountlake Terrace, Puyallup, Renton, Shoreline and University Place. The analysis compared average cost to customers in the area of residential collection, commercial collection, multifamily collection, and the revenue that the hauler collects. Lakewood residential collection is nearly 14% lower than the average, commercial rates are 6.2% lower than the average, and multifamily rates are nearly 2% lower than the average. Annual revenue for solid waste collection, excluding administrative fees, embedded taxes and tipping fee differences, received by Lakewood's solid waste collection contractor is $10.8 million. The average annual collection revenue, adjusted to exclude administrative fees, embedded taxes and refuse tipping fee differences for the eight comparison cities calculated at Lakewood service levels is $12 million. That is, solid waste collection service customers in Lakewood are paying their collection service provider 9.8% less than they would if they were paying the average adjusted fees charged in the eight comparison cities.

Outreach to Departments and next steps with the Municipal Code: Once it was determined that the cost and service levels were within a normal range, the City turned to the departments that will be most likely to hear concerns from customers about solid waste services, that use the provider's services for special events, and participate in cleaning up derelict properties. Based on the feedback a list of discussion points with Waste Connections was developed. The agreement, departmental expertise and current Code language are being considered together in order to yield the best possible program and service for the citizens of Lakewood.

Topics of discussion with Waste Connections include the following:

- Removal of language that ensures that any single hauler has rights to the Lakewood territory in perpetuity. (Removal of evergreen clause)
- Ensure that the City of Lakewood receives hauling services at no cost to the City.
    - Receive increased hauling assistance at City facilities, parks, and special events.

- Add clean-up days to include additional curbside pick-up for customers who have larger than normal items or amounts of garbage.
- Determine what the City receives in annual litter credits and how they may be used.
- Keep down costs for customers while increasing the service level.
- Modernize the look and feel of the contract to create alignment with other municipal solid waste franchise agreements.

A review of the Lakewood Municipal Code (LMC) performed along with updates to the agreement suggests further study of how to address delinquent customers and recycling. Proposed changes to the LMC will remove duplicative language and potential conflicts with language contained in the franchise agreement.

Currently, when customers become delinquent, the ultimate consequence is to stop service. This penalizes the community as much as, if not more than, the customer in the form of accumulated garbage in the community. Current Code language provides a process for abating accumulated garbage in the way we would abate any nuisance. This process has not resolved the problem and thus the question is whether the City has not sufficiently exercised this option or whether there are other issues with it.

With regard to recycling, current Code language is designed to protect exclusivity of the solid waste hauler by holding recycling service providers to hauling only recyclables. This is achieved in many cities including Lakewood by regulating what percentage of any given load may be garbage rather than recyclable. Lakewood's percentage of allowable garbage in a recycling load is one of the lowest in the State and may be overly prescriptive. Based on the current analysis, recommendations will be to reduce the restrictiveness of the language in the LMC.

Alternative: The City could decide to provide garbage hauling services directly or seek hauling services from an alternative provider. There are several steps that would need to occur to achieve either outcome.

Recommendation: Authorize the City Manager to execute a new franchise agreement with Harold LeMay Enterprises, Inc.

Table 1. Chronology for Waste Connections

April 4, 1996	City of Lakewood Garbage Collection Services Contract (term 10 years with 2 auto renewals for 5 years each)
April 28, 1998	City of Lakewood Garbage Collection Services Contract (term 6-30-2016
August 24, 1999	Addendum- Modifies compensation
May 21, 2001	Legal Opinion of Polly McNeil Re: Municipal vs. WUTC jurisdiction • Per this opinion, one of the reasons (of 3) for the new contract in 1998 as to incorporate an "Evergreen" clause from 2000-2004
June 18, 2001	Solid Waste Interlocal Agreement between Pierce County and City of Lakewood
December 7, 2001	Second Addendum- Reinstatement of Certificate Rights
February 17, 2004 and January 16, 2007	Ord. 436 §4, 2007; Ord. 337 §8, 2004 → Recycling
June 22, 2005	Correspondence Re: Term • This amendment, had it gone through, would have perpetually added years to this contract
2007	Correspondence • This correspondence suggests we were actively negotiating with LeMay
Summer 2008	City passes a LeMay fuel surcharge
November 3, 2008	Waste Connections acquires LeMay
Spring 2012	City and Waste Connections- Meetings and correspondence regarding issues of concern • Coordination with Code Enforcement • "Rebel" recyclers • Coordinate community clean-ups using County 'litter credits"
2015	• Conduct rate analysis • Review previous franchise agreement • Negotiate updated agreement

Table 2. Solid Waste Collection Rates

	Residential Rates	Multifamily Rates	Commercial Rates
Lakewood	$ 29.60	$ 91.88	$ 78.17
DuPont	$ 34.70	$ 80.93	$ 75.02
Federal Way	$ 27.49	$ 81.31	$ 66.05
Kirkland	$ 45.05	$ 76.30	$ 63.84
Mountlake Terrace	$ 39.83	$ 103.12	$ 91.11
Puyallup	$ 44.63	$ 121.45	$ 97.94
Renton	$ 38.72	$ 105.01	$ 89.71
Shoreline	$ 31.88	$ 97.92	$ 90.45
University Place	$ 32.87	$ 84.80	$ 85.02
Average	$ 36.90	$ 93.85	$ 82.39

COMPREHENSIVE GARBAGE, RECYCLABLES AND YARD WASTE COLLECTION AGREEMENT

City of Lakewood

and

Harold LeMay Enterprises, Incorporated

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COMPREHENSIVE GARBAGE, RECYCLABLES AND YARD WASTE COLLECTION CONTRACT

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This solid waste collection contract is entered into by and between the City of Lakewood, a municipal corporation of the State of Washington ("City"), and Harold LeMay Enterprises, Incorporated, a Washington corporation ("Contractor") to provide for collection of Garbage, Yard Waste, and Recyclables from Single-Family Residences, Multi-Family Complexes and Commercial Customers located within the corporate limits of the City of Lakewood. (Each capitalized term is hereinafter defined.)

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

RECITALS

WHEREAS, the City currently has a solid waste collection contract with the Contractor which it would like to continue for an additional term of ten years; and

WHEREAS, the Contractor represents that it has the experience, resources and expertise necessary to continue to perform the contract services; and

WHEREAS, the City desires to enter into this Contract with the Contractor for Garbage, Recyclables and Yard Waste collection services to fulfill its franchise obligations under State law;

NOW, THEREFORE, in consideration of the mutual covenants, agreements and promises herein contained, the City and Contractor do hereby agree as follows:

DEFINITIONS

Change in Control: Change in Control means any sale, merger, policy of assets, the issuance of new shares, any change in the voting rights of existing shareholders, or other change in ownership which transfers 25% or more of the beneficial interest therein from one entity to another. Provided, however, that intracompany transfers, such as transfers between different subsidiaries or branches of the parent corporation of the Contractor, or transfers to corporations, limited partnerships, or any other entity owned or controlled by the Contractor upon the effective date of this contract shall not constitute a change in control.

City: The word "City" means the City of Lakewood, Pierce County, Washington. As used in the Contract, it includes the official of the City holding the office of the City Administrator or her/his designated representative, such as the City's Director of Public Works.

Commercial Customer: The term "Commercial Customer" means non-residential Customers including businesses, institutions, governmental agencies and all other users of commercial-type Garbage collection services.

Commercial Recyclables: The term "Commercial Recyclables" means aluminum cans and foil; corrugated cardboard; recyclable plastic containers that have contained non-hazardous products, Mixed Paper; newspaper; polycoated cartons; tin cans; and such other materials that the City and Contractor determine to be recyclable.

Container: The word "Container" means any Cart, Detachable Container or Drop-Box Container owned and provided by the Contractor.

Contractor: The word "Contractor" means Harold LeMay Enterprises, Incorporated, which has contracted with the City to collect and dispose of Garbage and to collect, process, market and transport Recyclables and Yard Wastes.

Curb or Curbside: The words "Curb" or "Curbside" mean on the homeowners' property, within five (5) feet of the Public Street or Private Road without blocking sidewalks, driveways or on-street parking. If extraordinary circumstances preclude such a location, Curbside shall be considered a placement suitable to the resident, convenient to the Contractor's equipment, and mutually agreed to by the City and Contractor.

Customer: The word "Customer" means all users of solid waste services, including property owners, managers and tenants.

Detachable Container: The term "Detachable Container" means a watertight metal or plastic Container equipped with a tight-fitting cover, capable of being mechanically unloaded into a collection vehicle, and that is not less than one (1) cubic yard or greater than six (6) cubic yards in capacity.

Drop-Box Container: The term "Drop-Box Container" means an all-metal Container with twenty (20), thirty (30), or fourty (40) cubic yards or more capacity that is loaded onto a specialized collection vehicle, transported to a disposal or recycling site, emptied and transported back to the Customer's site.

Extra Unit: The term "Extra Unit" means excess material which does not fit in the Customer's primary Container. In the case of Can/Cart services, An Extra Unit shall be up to 35 gallons in volume, and may be loose or contained in either a plastic bag or Garbage Can. In the case of Garbage Containers one cubic yard or more in capacity, and Extra Unit is one cubic yard.

Garbage: The word "Garbage" means all putrescible and nonputrescible solid and semi-solid wastes, including, but not limited to, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, and discarded commodities that are placed by Customers of the Contractor in appropriate bins, bags, cans or other receptacles for collection and disposal by the Contractor. The term Garbage shall not include Hazardous Wastes, Special Wastes, Source-Separated Recyclables or Yard Wastes.

Garbage Can: The term "Garbage Can" means a City-approved Container that is a water-tight galvanized sheet-metal or sturdy plastic Container not exceeding four (4) cubic feet or thirty-five (35) gallons in capacity; fitted with two (2) sturdy looped handles, one on each side; and fitted with a tight cover equipped with a handle. All Containers shall be rodent and insect proof.

Garbage Cart: The term "Garbage Cart" means a Contractor-provided 65 or 95-gallon wheeled cart suitable for household deposit, storage and Curbside placement and collection of Garbage. Garbage Carts shall be rodent and insect proof and kept in sanitary condition at all times.

Hazardous Waste: The term "Hazardous Waste" means any substance that is:

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A. Defined as hazardous by 40 C.F.R. Part 261 and regulated as Hazardous Waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments ("HSWA") of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or any other federal statute or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA.

B. Defined as dangerous or extremely hazardous by Chapter 173-303 WAC and regulated as dangerous waste or extremely Hazardous Waste by the Washington State Department of Ecology under the State Hazardous Waste Management Act, Chapter 70.105 RCW, or any other Washington State statute or regulation governing the treatment, storage, handling or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW.

Pierce County Disposal System: The term "Pierce County Disposal System" means the real property permitted by the Pierce County Solid Waste Division, Pierce County, Washington for the disposal of Garbage, or such other site as may be authorized by the then current Pierce County Comprehensive Solid Waste Management Plan.

Mixed Paper: The term "Mixed Paper" means magazines, junk mail, phone books, bond or ledger grade paper, cardboard, paperback books, paperboard packaging, paper cups and other fiber-based materials meeting industry standards. Tissue paper, paper towels, food-contaminated paper or paper packaging combined with plastic, wax or foil are excluded from the definition of Mixed Paper.

Mixed-Use Building: The term "Mixed-Use Building" means a structure inhabited by both Residential and Commercial Customers.

Multi-Family Complex: The term "Multi-Family Complex" means a multiple-unit Residence with two or more attached or unattached dwellings billed collectively for collection service.

Private Road: The term "Private Road" means a privately owned and maintained way that allows for access by a service truck and that serves multiple Residences.

Public Street: The term "Public Street" means a public right-of-way used for public travel, including public alleys.

Recycling: The word "Recycling" means pertaining to the preparation, collection, process and marketing of Recyclables.

Recycling Cart: The term "Recycling Cart" means a Contractor-provided 95 gallon wheeled cart suitable for household collection, storage and Curbside placement of Source-Separated Recyclables.

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Recycling Container: The term "Recycling Container" means a Contractor-provided Container suitable for on-site collection, storage and placement of Source-Separated Recyclables at Multi-Family Complexes and Commercial Customer locations.

Residence/Residential: The words "Residence" or "Residential" mean a living space, with a kitchen, individually rented, leased or owned.

Residential Recyclables: The term "Residential Recyclables" means aluminum cans and foil; corrugated cardboard; Mixed Paper; newspaper; recyclable plastic containers that have contained non-hazardous products; polycoated or aseptic cartons and tin cans.

Service Area: The Service Area shall be the same as the area located within the corporate limits of the City. This area is identified in the map provided as Attachment A to this Contract.

Single-Family Residence: The term "Single-Family Residence" means all one-unit houses, duplexes, triplexes and 4-plexes that are billed for collection service individually and located on a Public Street or Private Road.

Source-Separated: The term "Source-Separated" means certain reclaimable materials that are separated from Garbage by the generator for recycling or reuse, including, but not limited to Recyclables, Yard Wastes and other materials.

Special Waste: The term "Special Waste" means polychlorinated biphenyl ("PCB") wastes, industrial process wastes, asbestos containing materials, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, county or local laws or regulations.

Yard Wastes: The term "Yard Wastes" means leaves, grass and clippings of woody, as well as fleshy, plants. Unflocked, undecorated holiday trees are acceptable. Materials larger than four (4) inches in diameter or four (4) feet in length are excluded. Bundles of Yard Wastes up to two feet by two feet by four feet (2'x2'x4') in dimension shall be allowed and shall be secured by degradable string or twine, not nylon or other synthetic materials.

Yard Waste Cart: The term "Yard Waste Cart" means a Contractor-provided 95-gallon wheeled cart provided to Yard Waste collection Customers for the purpose of containing and collecting Yard Wastes.

WUTC: The term WUTC means the Washington Utilities and Transportation Commission.

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COMPREHENSIVE GARBAGE, RECYCLABLES AND YARD WASTE COLLECTION AGREEMENT

This agreement (hereafter, "Contract") is made and entered into this _____ day of _____, 201_, by and between the City of Lakewood, a municipal corporation (hereafter, "City"), and Harold Lemay Enterprises, Incorporated, a Washington corporation (hereafter, "Contractor").

1. TERM OF CONTRACT

The term of this Contract is ten years, starting January 1, 2016, and expiring December 31, 2025. The City may, at its sole option, extend the term of this Contract for up to two (2) extensions, each of which shall not exceed five (5) years in duration. Any such extension shall be under the terms and conditions of this Contract, as amended by the City and Contractor from time to time. To exercise its option to extend this Contract, notice shall be given by the City to the Contractor no less than ninety (90) days prior to the expiration of the Contract term or the expiration of a previous extension.

2. SCOPE OF WORK

2.1 General Collection System Requirements

The Contractor shall collect, transfer and dispose of Garbage, Recyclables and Yard Wastes according to the terms and conditions of this Contract; provided, that the Contractor shall not knowingly or as a result of gross negligence collect or dispose of Hazardous Waste or Special Waste as those terms are defined herein. The Contractor shall indemnify the City for any City damages caused by violation of this Section. To the extent identifiable, Customers shall remain responsible for any Hazardous Waste or Special Waste inadvertently collected and identified by Contractor. Title to and liability for any Hazardous Waste and Special Waste shall remain with the Customer, even if the Contractor inadvertently collects and disposes of such Hazardous Waste and Special Waste.

2.1.1 Service Area

The Contractor shall provide all services pursuant to this Contract throughout the entire Service Area.

2.1.2 Annexation

Any areas annexed into the City during the term of this Contract shall be addressed outside of this Contract through separate franchise or other arrangement. The City shall have no obligation to offer such annexed areas to be served by the Contractor nor shall the Contractor have an obligation to service such areas.

Any area annexed into the City prior to the term of this Contract shall be subject to the terms and conditions of the controlling franchise applicable

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to that annexation area at the time of annexation. When the controlling franchise's term for each individual annexation area expires, that annexation area shall then be provided service under the authority, terms and conditions of this Contract.

2.1.3 Unimproved Public Streets and Private Roads

Residences located in an area that does not allow safe access, turn-around or clearance for service vehicles will be provided service if materials are set out adjacent to the nearest Public Street or Private Road that provides safe access.

In the event that the Contractor believes that a Private Road cannot be safely negotiated or that providing walk-in service for Single-Family Customers is impractical due to distance or unsafe conditions, the Contractor shall work with the Customer to negotiate the nearest safe and mutually convenient pick up location.

If the Contractor believes that there is a probability of Private Road damage, the Contractor shall inform the respective Customers. Contractor may require a damage waiver agreement or decline to provide service on those Private Roads. The City shall review and approve the damage waiver form prior to its use with the Contractor's Customers.

2.1.4 Hours/Days of Operation

All regular collections from Residential Customers shall be made on such days as determined by Contractor in its reasonable discretion between the hours of 6:30 a.m. and 6:00 p.m. The Contractor shall provide route and schedule information to the City. Thirty (30) days advance notice shall be given to the City for any route and schedule changes. The City may authorize an extension of hours or days to accommodate specific Customers or sections of routes. The Contractor may perform Commercial collections twenty-four hours per day, provided such services do not take place in areas adjacent to Residential dwellings. Saturday and/or Sunday collection is allowed to the extent consistent with the needs of Commercial Customers, special bulky waste collections, make-up collections, and holiday and inclement weather schedules, provided that Residential areas shall not be impacted by Contractor operations during those days. City code noise restrictions, as amended from time to time, shall be applicable to collection services provided under this Contract.

2.1.5 Employee Conduct

The Contractor's employees collecting Garbage, Recyclables and Yard Wastes shall at all times be courteous, refrain from loud, inappropriate or obscene language, exercise due care, perform their work without delay, minimize noise, and avoid damage to public or private property. If on

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private property, employees shall follow the regular pedestrian walkways and paths, returning to the street after replacing empty Containers. Employees shall not trespass or loiter, cross flower beds, hedges or property of adjoining premises, or meddle with property that does not concern them or their task at hand. While performing work under the Contract, employees shall wear a professional and presentable uniform with a company emblem visible to the average observer.

If any person employed by the Contractor to perform collection services is, in the opinion of the City, incompetent, disorderly or otherwise unsatisfactory, the City shall promptly document the incompetent, disorderly or unsatisfactory conduct in writing and transmit the documentation to the Contractor with a demand that such conduct be corrected. The Contractor shall investigate any written complaint from the City regarding any unsatisfactory performance by any of its workers. If the offending conduct is repeated, the City may require that the person be removed from all performance of additional work under this Contract. Removal shall be addressed by the Contractor immediately, and related documentation shall be provided to the City.

2.1.6 Disabled Persons Service

The Contractor shall offer carry-out service for Garbage, Recyclables, and Compostables to Single-family Residence Customers lacking the ability to place containers at the Curb, at no additional charge. To be eligible for this service, there shall be no other person capable of setting out Containers living or residing at the Residence of the Customer applying for this service. Eligible customers must provide the City of Lakewood with written documentation from a licensed physician of their physical inability to deposit the materials at the curb.

2.1.7 Holiday Schedules

The Contractor shall observe the same holiday schedule as do Pierce County Transfer Stations (New Year's Day, Thanksgiving Day, and Christmas Day).

When the day of regular collection is a Pierce County Transfer Station holiday, the Contractor shall reschedule the remainder of the week of regular collection to the next succeeding workday, which shall include Saturdays but not Sundays. The Contractor will provide thirty (30) days advance notice to all customers of altered service resulting from the observation of these holidays. The Contractor shall not collect Residential Garbage, Recyclables or Yard Wastes earlier than the regular collection day due to a holiday. Commercial collections shall be made one day early only with the consent of the Commercial Customer.

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2.1.8 Inclement Weather and Other Service Disruptions

The Contractor shall monitor inclement weather conditions and shall take all reasonable measures to minimize Customer inconvenience. Those measures may include, but are not limited to, pre-placing equipment at a City-provided site the night before a potential inclement weather incident to limit arterial access problems on hills.

The Contractor shall provide all collection services unless weather conditions are such that continued operation would result in danger to the Contractor's staff, area residents, or property. In that event, the Contractor shall collect only in areas that do not pose a danger. The Contractor shall notify the City by telephone or e-mail of the areas not to be served by 6:00 a.m. on the same business day. Once Contractor vehicles are on-route, areas intentionally missed due to hazardous conditions and not previously reported to the City, shall be approved by a route supervisor and reported to the City when collections are finished for that day. The Contractor shall coordinate missed collection areas so that Customers either have all or none of their materials collected to avoid Customer complaints and calls. The Contractor shall provide automated notification calls or e-mails (at Customers' preference) to all missed Customers by 3:00 p.m., including information on when their next collection is expected.

The Contractor shall collect Garbage, Recyclables, and Compostables from Customers with interrupted service on the following week. When service is resumed, the Contractor shall collect reasonably accumulated excess volumes of materials equal to what would have been collected on the missed collection day from Customers at no extra charge.

Weather policies shall be included in program information provided to Customers. On each inclement weather day, the Contractor shall release notices via a news release on the Contractor's website, with local newspapers and radio stations notifying residents of the modification to the collection schedule. The City may specify additional media outlets for Contractor announcements at the City's discretion. . The Contractor shall use automated dialing services to inform Customers at the route level about service changes, provided that Customers shall be provided the option of opting out of automated calls.

If Garbage collection is interrupted for two consecutive weeks (for example: Wednesday Customers are missed for two consecutive Wednesdays) due to inclement weather, the Contractor shall provide additional curbside service for all customers at no additional cost to the customer. The time to provide this service may take up to three weeks to complete. In addition, the Contractor shall credit Customers for the non-disposal component of missed services.

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2.1.9 Suspending Collection from Problem Customers

The City and Contractor acknowledge that, from time to time, some Customers may cause disruptions or conflicts that make continued service to that Customer unreasonable. Those disruptions or conflicts may include, but not be limited to, failure to pay for collection service, repeated damage to Contractor-owned Containers, repeated refusal to position Garbage, Recycling and Yard Waste Carts properly, repeated suspect claims of timely set-out followed by demands for return collection at no charge, repeated claims of Contractor damage to a Customer's property, or other such problems.

The Contractor shall make every reasonable effort to provide service to those problem Customers. However, the Contractor may deny or discontinue service to a problem Customer if reasonable efforts to accommodate the Customer and to provide services fail. If the Customer submits a written letter to the City appealing the Contractor decision, the City may, at its reasonable discretion, intervene in the dispute. In this event, the decision of the City shall be final except with regard to Customers who fail to pay for collection service. The City may also require the denial or discontinuance of service to any Customer who is abusing the service or is determined to be ineligible.

2.1.10 Missed Collections

If Garbage, Recyclables or Yard Waste Containers are set out inappropriately, improperly prepared or contaminated with unacceptable materials, the Contractor shall place in a prominent location a notification tag that identifies the specific problem(s) and reason(s) for rejecting the materials set out for collection.

The failure of the Contractor to collect Garbage, Recyclables or Yard Wastes that have been set out by a Customer in the proper manner shall be considered a missed pick-up, and the Contractor shall collect the materials from the Customer on the same day if notified by 12:00 p.m. Monday through Friday, otherwise the collection shall occur on the next business day. The Contractor shall maintain an electronic database of all missed pick-ups (whether reported by telephone call or e-mail) and Contractor shall routinely note and provide corrective action to those Customers who experience repeated missed pick-ups. Such records shall be made available for inspection upon request by the City.

If the Contractor is requested by the Customer to make a return trip due to no fault of the Contractor, the Contractor shall be permitted to charge the Customer an additional fee for this service (a "return trip fee" at the rate

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specified in Attachment B), provided the Contractor notifies the Customer of this charge in advance.

2.1.11 Same Day Collection

Garbage, Recyclables and Yard Wastes collection shall occur on the same regularly scheduled day of the week for Single-Family Residence Customers. The collection of Garbage, Recyclables and Yard Wastes from Multi-Family Complexes and Commercial Customers need not be scheduled on the same day.

2.1.12 Damage to Streets

The City represents and warrants that the Public Streets that the Contractor will use to provide the services are capable of holding the weight of the Contractor's trucks reasonably necessary to provide the services, when such vehicles are operated lawfully and in compliance with weight limitations established by Washington law. Except in the case of driver/operator negligence or when being operated in violation of applicable weight limitations, the Contractor shall not be liable to the City for damage to pavement, curbing, or driving surface owned or controlled by the City resulting from its trucks providing services in the agreed-upon area.

2.1.13 Routing, Notification and Approval

The Contractor shall indicate, on a detailed map acceptable to the City, the day of the week Garbage, Recyclables and Yard Wastes shall be collected from each Single-Family Residence.

The Contractor may change the day of collection by giving notice at least twenty-one (21) days prior to the effective date of the proposed change and must obtain advance written approval from the City. On the City's approval, the Contractor shall provide affected Customers with at least fourteen (14) days written notice of pending changes of collection day. The Contractor shall obtain the prior written approval from the City of the notice to be given to the Customer, and such approval shall not be unreasonably withheld, conditioned or delayed.

2.1.14 Equipment Age/Condition

The Contractor shall use vehicles that meet model year 2010 or later federal emissions standards. Back-up vehicles used fewer than thirty (30) operating days per calendar year shall not be subject to the age and emission standards that apply to regularly-used vehicles, but shall be presentable, in safe working order and shall be subject to all other

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conditions of this Section. The accumulated annual use of individual back-up vehicles shall be reported in the Contractor's annual report.

All vehicles used in the performance of this Contract shall be maintained in a clean and sanitary manner, and shall be thoroughly washed at least once each week and shall be repainted as necessary.

All collection equipment shall have appropriate safety markings, including all highway lighting, flashing and warning lights, clearance lights, and warning flags, all in accordance with current statutes, rules and regulations. Equipment shall be maintained in good condition at all times. All parts and systems of the collection vehicles shall operate properly and be maintained in a condition satisfactory to the City. The Contractor shall maintain collection vehicles to ensure that no liquid wastes (such as Garbage or leachate) or oils (lubricating, hydraulic or fuel) are discharged to Customer premises or City streets. Any equipment not meeting these standards shall not be used within the City until repairs are made. All liquid spills will be immediately cleaned to the City's and Customer's satisfaction.

All collection vehicles shall be labeled with signs on both the front and driver's side door and the rear of the vehicle which clearly indicate the vehicle inventory number. The Customer service telephone number shall be labeled on the side of the vehicle. Signs shall use lettering not less than four (4) inches high and shall be clearly visible from a minimum distance of twenty (20) feet. Signs, sign locations and the telephone number shall be subject to approval by the City. No advertising shall be allowed on Contractor vehicles other than the Contractor's name, logo and Customer service telephone number and website address. Special promotional messages may be permitted, upon the City's prior written approval. In addition, any vehicle regularly used in the City shall include a placard clearly visible at the rear of the vehicle. This placard will show, in lettering at least 12" high, an abbreviated truck designation number specific to the Contractor's operating division, limited to a four digit numeral to aid in rapid identification of vehicles to allow more precise reporting and correction of any unsatisfactory condition related to specific vehicles. The 12" four digit number may be the last four digits of a larger fleet number, provided that the initial numbers are no greater than four inches high. All Contractor route, service and supervisory vehicles shall be equipped with properly licensed two-way communication equipment. The Contractor shall maintain a base station or have communication equipment capable of reaching all collection areas.

2.1.15 Container Requirements and Ownership

All collection services provided under this Contract specifically include the costs of the associated Garbage, Recycling and Compostables Container and the cost of Contractor-provided Containers are incorporated in the

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Garbage fees included in Attachment B, unless Container rental for a particular service is specifically listed in Attachment B, such as rent for Drop-box Containers.

Single-family Residence, Multifamily Complex, and Commercial Customers must use Contractor-provided Containers for their initial Container of Garbage collection service. Plastic bags or Garbage Cans may be used for excess volumes of Garbage, but not as a Customer's primary container.

In the event the Customer uses a Garbage Container for Extra Units, the Contractor shall handle the Customer-owned Garbage Container in such a way as to prevent undue damage. The Contractor shall be responsible for unnecessary or unreasonable damage to Customer-owned Containers.

2.1.15.1 [Intentionally omitted.]

2.1.15.2 Garbage, Recyclables and Yard Waste Carts

The Contractor shall provide 65 of 95-gallon Garbage Carts for Garbage collection; 95-gallon Recyclables Carts; and 95-gallon Yard Waste Carts. All Carts shall be manufactured from a minimum of 10 percent (10%) post-consumer recycled plastic, with a lid that will accommodate a Contractor affixed instructional label. Carts shall be provided to requesting Customers within five (5) business days of the Customer's initial request. All wheeled cart manufacturers, styles and colors shall be approved in writing by the City prior to the Contractor ordering a cart inventory. All Carts must have materials preparation instructions and telephone and website contact information that visually depicts allowed and prohibited materials suitable for the designated Cart either screened or printed on a sticker affixed to the lid.

All Contractor-owned wheeled carts shall: be maintained by the Contractor in good condition to allow material storage, handling, and collection; contain no jagged edges or holes; be equipped with functional wheels or rollers for movement; be equipped with functional lid; and be equipped with an anti-skid device or sufficient surface area on the bottom of the Container to prevent unwanted movement. The carts shall be labeled with instructions for proper use, including any Customer actions that would void manufacture warranties (such as placement of hot ashes in the Container causing the Container to melt or burn).

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Contractor personnel shall note any damaged hinges, holes, poorly functioning wheels and other similar repair needs on Contractor-owned carts (including those for Garbage, Recycling and Yard Wastes) and forward repair notices to the Contractor's service personnel. Cart repairs shall then be made within seven (7) days at the Contractor's expense. Any Cart that is damaged or missing on account of accident, act of nature or the elements, fire, or theft or vandalism by other members of the public shall be replaced no later than five (5) business days after notice from the Customer or City. Replacement Carts may be new or used and reconditioned, and *all* Carts shall be clean and appear presentable when delivered. Unusable carts shall be retrieved by Contractor, cleaned (if necessary) and recycled to the extent possible.

In the event that a particular Customer repeatedly damages a Cart or requests more than one replacement Cart during the term of the Contract due to that Customer's negligence or intentional misuse, the Contractor shall forward in writing the Customer's name and address to the City. The City shall then attempt to resolve the problem. In the event that the problem continues and upon City-approval, the Contractor may charge the Customer a Cart destruction fee equal to the current new Cart replacement cost.

2.1.15.3 Detachable and Drop-Box Containers

The Contractor shall furnish and install 1-, 2-, 3-, 4-, and 6-, cubic yard Detachable Containers, and 20-, 30-, and 40-cubic yard un-compacted Drop-box Containers to any Customer who requires their use for storage and collection of Garbage or Recyclables within five (5) days of the Customer's request. Containers shall be located on the premises in a manner satisfactory to the Customer and for collection by the Contractor.

The Contractor shall charge rent for temporary and permanent Drop-box Container service. The Contractor may not charge Customers any fees, charges, rates, or any expenses in connection with Drop-box Container service.

Detachable Containers shall be watertight and equipped with tight-fitting metal or plastic covers; have four (4) wheels for Containers 3-cubic yards and under; be in good condition for Garbage or Recyclables storage and handling; be safe for the intended use; and, have no leaks, jagged edges, or holes. Drop-box Containers shall be all-metal, and equipped with a tight-

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fitting screened or solid cover operated by a winch in good repair. Containers shall be repainted as needed, or upon notification from the City.

Detachable Containers shall be cleaned, reconditioned, and repainted (if necessary) before being supplied to a Customer who had not used it earlier. The Contractor shall provide an On-call Container cleaning service to Customers. The costs of On-call cleaning shall be billed directly to the Customer.

All Containers on Customers' premises are at the Contractor's risk and not the City's. The Contractor shall repair or replace within twenty-four (24) hours any Container that was supplied by or taken over by the Contractor and was in use if the City, Health Department inspector, or other agent having safety or health jurisdiction determines that the Container fails to comply with reasonable standards or constitutes a health or safety hazard.

2.1.15.4 Recycling Carts

The Contractor shall provide Recycling Carts to Customers within the Service Area, including new Residences and annexation areas, as well as replacement Carts to existing Customers who request them because of loss, theft or damage. Carts shall be provided within five (5) business days of a Customer request.

All distributed Recycling Carts shall include information materials describing material preparation and collection requirements. Any materials published by the Contractor must be reviewed and approved by the City prior to printing and distribution by the Contractor. All Recycling Carts shall be labeled with materials preparation instructions that visually depict allowed and prohibited materials suitable for the designated Cart either screened or printed on a sticker affixed to the lid, along with telephone and website contact information. All Recycling Carts shall be provided at the Contractor's sole expense.

In the event that a Customer intentionally damages or misuses their Recycling Cart, the Contractor may discontinue recycling service to that Customer, on the City's prior approval and/or may charge the Customer a Cart destruction fee equal to the current new Cart replacement cost.

2.1.15.5 Ownership

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On the termination of this Contract for any reason, all Contractor-supplied Garbage Carts, Recycling Carts and Yard Waste Carts purchased or obtained by the Contractor in performance of this Contract, shall, revert back Contractor.

Detachable Containers and Drop-Box Containers shall be purchased, delivered and maintained by the Contractor during the term of this Contract. On the termination of this Contract for any reason, the City may, at its option, purchase or assign the right to purchase the Contractor's in-place inventory of Detachable Containers or Drop-Box Containers for use by the successive contractor. In the event that Contractor's Containers are purchased or assigned, the sale price shall equal fifty percent (50%) of the average new price for each Container, based on the average price from three (3) manufacturers at the time of the termination. For the purposes of this transaction, the average prices shall include transportation from the manufacturer to the Contractor's closest service yard, but shall exclude sales or use taxes.

2.1.15.6 Container Colors and Labeling

New and replacement Contractor-provided Recycling Carts shall be grey, Yard Waste Carts shall be blue, and Garbage Carts shall be green. Detachable Containers used for Garbage shall be green and all Detachable Containers used for Recyclables shall be blue. The color requirements apply to both Cart bodies and lids, but not Commercial Container lids. Containers requiring repainting, including Containers damaged by graffiti, shall be repainted within one week of verbal, written or e-mail notification by the City or Customer.

All Containers shall be labeled with up-to-date instructional information and contact information prior to delivery, including both a customer service phone number and a website address. All label designs shall be approved by the City prior to ordering by the Contractor. The location of the label on the Containers shall be subject to the City's prior approval. Labels shall be replaced by the Contractor at no additional charge when faded, damaged, out-of-date, or upon City or Customer request.

2.1.15.7 Container Weights

Cart weights shall not exceed the limits specified by the WUTC. The Contractor shall not be required to lift or remove materials from a Detachable Container exceeding the safe

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working capacity of the collection vehicle. The combined weight of Drop-Box and contents must not cause the collection vehicle to exceed legal road weights. If 65-gallon Garbage Carts are used, the assumed average weight of such Carts shall be 45 pounds.

2.1.16 Spillage

All loads collected by the Contractor shall be completely contained in collection vehicles at all times, except when material is actually being loaded. Hoppers and tippers on all collection vehicles shall be operated so as to prevent any blowing or spillage of materials. Any blowing or spillage of materials either caused by Contractor or that occurs during collection shall be immediately cleaned up by the Contractor at Contractor's expense. Contractor shall thoroughly inspect for and contain any collected materials inadvertently spilled on top of the collection vehicle to prevent release or littering this material.

All vehicles used in the performance of this Contract shall be required to carry regularly-maintained and fully-functional spill kits. At a minimum, spill kits shall include absorbent pads or granules, containment booms, storm drain covers, sweepers and other similar materials sufficient to contain, control and, for minor events, appropriately clean-up any spillage or release of wind-blown materials, litter, or leaks of Contractor vehicle fluids or leachate; provided, however, that for larger spills, the Contractor shall be permitted to retain the services of one or more third-party subcontractors to clean-up such spills. The Contractor shall notify the City via e-mail within two hours of any major spill or any spill that leaves a noticeable stain on City Roads or private property. Spill kits shall also include employee spill containment instructions and procedures as well as a regularly updated list of emergency contacts. The Contractor shall develop spill response procedures for review and approval by the City before initiating any work under this Contract. Prior to operating any vehicle in the City, all Contractor vehicle drivers shall be provided with hands-on training on the location, maintenance, and use of spill kits and associated containment and notification procedures. Such training shall be provided to all vehicle drivers at least annually.

All Drop-Box loads (both open and compactor) shall be properly and thoroughly covered or tarped to prevent any spillage of material prior to Contractor vehicle entering any Private Road or Public Street.

2.1.17 Pilot Programs

The City may wish to test and/or implement one or more changes to waste stream segregation, materials processing or collection technology, promotion of services, or collection frequency at some point during the

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term of the Contract. The City shall notify the Contractor in writing at least ninety (90) days in advance of its intention to implement a pilot program or of its intentions to utilize a new technology system on a City-wide basis. The costs (or savings) accrued by any City-initiated pilot programs shall be negotiated prior to implementing any City-directed pilot or proceeding with Service Area-wide full implementation. The Contractor shall coordinate with the City and participate fully in the design, roll-out, operation and troubleshooting of such pilot programs.

Contractor-initiated pilot programs shall require prior written notification and approval by the City. Contractor-initiated pilot programs shall be performed at no additional cost to the City or the Contractor's Customers; however, savings accrued may be subject to negotiations prior to City-wide implementation at the City's request.

Contractor-initiated surveys are allowed of businesses and/or Residences to gather information about generic service preferences or to access pilot program options or outcomes, provided that all related data and analysis is shared with the City.

2.1.18 Disruption Due to Construction

The City reserves the right to construct any improvement or to permit any such construction in any street or alley in such manner as the City may direct, which may have the effect for a time of preventing the Contractor from traveling the accustomed route or routes for collection. However, the Contractor shall, by the most expedient manner, continue to collect Garbage, Recyclables and Yard Wastes to the same extent as though no interference existed upon the streets or alleys normally traversed. This collection shall be done at no extra expense to the City or the Contractor's Customers.

2.1.19 Contractor Planning Assistance

The Contractor shall, upon request and without additional cost, make available site planning assistance to either the City and/or property owners or their representatives. The site planning assistance shall be available for all new construction or remodeling of buildings and structures within the Service Area, and shall address the design and planning of Garbage, Recyclables and Yard Wastes removal areas and their location upon the site of the proposed construction or remodeling project. Contractor planning assistance for optimizing loading docks, enclosures, compactor equipment, and other similar structures or areas shall also be available for existing Customers when adjusting Garbage, Recyclables and Yard Wastes services. Contractor planning assistance shall be provided within five (5) business days of the Contractor receiving a written request for assistance.

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2.1.20 Safeguarding Public and Private Facilities

The Contractor shall be obligated to protect all public and private improvements, facilities and utilities whether located on public or private property, including street Curbs. If such improvements, facilities, utilities or Curbs are damaged and such damage is primarily attributable to the Contractor's negligence or violation of applicable weight limitations, the Contractor shall notify the City immediately in writing of all damage, and the Contractor shall repair or replace the same. If the Contractor fails to do so within seven (7) days, the City may cause repairs or replacement to be made and the cost of repairs will become the responsibility of the Contractor. The City may deduct the cost of the repair from the Contractor's performance bond. Except in the case of driver/operator negligence or when being operated in violation of applicable weight limitations, the Contractor shall not be liable to the City for damage to pavement, curbing, or driving surface owned or controlled by the City resulting from its trucks providing services in the agreed-upon area.

2.1.21 Company Name

Harold LeMay Enterprises, Incorporated

2.1.22 Ongoing Coordination with City and Performance Review

The Contractor's supervisory staff shall be available to meet with the City at the City's offices on request to discuss and resolve operational and Contract issues should they arise. The City may, at its option, conduct periodic performance reviews of the Contractor's performance under this Contract. The City may perform the review to confirm various aspects of the Contractor's operations and compliance with this Contract. City staff or contracted consultants may provide the review at the City's direction. The Contractor shall fully cooperate and assist with all aspects of the performance review, including access to Contractor's route and Customer service data, billing information, safety records, equipment, facilities and other applicable items. The City's scope of review under this provision is intended to focus on analysis of the Contractor's performance and Contract compliance. Notwithstanding the foregoing, the City shall not be entitled to review and/or audit the Contractors confidential, proprietary, or privileged information as determined in the Contractors reasonable discretion, or information not directly related to the services provided by the Contractor hereunder.

The results of the performance review shall be presented to the Contractor and a plan for addressing any deficiencies shall be provided to the City within two (2) weeks of the Contractor's receipt of the review. The Contractor shall analyze and correct in good faith any deficiencies found in its performance under this Contract, including broader implementation of

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corrections that extend beyond the limited data or scope of a performance review to bring Contractor into more complete Contract compliance.

The Contractor's corrective plan shall address all identified deficiencies and include a timeline for corrective actions. The Contractor's corrective plan shall be subject to review and approval by the City. Upon approval of the plan, the Contractor shall implement and sustain actions that correct deficiencies. The Contractor shall continually monitor and evaluate all operations to ensure compliance with this Contract.

2.1.23 Disposal Restrictions and Requirements

All Garbage collected under this Contract, as well as residues from processing Recyclables and Yard Wastes, shall be delivered to the LRI Landfill located in Graham, Washington, unless otherwise directed in writing by the City.

The Contractor shall not be required to collect Hazardous Waste, Special Waste or any other hazardous materials that are either restricted from disposal or would pose a danger to collection crews. If materials are rejected for this reason, the Contractor shall leave a written notice with the rejected materials listing why they were not collected and providing the Customer with a contact for further information about proper disposal options. The Customer shall remain responsible for all costs associated with handling and disposal of all Hazardous Waste, Special Waste or any other hazardous materials not collected by Contractor. In addition, the Customer shall remain responsible for all costs associated with handling and disposal of all Hazardous Waste, Special Waste or any other hazardous materials inadvertently collected by Contractor. Title to and liability for any Hazardous Waste, Special Waste and any other hazardous materials shall remain with the Customer, even if the Contractor inadvertently collects and disposes of such Hazardous Waste, Special Waste and/or other hazardous materials.

2.1.24 Violation of Ordinance

The Contractor shall report in writing immediately to the City any observed violation of the City's ordinances providing for and regulating the Containerization, collection, removal and disposal of Garbage, Recyclables and Yard Wastes.

2.2 Collection Services

2.2.1 Single-Family Residence Garbage Collection

2.2.1.1 Subject Materials

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The Contractor shall collect all Garbage placed Curbside for disposal by Single-Family Residence Customers in and adjacent to plastic bags (for Extra Units) and/or Contractor-owned Garbage Carts. The Contractor shall offer carry-out service to disabled Customers at no charge (per Section 2.1.6) and to all other Customers for the appropriate service level rate, plus the carry-out surcharge, in accordance with Attachment B. If a Customer is either eligible for, or subscribes to, carry-out service, carry-out service shall be provided for all three collection streams (Garbage, Recyclables, and/or Yard Wastes) without duplicate surcharges.

2.2.1.2 Collection Containers

The Customer's primary Container must be a Garbage Cart. Plastic bags may only be used for Extra Units, not as the Customer's primary Container. Cart rental fees shall be embedded in the respective rate charged for the level of service and not separately charged or itemized.

Garbage Carts shall be delivered by the Contractor to Single-Family Residence Customers within five (5) calendar days of the Customer's initial request.

2.2.1.3 Specific Collection Requirements

The Contractor shall offer regular weekly collection of Carts as provided in Section 2.1.4.

Carry-out charges shall be assessed only to those Customers who choose to have the Contractor move Containers to reach the collection vehicle at its nearest point of access. An Extra Unit charge may be assessed for materials loaded so as to lift a Cart lid in excess of six (6) inches from the normally closed position. The Contractor may either charge for an overweight Container at the Extra Unit rate or leave the Container at the Curb with Customer notification as to why it was not collected. The Contractor shall maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Unit fees. All Extra Units from Customers with a history of disputed charges shall be documented with a date and time stamped photograph. Customers shall be allowed to specify that no Extra Units be collected without prior Customer notification, which shall be provided by the Customer no less than twenty-four (24) hours prior to that Customer's regular collection.

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Collections shall be made on such days as determined by Contractor in its reasonable discretion between 6:30 a.m. and 6:00 p.m. Customers shall place Containers on or abutting Public Streets or Private Roads by 6:30 a.m. on the day of garbage pickup. The Contractor may tag inappropriately placed Containers and may discontinue service in the event of persistent inappropriate Container placement. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers, in an upright position, with lids closed and attached, to their set out location and will not place Containers on streets, sidewalks, public pathways, or in places that block vehicle access to any driveways, mailboxes, or similar structures.

Once each year, on a schedule approved by the City, the Contractor shall provide a curbside collection event to handle bulky materials at no additional charge to Residential Customers. The event shall accept two categories of bulky household items: (1) individual small items not larger than three feet by three feet and weighing not more than 65 pounds; and (2) larger items, limited to one of each type, including all appliances, mattresses, sofas, hot water tanks, etc.

2.2.2 Single-Family Residence Recyclables Collection

2.2.2.1 Subject Materials

The defined list of Residential Recyclables shall be collected from all participating Single-Family Residences as part of basic Garbage collection services, without extra charge. The Contractor shall collect all Residential Recyclables from Single-Family Residences that are placed in Contractor owned Carts or that are boxed or placed in a paper bag next to the Customers' Recycling Cart. Recyclables containing obvious amounts of Yard Wastes or Garbage shall not knowingly be collected and instead prominently tagged with a notice informing the Customer of Recyclables contamination. Recyclables must be prepared as follows and uncontaminated with food or other residues:

Aluminum Cans:	All clean aluminum cans that are placed in the Recycling Cart.
Corrugated Cardboard:	All corrugated cardboard boxes smaller than three (3) feet square, and placed in or next to the Customer's Recycling Cart. Corrugated cardboard boxes larger than three (3) feet square must be flattened by Customer prior to collection.

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Mixed Paper:	All Mixed Paper
Newspaper:	All newspaper and advertising supplements that are delivered.
Plastic Containers:	All clean plastic bottles, cups, jugs and tubs. Other plastics, automotive or other hazardous product Containers, and lids less than 3" are excluded.
Other Plastic:	Clean plastic food containers and trays, Polypropylene and PET plastic soda and water bottles; plastic buckets such as 5 gallon pails and clean Plant pots. Plastic grocery bags are excluded.
Tin Cans:	All clean food and beverage tin cans.

2.2.2.2 Containers

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining adequate inventories of, and distributing and maintaining Recycling Carts. The Recycling Cart size shall be 95-gallons for all Customers. Recycling Carts shall include a recycling/program brochure when distributed.

Recycling Carts shall be delivered by the Contractor to new Customers or those Customers requesting replacements, within five (5) days of the Customer's initial request.

2.2.2.3 Specific Collection Requirements

Single-Family Residence Recyclables collection shall occur every other week on such days as determined by Contractor in its reasonable discretion. Single-Family Residence Recyclables collection shall occur during the hours and days specified in Section 2.1.4. Collections shall be made from Residences on a regular schedule on the same day and as close to a consistent time as possible. The Contractor shall collect on Public Streets and Private Roads in the same location as Garbage collection service is provided. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers with their lids closed and attached to their set out location in an orderly manner.

The Contractor shall collect properly prepared Single-Family Residence Recyclables from Garbage Customers. When

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extremely large quantities of commercially-generated materials are consistently set out at a Single-Family Residence, the Contractor shall request the resident to use a larger Recycling Cart or use commercial recycling services for the excess volumes. If the resident continues to set out commercial quantities of Recyclables, the Contractor shall notify the City for further action. In the event that large quantities of Residentially-generated cardboard (e.g. moving boxes) are set out for collection, the Contractor may collect the excess materials the following day in a separate truck, provided that clear written notification of the collection delay is provided to the Customer.

The City and Contractor shall cooperate on monitoring the quality of Recyclables set out for collection. Either party may inspect or sample set-out or collected Recyclables. Any deficiencies in Recyclables quality observed by City or Contractor's staff shall require educational follow-up by the Contractor to encourage maximum quality and marketability. Educational follow-up shall range from a minimum of a notice ticket or "oops tag" to involvement of management staff from either the City or Contractor as appropriate.

2.2.3 Yard Wastes Collection

2.2.3.1 Subject Materials

Yard Wastes shall be collected every other week, the same day as each household's Garbage collection. Single-Family Residence Yard Waste collection shall occur during the hours and days specified in Section 2.1.4.

Yard Wastes containing obvious amounts of Recyclables or Garbage shall not knowingly be collected and instead prominently tagged with a notice informing the Customer of Yard Wastes contamination.

Contaminated or oversized Yard Wastes materials rejected by the Contractor at the Curb shall be tagged in a prominent location with an appropriate problem notice explaining why the material was rejected.

2.2.3.2 Containers

A 95-gallon Yard Waste Cart shall be provided to all subscribers. The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining

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Yard Wastes Carts. Yard Waste Carts shall be labeled with instructional information, in accordance with Section 2.1.15.6. The Yard Wastes Cart size shall be 95-gallons.

Extra Yard Wastes material that does not fit in the initial Yard Wastes Cart shall be bundled or placed in Kraft bags or Customer-owned Garbage Cans labeled for Yard Wastes. Customers choosing to use their own Containers for excess Yard Wastes shall be provided durable stickers by the Contractor that clearly identify the Container's contents as Yard Wastes.

Yard Waste Carts shall be delivered by the Contractor to Customers within five (5) days of the Customer's initial request. Redelivery fees shall be charged only to those Residential Customers that cancel and then restart Yard Waste Cart collection service within seven months of cancellation. In order for this fee to be applicable, Contractor must notify each Customer at the time they request service cancellation. The Contractor may charge a Yard Wastes Cart cleaning and deodorizing fee, per occurrence, for each Yard Waste Cart cleaned and redelivered to existing Yard Wastes collection subscribers upon their request.

2.2.3.3 Specific Collection Requirements

Single-Family Residence Yard Wastes collection shall occur every other week on such days as determined by Contractor in its reasonable discretion and opposite Curbside recyclables collection. Single-Family Residence Yard Wastes collection shall occur during the hours and days specified in Section 2.1.4. Collections shall be made from Residences on a regular schedule on the same day and as close to a consistent time as possible. Yard Wastes in excess of 96 total gallons may be charged as Yard Wastes Extra Units in 32 gallon increments in accordance with Attachment B, except during the two collection cycles immediately following a storm event, when up to 96 additional gallons of storm debris shall be accepted with regular quantities of Yard Wastes without extra charge.

Unflocked, undecorated, natural holiday trees (Christmas Trees) will be collected at no additional cost on the first two weeks of scheduled Yard Waste materials collection each year from all Single-Family and Multifamily Residences in the City if prepared as 2x2x4 feet sections or bundles.

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The Contractor shall collect Yard Wastes on Public Streets and Private Roads in the same location as Garbage collection. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers in an upright position, with lids attached, to their set out location and will not place Containers on streets, sidewalks, public pathways, or in places that block vehicle access to any driveways, mailboxes, or similar structures.

2.2.4 Single Family Bulky Waste Collection

2.2.4.1 Subject Materials

On-call Bulky Waste collection shall be offered, and shall be provided at the rates listed in Attachment B. Collected oversized items shall be recycled by the Contractor to the extent possible. The Contractor shall maintain a separate log listing service date, materials collected, Customer charges and whether the item was recycled or disposed. This log shall be provided to the City on reasonable demand.

2.2.4.2 Specific Collection Requirements

On-call collection services of bulky waste such as couches, mattresses, white goods and other oversized materials must occur during the hours and days specified in Section 2.1.4. The Contractor's crews shall make collections in an orderly and quiet manner.

2.2.5 Multi-Family Complex and Commercial Customer Garbage Collection

2.2.5.1 Subject Materials

The Contractor shall collect all Garbage set out for disposal by Multi-Family Complex and Commercial Customers in acceptable Containers as designated in Section 2.2.5.2.

2.2.5.2 Containers

The Contractor shall provide Containers meeting the standards described in Section 2.1.15. Multi-Family Complex and Commercial Customers shall be offered a full range of Containers and service options, including Garbage Carts, one (1) through six (6) cubic yard compacted and one (1) through six (6) cubic-yard non-compacted Detachable Containers, and compacted or non-compacted Drop-Box Containers.

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Materials in excess of Container capacity or the subscribed service level shall be collected and properly charged as Extra Units at the rates listed in Attachment B. The Contractor shall develop and maintain route lists in sufficient detail to allow accurate recording and charging of all Extra Units and documentation of service irregularities such as damaged or blocked Containers. All Extra Units and service irregularities shall be documented with a date and time stamped photograph.

The Contractor may use either or both front-load or rear-load Detachable Containers to service Multi-Family Complex and Commercial Customers. However, not all collection sites within the Service Area may be appropriate for front-load collection due to limited maneuverability or overhead obstructions. The Contractor shall provide Containers and collection services capable of servicing all Customer sites, whether or not front-load collection is feasible at that Customer's site.

Contractor-owned Containers shall be delivered by the Contractor to requesting Multi-Family Complex and Commercial Customers within five (5) days of the Customer's initial request.

2.2.5.3 Specific Collection Requirements

Commercial Garbage collection shall be made available to Multi-Family Complex and Commercial Customers weekly on such days as determined by Contractor in its reasonable discretion during the times specified in Section 2.1.4. Collection at Multi-Family sites shall be limited to the same hours as Single-Family Residence collection. Collections shall be made on a regular schedule on the same day and as close to a consistent time as possible to minimize Customer confusion. The Contractor shall collect from areas mutually agreed upon by the Contractor and Customer with the least slope and best truck access possible. Containers shall be replaced after emptying in the same location as found.

Extra charges may be assessed for materials loaded so as to lift the Garbage Can, Garbage Cart of Detachable Container lid in excess of six (6) inches from the normally closed position.

Customers may request extra collections and shall pay a proportional amount (e.g. one pick-up per week rate divided by 4.33 weeks per month) of their regular monthly rate for that service.

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2.2.5.4 Premium Services

Premium services for Commercial and Multifamily Customers include Contractor-provided locks, lockboxes to hold customer keys, opening and closing gates, and rolling out containers more than 10 (ten) feet. The charges for premium services are specified in Attachment B.

2.2.6 Multi-Family Complex Recyclables Collection

2.2.6.1 Subject Materials

The Contractor shall provide adequate Container capacity and collect all Recyclables from Multi-Family Complexes that are prepared in a manner similar to that described for Single-Family Residence Recyclables in Section 2.2.2.1. This embedded Recyclables collection shall occur at no extra charge from base Garbage collection. The Contractor shall tag contaminated Containers, but will not collect the contaminated load as Garbage and not charge the resident or property manager a fee for contamination unless notification and correction procedures as specified by the City are completed.

2.2.6.2 Containers

The Contractor shall use Detachable Containers for recycling collection at Multi-Family sites wherever practicable and shall use Recycling Carts only at duplexes, tri-plexes, four-plexes and other sites where site constraints limit the use of Detachable Containers. Upon notice, Contractor shall equip Detachable Containers with special slotted recycling lids approved by the City.

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Detachable Containers and Recycling Carts. The default Recycling Cart size shall be 95-gallons. Recycling Carts shall be labeled with recycling collection requirements in accordance with Section 2.1.15.6 when distributed. The City may require that combination or common-keyed locks and multiple keys be provided by Contractor at no extra charge to limit contamination of Recycling Carts or Recycling Detachable Containers.

Recycling Carts and Containers shall be delivered by the Contractor to requesting Customers within five (5) days of the Customer's initial request. Multi-Family Complex Recycling

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Carts shall be relabeled periodically in accordance with Section 2.1.15.6.

2.2.6.3 Specific Collection Requirements

Multi-Family Complex Recyclables collection shall occur every other week shall be made available during the times specified in Section 2.1.4. Collections shall be made on a regular schedule on the same day(s) of the week to minimize Customer confusion. The Contractor shall collect from areas mutually agreed upon by the Contractor and Customer with the least slope and best truck access possible. After emptying, Containers shall be replaced in the same location as found. Multi-Family Complex Recycling Customers shall not be charged lock, gate or roll-out fees.

When space constraints limit the provision of Containers appropriately-sized for every other week collection, the Contractor shall provide more frequent collection, as necessary, of smaller Containers to provide adequate total recycling capacity for the Multi-Family Complex site.

2.2.6.4 Multi-Family Recycling Outreach and Incentives

The Contractor shall provide ample copies of current recycling guidelines upon request of the City or Customer. The Contractor shall assist the City in the development and implementation of an annual recycling outreach and incentive plan. The plan shall include, at a minimum, a description of planned programs, task assignments between the City and Contractor and support costs where appropriate.

Public Education will play an important role in this process. The Contractor and the City shall work together to conduct workshops, visit with Customers, and develop and implement a high quality public education campaign. The outcomes and results of these efforts will be tracked and reported to the City by the Contractor.

2.2.7 Multi-Family Complex and Commercial Customer Yard Wastes Collection

2.2.7.1 Subject Materials

The Contractor shall provide Cart-based Yard Wastes collection services to requesting Multifamily Complexes and Commercial Customers on a subscription fee basis. If additional capacity is required, such additional capacity shall be fee-based as negotiated between the Customer and the

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Contractor. The provision of fee-based Commercial Yard Wastes collection in Detachable Containers by the Contractor shall comply with the service and billing standards of this Contract, even though rates are not regulated by this Contract.

Contaminated or oversized Yard Waste materials rejected by the Contractor shall be tagged in a prominent location with an appropriate problem notice explaining why the material was rejected.

2.2.7.2 Containers

The Contractor shall be responsible for ordering, assembling, affixing instructional information onto, maintaining inventories of, and distributing and maintaining Yard Waste Carts and Detachable Containers.

Yard Waste Carts and Detachable Containers shall be delivered by the Contractor to new Multi-Family Complexes or Commercial Customers within five (5) days of the City's request, following the City's provision of technical assistance to the Customer to set up the program.

2.2.7.3 Specific Collection Requirements

The Contractor shall provide Cart-based Yard Wastes collection services to requesting Multifamily Complexes and Commercial Customers every other week on such days as determined by Contractor in its reasonable discretion during the hours specified in Section 2.1.4 opposite recyclables collection. Collections shall be made on a regular schedule on the same day(s) and as close to a consistent time as possible.

The Contractor shall collect Containers at defined Multi-Family Complex or Commercial Customer Container spaces. The Contractor's crews shall make collections in an orderly and quiet manner, and shall return Containers with their lids closed and attached to their set out location.

2.2.8 Drop-Box Container Garbage Collection

2.2.8.1 Subject Materials

The Contractor shall provide Drop-Box Container Garbage collection services to Multi-Family Complex and Commercial Customers, in accordance with the service level selected by the Customer.

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2.2.8.2 Containers

The Contractor shall provide Containers meeting the standards described in Section 2.1.15. Both Customer-owned and Contractor-owned Drop-Box Containers shall be serviced, including Customer-owned compactors.

Contractor-owned Containers shall be delivered by the Contractor to requesting Customers within five (5) days of the Customer's initial request.

2.2.8.3 Specific Collection Requirements

Single-Family Residence, Multi-Family Complex and Commercial Customer Drop-Box Container collection must occur on such days as determined by Contractor in its reasonable discretion during the times specified in Section 2.1.4. Collection of Drop-Box Containers in Single-Family Residence and Multi-Family Complex areas and multi-use buildings containing Multi-Family Complexes shall be limited to the same hours as Single-Family Residence collection.

The Contractor shall provide service and equipment capability to collect full Drop-Box Containers no later than the next business day after the Customer's initial call, provided such call is received prior to 1 p.m. The Contractor shall maintain a sufficient Drop-Box Container inventory to provide empty Containers to new and temporary Customers within five (5) business days after the Customer's initial call.

Mileage fees shall be assessed only when Customer-directed disposal/recycling sites are more than ten (10) road miles by the shortest route from a particular Customer's location, and then only on the additional mileage above twenty (20) miles round-trip. The Contractor shall obtain prior permission from the Customer to use disposal/recycling sites which would result in additional mileage charges.

2.2.9 Temporary Container Customers

The Contractor shall provide temporary 2-, 4-, and 6-cubic yard Detachable Containers and 10-, 20-, 30-, and 40-cubic yard Drop-Boxes to Single-Family Residence, Multi-Family Complex and Commercial Customers on an on-call basis. Temporary service shall include all Customers requesting Container service of less than ninety (90) days duration, including existing Customers on permanent service who temporary request an extra Container for less than ninety (90) days. The charges for temporarily Detachable Container service listed in Attachment B shall include delivery, collection

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and disposal. Disposal charges for temporary Drop-Box Containers shall be billed in addition to the delivery, rental and hauling charges listed in Attachment B. Rental charges shall be itemized and charged separately, at the rates listed in Attachment B. The Contractor may charge a deposit to be paid in advance of service equal to the average disposal fee for the size of temporary Container ordered if the creditworthiness of the individual Customer is in doubt.

2.2.10 Municipal Services

The Contractor shall provide weekly Garbage, Recyclables and Yard Wastes collection to all City-owned municipal facilities as a part of this Contract and at no additional charge. Those facilities include, but are not limited to those listed in Attachment C.

At any time during the term of this Contract, the City may add a reasonable number of facilities in addition to those listed above. Additional municipal facilities added during the term of the Contract shall also be provided collection, including new facilities developed within the Service Area, as well as municipal facilities in future annexation areas covered by this Contract.

2.2.11 City-Sponsored Community Events

The Contractor shall provide Garbage and Recycling services for City-sponsored special events at no charge to the City or users. Container capacity shall be coordinated with event staff to ensure that sufficient Container capacity and collection frequency is provided by the Contractor. These events shall include, but not be limited to:

- **City Collection Event(s)**:

- The contractor shall support up to two (2) City special collection events scheduled each year for Lakewood residents (proof of residency required). At each event, contractor shall provide curbside pick-up for white goods, bulky items such as furniture, mattresses/springs, recyclables and other items approved by the City. Contractor shall provide all equipment, staffing, collection, promotional/outreach, transportation and recycling and/or disposal fees at no additional charge to the City.

- **Discounted Code Enforcement Clean-up Support**: In residential areas designated by the City, contractor shall support up to ten (10) clean-up events. Contractor shall provide 10-40 yard drop box containers (or other sizes approved by the City) without charge to the City. Contractor shall waive delivery, rental, disposal and other fees.

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- **Recycling Collection at Special Events**: Contractor shall provide without charge, recycling containers and collection during the events listed on Attachment D.

2.2.12 Other Solid Waste Collection Services (Emergency Events)

The Contractor may occasionally provide other regularly scheduled or one-time services related to solid waste collection in the City not specifically delineated under this Contract. E.g. storm events, natural disasters, fires, etc. This service will be provided in in the event that an emergency has been declared by the City. Should an emergency be declared, the City will notify the Contractor should additional services be required.

2.3 Management

2.3.1 Responsibility of Participants

2.3.1.1 Contractor's Responsibilities

Consistent with the responsibilities set forth otherwise in this Contract, the Contractor shall be responsible for:

- Collecting Garbage in the Service Area and delivering the Garbage to the Pierce County Disposal System, unless otherwise directed by the City, and shall ensure that the Contractor handles Garbage in accordance with the City's interlocal agreements governing solid waste management.

- Collecting construction/demolition waste in the Service Area and delivering the waste to fully permitted recycling, disposal or transfer sites in compliance with Pierce County's Comprehensive Solid Waste Management Plan.

- Collecting, processing and marketing Recyclables and Yard Wastes collected by the Contractor in the Service Area.

- Providing cart and Container assembly, maintenance, painting, stickering/labeling and re-stickering/labeling and delivery services listed or required in this Contract.

- Performing customer service, including answering telephone calls and e-mails, providing information on services, establishing Customer accounts and providing appropriate Customer support.

- Billing, receiving, posting Customer payments and deposits, and adding educational information to bills, if requested by the City.

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- Procuring all equipment and bearing all start-up, operating maintenance, and transition costs for collection and processing or disposal of Garbage, Recyclables and Yard Wastes, including proper safety equipment and insurance for vehicles and workers.

- Providing and supervising all labor to accomplish the scope of services required under this Contract, including labor to collect materials, maintain and distribute equipment and related customer service functions.

- Operating a maintenance facility to house and service collection equipment and acquiring all necessary land use, building, operating, and business permits and licenses.

- Submitting all informational materials for public release to the City for review and approval prior to release.

- Complying with all state, federal and local laws.

- Meeting all non-discrimination and OSHA (Federal Occupational Safety and Health Act of 1970)/WISHA (Washington Industrial Safety and Health Act of 1973) standards, and all environmental standards and regulations.

- Providing a safe working environment and comprehensive liability insurance coverage as set forth in Section 6.4, and providing proof of this insurance to the City annually.

- Providing a valid Contractor's performance and payment bond in accordance with Section 6.5, and providing proof of this bond to the City annually.

- Securing the prior written approval of the City and surety before assigning or pledging money, or assigning, subcontracting or delegating duties.

- Providing route maps to the City indicating the day of week for each service.

- Submitting collection day changes to the City for review and approval prior to notice being provided to Customers and the change taking place.

- Submitting prompt notices to the media regarding modifications to the collection schedule due to inclement weather.

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- Maintaining Containers, vehicles and facilities in a clean, properly labeled and sanitary condition.

- Meeting all City reporting, inspection and review requirements as set forth herein.

- Providing outreach materials and programs, and assistance with distribution and outreach as required in this Contract.

- Providing operating and safety training for all personnel, including spill response training for all drivers.

- Notifying the City of intended changes in management not less than sixty (60) days prior to the date of change. New management shall also attend an introductory meeting scheduled by the City during the sixty (60) day notification period. Exception shall be made for termination for cause or voluntary termination, in which case the Contractor shall notify the City within twenty-four (24) hours of the termination.

2.3.1.2 City's Responsibilities

Consistent with the responsibilities set forth otherwise in this Contract, the City shall be responsible for:

- Overall project administration and final approval of Contractor services and activities.

- Reviewing and approving Contractor compensation adjustments due to changes in County disposal fees or price indices.

- Directing and overseeing public education and outreach with the cooperation and assistance of the Contractor.

- Monitoring and evaluating collection operations with the cooperation and assistance of the Contractor.

- Reviewing and approving all assignment, pledging, subcontracting or delegation of money or duties.

- Reviewing and approving collection days and rate changes.

- Reviewing and approving holiday schedule changes.

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- Reviewing and approving all written or other informational materials used in the City by the Contractor.

- Conducting performance reviews of the Contractor with the Contractor's cooperation and assistance.

- Holding periodic operations meetings with the Contractor, as necessary.

- Adopting ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of this Contract, including, without limitation, the exclusive service rights granted to the Contractor pursuant to this Contract (collectively, the "Ordinances").

- Enforcing the Ordinances.

- Using best efforts to assist the Contractor in collecting delinquent and unpaid charges for collection services provided by the Contractor hereunder. To that effect, if the charges for such collection services are delinquent and unpaid for a period of sixty (60) days, such charges shall become a lien on the real property for which the services were provided and the property owner shall be notified by the City as provided for in the Ordinances.

2.3.2 Customer Service and Billing

The Contractor shall be responsible for providing all customer service functions, including: answering Customer telephone calls and e-mail requests, informing Customers of current services and charges, handling Customer subscriptions and cancellations, receiving and resolving Customer complaints, dispatching Drop-Box Containers and special collections, correlating service levels to current invoices, all Customer billing, and maintaining and regularly updating a user-friendly website. These functions shall be provided at the Contractor's sole cost, with such costs included in the Customer charges (see Attachment B).

2.3.2.1 Office Location

The Contractor shall maintain a principal office within twenty five (25) miles of the City limits. The Contractor's office and customer service assistance shall be accessible by a local area code and phone number, specifically for use during this Contract as the Contractor's primary customer service line. The Contractor's office hours shall be open at a minimum from 8

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a.m. to 5 p.m. daily, except Saturdays, Sundays and recognized holidays. Representatives shall be available at the Contractor's local office during office hours for communication with the public and City representatives. Customer calls shall be taken during office hours by a person, not by voice mail.

The Contractor shall maintain an emergency telephone number for use by City staff outside normal office hours. The Contractor shall have a representative, or an answering service to contact such representative, available at said emergency telephone number during all hours other than normal office hours.

2.3.2.2 Customer Service Requirements

2.3.2.2.1 [Intentionally omitted.]

2.3.2.2.2 Service Recipient Complaints and Requests

The Contractor shall record all complaints and service requests, regardless of how received, including date, time, Customer's name and address (if the Customer is willing to give this information), method of transmittal, and nature, date and manner of resolution of the complaint or service request in a computerized daily log. Any telephone calls received via the Contractor's non-office hours answering service shall be recorded in the log the following business day. The Contractor shall make a conscientious effort to resolve all complaints within twenty-four (24) hours of the original call or e-mail, and service requests within the times established throughout this Contract for various service requests. If a longer response time is necessary for complaints or requests, the reason for the delay shall be noted in the log, along with a description of the Contractor's efforts to resolve the complaint or request.

The customer service log shall be available for inspection by the City, or its designated representatives, during the Contractor's office hours.

The Contractor shall provide sufficient field service/sales staff and route manager personnel to

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accurately set-up accounts and visit Customers at their service location as needed – for example during roll-out of service changes that impact multiple accounts, or during establishment of new Recycling or Yard Wastes collection service changes. The Contractor's field service/sales staff shall be able to describe to Customers any related service procedures and Container or equipment needs, and be able to calculate any related rate impacts that would arise from implementing service change options. The Contractor's field service/sales staff shall also be responsible for completion of outreach and tracking specified in Section 2.3.4 and 2.3.5, including related required annual reporting.

2.3.2.2.3 Handling of Customer Calls

All incoming telephone calls shall be answered promptly and courteously, with an average speed of answer in accordance with industry standards. A Customer shall be able to talk directly with a customer service representative when calling the Contractor's Customer service telephone number during office hour.

2.3.2.2.4 Corrective Measures

Upon the receipt of Customer complaints in regards to busy signals or excessive delays in answering the telephone, the City may request and the Contractor shall submit a plan to the City for correcting the problem. Once the City has approved the plan, the Contractor shall have thirty (30) days to implement the corrective measures, except during the transition and implementation period, during which time the Contractor shall have one (1) week to implement corrective measures. Corrective measures shall be implemented without additional compensation to the Contractor.

2.3.2.2.5 Internet Website

The Contractor shall provide a Customer-friendly Internet website accessible twenty-four (24) hours a day, seven (7) days a week, containing

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information specific to the City's collection programs, including at a minimum, contact information, collection schedules, material preparation requirements, available services and options, rates, inclement weather service changes and other relevant service information for its Customers. The website shall include an e-mail function for Customer communication with the Contractor, and the ability for Customers to submit service requests on-line. E-mailed Customer service requests shall be answered the next business day after receipt. The website shall offer Customers the option to pay their service bills on-line through a secured bill payment system. The Contractor shall update the website monthly, and more often if necessary, and provide links to the City's website. The website shall include contact information translated into Spanish. The Contractor's website shall minimize "pop-up" windows, and not include adware, spyware or third party tracking "cookies."

2.3.2.2.6 Full Knowledge of Programs Required

The Contractor's customer service representatives shall be able to accurately describe all collection services available to City Customers, including the various services available to Single-Family Residence, Multi-Family Complex and Commercial Customers. For new Customers, customer service representatives shall explain all Garbage, Recyclables and Yard Wastes collection options available depending on the sector the Customer is calling from. For existing Customers, the representatives shall explain new services and options, and resolve recycling issues, collection concerns, missed pickups, Container deliveries, and other Customer concerns. Customer service representatives shall be trained to inform Customers of all Recyclables and Yard Wastes specifications. Policy questions resolvable by the City shall be immediately forwarded to the City for response. The Contractor's customer service representatives shall have real-time electronic access to customer

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service data and history to provide efficient and high-quality customer services.

2.3.3 Contractor's Customer Billing Responsibilities

The Contractor shall be responsible for all billing functions related to the collection services provided under this Contract. All Single-Family Residence Customers shall be billed every other month, and Multi-Family Complex and Commercial Customers shall be billed monthly. Customers may be billed prior to receiving service, but the due date (or past due date) shall be no sooner than the last day of service provided under that billing cycle. The bill's due date shall be no sooner than fifteen (15) business days after the date the bill is mailed. The Contractor may make account adjustments for over- or under-charges, provided that under-charges may only be charged for services provided within ninety (90) days of the bill date.

Billing and accounting costs associated with Customer invoicing shall be borne by the Contractor, and are included in the service fees in Attachment B. The Contractor may bill to Customers late payments and "Non-sufficient Funds" ("NSF"), "bounced" check charges, as well as the actual third party costs of bad debt collection. Late fees shall not exceed one percent (1%) per month and NSF charges shall not exceed twenty dollars ($20.00) per NSF check or actual bank charges, whichever is greater.

All Single-Family Residence Recyclables collection costs and revenues shall be included in the Garbage collection rate and shall not be charged or itemized separately. Subscription Yard Waste services shall be itemized separately. All Multi-Family Complex Recyclables collection costs and revenues shall be included in the Garbage collection rate and shall not be charged or itemized separately, except as directed at the City's sole discretion. Commercial Customer and Multi-Family Complex Yard Waste services shall be itemized and charged separately. No surcharges (such as environmental or fuel surcharges) shall be added to invoices for Garbage, Recyclables or Yard Wastes collection, including Commercial Recycling collection, unless specifically authorized in writing by the City.

The Contractor shall be responsible for the following:

- Generating combined Garbage, Recyclables and Yard Wastes collection bills. Bills must include a statement indicating the Customer's current service level, current charges and payments, and appropriate taxes and fees as well as the Contractor's customer service contact information. Space shall be made available on bills for including City contact information at the City's request.

- Accepting, processing and posting payment data each business day.

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- Maintaining a system to monitor and report Customer subscription levels, record Extra Unit Garbage and Yard Wastes collected, place an additional charge on the Customer's bill for the excess collection, and charge for additional services requested and delivered. This system shall maintain a Customer's historical account data for a period of not less than two years.

- Accepting and responding to Customer requests for service level changes, missed or inadequate collection services, and additional services.

- Collecting unpaid charges from Customers for collection services.

- Implementing rate changes as specified in Section 3.1 and 3.3.

- Including lines/space for customer service messages on Customer bills.

- Including Contractor phone numbers for customer service on Customer bills.

- Manage published information so that all Customers in any grouping targeted for receipt of printed educational or outreach materials shall be included in Contractor's mass-mailings of such materials regardless of Customer's billing method status (such as web-based invoicing) or Customer's mail receipt method (such as use of a Post Office Box rather than standard curbside mail service).

The Contractor shall be required to have procedures in place to backup and minimize the potential for the loss or damage of the account servicing (customer service, service levels and billing history) database. The Contractor shall ensure that a daily backup of the account servicing database is made and securely stored off-site. The Contractor shall also provide the City with a copy of the customer service database via e-mail or other electronic medium on a quarterly basis. The City shall have unlimited rights to use the customer service database to develop targeted educational and outreach programs, analyze service level shifts or rate impacts, and/or to provide information to successor contractors.

Upon five (5) business days written notice, the Contractor shall provide the City with a paper and/or electronic copy at the City's discretion of the requested Customer information and history, including but not limited to Customer names, service and mailing addresses, contact information, service levels and current account status. City requests for information pertaining to five or fewer accounts shall be provided within one business day.

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As set forth in detail below, the Contractor shall provide reports upon request by the City and annual reports to the City. In addition, the Contractor shall allow the City access to pertinent operations information related to compliance with the obligations of this Contract, such as vehicle maintenance logs, disposal, Yard Wastes and recycling facility certified weight slips, and Customer charges and payments.

2.3.4 Reporting

The Contractor shall provide quarterly and annual reports to the City at no cost. In addition, the Contractor shall allow City staff access to pertinent operations information such as disposal facility certified weight slips and vehicle maintenance logs upon request.

2.3.4.1 Annual Reports

On an annual basis, the Contractor shall provide a report containing information for the previous three months. Reports shall be submitted in electronic format approved by the City and shall be certified to be accurate by the Contractor. At a minimum, reports shall include:

(1) A tabulation of the number of single family, commercial and multi-family accounts by service level/Container size and service frequency.

(2) A compilation of program participation statistics including: a summary of multi-family and commercial participation in recycling programs, set-out statistics for Residential Garbage, Yard Wastes and Recyclables collection services, and log of bulky items.

(3) A summary of Recyclables quantities by collection sector and by commodity, including processing residues disposed and market prices.

(4) A summary of disposal or tipping facility locations and associated quantities for Garbage, Recyclables and Yard Wastes as well as any changes in processing procedures, locations or tipping fees.

(5) A description of any vehicle accidents infractions, or insurance claims against Contractor.

(6) A description of any changes to collection routes, Containers, vehicles (including the identification of back-up vehicles not meeting contract standards with the truck number and date of use), customer service or

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other related activities affecting the provision of services; and

(7) Call Center performance as outlined in Section 2.3.2.2.

If collection vehicles are used to service more than one Customer sector or jurisdiction, the Contractor shall develop an apportioning methodology that allows the accurate calculation and reporting of collection quantities. The apportioning methodology shall be subject to prior review and approval by the City and shall be periodically verified through field testing by the Contractor.

(8) A discussion of highlights and other noteworthy experiences, along with measures taken to resolve problems, increase efficiency, and increase participation in Yard Wastes and Recyclables collection programs.

(9) A discussion of promotion and education efforts and accomplishments.

(10) An inventory of current collection, delivery, spare and other major equipment, including make, model, year, and accumulated miles.

(11) A list of multi-family and commercial recycling sites pursuant to Section 2.3.5.

2.3.4.2 Compliance with Federal, State and Local Reporting Requirements.

The Contractor agrees to comply with all federal, state and local reporting requirements including but not limited to Pierce County requirements concerning its Single Stream Recycling Ordinance.

2.3.4.3 Public Records Act Compliance.

Information received by the City and in the Contractor's possession shall be subject to existing laws and regulations regarding disclosure, including the *Public Records Act*, Chapter 42.56 RCW and shall be subject to the provisions of Section 6.8 below. Contractor shall cooperate with City on all public records requests or requests related to litigation and provide all information requested.

2.3.5 Promotion and Education

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The Contractor shall have primary responsibility for providing service-oriented information and outreach to Customers and implementing on-going recycling promotion, at the direction of the City. The Contractor shall also incorporate general waste reduction, minimization and reuse elements into its promotion and education program.

The Contractor shall maintain a complete list of all Multi-Family Complex sites within the Service Area, and the status of each site's participation in Contractor-provided services. The Contractor shall annually contact, by telephone or site visit, the manager or owner of each site to encourage participation and inform the manager or owner of all available services and ways to decrease Garbage generation. Printed informational materials discussing waste prevention and recycling service options shall be prepared and distributed to support contact with Multi-Family Complex and Commercial Customer sites. This contact shall be coordinated with City and Pierce County promotional efforts. The Contractor shall include with its annual report the list of Multi-Family Complex and Commercial Customer sites; Garbage, recycling and Yard Wastes status; Container sizes, service frequency, and types; Customer contact dates and outcome of such contacts; and suggestions for increasing participation or other program improvements.

The Contractor shall keep the public informed of programs and encourage participation through an annual service update. Upon request by the City, but not more frequently than annually, the Contractor shall provide an annual service update for each service sector, the format, content and timeframe of which shall be subject to prior review and reasonable approval by the City. The annual service update shall be mailed to all Customers and, at a minimum, shall include an informational brochure indicating rates, all services available, preparation and other service requirements, contact information, inclement weather and other policies, a collection schedule calendar applicable to each recipient's routes and other useful Customer information.

The Contractor shall develop, print, periodically update and maintain sufficient quantities of new Customer information materials, the format and content of which shall be subject to prior review and approval by the City. Upon approval, materials shall be mailed to every new Customer prior to the Customer's first billing and shall, at a minimum, include a statement of applicable rules and service policies, rates, services and preparation requirements, collection days in calendar format, Contractor customer service information and City contact information. Contractor's materials shall be TTY accessible and Contractor shall provide alternative language formats upon request.

The Contractor's welcome packet and annual service update may be e-mailed to Customers instead of paper materials, upon Customers' request.

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The Contractor shall permit the City to insert, at no charge, single-sheet information bulletins into Customer bills. When the insert is beyond one page and increases Contractor cost, the City shall pay the incremental difference. The City and Contractor shall work cooperatively for timely inclusion of such materials.

2.3.6 Field Monitoring

The City may periodically monitor collection system parameters such as participation, Container condition, Container weights, waste composition and Customer satisfaction. The Contractor shall assist the City by coordinating the Contractor's operations with the City's field monitoring to minimize inconvenience to Customers, the City and the Contractor.

2.3.7 Transition to Next Contractor

The Contractor shall be expected to work with the City and any successive contractor(s) in good faith to ensure a minimum of Customer disruption during the transition period. Container removal and replacement shall be coordinated between the Contractor and a successive contractor to occur simultaneously in order to minimize Customer inconvenience.

The Contractor shall provide a detailed updated Customer list, including Customer name, service address, mailing address, and collection and Container rental service levels to the successive contractor within seven (7) days of the City's request.

The parties recognize that a failure to comply with this provision will damage the City, but that determination of such damage will be difficult and burdensome; therefore, the parties agree that in the event of a breach of this provision, the Contractor or the Contractor's surety shall pay the City $25,000 or the material breach of this Contract provision. Payment shall be made within twenty (30) business days of the end of this Contract.

3. COMPENSATION

3.1 Compensation to the Contractor

3.1.1 Rates

The Contractor shall be responsible for billing and collecting funds from Single-Family Residence, Multi-Family Complex and Commercial Customers in accordance with the charges for services listed in Attachment B. The Contractor may reduce or waive at its option, but shall not exceed, the charges listed in Attachment B. These payments shall comprise the entire compensation due to the Contractor. In no event shall the City be responsible for money that the Contractor, for whatever reason, is unable to

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collect. If a service is not specifically called out in the rate list, the cost will default to the WUTC rate.

Senior low-income and/or disabled resident discounts shall be offered to Single-family Residential Customers meeting the City's eligibility criteria. The City shall provide the Contractor with a list of eligible accounts and shall update the list as revisions are made.

3.1.2 Itemization on Invoices

City, Pierce County and Washington State solid waste, utility and/or sales taxes shall be itemized separately on Customer invoices and added to the charges listed in Attachment B. The Contractor shall not charge separately for the collection of Source-Separated Recyclables other than Commercial Recyclables above the limit of the included embedded Commercial Recyclables program as defined in Section 2.2.7.3. The City administrative fee shall not be itemized separately on Customer invoices.

3.1.3 Discontinuing Service for Nonpayment

The Contractor may use any legal means, including appropriate lien rights, to enforce Customer payment obligations and may discontinue service to non-paying Customers provided that such Customers are provided with ten (10) days prior written notice that service will be discontinued for non-payment. The Contractor may charge a one-time twenty dollar ($20.00) cart redelivery fee to Customers who want to restart service who have previously had their service terminated for nonpayment and had carts removed. The cart redelivery fee shall be applied as a flat charge, regardless of the number of carts delivered (e.g. Garbage, Recyclables and Yard Wastes).

3.2 Compensation to the City

The Contractor shall also pay to the City a four percent (4%) City fee, applied/equal the gross revenue received from Customers, excluding itemized City, County and state taxes, during the prior month on or before the fifth working day of each month during the term of this Contract, starting on March 1, 2015. The Contractor shall remit the City fee received on all payments received under this Contract, including Customer payments received after the termination date of this Contract.

The rates included in Attachment B, as modified during the term of this Contract, include the City fee and Customers shall not be separately charged an itemized City fee.

The Contractor shall fully participate with any City billing audit to confirm the Contractor's actual revenue during any accounting period during the term of the Contract. The audit shall be confined to confirming customer billing rates, Contractor revenue for services provided under this Contract, and bad debt recovery.

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In addition, the Contractor shall be responsible for payment of all applicable permits, licenses, fees and taxes as described in Section 6.13, Permits and Licenses.

3.3 Compensation Adjustments

3.3.1 Annual Rate Adjustment

The Contractor's collection service charges, excluding waste disposal fees, for each level of service shall increase or decrease once every year by one hundred percent (100%) of the change in the Consumer Price Index CWURA423SAO for the Seattle-Tacoma-Bremerton Metropolitan Area for Urban Wage Earners and Clerical Workers, all items (Revised Series) (CPI-W 1982-1984) prepared by the United States Department of Labor, Bureau of Labor Statistics, or a replacement index (the "CPI Index").

Adjustments to the Contractor's collection service charge shall be made in units of one cent ($0.01). Fractions less than one cent ($0.01) shall not be considered when making adjustments.

Rates shall be adjusted annually, beginning March 1, 2016 (the "Adjustment Date"). The Contractor shall submit to the City for review and approval a Rate Adjustment Statement, calculating the new rates for the next year, by calculating the percentage change in the CPI Index for the most recent twelve (12) month period ending on September 30th. The Contractor's calculations shall be provided to the City no later than January 1st prior to the Adjustment Date and the City shall have thirty (30) days to confirm the Contractor's rate modification calculations. On City approval, which shall not be unreasonably withheld or delayed, the new rates shall take effect on March 1st of the next year, and Customers shall be notified in January, at least forty-five (45) days prior to the date adjusted rates become effective. Should ratepayers not receive timely notification due to missed deadlines, rate calculation errors by the Contractor, or rate disapproval by the City, implementation of the new rates shall be delayed by one month without opportunity for recovery of lost revenue.

3.3.2 Disposal Fee Adjustments

Disposal Fee adjustments shall be made to Contractor collection rates to reflect increases or decreases in Pierce County disposal fees for solid waste. In the event of a change in disposal fees, the disposal fee component of rates charged to Customers shall be adjusted, based on Container content weights specified in Attachment B of this Contract.

Specific examples of rate modifications due to Consumer Price Index and disposal fee changes are provided in Attachment C.

3.3.3 Changes in Disposal/Processing Sites and Tipping Fees

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The Contractor assumes all risk for the processing and marketing of Recyclables and Yard Wastes. If the Contractor is required by the City to use processing sites or markets other than those being used at the initiation of this Contract, the Contractor may submit a detailed proposal for a rate adjustment to reflect any additional costs or savings to the Contractor. The City and Contractor agree to negotiate in good faith any changes to the rates to offset these costs or savings.

4. FAILURE TO PERFORM, REMEDIES, TERMINATION

The City expects high levels of Customer service, and performance failures shall be discouraged. If Contractor fails to perform and/or has repeated Customer complaints or other performance failures of this Contract, City reserves the right to amend this Contract to add performance fees and default provisions and procedures.

4.1 Contract Default

Except as provided in Section 6.18, the Contractor shall be in default of this Contract if it violates any provision of this Contract. In addition, except as provided in Section 6.18, the City reserves the right to declare the Contractor to be in default in the event of any violation, which shall include, but not be limited to, the following:

(1) The Contractor fails to commence the collection of Garbage, Recyclables or Yard Wastes, or fails to provide any portion of service under the Contract on March 1, 2015, or for a period of more than five (5) consecutive days at any time during the term of this Contract.

(2) The Contractor fails to obtain and maintain any permit required by the City, Pierce County, or any federal, state or other regulatory body in order to collect materials under this Contract.

(3) The Contractor's noncompliance creates a hazard to public health or safety.

(4) The Contractor fails to maintain, in good standing, surety and insurance required by this Contract.

The City reserves the right to pursue any remedy available at law for any default by the Contractor. Remedies may include but are not limited to:

(1) Terminate this Contract by written notice and order the Contractor to discontinue further service;

(2) Be released from its obligations under this Contract and use any other method or person to perform those services;

(3) Seek judicial remedies;

(4) Pursue any other remedy at law or equity.

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In the event of default, the City shall give the Contractor ten (10) days prior written notice of its intent to exercise its rights, stating the reasons for such action. However, if an emergency shall arise that does not allow ten (10) days prior written notice, the City shall immediately notify the Contractor of its intent to exercise its rights immediately. Upon receipt of such Notice, both parties shall, within five (5) business days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each party shall, in good faith and in writing, promptly provide to the other party any and all information and documentation reasonably related to the dispute requested by the other party. If the parties are unable to satisfactorily resolve the dispute within ten (10) calendar days then the remaining provisions of this Section 4.1 shall govern any such dispute. Following such "meet and confer", if the Contractor cures the stated reason within thirty (30) days, or initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its rights for the particular incident. If the Contractor fails to cure the stated reason within the stated period, or does not undertake efforts satisfactory to the City to remedy the stated reason, then the City may at its option terminate this Contract.

If the Contractor abandons or violates any portion of this Contract, fails to fully and promptly comply with all its obligations, or fails to give any reason satisfactory to the City for noncompliance, and fails to correct the same, the City, after the notice periods set forth herein, may declare the Contractor to be in default of this Contract and notify the Contractor of the termination of this Contract. A copy of said notice shall be sent to the Contractor and surety on its performance bond.

Upon receipt of such notice, the Contractor agrees that it shall promptly discontinue the services provided under this Contract. The surety may, at its option, within thirty (30) days from such written notice, assume the services provided under this Contract that the City has ordered discontinued and proceed to perform same, at its sole cost and expense, in compliance with the terms and conditions of the Contract, and all documents incorporated herein. Pending consideration by the surety of said option to assume the services provided under this Contract, the City may employ such work force and equipment as it may deem advisable to continue the services provided under this Contract. The cost of all labor, equipment and materials necessary for such services provided under this Contract shall be paid by the Contractor in full.

In the event that the surety fails to exercise its option within the thirty (30) day period, the City may complete the services provided under this Contract or any part thereof, either through its own work force or by contract, and to procure other vehicles, equipment and facilities necessary for the completion of the same, and to charge the same to the Contractor and/or surety, together with all reasonable costs incidental thereto.

The City shall be entitled to recover from the Contractor and its surety as damages all expenses incurred, including reasonable attorney's fees, together with all such additional sums as may be necessary to complete the services provided under this Contract, together with any further damages sustained or to be sustained by the City.

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If City employees provide Garbage, Yard Wastes and/or Recyclables collection, the actual incremental costs of City labor, overhead and administration shall serve as the basis for a charge to the Contractor.

4.2 Breach by the City

Should the Contractor at any time contend that the City has breached any material provision of this Contract, the Contractor shall immediately notify the City in writing of the Contractor's contention. The City shall have a reasonable time to cure any such alleged breach, which in all events shall not be less than thirty (30) days or any such longer period as reasonably needed to cure said breach. If the City fails to cure the breach within such time, the Contractor may terminate this Contract.

5. NOTICES

All notices required or contemplated by this Contract shall be personally served or mailed (postage prepaid and return receipt requested), addressed to the parties as follows:

To City: Don Wickstrom, Public Works Director
6000 Main St. SW
Lakewood, WA 98499

To Contractor: Harold LeMay Enterprises, Incorporated
4111 192nd St E
Tacoma, WA 98446
Attn: District Manager

6. GENERAL TERMS

6.1 Collection Right

The Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Yard Wastes and Recyclables and construction/demolition materials placed in Contractor-owned Containers and set out in the regular collection locations within the Service Area. The Contractor may independently enforce its rights under this Contract against third party violators, including but not limited to seeking injunctive relief.

This contract provision will not apply to: Garbage, Recyclables or Yard Wastes self-hauled by the generator; Source-Separated Recyclables hauled by common or private carriers (including drop-off recycling sites) from construction/demolition waste hauled by self-haulers or construction contractors in the normal course of their business; Garbage, Recyclables or Yard Wastes handled by retailers or maintenance services who provide ancillary services unrelated to Curb collection services (e.g. carpet installers, furniture delivery/pick-up, site clean-up services which include loading/sweeping, etc.); Yard Wastes generated and hauled by private landscaping services; or Yard Wastes hauled by common or private carriers from Commercial premises that contain Yard Wastes materials.

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The Contractor shall become the owner and retain responsibility for Garbage, Recyclables, construction/demolition materials and Yard Wastes once these materials are placed in Contractor-owned Containers, and the Contractor shall have no responsibility for these materials prior to the time they are placed in Contractor-owned Containers. The Contractor shall retain revenues it gains from the sale of Recyclables, construction/demolition materials or Yard Wastes. Likewise, a tipping or acceptance fee charged for Recyclables, construction/demolition materials or Yard Wastes shall be the financial responsibility of the Contractor.

6.2 Access to Records

The Contractor shall maintain in its local office full and complete operations, Customer, financial and service records that at any reasonable time shall be open for inspection and copying for any reasonable purpose by the City. In addition, the Contractor shall, during the Contract term, and at least three (3) years thereafter, maintain in an office in Washington State reporting records and billing records pertaining to the Contract that are prepared in accordance with Generally Accepted Accounting Principles, reflecting the Contractor's services provided under this Contract. Those Contractor's accounts shall include but shall not be limited to all records, invoices and payments under the Contract, as adjusted for additional and deleted services provided under this Contract. The City shall be allowed access to these records for audit and review purposes.

The Contractor shall make available copies of certified weight slips for Garbage, Recyclables and Yard Wastes on request within two (2) business days of the request. The weight slips may be requested for any period during the term of this Contract.

6.3 Contractor to Make Examinations

The Contractor has made its own examination, investigation and research regarding proper methods of providing the services required under this Contract, and all conditions affecting the services to be provided under this Contract, and the labor, equipment and materials needed thereon, and the quantity of the work to be performed as set forth by the Contract. The Contractor agrees that it has satisfied itself based on its own investigation and research regarding all of such conditions, that its conclusion to enter into this Contract is based upon such investigation and research, and that it shall make no claim against the City because of any of the estimates, statements or interpretations made by any officer or agent of the City that may be erroneous.

With the exception of Force Majeure events or as otherwise provided in this Contract, the Contractor assumes the risk of all conditions foreseen and unforeseen, and agrees to continue to provide services under this Contract without additional compensation under whatever circumstances may develop other than as provided herein.

6.4 Insurance

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The Contractor shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the services provided under this Contract hereunder by the Contractor, their agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by the Contractor. The Contractor shall notify the City within 15 days of any change in coverage, cancellation of coverage or lapse of any required insurance coverages. Failure to make insurance payments and to keep policies current shall be cause for contract default in accordance with Section 4.2.

No Limitation. Contractor's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

6.4.1 Minimum Scope of Insurance

Contractor shall obtain insurance that meets or exceeds the following of the types described below:

(1) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. The policy shall include coverage for insured contracts. The City shall be named as an additional insured under the Contractor's Automobile Liability insurance policy with respect to the work performed for the City, using ISO additional insured endorsement CG 20 48 02 99 or a substitute endorsement providing equivalent coverage.

(2) Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City, using ISO additional insured endorsement CG 20 10 11 85 or a substitute endorsement providing equivalent coverage. The policy shall be endorsed to waive the Contractor's right to subrogation against the City.

(3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(4) Pollution Legal Liability insurance covering losses caused by pollution conditions that arise during transport.

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(5) Hazardous Waste Hauling. To the Automobile Liability Minimum Scope of Insurance, add Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

6.4.2 Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

(1) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

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

(3) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington, Employers' Liability with the following limits:

EL Each Accident	$1,000,000
EL Disease – Each Employee	$1,000,000
EL Disease – Policy Limit	$1,000,000

(4) Pollution Legal Liability The Pollution Legal Liability insurance shall be written in an amount of at least $1,000,000 per loss, with an annual aggregate of at least $1,000,000. Coverage may be written on a claims-made basis.

6.4.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be for the Contractor's accounts and shall be paid entirely by the Contractor without contribution from the City.

6.4.4 Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Commercial General Liability, and Contractor's Pollution Liability coverage:

(1) The Contractor's insurance coverage shall be the primary insurance with respect to the City, its officials and employees. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.

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(2) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Should any of the above described policies be cancelled before the expiration thereof, notice will be delivered in accordance with the policy provisions.

6.4.5 Acceptability of Insurers

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

6.4.6 Verification of Coverage

The Contractor shall furnish the City with original certificates including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

6.4.7 Subcontractors

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor before commencement of the work. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

6.5 Performance Bond

The Contractor shall provide and maintain at all times a valid Contractor's Performance and Payment Bond or bonds, letter of credit or other similar instrument acceptable to and approved in writing by the City in the amount of fifty thousand dollars ($50,000.00). The bond, letter of credit or other similar instrument shall be issued for a period of not less than one year, and the Contractor shall provide a new bond, letter of credit or similar instrument, and evidence satisfactory to the City of its renewability, no less than sixty (60) calendar days prior to the expiration of the bond, letter of credit or other similar instrument then in effect. The City shall have the right to call the bond, letter of credit or other similar instrument in full in the event its renewal is not confirmed prior to five (5) calendar days before its expiration. Failure to make bond payments and to keep the bond current shall be cause for contract default in accordance with Section 4.2.

6.6 Indemnification

6.6.1 Indemnify and Hold Harmless

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The Contractor shall indemnify, hold harmless and defend the City, its elected officials, officers, employees, volunteers, and interns who are City-certified and have at a minimum, completed the City background checks and training, interns, agents and representatives, from and against any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including costs and reasonable attorney's fees in defense thereof, or injuries, sickness or death to persons, or damage to property (collectively, "Losses") to the extent arising out of or resulting from the negligent or willful acts, errors or omissions of the Contractor in performance of this Contract, except to the extent such Losses are caused by or result from the sole negligent or willful acts, errors or omissions of the City. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials employees, volunteers and interns the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

6.6.2 Notice to Contractor; Defense

In the event an action is brought against the City for which indemnity may be sought against the Contractor, the City shall promptly notify the Contractor in writing. The Contractor shall have the right to assume the investigation and defense, including the employment of counsel and the payment of all expenses. On demand of the City, the Contractor shall at its own cost and expense defend, and provide qualified attorneys acceptable to the City under service contracts acceptable to the City to defend, the City, its officers, employees, agents and servants against any claim in any way connected with the events described in Section 6.6.1. The City shall fully cooperate with the Contractor in its defense of the City, including consenting to all reasonable affirmative defenses and counterclaims asserted on behalf of the City. The City may employ separate counsel and participate in the investigation and defense, but the City shall pay the fees and costs of that counsel unless the Contractor has agreed otherwise. The Contractor shall control the defense of claims (including the assertion of counterclaims) against which it is providing indemnity under this Section, and if the City employs separate counsel, the City shall assert all defenses and counterclaims reasonably available to it.

6.6.3 Industrial Insurance Immunity Waiver

With respect to the obligations to hold harmless, indemnify and defend provided for herein, as they relate to claims against the City, its elected officials, officers, employees, volunteers, interns, agents and representatives, the Contractor expressly agrees to waive the Contractor's immunity under industrial insurance, Title 51 RCW, for any injury,

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sickness or death suffered by the Contractor's employees to the extent arising out of or resulting from the negligent or willful acts, errors or omissions of the Contractor in performance of this Contract. This waiver is mutually agreed to by the parties.

6.7 Payment of Claims

The Contractor agrees and covenants to pay promptly as they become due all just claims for labor, supplies and materials purchased for or furnished to the Contractor in the execution of this Contract. The Contractor shall also provide for the prompt and efficient handling of all complaints and claims arising out of the operations of the Contractor under this Contract.

6.8 Confidentiality of Information

Under Washington State law, the documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) prepared in performance of this Contract (the "documents") and submitted to the City are public record subject to mandatory disclosure upon request by any person, unless the documents are exempted from public disclosure by a specific provision of law.

The City assumes no contractual obligation to enforce any exemption.

6.9 Assignment of Contract

6.9.1 Assignment or Pledge of Moneys by the Contractor

The Contractor shall not assign or pledge any of the moneys due under this Contract without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days prior notice to the City of such assignment or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

6.9.2 Assignment, Subcontracting, Delegation of Duties and Change in Control

The Contractor shall not assign or subcontract any of the work or delegate any of its duties under this Contract without the prior written approval of the City and submittal of proof of insurance coverage.

When requested, approval by the City of a subcontract or assignment shall not be unreasonably withheld, conditioned or delayed. In the event of an assignment, subcontracting or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, or other obligor shall also become responsible to the City for the satisfactory performance of the work

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assumed. The City may condition approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

In addition, the assignee, subcontractor or obligor shall sign a separate statement agreeing to abide by all terms and conditions of this Contract. The City may terminate this Contract if the assignee, subcontractor or obligor does not comply with this clause. Furthermore, the assignee, subcontractor or obligor shall be subject to a one (1) year evaluation period during which the City may terminate this Contract on the basis of any material breach of the terms binding the Contractor.

For the purposes of this Contract, any Change in Control of the Contractor shall be considered an assignment subject to the requirements of this section. Nothing herein shall preclude the City from executing a novation, allowing the new ownership to assume the rights and duties of the Contract and releasing the previous ownership of all obligations and liability. Assignment of this Contract to a subsidiary or affiliate of the Contractor shall not require the City's consent.

6.10 Laws to Govern/Venue/Attorneys' Fees

This Contract shall be governed by the laws of the State of Washington both as to interpretation and performance. Venue shall be in Superior Court in the State of Washington for Pierce County. In the event either party breaches this Contract or a dispute arises between the parties hereto for interpretation or enforcement of this Contract, the prevailing party shall be entitled to reasonable attorney fees and costs.

6.11 Compliance with Law

The Contractor, its officers, employees, agents and subcontractors shall comply with applicable federal, state, county, regional or local laws, statutes, rules, regulations or ordinances, including those of agencies having jurisdiction over the subject matter of this Contract, in performing its obligations under the Contract. Such compliance shall include abiding by all applicable federal, state and local policies to ensure equal employment opportunity and non-discrimination. The Contractor shall comply with all applicable laws pertaining to employment practices, employee treatment and public contracts.

Conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and standards and regulations issued under these Acts from time-to-time must be complied with, including ergonomic and repetitive motion requirements. The Contractor must indemnify and hold harmless the City from all damages assessed for the Contractor's failure to comply with the Acts and Standards issued therein. The Contractor is also responsible for meeting all pertinent local, state and federal health and environmental

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regulations and standards applying to the operation of the collection and processing systems used in the performance of this Contract.

The Contractor is specifically directed to observe all weight-related laws and regulations in the performance of these services, including axle bridging and loading requirements.

6.12 Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, any required notices setting forth the provisions of this non-discrimination clause.

The Contractor understands and agrees that if it violates this non-discrimination provision, this Contract may be terminated by the City and further that the Contractor shall be barred from performing any services for the City now or in the future, unless a showing is made satisfactorily to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

6.13 Permits and Licenses

The Contractor and subcontractors shall secure a City business license if required and pay fees and taxes levied by the City. The Contractor shall have or obtain all permits and licenses necessary to provide the services herein at its sole expense.

The Contractor shall be solely responsible for all taxes, fees and charges incurred, including, but not limited to, license fees and all federal, state, regional, county and local taxes and fees, including income taxes, property taxes, permit fees, operating fees, surcharges of any kind that apply to any and all persons, facilities, property, income, equipment, materials, supplies or activities related to the Contractor's activities under the Contract, business and occupation taxes, workers' compensation and unemployment benefits.

6.14 Relationship of Parties

The City and the Contractor expressly agree that the full extent of the relationship between the Contractor and the City is that the Contractor is at all times an independent contractor of the City with respect to this Contract. The implementation

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of services shall lie solely with the Contractor. No agent, employee, servant or representative of the Contractor shall be deemed to be an employee, agent, servant or representative of the City.

6.15 Contractor's Relationship with Customers

The Contractor shall not separately contract with Customers for any services covered under this Contract. The Contractor is specifically allowed to negotiate separate agreements with Customers for compactor leasing, Commercial Recyclables collection, Commercial Yard Wastes collection, or other related services not included in this Contract, provided that Customers are provided separate invoices for those services and that the Contractor makes it clear to Customers that those services are not provided under this City Contract. These separate agreements must be in writing and shall in no way supersede this Contract. These separate agreements cannot have durations any longer than the final date of this Contract's term, since the City may, at its sole option, regulate similar or identical services to the successor of this Contract.

6.16 Bankruptcy

It is agreed that if the Contractor is adjudged bankrupt, either voluntarily or involuntarily, then this Contract, at the option of the City, may be terminated effective on the day and at the time the bankruptcy petition is filed.

6.17 Right to Renegotiate/Amendment

The City shall retain the right to renegotiate this Contract or negotiate contract amendments based on City policy changes, state statutory changes or rule changes in Pierce County, Washington State or federal regulations regarding issues that materially modify the terms and conditions of the Contract. The City may also renegotiate this Contract should any Washington State, Pierce County or City rate or fee associated with the Contract be held illegal. In addition, the Contractor agrees to renegotiate in good faith with the City in the event the City wishes to change disposal locations or add additional services to the Contract and to provide full disclosure of existing and proposed costs and operational impacts of any proposed changes.

This Contract may be amended, altered or modified only by a written amendment, alteration or modification, executed by authorized representatives of the City and the Contractor.

6.18 Force Majeure

Provided that the requirements of this Section are met, Contractor shall not be deemed to be in default and shall not be liable for failure to perform under this Contract if Contractor's performance is prevented or delayed by acts of terrorism, acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, wars, blockades, public riots, explosions, unavailability of required materials or disposal restrictions, governmental restraint or other causes, whether of the kind enumerated or otherwise, that are not reasonably

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within the control of the Contractor ("Force Majeure"). If as a result of a Force Majeure event, Contractor is unable wholly or partially to meet its obligations under this Contract, it shall promptly give the City written notice of the Force Majeure event, describing it in reasonable detail. The Contractor's obligations under this Contract shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure event and only for the period during which the Force Majeure event exists. The definition of Force Majeure shall not include any labor action to include but not limited to a strike.

6.19 Illegal Provisions/Severability

At the discretion of the City, if any provision of this Contract shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect.

6.20 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Contract on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

6.21 Entirety

This Contract and the attachments hereto are incorporated herein by this reference, specifically Attachments A-C, and represent the entire agreement of the City and the Contractor with respect to the services to be provided under this Contract. No prior written or oral statement or proposal shall alter any term or provision of this Contract.

WITNESS THE EXECUTION HEREOF on the day and year first above written.

HAROLD LeMAY ENTERPRISES,
INCORPORATED

By: _____

CITY OF Lakewood

By: _____
Mayor Don Anderson

Lakewood, WA

ATTEST:

_____
City Clerk, Alice Bush

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APPROVED AS TO FORM:

_____

City Attorney, Heidi Ann Wachter

Attachments:

A. Contractor Rates

B. Rate Modification Examples

C. City of Lakewood Facilities

D. City of Lakewood Events

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Attachment A

Lakewood Rates

Attachment B

Rate Modification Examples

The collection and disposal components of the Customer charges listed in Attachment B will be adjusted separately, as appropriate. The collection component of Customer charges will be adjusted annually, pursuant to this Section and as described below. The disposal component of the Customer charges listed in Attachment B will be adjusted only if the City receives notification from the County of a pending disposal fee adjustment, and will not become effective until the new disposal charges become effective and are actually charged to the Contractor. Formulas for both collection and disposal rate adjustments are provided as follows:

Collection Component Adjustment

The collection component listed in Attachment B will be increased or decreased by the amount of the CPI change:

$$NCC = PCC \times 1 + \frac{nCPI - oCPI}{oCPI} \times 1.0$$

Where	NCC	=	The new collection charge component of the customer rate for a particular service level; and
	PCC	=	The previous collection charge component of the Customer rate for a particular service level; and
	nCPI	=	The most recent September CPI value; and
	oCPI	=	The CPI value used for the previous rate adjustment or, in the case of the first contract adjustment, the CPI value reported at the end of September 2015.

Disposal Component Adjustment

In the case of a disposal fee modification at County disposal facilities, the disposal component of each service level will be adjusted as follows:

Step 1:

$$A = ODC \times \frac{NTF}{OTF}$$

Step 2:

$$NDC = A + [(A - ODC) \times CETR]$$

Where	NDC	=	The new disposal charge component of the customer rate for a particular service level; and
	NTF	=	The new disposal fee, dollars per ton; and
	ODC	=	The old disposal charge component of the customer rate for a particular service level;
	OTF	=	The old disposal fee, dollars per ton; and
	A	=	Pre-excise tax adjusted disposal component; and
	CETR	=	Current excise tax rate (the current State excise tax rate; 0.018 used for this example).

For example, using an initial one 95-gallon cart rate of $16.74 per month: if the previous CPI is 143.2, the new CPI is 144.3 and the disposal fee will increase from $95 to $105 per ton starting on January 1, 2012, the old disposal component is $3.97, and the State Excise Tax rate is 0.018, the January 2012 Customer charge for one 95-gallon cart per week Residential Curbside service would be:

$$\text{New Collection Component} = \$12.77 \times \left[1 + \frac{(144.3-143.2)}{(143.2)} \times 1.0\right] = \$12.85$$

New Disposal Component = [$3.97 x (105/95)] plus excise tax adjustment of $0.01 = $4.40

Thus, the new Customer charge for one 95-gallon cart per week Residential Curbside service will be $12.85 plus $4.40, equaling $17.25.

Attachment C

City of Lakewood Facilities

City Facility	Location
Lakewood City Hall	6000 Main St SW
Lakewood Police Station	9401 Lakewood Dr SW
Lakewood O & M Facility	9420 Front Street South
Lakewood Station	11424 Pacific Hwy SW
Active Park	10506 Russell Road SW
American Lake Park	9222 Veterans Drive SW
Edgewater Park	9102 Edgewater Drive SW
Fort Steilacoom Park *	9115 Angle Lane SW 9101 Angle Lane SW
Harry Todd Park	8928 North Thorne Lane SW
Interlaaken Bridge	Interlaaken Bridge
Kiwanis Park	6002 Fairlawn Drive SW
Lakewood Game Refuge	Phillips Road, East of Oakbrook
Oakbrook Park	9701 Onyx Drive SW
Seeley Lake Park	Lakewood Drive & 100th Street SW
Springbrook Park	12601 Addison Street SW
Wards Lake Park	2716 84th Street South
Washington Park	11528 Military Road SW

***** Fort Steilacoom Park to receive additional yard waste service from a 30 yd dumpster to be placed at 9115 Angle Lane SW. The City will call for service when on an as needed basis up to twelve (12) times per year.

Attachment D

City of Lakewood Events

Event	Location	Month (estimate)
Parks Appreciation Day	All Park Locations	April
Ray Evans Memorial Fishing Event	American Lake Park	May
Military Appreciation Day	Fort Steilacoom Park	May
SummerFEST	Fort Steilacoom Park	July
SummerFEST Triathlon	American Lake Park	July
National Night Out	All Park Locations	August
Parks Fundraiser	Fort Steilacoom Park	August
Farmer Market	City Hall	August – September
Halloween Event	Fort Steilacoom Park	October
Truck and Tractor Day	Fort Steilacoom Park	October
Make a Difference Day	Fort Steilacoom Park	October
Jingle Bell 5K Fun Run	Fort Steilacoom Park	December

TO: Mayor and City Councilmembers

FROM: Heidi A. Wachter, City Attorney; Adam Lincoln, Management Analyst

THROUGH: John J. Caulfield, City Manager

DATE: November 23, 2015

SUBJECT: Puget Sound Energy (PSE) Franchise Agreement Update

Purpose: The agreement with PSE for natural gas and electric power services is set to expire in 2016 and, in an effort to ensure high quality service to residents and businesses, the City reviewed the current agreement with PSE to determine what aspects may need to be addressed or changed. One area that the City wished to address with PSE was a transition to LED lights on all PSE light poles. This was addressed under a separate conservation grant agreements between the City and PSE that were executed in October, 2015. With the LED light transition taking place through a separate agreement, an extension of the current agreement is advisable.

Analysis: The City of Lakewood has three electric power providers; Tacoma Public Utilities, Lakeview Light & Power and Puget Sound Energy. PSE is the only provider for natural gas services to the City. The current agreement with PSE became effective in 2006 and will expire in 2016, although the agreement does allow for a 10 year extension automatically if allowed. Review prior to an automatic renewal is appropriate to ensure high quality service to citizens.

The base rates for PSE are the lowest of the three utility providers and with the addition of the LED light transition agreement, there remained few areas that the City wishes to address with PSE in reviewing the franchise agreement. The City did discuss the topic of "after acquired property" and how the City can best work with PSE when the City needs to have power poles moved from within certain rights of way. Currently these matters are processed by condemnation. New language could alleviate the need for condemnation but PSE believe that these cases are sufficiently specific that they prefer to deal with each case as it arises and work through PSE's property management team. Past condemnation work of this nature has rarely involved PSE.

Term: Ten years, 2006 – 2016, with an automatic ten year extension.

Utility Tax: Maintains existing utility tax for electricity at 5%, which will create approximately $530,000 in revenue in 2016, and utility tax for natural gas at 5%, which will create approximately $657,000 in 2016 and both amounts are part of the current budget.

Street maintenance and undergrounding: The Agreement allows PSE to have access to City rights of way. PSE is then required to follow the applicable permit processes to conduct their work and is required to restore all streets to the original state it was found in. The Public Works Director has the authority to sign off on the quality of the repairs that PSE makes.

The Agreement includes language for undergrounding of utilities. The Agreement requires all facilities exceeding 15,000 volts be undergrounded. Additional undergrounding costs are split at 60% to PSE and 40% to the City unless a City project includes the City purchasing right of way for which PSE facilities are located within. If this occurs, the City pays for the cost of undergrounding utilities.

Recommendation: It is recommended that the City Council take no action and allow for a ten year extension of the current agreement.

ORDINANCE NO. 403

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of natural gas and electric energy for power, heat and light, and any other purposes for which natural gas and electric energy may be used.

NOW, THEREFORE, for and in consideration of the mutual benefits and the terms and conditions of the below Franchise agreement, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON DO ORDAIN, AS FOLLOWS:

Section 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "PSE" means Puget Sound Energy, Inc., a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of Lakewood, an optional code city of the State of Washington, and its successors and assigns.

1.1.3 "Days" means calender days.

1.1.4 "Franchise Area" means any, every and all of the roads, streets, avenues, alleys and highways of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

1.1.5 "Facilities" means, collectively, any and all (i) natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems; (ii) electric transmission and distribution systems, including but not limited to, poles (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, fixtures, and communication systems; and (iii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.6 "Ordinance" means Ordinance No. 403, which sets forth the terms and conditions of this Franchise.

1.1.7 "Public Works Director" means the head of the Public Works Department or his/her designee.

1.1.8 "Tariff" means "tariff" as that term is defined in WAC 480-80-030(3), or such similar definition describing rate sechedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdicition under the laws of the State of Washington, over public service companies.

1.1.9 "WUTC" means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

Section 2. Facilities Within Franchise Area.

2.1 The City does hereby grant to PSE the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of natural gas and electric energy for power, heat, light and such other purposes for which natural gas and electric energy may be used.

Section 3. Noninterference of Facilities.

3.1 PSE's Facilities shall be located, constructed, installed, maintained and repaired within the Franchise Area in accordance with applicable safety standards, and so as not to unreasonably interfere with the free and safe passage of pedestrian and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto and in accordance with the laws of the State of Washington. PSE shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded PSE by such City codes and ordinances.

3.2 In the event that the Public Works Director reasonably determines, after providing written notice to PSE and a reasonable opportunity for PSE to respond to his or her concerns, that any one or more of PSE's Facilities within the Franchise Area interferes with the free and safe passage of pedestrian and/or vehicular traffic therein or with the reasonable, ingress or egress to properties abutting thereto, then PSE shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall fully cooperate with PSE. In the event such interference requires relocation of PSE facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 9 below. Any such interference, resulting from new development, with ingress or egress to properties abutting the Franchise Area in proximity to PSE's Facilities existing within the Franchise Area prior to the development shall be subject to Section 9.6.

3.3 During the term of this Franchise and with respect to poles which are Facilities and which are wholly owned by PSE and which are within the Franchise Area, the City may, subject to PSE's prior written consent, which consent shall not be unreasonably withheld, install

and maintain City-owned overhead wires upon such poles for signal interconnect and communication capabilities for municipal purposes (e.g. police, fire, and public safety communications). The foregoing rights of the City to install and maintain such wires are further subject to the following:

3.3.1 Such installation and maintenance shall be done by the City at its sole risk and expense in accordance with all applicable laws (including, but not limited to, RCW 70.54.090), and subject to such reasonable requirements as PSE may specify from time to time (including without limitation, requirements accommodating PSE's Facilities or the facilities of other parties having the right to use PSE's Facilities); and

3.3.2 PSE shall have no obligation under Section 12 (or arising under the purview of Section 12) in connection with any City-owned wires so installed or maintained.

3.3.3 PSE shall not charge the City a fee for the use of such poles as a means of deriving revenue therfrom; provided however, nothing herein shall require PSE to bear any cost or expense in connection with such installation and maintenance by the City including PSE's administrative review of and consent to City's request to make use of such poles.

3.4 PSE shall provide the City, upon the City's reasonable request, copies of available drawings in use by PSE showing the location of its Facilities within the Franchise Area. As to any such drawings so provided, PSE does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of PSE or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 4. Dangerous Conditions, Authority for the City to Abate

4.1 In the event that PSE's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the Franchise Area or public or private property adjacent thereto, the Public Works Director may direct PSE, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.

4.2 In the event PSE fails to promptly take action as directed by the City pursuant to Section 4.1, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take action as it reasonably believes is necessary with respect to PSE's Facilities or operations to protect persons or property and in such event PSE shall be responsible to reimburse the City for its costs incurred in so doing. With respect to PSE's gas facilities, the City's authority to act upon PSE's Facilities hereunder is specifically limited to actions, taken by trained emergency response personnel, to stop the flow of natural gas actively contributing to a dangerous condition by closing the natural gas supply valve at a meter or appliance.

Section 5. Permit Required

5.1 Whenever PSE works in the Franchise Area for purposes of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with all ordinances and regulations of the City. In no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

5.2 PSE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the right-of-way as required by City or state regulations, including RCW 39.04.180, for the construction of trench safety systems.

5.3 In the event of any emergency where any Facility located in the Franchise Area are broken or damaged, or if PSE's work area within the Franchise Area is in such a condition as to endanger any person or property, PSE shall immediately take any necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for and obtaining a permit as required by Section 5.1. This provision shall not relieve PSE from later obtaining any necessary permit for the emergency work. PSE shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical.

Section 6. Restoration

6.1 PSE shall, after any installation, construction, relocation, maintenance, or repair of Facilities within the Franchise Area, promptly restore the Franchise Area to at least the same condition as existed immediately prior to any such installation, construction, relocation, maintenance or repair in accordance with City standards at its sole cost and expense. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and City standards and specifications. The Public Works Director shall have final approval of the condition of the Franchise Area after restoration.

6.2 If it is determined that PSE has failed to restore the Franchise Area in accordance with Section 6, the City shall provide PSE with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Franchise Area. PSE shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this section. The remedy granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

6.3 All work by PSE pursuant to this Section 6 shall be performed in accordance with the permit issued by the City, together with the laws of the State of Washington, Lakewood

Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

Section 7. Bonding Requirement

7.1 Before undertaking any of the work authorized by this Franchise, PSE shall furnish an on-going performance bond executed by PSE and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Public Works Director as reasonably sufficient to ensure performance of PSE's obligations under this Franchise. The bond shall be conditioned so that PSE shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. PSE may meet the obligations of this section with one (1) or more bonds acceptable to the City. In the event that a bond furnished pursuant to this section is canceled by the surety, after proper notice and pursuant to the terms of said bond, PSE shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this section.

7.2 With respect to undertaking any of the work authorized by this Franchise, in the event PSE fails to perform its obligations under this Franchise and further fails to cure its deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by PSE pursuant to Section 7.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from PSE of costs incurred by the City to cure such deficiency.

7.3 In the event the City makes use of such bond(s) furnished by PSE pursuant to Section 7.2, the City shall promptly provide written notice of same to PSE. Within thirty (30) days of receipt of such notice, PSE shall replenish or replace such bond(s) as provided in Section 7.1.

7.4 The rights reserved to the City by this Section 7 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 7 shall constitute an election or waiver of any rights or other remedies the City may have.

Section 8. Underground Installation of Facilities

8.1 This Section 8 shall govern all matters related to underground installation of PSE's Facilities within the Franchise Area.

8.2 PSE acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area. The City acknowledges that PSE provides electrical and gas service on a non-preferential basis subject to and in accordance with applicable Tariffs on file with the WUTC. Subject to and in accordance with such Tariffs, PSE will

cooperate with the City in the formulation of policy and development regulations concerning underground installation of PSE's Facilities within the Franchise Area.

8.3 New extensions of electric Facilities that operate at 15,000 volts (15kV) or less constructed by PSE within the Franchise Area during the term of this Franchise shall be located underground subject to and in accordance with applicable Tariffs on file with the WUTC; provided that extensions of existing overhead Facilities of up to five spans or 500 feet (whichever is less) may, subject to the City's prior written consent which shall not be unreasonably withheld, be installed overhead in locations having other existing overhead utilities.

8.4 If, during the term of this Franchise, the City shall direct PSE to replace (convert) its overhead electric distribution Facilities (15kV or less) then existing within the Franchise Area with underground Facilities, such underground conversion shall be arranged and accomplished subject to and in accordance with applicable Tariffs on file with the WUTC.

Section 9. Relocation of Facilities.

9.1 Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any public works improvement within the Franchise Area or the Public Works Director reasonably determines that PSE's Facilities interfere with the free and safe passage of pedestrian and/or vehicular traffic pursuant to Section 3 above, and such public works improvement or interference necessitates the relocation of PSE's Facilities then existing within the Franchise Area, the City shall:

(i) provide PSE, within a reasonable time prior to the City's commencement of activities requiring such public works improvement, written notice requesting such relocation; and

(ii) provide PSE with copies of relevant portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, PSE shall relocate such Facilities within the Franchise Area at no charge to the City. If, during the construction of any such public works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of PSE's Facilities within the Franchise Area, the City shall give PSE notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, PSE shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities at no charge to the City.

9.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated Facilities. PSE shall act in good faith and shall use its best efforts to install relocated Facilities in such space within the Franchise Area, consistent with prudent utility

practice. If the City and PSE agree that there is not sufficient space for the relocated Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the City and PSE, the City shall provide sufficient space for the relocated Facilities by obtaining additional right-of-way or other equivalent rights mutually agreeable to the City and PSE, which shall be Franchise Area, title of which shall be in the City's name.

9.3 PSE may install relocated Facilities on property outside of the Franchise Area, the rights for which shall be obtained by PSE at no expense to the City, if:

(i) notwithstanding the use of best efforts by the City and PSE as outlined above, the City and PSE do not agree whether there is or will be sufficient space within the Franchise Area for the relocated Facilities, or

(ii) locating such relocated Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice.

The City and PSE shall each act in good faith and use their respective best efforts to mutually agree on the location of such relocated Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 4 shall limit the rights of the City or PSE with respect to acquisition or use of property rights outside of the Franchise Area.

9.4 If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Sections 9.1-9.3, the City shall reimburse PSE for all costs incurred by PSE in connection with such subsequent relocation.

9.5 PSE shall have the right as a condition of any relocation described in this Section 9.5 to require such person or entity other than the City to make payment to PSE, at a time and upon terms acceptable to PSE, for any and all costs and expenses incurred by PSE in the relocation of PSE's Facilities whenever:

(i) any person or entity, other than the City, requires the relocation of PSE's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to activities relating to development, roadway frontage improvements or mitigation of impacts; or

(ii) the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of PSE's Facilities within the Franchise Area.

9.6 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of PSE's Facilities within the

Franchise Area shall be a condition or requirement causing relocation of PSE's Facilities to occur subject to the provisions of Section 9.5 above; provided, however:

(i) in the event the City reasonably determines and notifies PSE that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a public works improvement within a segment of the Franchise Area on the City's behalf, and

(ii) such public works improvement is otherwise reflected in the City's adopted Six-Year Capital Improvement Program; Transportation Improvement Program; or Transportation Facilities Program;

then only those costs and expenses incurred by PSE in connecting such relocated Facilities with PSE's other Facilities shall be paid to PSE by such person or entity, and PSE shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 9.1-9.3.

9.7 As to any relocation of PSE's Facilities whereby the cost and expense thereof is to be borne by PSE in accordance with Sections 9.1-9.3, PSE may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from PSE of such written alternatives, the City shall evaluate such alternatives and shall advise PSE in writing if one or more of such alternatives is suitable to accommodate the work which would otherwise necessitate relocation of PSE's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by PSE full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by PSE shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, PSE shall relocate its Facilities as otherwise provided in Sections 9.1-9.3.

9.8 Nothing in this Section 9 shall require PSE to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other prior rights not derived from this Franchise.

Section 10. Records of Installation and Planning

10.1 Upon the City's reasonable request, PSE shall provide to the City copies of available plans for improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate PSE to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

10.2 Upon the City's reasonable request, PSE shall provide to the City copies of available drawings in use by PSE showing the approximate location of PSE's Facilities at specified locations within the Franchise Area. PSE shall further provide, upon the City's reasonable request in connection with the City's design of new streets, intersections and/or other municipally funded public works projects and major renovations of existing streets and intersections, field marking of PSE's underground Facilities within the Franchise Area, if such Facilities can be so field marked with reasonable accuracy using devices designed to respond to the presence of PSE's underground Facilities. Notwithstanding the foregoing, however, PSE does not warrant the accuracy or sufficiency of any such drawings or field markings or other information provided by PSE, and PSE shall not be liable to the City or others for any errors or defects in the same.

10.3 In addition, whenever PSE and the City agree that it is mutually beneficial to both parties in connection with the design of new streets, intersections and/or municipally funded public works projects and major renovations of existing streets and intersections, PSE shall verify the actual location of its underground Facilities within the Franchise Area by excavating, including pot holing, at no expense to the City.

10.4 Notwithstanding the foregoing, nothing in this Section 10 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 11. Vegetation Management

11.1 PSE shall, on an annual basis, provide the City a list of locations within the Franchise Area at which PSE anticipates performing vegetation management activities; provided that such list shall not limit PSE's right under this Franchise to cut, trim or otherwise remove vegetation at any time within the Franchise Area which, due to proximity to PSE's facilities, pose an imminent threat to public safety or the reliable operation of PSE's facilities.

11.2 PSE shall, in coordination with the City, identify vegetation species appropriate for location in proximity to PSE's facilities and shall cooperatively act with the City to promote use of such identified species within and adjacent to the Franchise Area.

Section 12. Indemnification

12.1 PSE shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of PSE, its agents, servants or employees in exercising the rights granted to PSE in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify PSE thereof, and PSE shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify PSE thereof, and PSE shall have the right, at its election and its sole cost and

expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 13. Insurance

13.1 PSE shall procure and maintain for the duration of the Franchise, insurance, or in lieu thereof provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to PSE, its agents, representatives or employees. PSE shall provide certificate(s) of insurance (Form CG2O1O ISO or equivalent) and/or evidence of self-insurance, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such certificate(s) of insurance and/or evidence of self-insurance shall evidence the following minimum coverages:

(i) Commercial general liability insurance or excess liability insurance, including coverage for premises operations, explosions and collapse hazard, underground hazard and products completed hazard, written on an occurrence basis, with limits not less than:

A. $2,000,000 for bodily injury or death to each person; and

B. $2,000,000 for property damage resulting from any one accident.

(ii) Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000 for each person and $2,000,000 for each accident.

(iii) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $2,000,000.

13.2 PSE shall maintain the liability insurance policies required by this Section 13 throughout the term of this Franchise. Any deductibles or self-insured retentions must be declared to the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of PSE.

13.3 PSE's insurance shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers. Any insurance maintained by the City, its officers, elected officials, agents, employees, representatives, consultants and volunteers shall be in excess of PSE's insurance and shall not contribute with it.

13.4 The cancellation clause of any certificate(s) of insurance (ACORD Form 25 or equivalent) provided to the City pursuant to Section 13.1 shall include the following provision:

"Should any of the policies described by this certificate be canceled before the expiration date thereof, the issuing company will provide at least thirty (30) days written notice thereof to the certificate holder."

13.5 In the event any of the insurance required by this Section 13 is canceled or otherwise not renewed during the term of this Franchise, PSE shall promptly acquire replacement insurance or shall utilize self insurance to restore and maintain the amount of coverage required by this Section 13 and shall promptly provide to the City certificate(s) of insurance or evidence of self insurance as provided in this Section 13 as may be applicable.

Section 14. Administrative fees and Reimbursement of Costs.

14.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PSE. However, as provided in RCW 35.21.860, the City may recover from PSE actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW.

Section 15. Reservation of Easement in Event of Vacation.

15.1 In the event the City vacates any portion of the Franchise Area during the term of this Franchise, the City shall, in its vacation procedure, reserve and grant an easement to PSE for PSE's Facilities, unless it is determined by the City, in consultation with PSE, that retaining, reserving and/or granting such an easement is not necessary for construction, repair and maintenance of existing and/or future Facilities.

Section 16. Moving Buildings within the Franchise Area.

16.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with PSE for the temporary adjustment of PSE's wires to accommodate the moving or removal of said building or other object. Such necessary arrangements with PSE shall be made, to PSE's satisfaction, not less than thirty (30) days prior to the moving or removal of said building or other object. In such event, PSE shall at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires which may obstruct the moving or removal of such building or other object, provided that:

(i) The moving or removal of such building or other object which necessitates the adjustment of wires shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with PSE's business;

(ii) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route approved by the City; and

(iii) The person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save PSE harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person or entity moving or removing such building or other object or the negligence of the agents, servants or employees of the person or entity moving or removing such building or other object.

Section 17. Forfeiture, Revocation and Remedies

17.1 If PSE violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given PSE by the City under the provisions of this Franchise, then PSE shall, at the election of the Lakewood City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to PSE. The City may elect, in lieu of the above and without any prejudice thereto, seek to obtain an order from the superior court having jurisdiction compelling PSE to comply with the provisions of this Franchise. In such a proceeding, the prevailing party shall be entitled to recover its attorneys' fees and costs from the other party. Nothing herein is intended to limit the rights or remedies of either party, as such rights or remedies may exist under applicable law; nor shall the foregoing be construed to create any rights or remedies, except as otherwise specifically provided herein.

Section 18. Nonexclusive Franchise.

18.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with PSE's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 19. Shared Facilities

19.1 The Franchise Area may include areas occupied by overhead transmission and distribution utility facilities that are owned and operated by a utility other than PSE. If such occupancy preexisted PSE's intent to construct Facilities in that portion of the Franchise Area, and if such preexisting occupancy is authorized by a franchise granted to such utility by the City that contains a common user clause (such clause being substantially in the form set forth below), then as to such portion of the Franchise Area, PSE's construction of any Facilities therein shall be subject to such common user clauses; provided, however, nothing herein shall require PSE to (1) construct, operate, maintain, or use any Facilities in a manner that is not consistent with prudent utility practices; or (2) occupy, use, or employ any one or more of the labor, materials, facilities, equipment, tools, goods, services, designs, or properties of a third party, unless such occupancy, use, or employment is arranged and accomplished on reasonable terms and conditions.

19.2 This Franchise is subject to the following "common user clause." If the City shall hereinafter grant a franchise to a utility (other than PSE), and such subsequent franchise authorizes such utility to construct overhead transmission and distribution utility facilities within a portion of the Franchise Area where PSE maintains Facilities pursuant to this Franchise, then in such event, PSE shall permit such other utility to jointly use and occupy PSE's Facilities within such portion of the Franchise Area; provided, however, nothing herein shall require PSE to (1) construct, operate, maintain, or use any Facilities in a manner that is not consistent with prudent utility practices; or (2) permit such joint use and occupancy unless the same can be arranged and accomplished on reasonable terms and conditions.

Section 20. Franchise Term.

20.1 This Franchise is and shall remain in full force and effect for a period of ten (10) years from and after the effective date of the Ordinance; provided, however, PSE shall have no rights under this Franchise nor shall PSE be bound by the terms and conditions of this Franchise unless PSE shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance. This Franchise shall automatically be extended for one or more additional ten (10) year periods at the expiration of the initial term of this Franchise or subsequent extension thereof, provided PSE is not in material breach of the terms and conditions of this Franchise. Either party may terminate this Franchise at the expiration of the initial term of this Franchise or any subsequent extension thereof by provision of notice submitted not more than one (1) year and not less than ninety (90) days prior to the expiration of the initial term of this Franchise or any subsequent extension thereof.

Section 21. Assignment.

21.1 PSE shall not have the right to assign its rights, benefits and privileges in and under this Franchise without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Notwithstanding the foregoing, PSE shall have the right, without such notice or such written acceptance, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

Section 22. Miscellaneous.

22.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

22.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 12 above) shall govern

and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by PSE of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

(i) references this Franchise; and

(ii) states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

Section 23. Alteration of Franchise.

23.1 The City and PSE hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provisions of this Section.

23.2 At any time during the term of this Franchise, the City or PSE may request, by written notice, that the other promptly participate in negotiations to alter, amend or modify the terms and conditions of this Franchise.

23.3 Within a reasonable time after receipt of the notice required by Section 23.2, the City and PSE shall, at a mutually agreed-upon time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and PSE shall conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor PSE shall be obligated to agree to any proposed alteration, amendment or modification. Further, no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or PSE to agree to any proposed alteration, amendment or modification.

23.4 Neither the City nor PSE shall be obligated to continue negotiations after the expiration of ninety (90) days from the date they commence such negotiations; provided, however, the City and PSE may agree to continue such negotiations for an additional period of time.

23.5 Any alteration, amendment or modification to which the City and PSE agree shall be submitted to the legislative authority of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that, unless PSE properly files a written notice of acceptance within sixty (60) days of its effective date, the ordinance shall not be effective and this Franchise shall not be altered, amended or modified. To the extent permitted by law, the party proposing the alteration, amendment or modification shall bear all actual administrative costs directly related to approval thereof.

Section 24. Effective Date.

24.1 This Ordinance shall be effective on Jan. 23, 2006, having first been submitted to the City Attorney, having been published as required by law; having been passed at a regular meeting of the legislative body of the City by a majority of the whole of such legislative body, and having been approved by the Mayor of the City.

ADOPTED by the City Council this 17th day of January, 2006

CITY OF LAKEWOOD

Claudia B. Thomas

Claudia B. Thomas, Mayor

ATTEST:

Alice M. Bush

Alice M. Bush, MMC, City Clerk

APPROVED AS TO FORM:

Heidi Ann Wachter

Heidi Ann Wachter, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I, ALICE M. BUSH, the duly appointed, qualified City Clerk of the City of Lakewood, an optional Code City, situated in the County of Pierce, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 403, an ordinance of the City of Lakewood, entitled:

ORDINANCE NO. 403

AN ORDINANCE granting Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of energy for power, heat, light and any other purpose for which energy can be used; and to charge and collect tolls, rates and compensation for such energy and such uses.

I further certify that said Ordinance No. 403 was introduced on the 17th day of January, 2006; was submitted to the City Attorney on the 17th day of January, 2006; was published as provided by law at least once in a newspaper of general circulation in the City of Lakewood; was approved by a majority of the entire legislative body of the City of Lakewood at a regular meeting on the 17th day of January, 2006; and was approved by the Mayor of the City of Lakewood on the 17th day of January, 2006.

WITNESS my hand and official seal of the City of Lakewood, this 18th day of January, 2006.

Alice M. Bush
ALICE M. BUSH, City Clerk
City of Lakewood, State of Washington

HONORABLE MAYOR AND CITY COUNCIL
CITY OF LAKEWOOD, WASHINGTON

In the matter of the application of Puget Sound Energy, Inc., a Washington corporation, for a franchise to construct, operate and maintain facilities in, upon, over under, along, across and through the franchise area of the City of Lakewood, Washington	:	Franchise Ordinance No. 403
	:	ACCEPTANCE

WHEREAS, the City Council of the City of Lakewood, Washington, has granted a franchise to Puget Sound Energy, Inc., a Washington corporation, its successors and assigns, by enacting Ordinance No. 403, bearing the date of JANUARY 17, 2006; and

WHEREAS, a copy of said Ordinance granting said franchise was received by the Puget Sound Energy, Inc. on January 20, 2006 from said City of Lakewood, Pierce County, Washington.

NOW, THEREFORE, Puget Sound Energy, Inc., a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Lakewood, Pierce County, Washington.

IN TESTIMONY WHEREOF said Puget Sound Energy, Inc. has caused this written Acceptance to be executed in its name by its undersigned Terry J. Oxley thereunto duly authorized on this 23rd day of January, 2006.

ATTEST:

PUGET SOUND ENERGY, INC.

By:

Copy received for City of Lakewood
on January 26, 2006

By:
City Clerk

To: Mayor and City Councilmembers

From: Police Chief Michael Zaro

Through: John J. Caulfield, City Manager

Date: November 23, 2015 (Study Session)

Subject: CSRT Update

The Community Safety and Resource Team is a multidisciplinary team comprised of Police Officers, Community Support Officers, and Code Enforcement Officers. The multidisciplinary design allows for a comprehensive approach to problem solving by bringing together the resources most widely used to address quality of life and nuisance issues in the City of Lakewood.

Subsequent to the 2015/2016 budget process all CSRT resources were brought under the Police Department. The transition and initial staffing issues impacted effectiveness however we are now fully staffed and through the transition. This report is to provide a snapshot of the work CSRT has been doing and the effectiveness of their activities.

CSRT Update

Chief Mike Zaro

Staffing: 10 total personnel

- Lt. Heidi Hoffman
- Sgt. Mark Eakes
- Neighborhood Police Officers
  - Ralph Rocco, Ken Devaney, Jeremy Prater, Jason Cannon
- Community Service Officers
  - Gail Conelly, Mike Miller, Joy Browne
- Code Enforcement Officers
  - Sandy Stauffer, Bill Mathies

Districts 1 and 5

- NPO Prater and CSO Conelly
  - Community meeting regarding the shooting and manhunt in Tillicum.
  - Preschool visit with patrol car for show and tell.
  - Officer Prater is also responsible for the Retail Theft Program.
    - Program designed to streamline the process for retailers to file theft and shoplifting reports.

Districts 2 and 3

- NPO Cannon and CSO Miller
  - Shut down and cleaned up homeless encampment on 47th Avenue.
  - Working on other encampments near the theaters on 84th .
  - Attended the Pumpkin Patch event at West Pierce Fire station. Brought the SWAT armored vehicle for display.
  - Assisted with over 100 graffiti abatements.
  - Recovered approximately 50 shopping carts.
  - Worked to bring Karwan Village mobile home park into compliance.

District 4

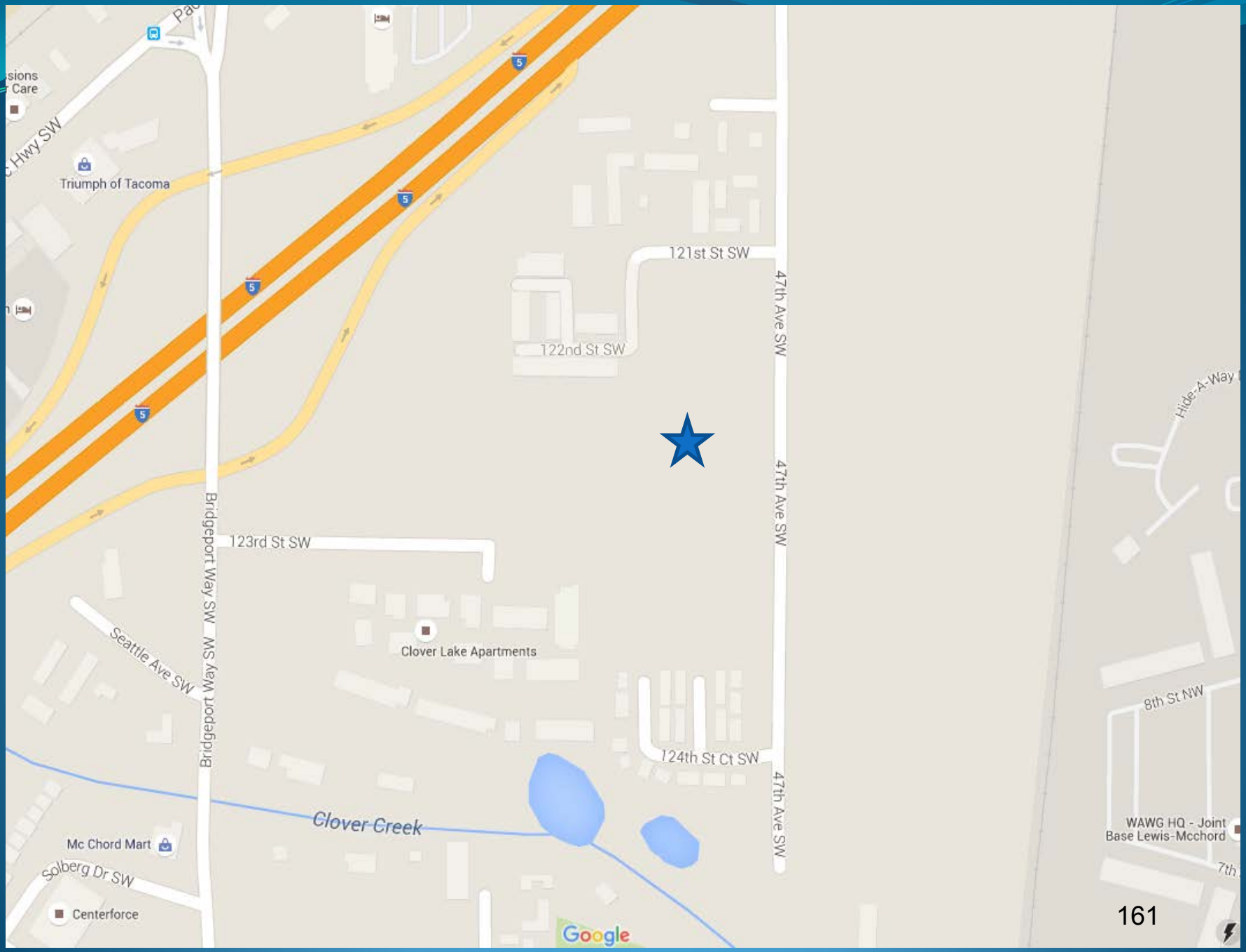
- Officer Rocco and CSO Miller
  - MHP Program with Carolyn Cyr.
  - Attended Springbrook Community Connections Youth Community Garden Event.
  - Participated in Coffee With a Cop at the Senior Center.

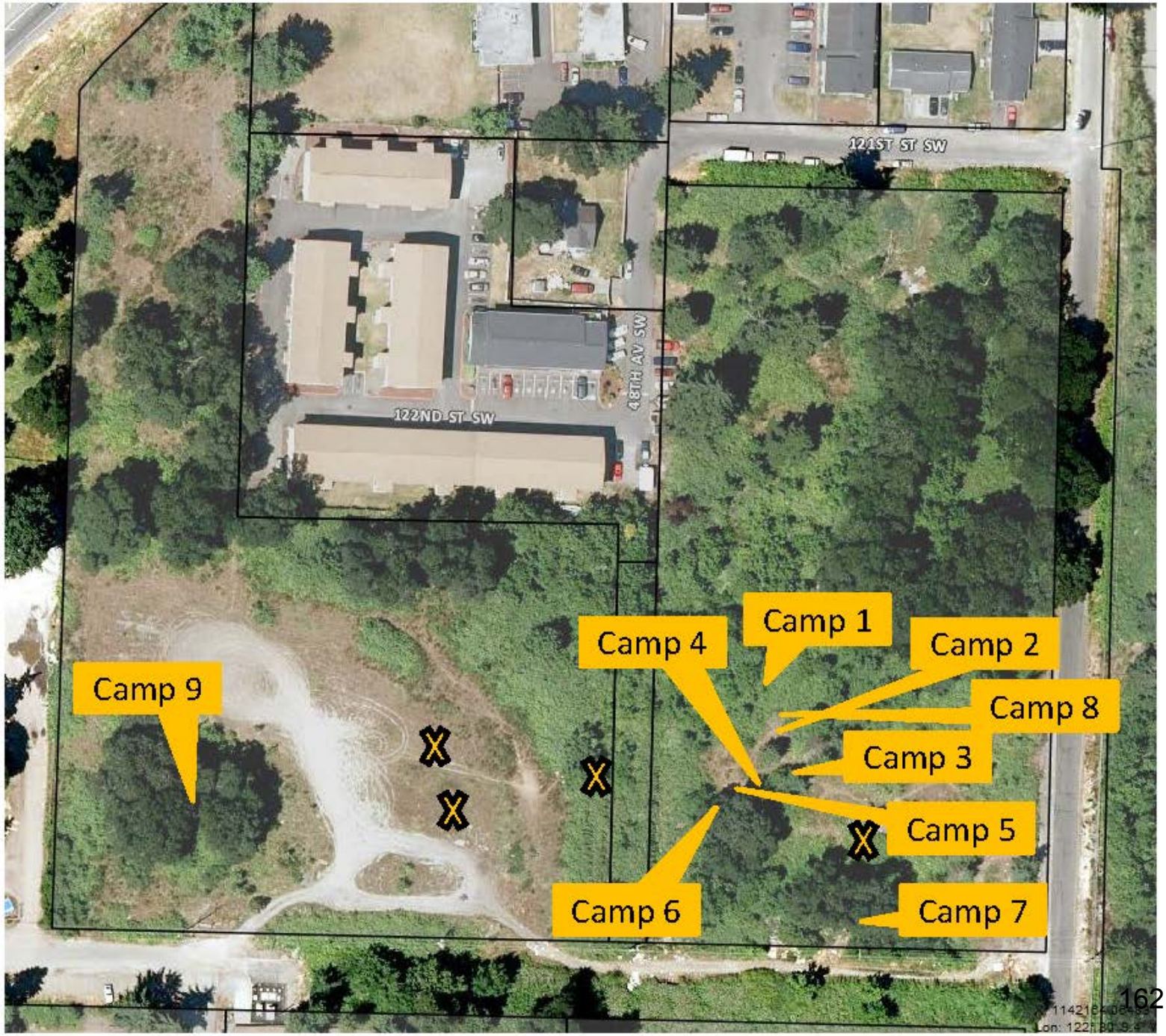
District 5 and 6

- Officer Devaney and CSO Conelly
  - Works with Western State Hospital.
  - Addressed chronic loitering and panhandling issues in the Oakbrook plaza receiving positive feedback from business owners.
  - Attended health and Safety Fair at pierce College.
  - Attends the Lake City Neighborhood Association meetings.
  - Investigates minor property crimes.

Code Enforcement

- CEO Mathies and CEO Stauffer
  - Property maintenance and junk vehicles are the primary types of complaints.
  - District 5 hoarder with multiple vehicles cited and brought into compliance.
  - Daily inspections of the Golden Lion Motel.
  - Education and enforcement of new second-hand business licenses
  - Shut down illegal home business where occupants were producing and distributing bath products.
  - 112 open code cases dating back to 2012 (assigned to both CEOs and CSOs).
    - 34 commercial or vacant properties
    - 78 residential properties
    - Average days from complaint to inspection is 2


Triumph of Tacoma
121st St SW
122nd St SW
47th Ave SW
47th Ave SW
Hide-A-Way
123rd St SW
Bridgeport Way SW
Bridgeport Way SW
Seattle Ave SW
Clover Lake Apartments
8th St NW
124th St Ct SW
47th Ave SW
Clover Creek
WAWG HQ - Joint Base Lewis-Mcchord
Mc Chord Mart
Solberg Dr SW
Centerforce
Google


121ST ST SW
48TH AV SW
122ND ST SW
Camp 1
Camp 2
Camp 3
Camp 4
Camp 5
Camp 6
Camp 7
Camp 8
Camp 9

Camp 5 and 6

To: Mayor and City Councilmembers

From: Police Chief Michael Zaro

Through: John J. Caulfield, City Manager

Date: November 23, 2015 (Study Session)

Subject: Greater Lakes Mental Health Agreement

In February of 2015 the City of Lakewood Partnered with Greater Lakes Mental Health to develop a program that would imbed a Mental Health Provider (MHP) into the Police Department. The MHP would partner with an Officer and together would act as first responders to incidents involving people suffering from mental illness who were in crisis and generating a police call for service. The team would identify the most appropriate resource for that person and follow-up in the days after to ensure that he or she was stable. The ultimate goal of the program is to provide the most appropriate resources to the person in crisis and also prevent unnecessary use of emergency services.

The agreement with Greater Lakes for the MHP services was through December 2015. The funding is already in place for 2016 and this agreement simply extends the services through December of 2016 with no change to the service provisions listed in the agreement.

CONTRACT BETWEEN THE CITY OF LAKEWOOD AND GREATER LAKES MENTAL HEATHCARE

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the City of Lakewood, Washington, a code city duly organized and existing pursuant to laws of the State of Washington, hereinafter referred to as the "City" and Greater Lakes Mental Health Foundation, doing business as Greater Lakes Mental Healthcare, hereinafter referred to as the "Agency".

WHEREAS, the City has determined the need to have certain human services performed for its citizens; and,

WHEREAS, the City desires to have the Agency perform such services pursuant to certain terms and conditions; and

WHEREAS, the City has received a federal grant that will allow the City to hire (on a contract basis) a mental health professional who will work with police to provide or facilitate appropriate assistance for the mentally ill involved in police calls for service;

NOW THEREFORE, IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope of Services to be Performed by Agency. The Agency shall provide the services of a Mental Healthcare Professional (MHP). This individual shall work in the field with Neighborhood Police Officers on calls involving mentally unstable persons.

The MHP will work in the field to assess, stabilize, and provide alternatives, if possible, to jailing or hospitalizing a person with mental illness that is the subject of a call for police service. The MHP and/or GLMHC will provide training to police officers, first responders and managers of hotel/motel group.

In performing such services, the Agency shall at all times comply with all Federal, State, and local statutes, ordinances and rules applicable to the performance of such services and the handling of any funds used in connection therewith. The Agency shall request, in writing, prior approval from the City whenever the Agency desires to amend the scope of services.

2. Compensation and Methods of Payment. The City shall pay the Agency for services rendered. The total amount to be paid shall not exceed $76,373. Payment will be made on a reimbursement basis no more than monthly and no less than quarterly for the duration of this project. The Agency will provide proof of hours worked and report data according to the list of deliverables listed in Exhibit A.

The requests for such payment shall be processed for payment by the City in the normal course after that date, in accordance with the terms hereof.

3. Agency Budget. The Agency shall apply the funds received under this Agreement with the maximum limits set forth in this Contract solely to the services specified in

Paragraph 1, above, and according to the approved budget of the Agency. Prior approval from the City is required whenever the Agency desires to amend its budget by transferring funds among the budget categories.

4. Duration of Contract. This Contract shall be in full force and effect for a period commencing on the 1st day of January, 2016 and ending on the 31st day of December, 2016, unless sooner terminated under the provisions hereinafter specified.

5. Independent Contractor. The Agency and City agree that the Agency is an independent contractor with respect to the services provided pursuant to this Contract. Nothing in this Contract shall be considered to create the relationship of employer and employee between the parties hereto. Neither the Agency nor any employee of the Agency shall be entitled to any benefits accorded City employees by virtue of the services provided under this Contract. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security payments or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Agency, or any other employee of the Agency.

6. Indemnification and Defense. The Agency shall defend and indemnify, and save harmless the City, its agents and employees, from and against any and all liability arising from injury or death to persons or omissions of the Agency, its agents, servants, officers or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, or its agents or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury, death or damage, the Agency shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expense incurred by the City in defending such claim or suit, including attorney's fees.

7. Insurance.

A. The Agency shall procure and maintain in full force throughout the duration of the Contract commercial comprehensive general liability insurance with a minimum coverage of $1,000,000.00 per occurrence combined single limit and $2,000,000.00 in the aggregate for personal injury and property damage and non-owned automobile. The said policy shall name the City as an additional named insured on the insurance policies, and **A COPY OF THE ENDORSEMENT NAMING THE CITY AS AN ADDITIONAL INSURED SHALL BE ATTACHED TO THE CERTIFICATE OF INSURANCE.**

B. In addition to the insurance provided for in Paragraph A above, the Agency shall maintain or insure that its professional employees or contractors maintain professional liability insurance in the event that services delivered pursuant to this Contract, either directly or indirectly, involve providing professional services. Such professional liability insurance shall be maintained in an amount not less than $500,000.00 combined single limit per claim and in the aggregate. For the purposes of this paragraph "professional service" shall mean services provided by a physician, licensed psychologist, or other licensed professional.

C. Certificates of coverage as required by Paragraph A and B above shall be delivered to the City within fifteen (15) days of execution of this contract. Further, it is the responsibility of the Agency to ensure a valid certificate of insurance is in effect at all times

throughout the course of this contract. Requests for reimbursement under this contract may be withheld until such time as a valid certificate of insurance is provided to the City.

8. Record Keeping and Reporting.

A. The Agency shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Contract and other such records as may be deemed necessary to the City to ensure proper accounting for all funds contributed by the City for the performance of this Contract and compliance with this Contract. The Agency shall notify the City within ten (l0) days of any change in program personnel.

B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with Chapter 40.14 RCW and by the City.

C. The Agency shall provide quarterly activity reports to the City containing actual outcomes, indicators and an evaluation of the program. The goals, activities to accomplish those goals and outcome-based metrics shall be mutually agreed upon by the parties and are outlined in Exhibit A.

D. The Agency, at the request of the City, shall make public presentations regarding the program funded by the City. Such presentation shall be prepared in advance and approved by the City.

E. The City of Lakewood places a high priority on collaboration. As such, the Agency shall provide representation at the monthly Collaboration Meeting.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Contract shall be subject at all times to inspection, review or audit during the performance of this Contract. The City shall have the right to an annual audit of the Agency's financial statements and condition. In addition, the Agency is subject to an annual site monitor of the systems supporting Outcomes Based Evaluation. The City shall have the right to an annual inspection of the Agency's data systems for tracking outcome achievement. Areas of default noted during the annual inspection may demand additional site monitoring(s).

10. Termination. The City of Lakewood may suspend or terminate this Agreement in whole or in part for convenience, upon 15 days written notice to the Agency. If the Agency's insurance coverage is canceled for any reason, the City shall have the right to terminate this Contract immediately. If for any reason an agency does not comply with all aspects of this contract, including mandatory reports, such non-compliance may jeopardize the agency's ability to receive future funding.

Further: This Contract may be terminated upon evidence of the following conditions:

1. Agency is no longer operating. The Contract shall be terminated within 10 days of notification that the Agency is no longer operating and performing the duties identified in "Exhibit A" Scope of Services.

2. Change in Scope of Services: Should the Agency no longer provide services identified in "Exhibit A" Scope of Services, the contract may be terminated for non-performance.

11. Discrimination Prohibited. The Agency shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Agency to be provided under this Contract on the basis of race, color, religion, creed, sex, age, national origin, marital status or presence of any sensory, mental or physical handicap.

12. Assignment and Subcontract. The Agency shall not assign or subcontract any portion of the services contemplated by this Contract without the written consent of the City.

13. Entire Agreement. This Contract contains the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the Contract. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Contract.

14. CONTRACTOR'S EMPLOYEES EMPLOYMENT ELIGIBILITY REQUIREMENTS. The Agency and any subcontractors shall comply with E-Verify as set forth in Lakewood Municipal Code Chapter 1.42. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Contractor shall emoll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation i'n E-Verify throughout the course of the Contractor's contractual relationship with the City. Ifthe Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. The Contractor shall show proof of compliance with this section, and/or proof of subcontractor compliance with this section, within three (3) working days of the date of the City's request for such proof.

15. Notices. Notices required by terms of this Contract shall be sent to the other party at the following addresses, unless otherwise requested, in writing, by one of the parties hereto:

TO THE CITY
City of Lakewood
Attn: Mike Zaro
Police Department
6000 Main St SW
Lakewood, Washington 98499

TO THE AGENCY:
Deanua Carron, LICSW
Director of Forensic Services
Greater Lakes Mental Healthcare
(253) 620-5769
deannac@glmhc.org

16. Applicable Law, Venue, Attorney's Fees. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Contract, the parties specifically understand and agree that venue shall be properly laid in Pierce County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

IN WITNESS WHEREOF THE PARTIES HERETO EXECUTED THIS CONTRACT AS OF THE DATE AND YEAR FIRST ABOVE WRITTEN.

CITY OF LAKEWOOD	GREATER LAKES MENTAL HEALTH FOUNDATION
_____	_____
John C. Caulfield City Manager	Terri Card President and CEO

Attest:

_____
Alice M. Bush, MMC, City Clerk

Approved as to Form:

_____
Heidi Ann Wachter, City Attorney

Exhibit A

Goal	Activity	Immediate/Short Term Disposition
Provide Alternatives to use of Emergency Room and Jails	MHP will provide structured assistance to persons in crisis	Client stabilized - remains at home Client referred to shelter Client referred to crisis bed Client referred to Recovery Innovations Client arrested/jail Client taken to ED Client referred to current Mental Health Center/Case Manager Client detained to Evaluation and Treatment Center Other
Goal	**Activity**	**Follow-Up/Long Term Disposition**
Improved Treatment for residents with mental illness	MHP will provide follow up services and document outcome status	Client contacted by MHP Client could not be reached/located Client declined assistance Client enrolled in mental health services Client provided with housing referrals Other
Goal	**Activity**	**Outcome**
More effective interaction between police and citizens with mental illness	Mental Health Training & Education	Who provided the training What was the focus of the training How many attended Duration