

**GRANDVIEW CITY COUNCIL
COMMITTEE-OF-THE-WHOLE
MEETING AGENDA
TUESDAY, MARCH 12, 2019**

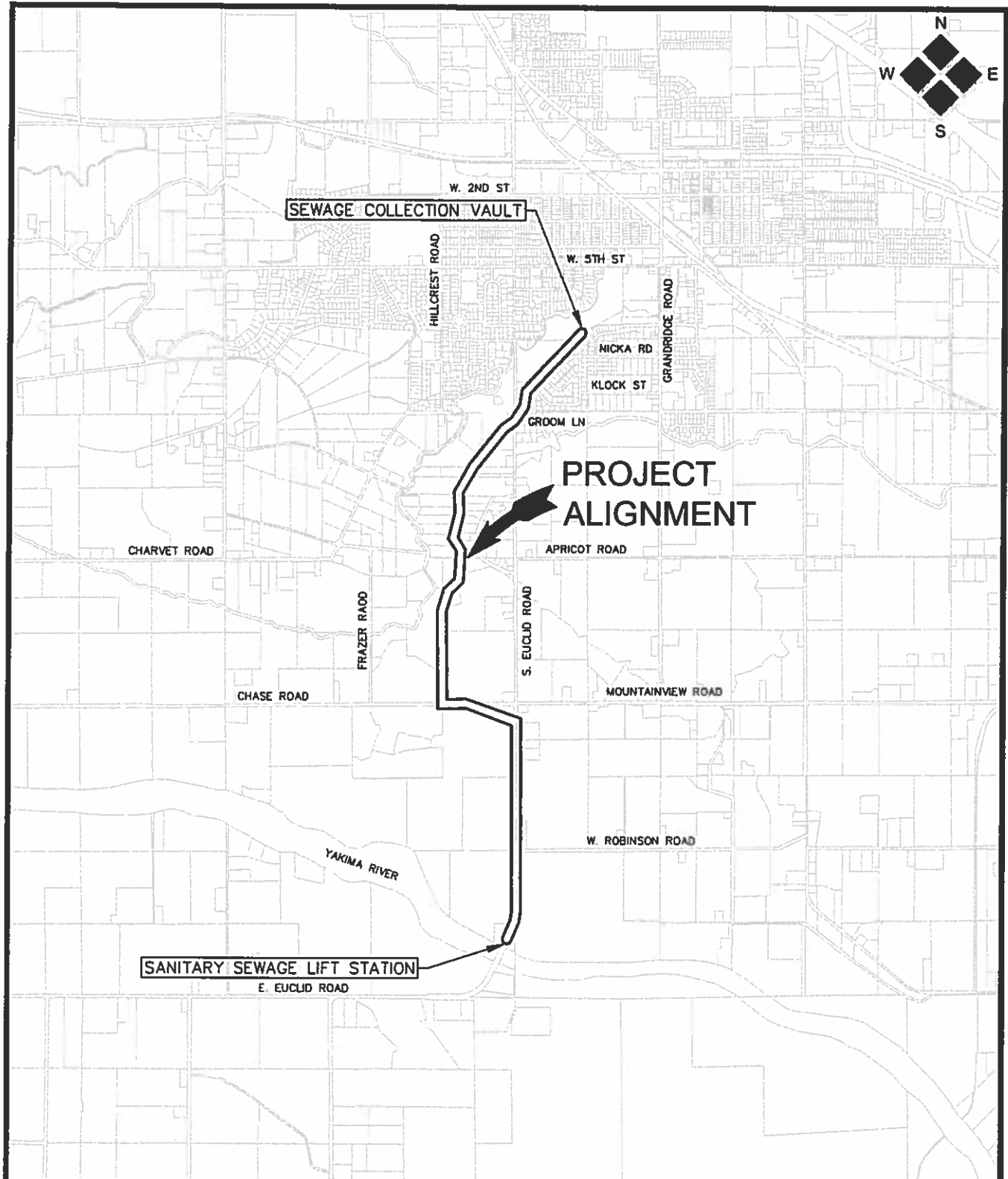


COMMITTEE-OF-THE-WHOLE MEETING – 6:00 PM

PAGE

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENT** – At this time the public may address the Council on any topic whether on the agenda or not, except those scheduled for public hearing.
- 4. NEW BUSINESS**
 - A. Sanitary Sewer Trunk Main Replacement Update – HLA Engineering 1
 - B. Resolution authorizing the Mayor to sign the Community Development Block Grant (CDBG) Program General Purpose Grant Contract No.18-62210-024 with the Washington State Department of Commerce for the Sanitary Sewer Trunk Main Replacement 2-38
 - C. Wine Country Road Grind and Overlay 39-41
 - D. Resolution authorizing the Mayor to sign an Option and Structure Lease Agreement between the City of Grandview and New Cingular Wireless PCS, LLC 42-69
 - E. Ordinance amending Section 2.04.010 of the Grandview Municipal Code to Provide that Committee-of-the-Whole and Business Meetings are Regular Meetings of the Grandview City Council 70-73
 - F. Snow Removal Comments – Councilmember Diana Jennings 74-75
- 5. OTHER BUSINESS**
- 6. ADJOURNMENT**

CITY OF GRANDVIEW SANITARY SEWER TRUNK MAIN REPLACEMENT



**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

Resolution authorizing the Mayor to sign the Community Development Block Grant (CDBG) Program General Purpose Grant Contract No. 18-62210-024 with the Washington State Department of Commerce for the Sanitary Sewer Trunk Main Replacement

AGENDA NO.: New Business 4 (B)

AGENDA DATE: March 12, 2019

DEPARTMENT

Public Works Department

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

DEPARTMENT DIRECTOR REVIEW


CITY ADMINISTRATOR

MAYOR




ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

The City of Grandview applied for and successfully received a Community Development Block Grant (CDBG) in the amount of \$750,000 for the Sanitary Sewer Trunk Main Replacement.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

Attached for consideration are the CDBG General Purpose Grant contract documents from the Department of Commerce for the Sanitary Sewer Trunk Main Replacement. This scope of work and budget states the goals/expected results to be accomplished, and lists the schedule and budget for the specific construction activities to be conducted.

ACTION PROPOSED

Move a resolution authorizing the Mayor to sign the Community Development Block Grant (CDBG) Program General Purpose Grant Contract No. 18-62210-024 with the Washington State Department of Commerce for the Sanitary Sewer Trunk Main Replacement to the regular meeting for consideration.

Cus Arteaga

From: Golden, Roberta (COM) <roberta.golden@commerce.wa.gov>
Sent: Monday, March 04, 2019 9:19 AM
To: Cus Arteaga
Cc: Andresen, Jacquie (COM)
Subject: CDBG Contract 18-62210-024 to be signed and returned
Attachments: Grandview 1824.pdf

Dear Mr. Arteaga,

Congratulations on your 2018 CDBG General Purpose Grant award!

Please print **two** (2-sided) copies of the attached contract. After they are signed, return both copies with original signatures to the address listed below. We will return one fully executed copy to you for your records.

Thank you,

Roberta

Roberta Golden
Grant Specialist

[Community Development Block Grant \(CDBG\)](#)

Local Government Division – Community Assistance & Research Unit | [Washington State Department of Commerce](#) | (360) 725-5020

RESOLUTION NO. 2019-__

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN THE COMMUNITY DEVELOPMENT BLOCK
GRANT (CDBG) PROGRAM GENERAL PURPOSE GRANT CONTRACT NO.
18-62210-024 WITH THE WASHINGTON STATE DEPARTMENT OF COMMERCE
FOR THE SANITARY SEWER TRUNK MAIN REPLACEMENT**

WHEREAS, the City of Grandview has applied for and been granted a Community Development Block Grant (CDBG) General Purpose Grant from the State of Washington Department of Commerce for the Sanitary Sewer Trunk Main Replacement; and,

WHEREAS, the City must execute a contract setting forth the terms and conditions and the regulations by which the City must comply in order to receive said grant,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON, as follows:

The Mayor is hereby authorized to sign the Community Development Block Grant (CDBG) Program General Purpose Grant No. 18-62210-024 with the State of Washington Department of Commerce for the Sanitary Sewer Trunk Main Replacement in the form as is attached hereto and incorporated herein by reference.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



Department of Commerce

Grant Contract with:

City of Grandview

through

Community Development Block Grant (CDBG) Program

General Purpose Grant

For:

Sanitary Sewer Trunk Main Replacement

Start date: 9/12/2018

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Attachment A, Scope of Work and Budget

Attachment B, State and Federal Requirements and Assurances

Attachment C, Letter to Incur Costs (if applicable)

FACE SHEET

Contract Number: 18-62210-024

Washington State Department of Commerce
Local Government Division
Community Assistance and Research Unit
General Purpose Grant

1. Grantee City of Grandview 207 West Second Street Grandview, WA 98930		2. Grantee Doing Business As (optional) N/A	
3. Grantee Representative Cus Arteaga, City Administrator/PWD Phone: (509) 882-9211 Fax: (509) 882-3099 Email: cartega@grandview.wa.us		4. COMMERCE Representative Jacquie Andresen, Project Manager Phone: (360) 725-3017 Fax: (360) 586-8440 jacquie.andresen@commerce.wa.gov Address: PO Box 42525 1011 Plum Street SE Olympia, WA 98504	
5. Grant Amount \$750,000	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 9/12/2018	8. End Date 1/31/2022
9. Federal Funds (as applicable) \$750,000	Federal Agency: U.S. Department of Housing And Urban Development (HUD)	CFDA Number: 14.228	Indirect Rate (if applicable): N/A
10. Tax ID # 91-6001437	11. SWV # 0000003-00	12. UBI # 391000041	13. DUNS # 03-852-0482
14. Grant Purpose Sanitary Sewer Trunk Main Replacement. A full description of the project is in Attachment "A" Scope of Work and Budget.			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grant Terms and Conditions including Attachment "A" – Scope of Work and Budget, Attachment "B" – State and Federal Requirements and Assurances, Attachment "C" – Letter to Incur Costs (if applicable), and the following documents incorporated herein by reference: Grantee's application for funding and the Community Development Block Grant policies and procedures, prepared by Commerce.			
FOR GRANTEE _____ The Honorable Gloria Mendoza, Mayor City of Grandview _____ Date		FOR COMMERCE _____ Mark K. Barkley, Assistant Director Local Government Division _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE – SEPTEMBER 25, 2018	

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SPECIAL TERMS AND CONDITIONS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

1. DEFINITIONS

- A. "Contractor" and "Grantee" in this Grant, and the term "subrecipient" found in the federal Community Development Block Grant (CDBG) rules and regulations, shall mean the same.
- B. "Low- and moderate-income" shall mean a household income equal to or less than 80 percent of area median income adjusted by family size.

2. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Identification Number (FAIN): B-18-DC-53-0001.

Total amount of federal award B-18-DC-53-0001 to Commerce: \$12,458,664.

Total amount of B-18-DC-53-0001 awarded to Grantee under this Grant is set forth in the Face Sheet at #5, Grant Amount.

Federal Award Date: To be determined.

Awarding Federal official: To be determined.

Federal Award Date and Awarding Federal Official will be stated in a cover letter from Commerce that will accompany a copy of the fully executed Grant provided to Grantee.

Funds distributed through this Grant are subject to CDBG regulations in 24 CFR Part 570.

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Grant, shall contain the following statements:

"This project was supported by Grant No. B-18-DC-53-0001 awarded by the U.S. Department of Housing and Urban Development (HUD). Points of view in this document are those of the author and do not necessarily represent the official position or policies of HUD. Grant funds are administered by the Community Development Block Grant Program, Washington State Department of Commerce."

3. ACQUISITION AND DISPOSITION OF ASSETS

The Grantee will account for any tangible personal property acquired or improved with this Grant.

The use and disposition of real property and equipment under this Grant will be in compliance with the requirements of all applicable federal law and regulation, including but not limited to 24 CFR Part 84 and 24 CFR Part 570.489, 570.502, 570.503, 570.504, and 570.505 as applicable, which include but are not limited to the following:

Real property that was acquired or improved, in whole or in part, with funds under this Grant in excess of \$25,000 shall be used to meet one of the CDBG national objectives for ten (10) years after the Grant is closed. Any exception must be made with COMMERCE approval and the Grantee will be responsible to pay COMMERCE an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of or improvement to the property. Such payment from the disposition of real property acquired with this Grant within ten (10) years of closeout of the Grant shall be treated as CDBG Program Income.

In cases in which equipment acquired in whole or in part with funds under this Grant is sold, the proceeds will be CDBG Program Income.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of work provided and receipt of properly completed invoices, which shall be submitted to the COMMERCE Representative on a Washington State Invoice Voucher form not more than monthly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number identified on the Face Sheet of this Grant. If expenses are invoiced, provide a detailed breakdown of each type.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Grantee.

COMMERCE may, in its sole discretion, terminate the Grant or withhold payments claimed by the Grantee for services rendered if the Grantee fails to satisfactorily comply with any term or condition of this Grant, including completion of the Environmental Review and the release of funds (if applicable).

No payments in advance or in anticipation of services or supplies to be provided under this Grant shall be made by COMMERCE.

COMMERCE shall not release the final five (5) percent of the total grant amount until acceptance by COMMERCE of project completion.

5. CLOSEOUT

COMMERCE will advise the Grantee to initiate closeout procedures when there are no impediments to closing and the following criteria have been met or soon will be met:

- A. All costs have been incurred with the exception of closeout costs and any unsettled third-party claims against the Grantee. Costs are incurred when goods and services are received or contract work is performed.
- B. The Grantee has held a public hearing to review program performance.
- C. The Grantee has submitted the Contract Closeout Report. Failure to submit a report will not preclude COMMERCE from effecting closeout if it is deemed to be in the state's interest. Any excess grant amount in the Grantee's possession shall be returned in the event of failure to finish or update the report.
- D. Other responsibilities of the Grantee under this Grant and applicable laws and regulations appear to have been carried out satisfactorily or there is no further state interest in keeping this Grant open for the purpose of securing performance.

6. COMPENSATION

COMMERCE shall pay an amount not to exceed the amount identified on the Face Sheet of this Grant for the performance of all things necessary for or incidental to the performance of work as set forth in Attachment A, Scope of Work and Budget incorporated herein, and by reference the Grantee's application for funding.

Grantee shall receive reimbursement for travel and other expenses as authorized in advance by COMMERCE as reimbursable. Grantee shall receive compensation for travel expenses at current state travel reimbursement rates

7. ENVIRONMENTAL REVIEW

General Purpose, Housing Enhancement, and Economic Opportunity Grants

Funding in excess of the amount stipulated in **Attachment C, Letter to Incur Costs**, shall not be released to a Grantee by COMMERCE until the following conditions implementing 24 CFR part 58 are met:

- A. The Grantee must complete an environmental review of the project and make a finding of environmental impact. A notice of this finding must be published along with a notice of the Grantee's intent to request release of funds for the project unless the project is exempt from the publication requirements as described. The Grantee must allow a seven (7) or fifteen (15) day period for public review and comment following publication of the notices unless exempt under the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA). When this review and comment period expires, the Grantee may, after considering any comments received, submit a request for release of funds to COMMERCE. Upon receipt of the request, COMMERCE must allow a fifteen (15) day period for public review and comment. When COMMERCE's public review and comment period expires, COMMERCE may, after considering any comments received, formally notify the Grantee in writing of the release of federal funds for the project.
- B. This special condition is satisfied when the Grantee completes the environmental review and request for release of funds from COMMERCE. The special condition is effectively removed on the date COMMERCE provides the Grantee with written notice of release of funds.

Planning-Only Activities and Public Services Grants

Funding shall not be released to a Planning-Only or Public Services Grant recipient until the following conditions are met: The Grantee assures that assisted activities are exempt under NEPA (24 CFR 58.34) and categorically exempt under SEPA (RCW 43.21C.110). The Grantee further assures that the activities do not come under the purview of any other federal, state, and known local environmental laws, statutes, regulations or executive orders. In addition, the Grantee assures it will document, in writing, its determination that each activity or project is exempt and meets the conditions specified for such exemption under (NEPA) 24 CFR 58.34(3) (for Planning-Only) or 58.34(4) (for Public Services) and (SEPA) WAC 197-11-800.

8. GRANT MANAGEMENT

The Representative and contact information identified on the Face Sheet of this Grant for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

9. HISTORICAL OR CULTURAL ARTIFACTS, HUMAN REMAINS

In the event that historical or cultural artifacts are discovered at the project site during construction or rehabilitation, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation (DAHP) at (360) 586-3065. If human remains are discovered, the Grantee shall stop work, report the presence and location of the remains to the coroner and local law enforcement immediately, and contact DAHP and the concerned tribe's cultural staff or committee.

10. INSURANCE

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Grantees participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Unemployment and Industrial Insurance. The Grantee shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. Commerce will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Grantee, or any subcontractor or employee of the Grantee, which might arise under the industrial insurance laws during performance of this Contract.

Protection of Project Property, Grantee's Assumption of Risk. The Grantee shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Grantee shall be at the sole risk of the Grantee. The Grantee may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Grantee shall take all necessary precautions for the safety of its employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

11. PERFORMANCE REPORTING

The Grantee, at such times and in such forms as COMMERCE may require, shall furnish periodic progress and performance reports pertaining to the activities undertaken pursuant to this Contract. These reports may include environmental review records, publication affidavits, procurement and contracting records, documentation of compliance with federal civil rights requirements, job creation records, program income reports, reports of the costs and obligations incurred in connection therewith, the final closeout report, and any other matters covered by this Contract. Activities funded by this Contract providing income-qualified direct assistance or direct services under the limited clientele, housing, or job creation CDBG National Objectives, must submit quarterly beneficiary

reports as furnished by COMMERCE. Failure to submit these reports may result in COMMERCE withholding payment or terminating this Contract.

12. PROGRAM INCOME

Program income, as defined in 24 CFR 570.489(e), retains federal identity and will be used before drawing additional CDBG funds to complete activities included in the Scope of Work and Budget. The Grantee must maintain records of program income received and expended, and annually report program income received after closeout of this Grant. Program Income shall be used to continue the same activities to benefit low- and moderate-income persons or, with COMMERCE approval, for other activities to benefit low- and moderate-income persons. Interest earned in excess of \$100 on CDBG funds received to reimburse incurred costs must be remitted to COMMERCE for return to the U.S. Treasury.

13. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

14. SUBCONTRACTS FOR ENGINEERING SERVICES

Engineering firms must certify that they are authorized to do business in the state of Washington and are in full compliance with the requirements of the Board of Professional Registration. The Grantee shall require that engineering services providers be covered by errors and omissions insurance. The engineering firm shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the engineering firm and licensed staff employed or under contract to the engineering firm. The state of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

15. ORDER OF PRECEDENCE

In the event of an inconsistency in this Grant, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work and Budget
- Grantee's application for funding and the Community Development Block Grant policies and procedures, prepared by Commerce as incorporated by reference on the Face Sheet

**GENERAL TERMS AND CONDITIONS
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Grant" or "Agreement" means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- E. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- F. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- G. "State" shall mean the state of Washington.
- H. "Subgrantee/subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantee/subcontractor" refers to any tier.
- I. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- J. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the Grantee shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

4. ALL WRITINGS CONTAINED HEREIN

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

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Grantee must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

7. ASSIGNMENT

Neither this Grant, nor any claim arising under this Grant, shall be transferred or assigned by the Grantee without prior written consent of COMMERCE.

8. ATTORNEY'S FEES

Unless expressly permitted under another provision of the Grant, in the event of litigation or other action brought to enforce Grant terms, each party agrees to bear its own attorney's fees and costs.

9. AUDIT

If the Grantee is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to auditreview@commerce.wa.gov.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this Grant, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
4. Have not within a three-year period preceding the signing of this Grant had one or more public transactions (Federal, State, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this Grant, the Grantee shall attach an explanation to this Grant.

C. The Grantee agrees by signing this Grant that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

- D. The Grantee further agrees by signing this Grant that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

- a) The lower tier Grantee certifies, by signing this Grant that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - b) Where the lower tier Grantee is unable to certify to any of the statements in this Grant, such contractor shall attach an explanation to this Grant.
- E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

12. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:

- 1. All material provided to the Grantee by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Grantee that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Grantee that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B. The Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee shall use Confidential Information solely for the purposes of this Grant and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Grantee shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Grantee shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Grant whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.
- C. Unauthorized Use or Disclosure. The Grantee shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

13. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the Grantee terminate this Grant if it is found after due

notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Grantee in the procurement of, or performance under this Grant.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW. The Grantee and their subgrantee(s) must identify any person employed in any capacity by the state of Washington that worked on the Community Development Block Grant program including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the past 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If is determined by COMMERCE that a conflict of interest exists, the Grantee may be disqualified from further consideration for the award of a Grant.

In the event this Grant is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the Grantee as it could pursue in the event of a breach of the Grant by the Grantee. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Grant.

14. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

15. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Grant Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Grant shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

16. DUPLICATE PAYMENT

COMMERCE shall not pay the Grantee, if the Grantee has charged or will charge the State of Washington or any other party under any other Grant, subgrant/subcontract, or agreement, for the same services or expenses.

17. GOVERNING LAW AND VENUE

This Grant shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Grantee shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any subgrantee/subcontractor or its employees.

Grantee expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Grantee's or any subgrantee's/subcontractor's performance or failure to perform the Grant. Grantee's obligation to indemnify, defend, and hold harmless the State shall not be eliminated by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

19. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the state of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

20. INDIRECT COSTS

The Grantee shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

21. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount

owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Grant, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.

22. LAWS

The Grantee shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended, including, but not limited to:

United States Laws, Regulations and Circulars (Federal)

A. Audits

- 2 CFR Part 200.

B. Environmental Protection and Review

- Coastal Barrier Resources Act of 1982, 16 U.S.C. 3501 et seq.
- HUD's implementing regulations at 24 CFR parts 50 or 58, as appropriate.
- Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846 also 24 CFR 982.401(j).
- National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. and the Implementing Regulations of 24 CFR 58 (HUD) and 40 CFR 1500-1508 (Council on Environmental Quality).
- Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 USC 4851-4856.

C. Flood Plains

- Flood Disaster Protection Act of 1973, 42 USC 4001-4128.

D. Labor and Safety Standards

- Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.
- Davis Bacon Act, 40 U.S.C. 276a-276a-5.
- Drug-Free Workplace Act of 1988, 41 USC 701 et seq.
- Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.
- Title IV of the Lead Based Paint Poisoning Prevention Act, 42 U.S.C 4831, 24 CFR Part 35.
- Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

E. Laws against Discrimination

- Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.
- Americans with Disabilities Act of 1990, Public Law 101-336.
- Employment under Federal Contracts, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.
- Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.
- Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.
- Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR part 100.
- Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8.
- Fair Housing, Title VIII of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3601-19.
- Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.
- Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.
- Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).
- Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.
- Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.
- Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

F. Office of Management and Budget Circulars

- 2 CFR 200

G. Other

- Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.
- Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.
- Hatch Political Activity Act, 5 U.S.C. 1501-8.
- Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352. (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Grantees who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
- Non-Supplanting Federal Funds.

H. Privacy

- Privacy Act of 1974, 5 U.S.C. 552a.

I. Relocation

- Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 and implementing regulations at 49 CFR part 24.
- Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR part 570.

Washington State Laws and Regulations

- A.** Affirmative action, RCW 41.06.020 (1).
- B.** Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C.** Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D.** Discrimination-human rights commission, Chapter 49.60 RCW.
- E.** Ethics in public service, Chapter 42.52 RCW.
- F.** Housing assistance program, Chapter 43.185 RCW
- G.** Interlocal cooperation act, Chapter 39.34 RCW.
- H.** Noise control, Chapter 70.107 RCW.
- I.** Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J.** Open public meetings act, Chapter 42.30 RCW.
- K.** Prevailing wages on public works, Chapter 39.12 RCW.
- L.** Public records act, Chapter 42.56 RCW.
- M.** Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N.** Shoreline management act of 1971, Chapter 90.58 RCW.
- O.** State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P.** State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q.** State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R.** State environmental policy, Chapter 43.21C RCW.

23. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Grant.

24. LIMITATION OF AUTHORITY

Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Grant. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Grant is not effective or binding unless made in writing and signed by the Agent.

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

26. NOTIFICATION OF TENANT RIGHTS/RESPONSIBILITIES

The Grantee shall provide all tenants, if any, with information outlining tenant rights and responsibilities under the Washington State Landlord Tenant laws, Title 59, Revised Code of Washington.

The Grantee shall also provide all occupants of property acquired with U.S. Department of Housing and Urban Development (HUD) funds notice regarding their eligibility for relocation assistance. Such notices will be provided as required by the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended and referenced in 49 CFR part 24 and Section 104(d) of the Housing and Community Development Act of 1974, as amended and referenced in 24 CFR 570 and noted in HUD's Handbook No. 1378. Notifications will include but not be limited to:

- General Information Notice
- Notice of Displacement/Non-Displacement

27. PAY EQUITY

The Grantee agrees to ensure that "similarly employed" individuals in its workforce are compensated as equals, consistent with the following:

- a. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- b. Grantee may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Grant may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

28. POLITICAL ACTIVITIES

Political activity of Grantee employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

29. PREVAILING WAGE LAW

The Grantee certifies that all contractors and subcontractors performing work on the project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the project funded by this Grant, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Grantee shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

30. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200, for all purchases funded by this Grant.

The Grantee's procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
 - a. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - b. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
 - c. Positive efforts shall be made to use small and minority-owned businesses.
 - d. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - e. Contracts shall be made only with reasonable subgrantees/subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - f. Some form of price or cost analysis should be performed in connection with every procurement action.
 - g. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - h. A system for contract administration to ensure Grantee conformance with terms, conditions and specifications of this Grant, and to ensure adequate and timely follow-up of all purchases.
4. Grantee and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Grant to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Grant is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

31. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Grant shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Grant provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

32. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

33. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

34. RECORDS MAINTENANCE

The Grantee shall maintain books, records, documents, data and other evidence relating to this Grant and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Grant.

The Grantee shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Grant, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

35. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

36. RIGHT OF INSPECTION

The Grantee shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Grant.

37. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

38. SEVERABILITY

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

39. SITE SECURITY

While on COMMERCE premises, Grantee, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

40. SUBGRANTING/SUBCONTRACTING

The Grantee may only subcontract work contemplated under this Grant if it obtains the prior written approval of COMMERCE.

If COMMERCE approves subcontracting, the Grantee shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Grantee to amend its subcontracting procedures as they relate to this Grant; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

Every subcontract shall bind the Subgrantee to follow all applicable terms of this Grant. If any Subgrantee fails to comply with any applicable term or condition of this Grant, including the Scope of Work and Budget in Attachment A, the Grantee shall be responsible for completing the work itself, or contracting with another Subgrantee as approved by COMMERCE. The Grantee shall appropriately monitor the activities of the Subgrantee to assure fiscal conditions of this Grant. In no event shall the existence of a subcontract operate to release or reduce the liability of the Grantee to COMMERCE for any breach in the performance of the Grantee's duties.

Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subgrantee's performance of the subcontract.

41. SURVIVAL

The terms, conditions, and warranties contained in this Grant that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Grant shall so survive.

42. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Grantee's income or gross receipts, any other taxes, insurance or expenses for the Grantee or its staff shall be the sole responsibility of the Grantee.

43. TERMINATION FOR CAUSE

In the event COMMERCE determines the Grantee has failed to comply with the conditions of this Grant in a timely manner, COMMERCE has the right to suspend or terminate this Grant. Before suspending or terminating the Grant, COMMERCE shall notify the Grantee in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Grant may be terminated or suspended.

In the event of termination or suspension, the Grantee shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the Grant, withhold further payments, or prohibit the Grantee from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the GRANTEE or a decision by COMMERCE to terminate the Grant. A termination shall be deemed a "Termination for Convenience" if it is determined that the Grantee: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this Grant are not exclusive and are, in addition to any other rights and remedies, provided by law.

44. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Grant, COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Grant, in whole or in part. If this Grant is so terminated, COMMERCE shall be liable only for payment required under the terms of this Grant for services rendered or goods delivered prior to the effective date of termination.

45. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Grantee shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Grantee under the orders and subgrants/subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Grant had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the Grantee and in which COMMERCE has or may acquire an interest.

46. TREATMENT OF ASSETS

Title to all property furnished by Commerce shall remain in COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall remain in Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall remain in Grantee. Provided however, the foregoing shall not be interpreted to relieve Grantee of any other obligations in this Agreement regarding use and continued ownership of property improved or acquired with funds under this Agreement.

- A. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this Grant.
- B. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices.

- C. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this Grant

All reference to the Grantee under this clause shall also include Grantee's employees, agents or Subgrantees/Subcontractors.

47. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Grant unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

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ATTACHMENT A — SCOPE OF WORK AND BUDGET

Grantee: City of Grandview

Contract No. 18-62210-024

Section A: Project Description / Deliverable

The city of Grandview is awarded a \$750,000 CDBG General Purpose Grant for construction of a sewer trunk main replacement. The project will replace 2.5 miles of existing sanitary sewer trunk main that conveys all wastewater from the City's collection system to its treatment plant. Major components of the project include easement acquisition, attaining property, and replacement of the current sewer trunk main. These improvements reduce the risk for severe environmental degradation.

Total project costs are estimated at \$5,339,500 with funding from Ecology (\$601,000).

The project will provide an area benefit to the City of Grandview service area consisting of approximately 11,098 persons with 67.19 percent having low- and moderate-incomes based on HUD 2014 LMI data.

Section B: Project Activities, Milestones and Budget

CDBG Budget Code	Budget Amount	Project Activities *Must complete each bulleted project activity to meet the corresponding milestone.	Performance Milestones
21A General Admin.	\$0	<ul style="list-style-type: none"> ▪ Execute grant contract with Commerce. ▪ Establish administrative, financial, reporting, and record keeping systems. <p>Payment requests:</p> <ul style="list-style-type: none"> ▪ Review project costs and invoices against project budget and contract start date. ▪ Once costs are approved, prepare and submit payment request and project status report to Commerce. ▪ Document receipt of grant funds and reimbursement of eligible costs. 	<p>Before first payment request</p> <p>Not more than monthly</p> <p>First payment request within 270 days from contract execution</p>
		<ul style="list-style-type: none"> ▪ List CDBG expenditures in your annual Schedule of Expenditures of Federal Awards and arrange an audit with the State Auditor's Office to meet the Uniform Guidance (2 CFR Part 200). 	Before audit

Section B: Project Activities, Milestones and Budget (continued)				
CDBG Budget Code	Budget Amount	Project Activities *Must complete each bulleted project activity to meet the corresponding milestone.	Performance Milestones	
03J Sanitary Sewer Improvements	\$750,000	<ul style="list-style-type: none">▪ Advertise for project administration and for engineering services; outreach to MWBE and encourage Section 3 local business participation.▪ Select engineer, verify they and their subcontractors do not have an active exclusion record in the federal award system (SAM.gov) and include documentation in CDBG file.▪ Contract for services. Include required federal provisions.	Before first payment request for professional services	
		<ul style="list-style-type: none">▪ Complete the Section 106 of the National Historic Preservation Act review process.▪ Complete the environmental review including required consultation and public notices, and prepare an environmental review record in compliance with NEPA requirements for CDBG.	Before release of funds	
		<ul style="list-style-type: none">▪ Receive CDBG release of funds.▪ Complete final design and plans.▪ Request federal and state prevailing wage rates and prepare bid documents in consultation with CDBG project manager.▪ Advertise and solicit bids for construction; outreach to MWBE and encourage Section 3 local businesses.▪ Conduct bid opening.▪ Select contractor, verify they and their subcontractors do not have an active exclusion record in the federal award system (SAM.gov), and include documentation in CDBG file.	Before construction contract awarded	
		<ul style="list-style-type: none">▪ Award construction contract and provide Commerce with required notice to proceed documents.▪ Begin construction.▪ Review certified payrolls and submit first week labor standards package.	Before first payment request for construction costs	
		<ul style="list-style-type: none">▪ Contractor and subcontractors complete weekly certified payrolls, and payrolls are reviewed for compliance with CDBG requirements.	Weekly during construction	
		<ul style="list-style-type: none">▪ Regularly monitor engineering, weekly certified payrolls, and construction for compliance with applicable federal and state regulations, and conduct progress meetings.▪ Complete construction and conduct final inspection.▪ Conduct construction retainage release process.	Before construction is considered complete	
		<ul style="list-style-type: none">▪ Meet the CDBG national objective of principally benefiting low- and moderate-income persons.▪ Accomplish HUD's outcome of increasing the community's availability and access to sustainable infrastructure systems to achieve HUD's objective of creating suitable living environments.	Approx. 7457 LMI persons will begin receiving a benefit by January 31, 2022	
TOTAL:		\$750,000		

STATE AND FEDERAL REQUIREMENTS AND ASSURANCES

In addition to laws listed in the general terms and conditions of this Grant, the Grantee assures compliance with the following laws and regulations as they pertain to the local project. Contact the CDBG program if you want assistance in obtaining a copy of any of these.

FEDERAL

A. HOUSING AND COMMUNITY DEVELOPMENT

1. Executive Order 11063, as amended by Executive Order 12259 (24 CFR Part 107).
2. The Housing and Community Development Act of 1974, as amended through 1992: Sections 109; 104 (b) 4; 104 (d); and 104 (l), which prohibit discrimination and require identification of housing and community development needs; a "residential anti-displacement and relocation assistance plan"; and adoption and enforcement of policies prohibiting the use of excessive force.

B. LABOR

1. Prohibition of Use of CDBG for Job-Pirating Activities, 24 CFR Part 570.482(f), revised June 2006.

C. ENVIRONMENTAL AND CULTURAL

1. The Clean Air Act, as amended, 42 U.S.C. 7401 et seq.
2. Executive Order 11990, May 24, 1977, as amended by Executive Order 11990: Protection of Wetlands, 42 FR 26961 et seq.
3. The Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271 et seq.
4. Executive Order 11988, May 24, 1977: Floodplain Management and Wetland Protection, 42 FR 26951 et seq.
5. Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.
6. The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.
7. The Reservoir Salvage Act of 1960, as amended by the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 et seq.
8. The Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f et seq., 21 U.S.C. 349, as amended, and 40 CFR Part 149.
9. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212, 33 U.S.C. Section 1251 et seq.
10. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.
11. The Fish and Wildlife Coordination Act of 1958, as amended, 16 U.S.C. Section 661 et seq.
12. The National Historic Preservation Act of 1966, 16 U.S.C. 470
13. The Archaeological and Historical Data Preservation Act of 1974, 16 U.S.C. 469a-1 et seq.
14. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971.
15. Farmland Protection Policy Act of 1981, 7 U.S.C. 4201 et seq., and 7 CFR Part 658.
16. Environmental Justice (Executive Order 12898), as amended by Executive Order 12948.
17. Explosive and Flammable Operations (Section 2 of the Housing Act of 1949, as amended, 42 U.S.C. 1441; Section 7(d) of the HUD Act of 1965, 42 U.S.C. 3535(d); Section 2 of the HUD Act of 1969, 42 U.S.C. 1441(a); and 24 CFR Part 51 Subpart C).
18. Airport Clear Zones and Accident Potential Zones (Section 2 of the Housing Act of 1949 as amended, 42 U.S.C. 1441), affirmed by Section 2 of the HUD Act of 1969, P.L. No 90-448, Section 7(d) of the HUD Act of 1965, 42 U.S.C. 3535(d), and 24 CFR Part 51 Subpart D.

19. Toxic Chemicals and Radioactive Materials (Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by Superfund Amendments and Reauthorization Act and 24 CFR 58.5(i)).
20. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency – 40 CFR Parts 6, 51, and 93).

STATE

1. Relocation Assistance and Real Property Acquisition Policy, Chapter 8.26 RCW.



STATE OF WASHINGTON
DEPARTMENT OF COMMERCE

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000
www.commerce.wa.gov

September 12, 2018

The Honorable Norm Childress, Mayor
City of Grandview
207 West Second Street
Grandview, WA 98930

Dear Mayor Childress:

I am pleased to inform you that the city of Grandview has been selected by Commerce to receive up to \$750,000 in federal Community Development Block Grant (CDBG) funds. This award is based on the jurisdiction's CDBG General Purpose Grant application for a sanitary sewer trunk main replacement.

Prior to grant contract execution, this letter allows you to begin incurring costs not to exceed ten percent of your award as of the date of this letter, for only the following activities:

- Administration including staffing, travel and training
- Review of environmental laws and authorities, including Section 106 of the National Historic preservation Act of 1996
- Preliminary engineering design work and consultations needed for completion of the environmental review
- Subrecipient agreements or professional service contracts for any of the above activities

CDBG procurement requirements must be followed before hiring professional services or contractors to be funded by this CDBG award. These requirements are described in Sections 5 and 7 of the CDBG Management Handbook, which is available electronically at www.commerce.wa.gov/cdbg

CDBG-specific compliance with National Environmental Policy Act (NEPA) must be completed before any construction bid advertising or property acquisition activity can occur. These procedures are described in Section 6 of the CDBG Management Handbook.

Eligible costs will be reimbursed by Commerce after a grant contract between the jurisdiction and Commerce is executed and the environmental review is complete (see enclosure for further explanation). All costs to be reimbursed must comply with applicable state and federal requirements.

The Honorable Norm Childress
September 12, 2018
Page 2

A CDBG contract management webinar will be scheduled for the fall of 2018. The jurisdiction's project manager and consultant directly engaged in the project are to participate in the webinar. Registration materials for this free webinar will be forthcoming.
If your project is not ready to proceed, resulting in the contract's execution being delayed over 90 days from the date of this letter, the CDBG award may be rescinded with an invitation to reapply.

Jacque Andresen has been assigned to develop this contract. If you have any questions about this letter or grant award, please contact Jacque at (360) 725-3017 or Jacque.andresen@commerce.wa.gov.

I congratulate you and others for your efforts thus far. We look forward to working with you on this worthwhile project.

Sincerely,



Mark K. Barkley
Assistant Director

Enclosure

cc via email: Cus Arteaga, City Administrator

TIMING of CDBG FUNDING and NEPA RESTRICTIONS

No costs incurred prior to the CDBG award letter can be funded by CDBG. Eligible costs will be reimbursed by Commerce after a grant contract has been formally executed and the CDBG-specific procedures under NEPA and SEPA are completed. Executing the grant contract and completing the environmental review can occur concurrently.

In the meantime the local government grantee, subrecipients, contractors and all other participants may NOT commit CDBG or non-CDBG funds if the activity would have an adverse environmental impact or limit the choice of reasonable alternatives, such as:

- Finalizing design and bid specifications
- Advertising for construction bids
- Property acquisition, including sales and purchase agreements
- Site Preparation
- Demolition

Portions of preliminary design work needed for completion of the environmental review are allowable. Unless the activity is exempt or categorically excluded/not subject to 24 CFR 58.5 under NEPA, this restriction applies to activities as of the date the CDBG program receives the grant application.

Title 1 of the Housing and Community Development Act of 1974 as amended and the environmental review procedures found in 24 CFR 58.22 apply to any activities as part of a CDBG project. The environmental review activities completed for other federal or state funding can contribute towards but not entirely meet the CDBG-specific procedure for NEPA and SEPA. Section 6 of the CDBG Management Handbook provides further detail and the necessary CDBG forms.

Project Phase	Restrictions on Eligible Activities
Before CDBG contract is executed and environmental review is complete	<p>With the award letter, the grantee can begin to incur costs up to 10% of award for the following activities which don't require an environmental review IF the grant application requested CDBG funding of these costs:</p> <p>Administration: Executing the CDBG contract. Establishing administrative, financial, reporting, and record keeping systems, including staffing, travel and training.</p> <p>Environmental Review: Review of environmental laws and authorities, including 24 CFR 58.5 and Section 106 of the National Historic Preservation Act of 1996, such as:</p> <ul style="list-style-type: none"> • Soil surveys • Floodplain/wetland determination • Cultural resource survey • Consultation letters to affected tribes <p>Preliminary engineering feasibility studies for the environmental assessment, such as:</p> <ul style="list-style-type: none"> • Load bearing studies • Geophysical analysis (excluding ground-disturbing activity of over one cubic sq. ft.) <p>Subcontracting: Subrecipient agreements or professional service contracts for any of the above activities</p>
After CDBG contract execution	<p>All eligible costs will be reimbursed after:</p> <ol style="list-style-type: none"> 1. The applicable level of environmental review is documented and complete, and funds have been released (see environmental review guidance below); 2. <i>If applicable</i>, the subrecipient agreement is executed; 3. Procurement requirements are met; and 4. Adequate back-up documentation is submitted with the payment request. <p>To be eligible for CDBG funding, all costs must be allowable under federal cost principles and CDBG regulations, and identified in grant application's project budget</p>

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<p>While completing the environmental review</p>	<p>as to be funded by CDBG.</p> <p>The local government grantee must complete the applicable environmental review procedures depending on the type of project:</p> <ol style="list-style-type: none"> 1. Activities <u>documented</u> by the grantee, and confirmed by Commerce, as exempt or Categorically Excluded and <u>without impact</u> to 24 CFR 58.5 laws, historical structures or culturally sensitive land may proceed with commitment of CDBG and non-CDBG funds. 2. Activities that are Categorically Excluded and impact 24 CFR 58.5 laws, or activities requiring an environmental assessment and a Finding of Non-Significance (FONSI), must be <u>documented</u> appropriately with a request for release of CDBG funds submitted to Commerce. Only after the Commerce comment period is ended and <u>funds are released</u>, may CDBG and non-CDBG funds be committed for activities such as: <ul style="list-style-type: none"> • Finalizing design and bid specifications • Advertising for construction bids • Property acquisition, including sales and purchase agreements • Site Preparation • Demolition <p>Section 6 of the CDBG Management Handbook provides further detail and the necessary CDBG forms to complete the environmental review.</p>
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4/2018

TIMING of CDBG FUNDING and NEPA RESTRICTIONS	
<p>No costs incurred prior to the CDBG award letter can be funded by CDBG. Eligible costs will be reimbursed by Commerce after a grant contract has been formally executed <u>and</u> the CDBG-specific procedures under NEPA and SEPA are completed. Executing the grant contract and completing the environmental review can occur concurrently.</p> <p>In the meantime the local government grantee, subrecipients, contractors and all other participants may NOT commit <u>CDBG or non-CDBG</u> funds if the activity would have an adverse environmental impact or limit the choice of reasonable alternatives, such as:</p> <ul style="list-style-type: none"> • Finalizing design and bid specifications • Advertising for construction bids • Property acquisition, including sales and purchase agreements • Site Preparation • Demolition <p>Portions of preliminary design work needed for completion of the environmental review are allowable. Unless the activity is exempt or categorically excluded/not subject to 24 CFR 58.5 under NEPA, this restriction applies to activities as of the date the CDBG program <u>receives the grant application</u>.</p> <p>Title 1 of the Housing and Community Development Act of 1974 as amended and the environmental review procedures found in 24 CFR 58.22 apply to any activities as part of a CDBG project. The environmental review activities completed for other federal or state funding can contribute towards but not entirely meet the CDBG-specific procedure for NEPA and SEPA. Section 6 of the CDBG Management Handbook provides further detail and the necessary CDBG forms.</p>	
Project Phase	Restrictions on Eligible Activities
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4/2018

**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

Wine Country Road Grind and Overlay

AGENDA NO.: New Business 4 (C)

AGENDA DATE: March 12, 2019

DEPARTMENT

Public Works Department

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

DEPARTMENT DIRECTOR REVIEW


CITY ADMINISTRATOR


MAYOR





ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

The \$20 Transportation Benefit District (TBD) was formed to provide street maintenance to the City's road system. The funds collected are to support a chip-seal maintenance program, asphalt grind/overlay project and/or new construction. The TBD raises approximately \$160,000 per year and in 2019, the Council appropriated \$80,000 for the annual chip-seal maintenance program.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

The proposed 2019 chip-seal maintenance program included the following streets:

- Butternut Road
- Hill Drive
- Eberle Road
- West Fifth Street from Larson west to City limits

The proposed program was estimated at \$80,000 and included crack sealing, pothole repair and a chip-seal treatment.

I am recommending Council amend the 2019 chip-seal program to include an asphalt grind/overlay of Wine Country Road (WCR) from I-82 north to East Stover Road (approximately 800-feet). This section of roadway is failing and I would consider this as a method of preserving this section of WCR. WSDOT is scheduled to complete an asphalt grind/overlay of the Exit 73 off ramp. I am anticipating the City can take advantage of the asphalt quantities and completing that section of WCR at a better price if the City can utilize the same contractor.

ACTION PROPOSED

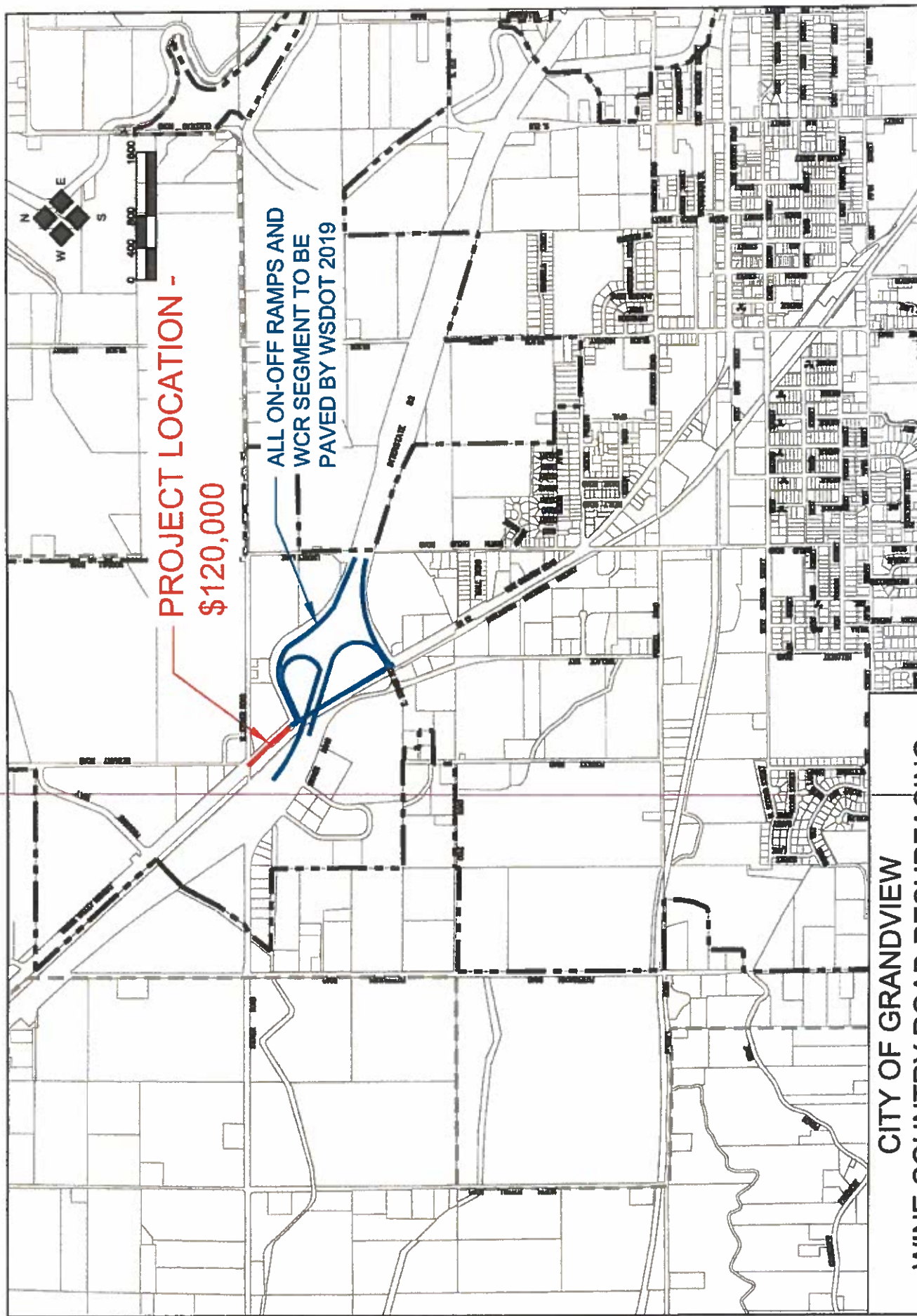
Recommend Council authorize staff to replace the 2019 chip-seal maintenance streets identified above with an asphalt grind/overlay of Wine Country Road from I-82 north to East Stover Road; and allow staff to amend the 2019 TBD budget approximately \$40,000 to complete the needed preservation of WCR.

CITY OF GRANDVIEW**Wine Country Road Resurfacing Improvements
Engineer's Opinion of Construction Cost**

3/7/2019

HLA Project No. 19007G

Item No.	Description	Payment Specification	Unit	Unit Cost	Overall Quantity	Overall Cost
1	Mobilization	1-09.7	LS	\$4,000.00	1	\$4,000.00
2	Project Temporary Traffic Control	1-10.5	LS	\$8,000.00	1	\$8,000.00
3	Planing Bituminous Pavement	5-04.5	SY	\$2.75	3,200	\$8,800.00
4	Pavement Repair Excavation Incl. Haul	5-04.5	SY	\$50.00	150	\$7,500.00
5	HMA for Pavement Repair Cl. 1/2Inch PG 64-28	5-04.5	TON	\$150.00	50	\$7,500.00
6	HMA Cl. 1/2-Inch PG 64-28	5-04.5	TON	\$80.00	570	\$45,600.00
7	Paint Line	8-22.5	LF	\$0.18	2,700	\$486.00
8	Plastic Traffic Arrow	8-22.5	EA	\$145.00	3	\$435.00
Subtotal						\$82,321.00
Contingency 15%						\$12,100.00
Total Construction Cost						\$94,421.00
Assumptions: 1. 0.25' max depth 2. 37' width average full width overlay 3. Excludes I-82 ramp intersection per WSDOT 2019 project and includes W Stover Rd (670')						
Total Construction Cost						\$94,421.00
Design Engineering 10%						\$9,400.00
Construction Engineering 15%						\$14,200.00
Total Estimated Project Cost						\$118,021.00



**CITY OF GRANDVIEW
WINE COUNTRY ROAD RESURFACING
IMPROVEMENTS
VICINITY MAP**

**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

Resolution authorizing the Mayor to sign an Option and Structure Lease Agreement between the City of Grandview and New Cingular Wireless PCS, LLC

AGENDA NO.: New Business 4 (D)

AGENDA DATE: March 12, 2019

DEPARTMENT

Public Works Department

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

DEPARTMENT DIRECTOR REVIEW


CITY ADMINISTRATOR

MAYOR


ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

None

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

New Cingular Wireless has requested to lease a portion of the water tower located at King Street and Velma Avenue known as Tower Park for antenna and equipment space in connection with its federally licensed communications business. The monthly lease payment to the City will be \$1,500 per month.

ACTION PROPOSED

Move a resolution authorizing the Mayor to sign an Option and Structure Lease Agreement between the City of Grandview and New Cingular Wireless PCS, LLC to the next regular Council meeting for consideration.

RESOLUTION NO. 2019-__

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,
AUTHORIZING THE MAYOR TO SIGN AN OPTION AND STRUCTURE LEASE
AGREEMENT BETWEEN THE CITY OF GRANDVIEW AND
NEW CINGULAR WIRELESS PCS, LLC**

WHEREAS, the City of Grandview owns real property and a water tower located at King Street and Velma Avenue, known as Tower Park; and

WHEREAS, New Cingular Wireless PCS, LLC has proposed leasing a portion of the property in connection with its federal licensed communications business; and

WHEREAS, the City Council determines that the proposed use is appropriate and compatible with the Public Facility district pursuant to GMC 17.56.020(F); and

WHEREAS, the City Council finds that it is in the best interest of the City to lease a portion of said property to New Cingular Wireless PCS, LLC,

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

The Mayor is hereby authorized to take all necessary and appropriate steps to lease said property in accordance with applicable federal, state and local law, including executing all documents necessary to lease said property, for and on behalf of the City of Grandview, Washington.

PASSED by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on _____, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Market: PNW
Cell Site Number: YA4769
Cell Site Name: Grandview
Fixed Asset Number: 10552683

OPTION AND STRUCTURE LEASE AGREEMENT

THIS OPTION AND STRUCTURE LEASE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by The City of Grandview, a municipal corporation, having a mailing address of 207 West Second Street, Grandview, WA ("Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 ("Tenant").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a structure (the "Structure"), together with all rights and privileges arising in connection therewith, located at 1208 King Street, Grandview, in the County of Yakima, State of Washington (collectively, the "Property"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the "Option") to lease a portion of the Property consisting of:

(i) approximately 600 square feet including the air space above such rooftop/basement/ground space, as described on attached **Exhibit 1**, for the placement of Tenant's Communication Facility;

(ii) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (i) and (ii) is the "Equipment Space");

(iii) that certain space on the water tank and/or railing, as generally depicted on **Exhibit 1** annexed hereto and made a part hereof, where Tenant shall have the right to install its antennas and other equipment (collectively, the "Antenna Space"); and

(iv) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "Connection Space"). Landlord agrees that Tenant shall have the right to install connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. Notwithstanding the foregoing, Tenant, to the extent feasible, shall locate all lines, wires, conduits and cables on existing poles extending from the roadway into Landlord's Property. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the "Premises."

(b) During the Option Term, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "Tests"), to apply for and obtain licenses, permits,

approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Seven Hundred Fifty and No/100 Dollars (\$750.00) within thirty (30) business days of the Effective Date. The Option will be for a term of six (6) months commencing on the Effective Date (the "**Option Term**").

(d) The Option may be sold, assigned or transferred at any time by Tenant to an Affiliate of Tenant or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to an Affiliate or a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option, then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option Term, this Agreement will terminate and the parties will have no further liability to each other.

(f) If during the term of this Agreement the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**," which includes without limitation the remainder of the Structure) or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communication fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right, but not the obligation, to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or Surrounding Property as described in **Exhibit 1** as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate

transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises at the Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the fifth (5th) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless (a) Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term, or (b) Landlord notifies Tenant in writing of Landlord's intention not to renew this Agreement at least one-hundred-eighty (180) days prior to the expiration of the second or any subsequent Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the expiration of the final Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental during such annual terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and the Holdover Term are collectively referred to as the Term (the "**Term**").

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance One Thousand Five Hundred and No/100 Dollars (\$1,500.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) In year one (1) of each Extension Term, the monthly Rent will increase by ten percent (10%) over the Rent paid during the previous five (5) year term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall

not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement including the following: 5 Approvals, 6(a) Termination, 6(b) Termination, 6(c) Termination, 6(d) Termination, 11(d) Environmental, 18 Condemnation or 19 Casualty.

7. INSURANCE.

(a) During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

(b) Notwithstanding the foregoing, Tenant shall have the right to self-insure the coverages required in subsection (a). In the event Tenant elects to self-insure its obligation to include Landlord as an additional insured, the following provisions shall apply (in addition to those set forth in subsection (a)):

(i) Landlord shall promptly and no later than thirty (30) days after notice thereof provide Tenant with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Tenant with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;

(ii) Landlord shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Tenant; and

(iii) Landlord shall fully cooperate with Tenant in the defense of the claim, demand, lawsuit, or the like.

8. INTERFERENCE.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party, if the exercise of such grant will adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors, provided that the Landlord has no obligation to indemnify the Tenant for general business, income or revenue losses that may be attributed by Tenant as arising from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in

connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the structure; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities, and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("Claims") to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omission of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous substances on the Property, or any environmental, health or safety condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. **ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Section 12, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth herein are a reasonable approximation of such damages.

13. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Structure, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms

provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within forty-five (45) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Landlord hereby grants to any company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or the service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 of this Agreement within forty-eight (48) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 of this Agreement within forty-eight (48) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant: New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration
Re: Cell Site #: YA4769; Cell Site Name: Grandview (WA)
Fixed Asset #: 10552683
575 Morosgo Drive NE
Atlanta, Georgia 30324

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept.- Network Operations
Re: Cell Site #: YA4769; Cell Site Name: Grandview (WA)
Fixed Asset #: 10552683
575 Morosgo Drive NE
Atlanta, Georgia 30324

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Grandview
Attn: City Administrator
207 W. Second Street
Grandview, WA 98930

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of the Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant, and Tenant decides not to terminate under this Section, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. **WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. **TAXES.**

(a) Landlord shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord, including any such taxes that may be calculated by the taxing authority using any method, including the income method. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant within such time period, Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17 and, in addition, of a copy of any such notices shall be sent to the following address. Promptly after the Effective Date of this Agreement, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax addresses changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration -- Taxes
Re: Cell Site #: YA4769; Cell Site Name: Grandview (WA)
Fixed Asset #: 10552683
575 Morosgo Drive NE
Atlanta, Georgia 30324

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property except as provided below.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RENTAL STREAM OFFER. If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment or transfer of Rent payments associated with this Agreement ("Rental Stream Offer"), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within twenty (20) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be

in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the twenty (20) day period, Landlord may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit 24b**. Either party may record this Memorandum or Short Form Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease.

(c) **Limitation and Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in this Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of

the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including, any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

"LANDLORD"

City of Grandview,
a municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

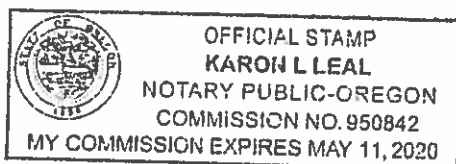
By: Wayne Wooten
Print Name: WAYNE WOOTEN
Its: Director
Date: 2-20-19

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF OR)
) ss:
COUNTY OF WA)

On the 20 day of FEB, 2019, before me personally appeared WAYNE WOOTEN, who acknowledged under oath that he/she is the Director of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.



K Leal
Notary Public: KARON L LEAL
My Commission Expires: 5.11.20

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

I CERTIFY that on _____, 20____, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of _____ [name of corporation], the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1 of 2

to the Option and Structure Agreement dated _____, 20____, by and between City of Grandview, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

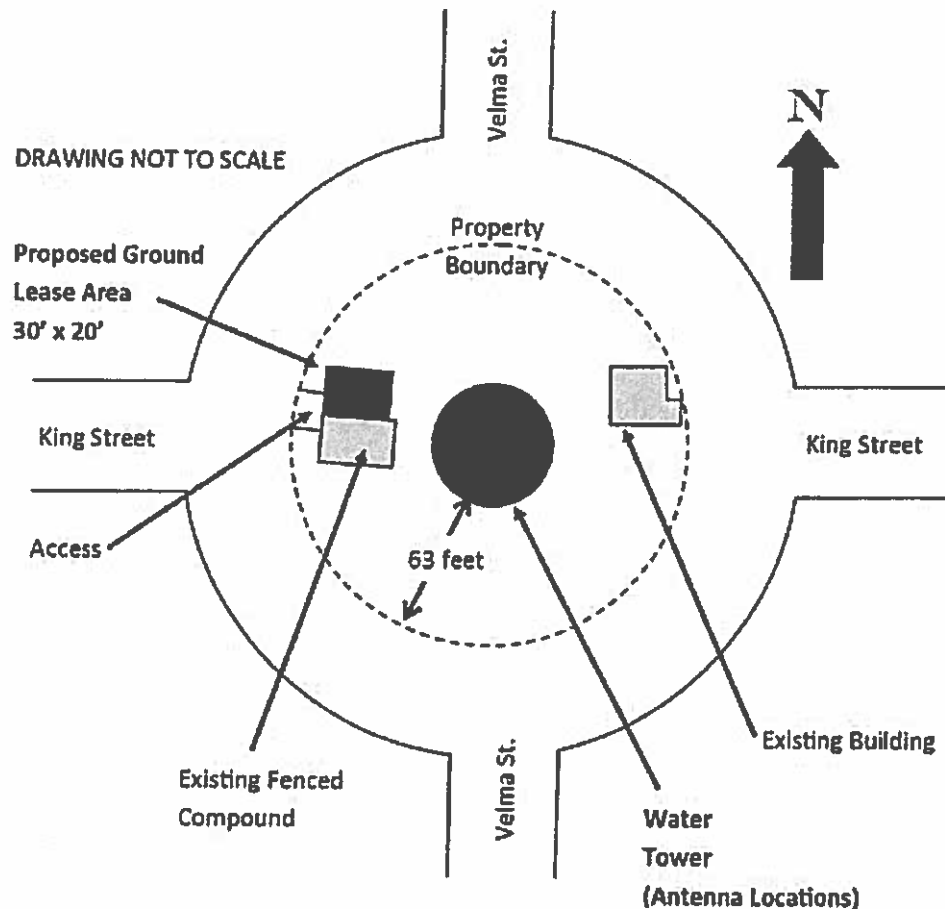
The Property is legally described as follows:

Block 5, GRANDVIEW HILLCREST ADDITION, according to the official plat thereof, recorded in Volume "N" of Plats, Page 26, records of Yakima County, WA.

EXHIBIT 1
DESCRIPTION OF PREMISES

Page 2 of 2

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

EXHIBIT 24b

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

Prepared by and Return to:
New Cingular Wireless PCS, LLC
575 Morosgo Drive
Atlanta, GA 30324
Attn: Network Real Estate Administration

**MEMORANDUM
OF
LEASE**

Grantor Name:	City of Grandview, a municipal corporation		
Grantee Name:	New Cingular Wireless PCS, LLC		
Legal Description:	Block 5, GRANDVIEW HILLCREST ADDITION, according to the official plat thereof, recorded in Volume "N" of Plats, Page 26, records of Yakima County, WA.		
Assessor's Tax Parcel ID #:	23092241550		
Recording Numbers of Prior Recorded Documents:	None		
Tax Mailing Address:	Does not apply	True consideration paid:	Does not apply
Cell Site #:	YA4769	Fixed Asset #:	10552683
Cell Site Name:	Grandview		
State:	Washington	County:	Yakima

This Memorandum of Lease is entered into on this ____ day of _____, 20____, by and between City of Grandview, a municipal corporation, having a mailing address of 207 W. Second Street, Grandview, WA 98930 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 575 Morosgo Drive NE, Atlanta, GA 30324 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Option and Structure Lease Agreement ("**Agreement**") on the ____ day of _____, 20____, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be five (5) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of its option, with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.

This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

"LANDLORD"

City of Grandview,
a municipal corporation

By: _____
Name: _____
Its: _____
Date: _____

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Its: _____
Date: _____

TENANT ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, who acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year ____ before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1 of 2

to the Option and Structure Agreement dated _____, 20____, by and between City of Grandview, a municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

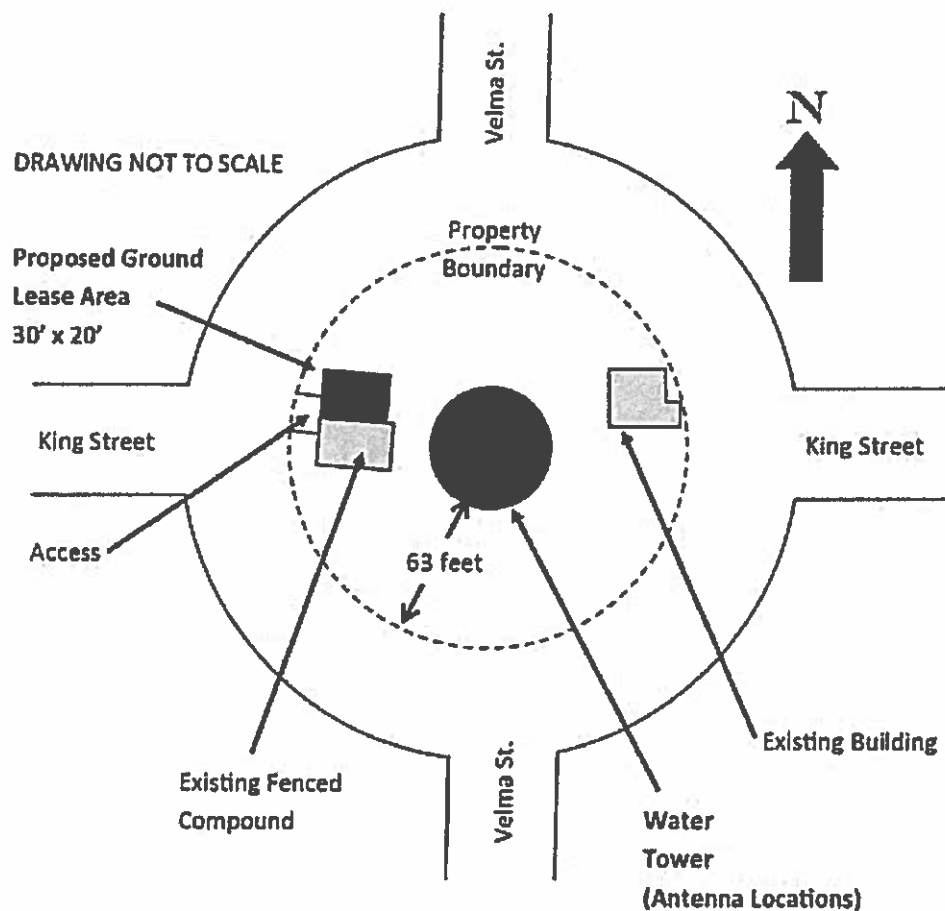
The Property is legally described as follows:

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EXHIBIT 1
DESCRIPTION OF PREMISES

Page 2 of 2

The Premises are described and/or depicted as follows:



Notes:

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3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

W-9 FORM

[FOLLOWS ON NEXT PAGE]

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code		
7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-				-	
or								
Employer identification number								
			-					

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Date ►

**CITY OF GRANDVIEW
AGENDA ITEM HISTORY/COMMENTARY
COMMITTEE-OF-THE-WHOLE MEETING**

ITEM TITLE

AGENDA NO.: New Business 4 (E)

Ordinance amending Section 2.04.010 of the Grandview Municipal Code to Provide that Committee-of-the-Whole and Business Meetings are Regular Meetings of the Grandview City Council

AGENDA DATE: March 12, 2019

DEPARTMENT

Legal

FUNDING CERTIFICATION (City Treasurer)
(If applicable)

DEPARTMENT DIRECTOR REVIEW

Quinn Plant, City Attorney

CITY ADMINISTRATOR

MAYOR



ITEM HISTORY (Previous council reviews, action related to this item, and other pertinent history)

In 2010, the City by ordinance designated the 7:00 p.m. regular business meeting as the "regular meetings of the council." GMC 2.04.010.

In 2016, the City Council amended the Council Procedure Manual. The Council Procedure Manual now provides for Committee-of-the-Whole ("C.O.W.") meetings on the second and fourth Tuesdays of each month at 6:00 p.m., directly before regularly scheduled Council meetings.

The proposed ordinance amends the City's code to align with the Council Procedure Manual. The code as amended will provide that the City's regular meetings include (1) the 6:00 p.m. COW meeting and (2) the 7:00 p.m. business meeting.

ITEM COMMENTARY (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

There is much efficiency to be gained by designating both meetings as regular business meetings of the City. The Open Public Meetings Act ("OPMA"), Ch. 42.30 RCW, provides for essentially two types of Council meetings. There are "regular meetings," the date and time of which is set by "ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body." See RCW 42.30.070. There are also "special meetings," which are essentially any meeting other than a "regular meeting."

The City has historically treated the 6:00 p.m. C.O.W. as a "special council" meeting. This is because the GMC declares the 7:00 p.m. business meeting (but not the C.O.W. meeting) to be the "regular meeting."

The OPMA imposes strict limits on what may occur at special council meetings. An agency must post an agenda of items that will be considered at a special council meeting 24 hours in advance of the meeting. RCW 42.30.080(b). The City Council may not take action on any items that are not on the agenda. RCW 42.30.080(3).

As we know from experience, there are times when the City Council completes the COW agenda well before 7:00 p.m. There are frequently items that are not on the COW agenda that could nevertheless be addressed during the COW meeting, and thereby would not need to be addressed at the 7:00 business meeting. If the COW meeting is treated as a special meeting, however, the City Council is prohibited from amending the COW agenda or otherwise taking action on items that are not on the agenda.

By amending the GMC to provide that the "regular" meeting of the City includes both (1) the 6:00 p.m. COW meeting and (2) the 7:00 p.m. business meeting, the City Council would have considerably more flexibility in amending the COW agenda to address items that might otherwise not be considered until the 7:00 p.m. business meeting.

ACTION PROPOSED

Move an ordinance amending Section 2.04.010 of the Grandview Municipal Code to Provide that Committee-of-the-Whole and Business Meetings are Regular Meetings of the Grandview City Council to the next regular Council meeting for consideration.

ORDINANCE NO. 2019-_____

**AN ORDINANCE OF THE CITY OF GRANDVIEW, WASHINGTON,
AMENDING SECTION 2.04.010 OF THE GRANDVIEW MUNICIPAL CODE TO
PROVIDE THAT COMMITTEE-OF-THE WHOLE AND BUSINESS MEETINGS ARE
REGULAR MEETINGS OF THE GRANDVIEW CITY COUNCIL**

WHEREAS, the Grandview City Council finds and determines that revising the Grandview Municipal Code in the manner set forth below is in the best interest of the residents of the City of Grandview and will promote the general health, safety and welfare;

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

Section 1. Grandview Municipal Code Section 2.04.010 Day and time of regular meetings which currently reads as follows:

2.04.010 Day and time of regular meetings.

The regular meetings of the council shall be held on the second and fourth Tuesday of each and every month at the hour of 7:00 p.m.; provided, that regular meetings shall be held on the next succeeding day when the meeting day is a state-established holiday.

is hereby amended to read as follows:

2.04.010 Day and time of regular meetings.

The regular meetings of the Council shall be held on the second and fourth Tuesdays of each month and shall consist of a Committee-of-the-Whole meeting at 6:00 p.m. and a business meeting at 7:00 p.m.; provided, that regular meetings shall be held on the next succeeding day when the meeting day is a state-established holiday.

Section 2. Except as set forth herein, all other provisions of Ch. 2.04 GMC remain unchanged.

Section 3. This ordinance shall be in full force and effect five days after its passage and publication as required by law.

PASSED by the **CITY COUNCIL** and approved by the **MAYOR** at its regular meeting on _____, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLICATION:
EFFECTIVE:

Anita Palacios

From: Anita Palacios
Sent: Friday, March 1, 2019 8:09 PM
To: Gloria Mendoza 1; Gloria Mendoza; Bill Moore 1; Gaylord Brewer; Gay Brewer; Dennis McDonald 1; Diana Jennings 1; Diana Jennings; jesouders@hotmail.com; Michael Everett; Harv Rodriguez; Joan Souders
Cc: Cus Arteaga
Subject: Fwd: Feb 26 Council Meeting Follow up

Sent from my iPhone

Begin forwarded message:

From: Public Works2 Grandview <carteaga@grandview.wa.us>
Date: March 1, 2019 at 5:56:00 PM PST
To: Anita Palacios <anitap@grandview.wa.us>
Subject: Fwd: Feb 26 Council Meeting Follow up

Please send out a note to Councilmembers not to reply to "all" because it will violate the open meeting requirements. They can talk one on one and/ or request to place it on the next agenda for discussion.

Sent from my iPhone

Begin forwarded message:

From: Diana Jennings <diana.r.jennings@gmail.com>
Date: March 1, 2019 at 5:35:35 PM PST
To: Anita Palacios <anitap@grandview.wa.us>, Bill Moore <MooreB@grandview.wa.us>, "Bill Moore 1" (billandrachel@charter.net)" <billandrachel@charter.net>, Cus Arteaga <carteaga@grandview.wa.us>, Dennis McDonald <DennisM@grandview.wa.us>, "Dennis McDonald 1" (dennismcd10@gmail.com)" <dennismcd10@gmail.com>, Diana Jennings <jenningsd@grandview.wa.us>, "Gay Brewer" (dancefunproductions@yahoo.com)" <dancefunproductions@yahoo.com>, Gaylord Brewer <brewerg@grandview.wa.us>, Gloria Mendoza <gmcmandoza@gmail.com>, Gloria Mendoza <MendozaG@grandview.wa.us>, Javier Rodriguez <RodriguezJ@grandview.wa.us>, "Javier Rodriguez" (rodhav1@yahoo.com)" <rodhav1@yahoo.com>, Joan Souders <SoudersJ@grandview.wa.us>, "jesouders@hotmail.com" <jesouders@hotmail.com>, Mike Everett <EverettM@grandview.wa.us>, "Mike Everett 1" (mike@everettlaw.net)" <mike@everettlaw.net>, Quinn Plant <qplant@mibe.com>
Subject: Feb 26 Council Meeting Follow up

I have been thinking about Councilmember Brewer's comments Tuesday night about City Administrator Cus Arteaga's slow response on the snow removal and responding with excuses when asked specific questions or action be taken. I am wondering if there is any type of documentation indicating that Mr. Arteaga, in his capacity as Public Works Director or City Administrator, has demonstrated a disregard for safety, either that of the employees or the public. Or if the City has ever been cited and/or fined due to error based on directions/instructions received by Mr. Arteaga.

Also, I am bothered by the comments because in my capacity as a private citizen or when I served on Council previously, I have never observed any recklessness in Mr. Arteaga's professional behavior. I would hate to think that we, as a Council, are undermining him in his credibility to the citizens of our community. As I mentioned at the meeting, my first impression when I learned of what other communities in the valley were doing with their snow removal activities, was that we, in Grandview, were pretty spoiled.

I wanted to bring this up because it has been on my mind, and I don't know how to address it. I also don't like the idea of those members of the community who attend our meetings to believe that Mr. Arteaga does not have the support of the Council, even though we may all agree on everything. I do believe we have the right to question actions and express opinions but we must be careful and clarify (to the public, each other) if needed, which is what I am trying to do.

I don't know if this topic is one we need to address while meeting or if I am the only person that felt uncomfortable with the unsaid implication that Mr. Arteaga was less than honest in his dealings with us and the citizens of our community. I am expressing what I walked away with; I don't want to put words in anyone's mouth, criticize or attempt limit discussion.

If I have erred in sending this out, my apologies. Quinn and/or Anita, please let me know what the appropriate action should have been for me to take, if this is inappropriate.

Thanks,
Diana

Sent from [Mail](#) for Windows 10