

AGENDA

REGULAR CITY COUNCIL MEETING

April 28, 2014

5:30 p.m.

CITY HALL COUNCIL CHAMBER
313 COURT STREET
THE DALLES, OREGON

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS
 - A. Annual Update by Six Rivers Mediation Service

6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Five minutes per person will be allowed. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

7. CITY MANAGER REPORT
8. CITY ATTORNEY REPORT
9. CITY COUNCIL REPORTS
10. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be "pulled" from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda will be placed on the Agenda at the end of the "Action Items" section.

- A. Approval of April 14, 2014 Regular City Council Meeting Minutes

CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles"

- B. Resolution No. 14-009 Approving a Section 3 Plan Required for Funding Assistance Provided Through the Community Development Block Grant Program
- C. Resolution No. 14-010 Approving a Limited English Proficiency (LEP) Plan Required as a Condition of Federal Funding Assistance

11. CONTRACT REVIEW BOARD ACTIONS

- A. Discussion Regarding Exemption of a Design/Build Contract for the Wastewater Treatment Plant Upgrade Project From the Competitive Bid Process [**Agenda Staff Report #14-027**]
- B. Award Logging Contract for 2014 Salvage and Commercial Timber Sale in The Dalles Municipal Watershed [**Agenda Staff Report #14-028**]

12. ACTION ITEMS

- A. Intergovernmental Agreement With North Wasco County School District 21 for Distribution of Enterprise Zone Fees from Design LLC Enterprise Zone Agreement [**Agenda Staff Report #14-017**]
- B. Resolution No. 14-012 Authorizing Transfers of Funds From the General Fund Contingency to the General Fund City Council Department, Making Appropriations and Authorizing Expenditures for the Fiscal year Ending June 30, 2014 [**Agenda Staff Report #14-029**]
- C. Resolution No. 14-008 Authorizing a Utility Rate Discount Program for Low Income Senior and Disabled Persons and Repealing Resolution No. 03-023 [**Agenda Staff Report #14-030**]

13. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Julie Krueger, MMC
City Clerk





CITY of THE DALLES

313 COURT STREET
THE DALLES, OR 97058

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AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Consent Agenda 10, A - C	N/A

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk 

THRU: Nolan K. Young, City Manager

DATE: April 15, 2014

ISSUE: Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

A. **ITEM:** Approval of April 14, 2014 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the April 14, 2014 regular City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the April 14, 2014 regular City Council meeting.

B. **ITEM:** Resolution No. 14-009, adopting the Section 3 Plan to comply with 24 CFR, Part 135 of the United States Department of Housing and Urban Development Section 3.

BUDGET IMPLICATIONS: The budget implications for the City should be minimal, as the City's primary responsibility will be to ensure that it's contracting and procurement

policies incorporate the requirements of Section 3 for those contracts where federal financial assistance from the Department of Housing and Urban Development is involved.

SYNOPSIS: The United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3), to further the goal of ensuring that federal funds benefit the residents of projects funded wholly or in part by those funds. Part 135 of Section 3 establishes the standards and procedures to be followed to ensure that the objectives of Section 3 are met. Section 3 of the Housing and Urban Development Act of 1968 requires the City to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly residents of government housing assistance, and business concerns that provide economic opportunities to low and very-low income persons.

The City received a Community Development Block Grant to establish the Mid-Columbia Housing Repair Program. The CDBG program receives funding from the United States Department of Housing and Urban Development. Representatives from Columbia Cascade

Housing Corporation, who are assisting the City with administration of the Housing Repair Program, have been working with representatives from the State Business Oregon Department, to establish the requirements to receive the initial draw down of funds for the grant program.

One of the requirements for receipt of initial draw down of funds under the CDBG Grant for the Housing Repair Program is evidence of adoption of a Section 3 Plan. The Plan sets forth the requirements that are imposed upon contractors who will perform the housing repair and rehabilitation services. The contractors are required to engage in good faith efforts to seek to fill training positions which they may have, with low income to very-low income persons. The City will also have to work with representatives from Columbia Cascade Housing in the process of advertising for contractors who seek to provide the rehabilitation and repair services, to ensure that the advertising process complies with the requirements of Section 3 of the Act. The requirements of Section 3 will apply only to contracts where federal financial assistance from the Department of Housing and Urban Development is involved.

Attached to Resolution No. 14-009 is a copy of a Section 3 Plan which has been prepared by City staff, with the assistance of staff from Columbia Cascade Housing Corporation. The Plan has been reviewed and approved by representatives from the Infrastructure Housing Finance Authority of the State Business Oregon Department.

RECOMMENDATION: Adopt Resolution No. 14-009.

- C. **ITEM:** Resolution No. 14-010, adopting a Limited English Proficiency Plan for the City of The Dalles to comply with requirements for receipt of federal funding.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The City applied for financial assistance through the Federal Department of Transportation and received a grant to operate The Dalles Dam Electric Shuttle Tours. The City also applied for financial assistance through the Community Development Block Grant program administered by the United States Department of Housing and Urban Development, and received a grant for the Mid-Columbia Housing Repair Program. Representatives from Columbia Cascade Housing Corporation, who are assisting the City with administration of the Housing Repair Program, have been working with representatives from the State Business Oregon Department, to establish the requirements to receive the initial draw down of funds for the grant program.

City staff has been advised by the federal agencies that the City needs to develop a Limited English Proficiency (LEP) Plan in order to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d), et. seq., and other federal laws and regulations. City staff developed a proposed LEP Plan for the City, and the proposed plan, a copy of which is attached to Resolution No. 14-010 has been reviewed and approved by representatives from the Infrastructure Housing Finance Authority of the State Business Oregon Department. A copy of the proposed plan was also recently submitted to the federal Department of Transportation.

RECOMMENDATION: Adopt Resolution No. 14-010.

MINUTES

REGULAR COUNCIL MEETING
OF
APRIL 14, 2014
5:30 P.M.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Steve Lawrence

COUNCIL PRESENT: Bill Dick, Dan Spatz, Tim McGlothlin, Linda Miller

COUNCIL ABSENT: Carolyn Wood

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Public Works Director Dave Anderson, Police Sergeant Jeff Halter, Administrative Fellow Jon Chavers, Administrative Intern Rich Wachter, Finance Director Kate Mast

CALL TO ORDER

Mayor Lawrence called the meeting to order at 5:30 p.m.

ROLL CALL

Roll call was conducted by City Clerk Krueger; Councilor Wood absent.

PLEDGE OF ALLEGIANCE

Mayor Lawrence invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Dick and seconded by Spatz to approve the agenda, as amended by the supplemental agenda. The motion carried unanimously, Wood absent.

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PRESENTATIONS/PROCLAMATIONS

Downtown Spring Clean Up Day Proclamation

Mayor Lawrence read a Proclamation declaring April 16 and 19 as Downtown Spring Clean Up Days. Matthew Klebes from the Main Street Program accepted the Proclamation.

Historic Preservation Month Proclamation

Mayor Lawrence read a Proclamation declaring the month of May 2014 as Historic Preservation month in The Dalles. Trish Neal accepted the Proclamation.

Historic Columbia River Highway Gorge Hubs Partnership Proclamation

Administrative Fellow Chavers reviewed the staff report.

It was the consensus of the City Council to authorize the Mayor to sign the Gorge Hubs proclamation. The motion carried unanimously, Wood absent.

AUDIENCE PARTICIPATION

None.

CITY MANAGER REPORT

City Manager Young introduced Administrative Intern Rich Wachter, noting he was participating in a program with Portland Community College and said Mr. Wachter was currently working on the City's Business Continuity Plan.

Young asked Public Works Director Anderson to provide an update on the Ecoli issue on Mill Creek.

Anderson explained the steps taken by City crews to determine where the contamination was coming from. He said they had used a video camera, dye tests, smoke tests and some excavations, but were not able to determine the source. Anderson said the County was now planning to do some testing on some residences in the area that were outside the city limits, but it was believed the contamination was coming from an indirect source, such as a drain field. Anderson said he believed the County Health Department had issued a public service announcement but was unsure about when or if they would post the area with signs.

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City Manager Young said he had sent a memorandum to the Council regarding the Tri-County Household Hazardous Waste agreement. He said questions had been raised regarding representation on the Steering Committee. Young said the City had a staff person on the Committee, but that a City Councilor could also serve as the representative if they wished to.

Councilor Spatz said he understood there were two interagency agreements and that was causing confusion regarding who was serving as the lead agency. City Manager Young said the City had only signed one agreement, which listed Wasco County as lead agency.

It was the consensus of the Council to leave the staff person as the City's representative and to direct staff to provide meeting minutes and the budget.

City Manager Young said one more packet of budget issue papers would be sent out this week and the proposed City budget would be delivered next week, with Budget Committee meetings beginning on May 5.

CITY ATTORNEY REPORT

City Attorney Parker said he would be presenting two resolutions at the next Council meeting to stay in compliance with regulations for the Community Development Block Grant. Parker said much of his time had been spent working on the medical marijuana issue.

CITY COUNCIL REPORTS

Councilor McGlothlin reported that the Traffic Safety Commission had discussed the traffic study for 10th and Thompson Streets; poor signage near the post office; need for new painting of streets near the middle school; a vision clearance problem at Ninth and Kelly; and congestion on West Sixth Street, near Cousin's Restaurant. He said the Commission was told by the Transportation Manager that the cost of work for Second and Webber Streets would increase due to new laws.

McGlothlin said the Airport Business Park was on schedule and that runway paving was planned for early May. It was noted that the Airport Board would be receiving an update at their next meeting regarding the golf course development.

Councilor Dick said the QLife Agency had reviewed their proposed budget and that the Agency was in good financial condition and was able to discuss future needs and how funds could be used to support other projects.

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Councilor Spatz said he attended the Mid Columbia Economic Development District meeting in March. He said the economic development projects list was complete, and included two projects at the Airport, wetlands identification and the Washington Street Crossing project.

City Manager Young said he would send a list of the approved projects to the City Council.

Mayor Lawrence reported he had attended a Gorge Historic Communities meeting regarding cycling in The Dalles; Regional Solutions Team meeting; participated in the inaugural cruise of the American Empress; met with a blogger who was on a bike tour of The Dalles; attended a meeting regarding attainable housing; and participated in a tour of veterans facilities with a group from the Association of Oregon Counties.

Mayor Lawrence said he would be presenting a plaque to the Captain of the American Empress to commemorate her first cruise on the Columbia River.

CONSENT AGENDA

It was moved by Spatz and seconded by McGlothlin to approve the Consent Agenda as amended. The motion carried unanimously, Wood absent.

Items approved by Consent Agenda were: 1) approval of March 24, 2014 regular City Council meeting minutes; 2) approval to declare Police Department equipment as surplus property; 3) Resolution No. 14-011 concurring with the Mayor's appointments to the Budget Committee; 4) authorizing the City Clerk to endorse OLCC New Outlet application for Fairfield Inn; and 5) authorizing the City Clerk to endorse OLCC New Outlet application for Boulder Path Designs.

PUBLIC HEARINGS

Public Hearing to Receive Testimony Regarding Special Ordinance No. 14-562 Regulating Medical Marijuana Dispensaries

Mayor Lawrence reviewed the procedures to be followed for the public hearing.

City Attorney Parker reviewed the staff report. He provided a summary of other actions taken by cities in Oregon regarding the regulation of dispensaries. Parker said he disagreed with the preemption argument provided by the attorney for Mountain View Naturals. He said Mr. Steinman had cited a case that didn't apply to Oregon law and that it was just a footnote. He said it didn't have precedence value in Oregon. Parker said the two legislative bills could operate concurrently and there was no indication that either bill was meant to be exclusive. He said the City's charter authorized enacting a moratorium.

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Mayor Lawrence asked what would happen if the City did not adopt the Ordinance imposing a moratorium, or the moratorium expired. City Attorney Parker said the City would then be subject to the State rules if they hadn't adopted their own.

Councilor Spatz asked what steps staff would take between now and the expiration of a moratorium. City Attorney Parker said it would allow time to follow the issue and see what happens with other cities.

Testimony

Attorney Bradley Steinman, representing Mountain View Naturals, provided testimony supporting the City's local authority to regulate the dispensaries or enact a temporary moratorium. He said State law did provide guidance as to what would constitute reasonable regulations for the purposes of local government adopting an ordinance to regulate medical marijuana dispensaries; the City could adopt a marijuana business license ordinance under its authority to reasonably regulate conditions on the manner in which a facility could dispense medical marijuana; noted there were only 384 patients in Wasco County who were enrolled in the Oregon Medical Marijuana Program; testified that the City couldn't rely on federal law to avoid complying with state law; and expressed concern that his client may be denied due process rights under the Land Use Development Ordinance (full written comments attached as Exhibit A).

Mary Beth Thouvenal, 445 East Knoll Drive, The Dalles, testified in support of a moratorium, expressing concern that the youth of the community could have greater access to marijuana. She said as an educator and someone who had a family member with an addiction, she had personally witnessed behavioral changes from its use. She asked that it not be legitimized in the eyes of children by calling it medicine because there was not enough data to say the benefits outweighed the negative affects. Thouvenal said medical marijuana was a joke and most who used it didn't have any of the medical conditions that would be helped by its use.

Sandy Burbank, 2255 State Road, Mosier, Oregon, said she had a non-profit clinic in The Dalles. She asked if the ban was required to be for one year or if that time could be less than a year.

There was a discussion among the City Council and City Attorney regarding the language. It was noted the state law used the word "until" to describe the ending date of the moratorium, though the City's proposed ordinance used more permissive language that would allow the moratorium to be lifted at any time during the year. City Attorney said he and the League of Oregon Cities attorney believed the language to be permissive.

Ms. Burbank discussed her early involvement in the medical marijuana legalization, beginning in 1982 and said she was a strong advocate because she had seen first hand how it helps patients. She said she served on the Oregon Medical Marijuana Board and had opened three clinics in Oregon that see approximately 6,000 patients per year. Burbank said the average age of patients was 58 and that many of them were so ill, they were not capable of growing it for themselves. She noted that most patients administered it through a salve, tincture, or through edibles, not by smoking it.

Councilor McGlothlin asked how many medical marijuana clinics were operating in Oregon. Burbank said she didn't know because it was not tracked by the State.

Kathryn Serells, 3975 Dee Highway, Hood River, said she had been a medical marijuana patient for seven years to treat pancreatic disease. She said pharmaceutical medications had led to organ failure and caused terrible side affects, while the marijuana did not. She said having regulated dispensaries would ensure that patients were not getting laced or moldy product.

Harriett Lewis, 318 East Eighth Street, The Dalles testified regarding the difficulties of being ill and trying to grow your own medical marijuana. She said it was a lot of work and the plants had to be protected from theft. She said it would be much better to be able to purchase the medications through a dispensary.

Edward Sohler, Jr., 1378 Golden Mantle Road, Crooked River, said he was one of the owners of Mountain View Naturals. He said his company wanted to open a dispensary to provide safe access for patients in The Dalles, but only legally. He said they had applied to the State for a license, and planned to employ approximately eight people. He said people who came to the community would spend money here, boosting the economy.

Pamela _____, 7225 Highway 35, Hood River, said she was an employee at a clinic and was a medical marijuana patient. She said she had heard many stories from patients that had told her conventional medications were not working for them. She said kids' safety was the responsibility of parents and said they would not be going to dispensaries to get recreational marijuana, noting dispensaries were heavily regulated. She asked that patients rights be protected and that no moratorium be placed on dispensaries.

Jennifer Trent, 1304 Sherman Avenue, Hood River, said she had been using medical marijuana since 2007 to treat the pain of fibromyalgia. Trent said prior to that, she had been on 22 kinds of pills and was bedridden. She said once she was able to get away from all the other medications, she was able to resume a normal life.

Steve Schwarzbach, 1726 East 17th Street, The Dalles, said it was a fairness issue. He said it was very difficult for some patients to have to travel to metropolitan areas to get their medication. He said the dispensaries were the correct way to provide this medication.

Hearing no further testimony, the public hearing was closed.

Council Deliberation

Councilor Spatz said he was concerned that the ordinance language and state law didn't match concerning the duration of a moratorium. He said it wasn't really a moratorium if it could be rescinded. He said the City should analyze options for a local ordinance to regulate dispensaries.

City Attorney Parker said the League of Oregon Cities had determined that cities could rescind an ordinance prior to the date of May 1, 2015, rather than that was the longest amount of time the moratorium could be in place. He said if the Council decided not to adopt the moratorium, the City would have no regulations and would need to rely on the state law.

Mayor Lawrence staff should develop regulations regardless of whether a moratorium was approved.

Councilor Dick said he had heard of instances where youth had purchased marijuana from people who received it with a medical authorization. He said many cities were studying the issue and that a moratorium would give staff time to sort out what regulations should be put in place. Dick said he would like to have heard testimony from physicians and downtown business owners.

Special Ordinance No. 14-562 Declaring a Moratorium on Medical Marijuana Facilities and Declaring an Emergency

City Clerk Krueger read Special Ordinance No. 14-562 by title.

It was moved by Dick and seconded by McGlothlin to adopt Special Ordinance No. 14-562 by title.

McGlothlin said he agreed with the League of Oregon Cities determination that a moratorium could be lifted prior to the May, 2015 deadline. He said the issue could be re-examined when the applicant received a license from the State.

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It was moved by Spatz and seconded by Miller to amend the motion by adding “subject to being rescinded prior to May 1, 2015 and direct staff to develop regulations”.

The motion on the amendment was voted on and carried unanimously, Wood absent.

The amended motion to adopt Special Ordinance No. 14-562 by title only, subject to being rescinded prior to May 1, 2015 and direct staff to develop regulations was voted on and carried unanimously, Wood absent.

CONTRACT REVIEW BOARD ACTIONS

Approval to Purchase Asphalt for Street Maintenance Projects

Public Works Director Anderson reviewed the staff report. There was discussion regarding whether projects may be re-scheduled in order to get the better pricing. Anderson said even if the order was less than 20 ton, they would still call for pricing to ensure the City was able to get the best price.

It was moved by McGlothlin and seconded by Spatz to authorize the purchase of hot mix asphalt as needed for street maintenance from the lowest cost supplier available at the time of the projects, in an amount not to exceed \$65,212. The motion carried unanimously, Wood absent.

ACTION ITEMS

Approval of Compensation Package for Exempt Employees

City Manager Young reviewed the staff report.

Mayor Lawrence asked why this would be approved prior to the Budget Committee meetings. City Manager Young explained it was the Council’s authority to set wages.

It was moved by Spatz and seconded by Miller to approve an exempt employee compensation package for the 2014-15 fiscal year to include a 2% COLA effective July 1, 2014 and increase the City’s contribution toward an employee’s insurance premium no more than 8%. The motion carried unanimously, Wood absent.

DISCUSSION ITEMS

Discussion Regarding Fort Dalles Fourth of July Funding Request

City Manager Young reviewed the staff report.

Doug Kirchofer, 2670 East 18th Street, The Dalles, said the Committee had nearly \$50,000 committed to the event, which included a walk/run, parade, family festival with entertainment, and fireworks display. A diagram of the festival area was provided. Kirchofer said this would be a significant regional event and said the Committee would provide a post-event report to the City Council.

It was moved by Miller and seconded by Dick to approve the \$20,000 funding request and direct staff to prepare a budget amendment for approval at the April 28, 2014 Council meeting.

Councilor McGlothlin said he had been surprised that the City was asked to help fund the event because he had been told it was all to be funded through private donations. He said he would support matching an amount that was also provided by other governmental agencies, such as Wasco County, but that he did not support using tax payer money to fund the event. McGlothlin said if transient room tax fees could be used, he would be more comfortable with it.

City Manager Young said the transient room tax revenues were added to the General Fund, that there was not a separate account just for room tax revenue. McGlothlin asked how much revenue was received in room tax. Young said the upcoming budget included approximately \$550,000.

Mayor Lawrence said the City's ordinance required a minimum of 21% to be used for tourism related items, but the City historically provided much more than that.

Mr. Kirchofer said they were only asking for approximately 3% of the room tax revenue and that the economic return would be at least equal to that.

Extend Time of Meeting

It was moved by Spatz and seconded by Miller to extend the time of the meeting by 15 minutes. The motion carried unanimously, Wood absent.

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The motion to approve the \$20,000 funding request and direct staff to prepare a budget amendment for approval at the April 28 Council meeting was voted on and carried, McGlothlin opposed; Wood absent.

ADJOURNMENT

Being no further business, the meeting adjourned at 8:35 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

statutory and regulatory authority to Oregon's cities and counties to impose certain regulations and restrictions on the operation of medical marijuana dispensaries within their jurisdictions, including the option of imposing a temporary ban or "moratorium" for a limited period of time - until May 1, 2015 on the operation and establishment of medical marijuana facilities in their jurisdictions. On April 1, 2014, the Oregon Health Authority filed rules implementing SB 1531.

As of April 11th, the Medical Marijuana Dispensary Program has processed 213 of the 313 applications the state had received since March 3, 2014, when the system opened to applicants. Of these, only 42 have been approved for state registration and have been mailed a state license, and may open for business legally only once they have received their state certificates in the mail. The state has been hard at work - it seems that less than 25% of medical marijuana facility applicants have been granted full licenses to operate under the rigorous standards and requirements of the application requirements and rules of the OHA.

Mountain View Naturals LLC, (MVN) is a domestic limited liability company registered as a business with the Oregon secretary of state, and is a pending applicant for a state medical marijuana facility license who is proposing to open a business in the central business commercial district of The Dalles. MVN plans to operate in full compliance with state laws, as well as local law. As such, MVN has yet to open its doors for business, since it is choosing to wait to learn of its ability to operate in full compliance with state and local laws, after hearing from both the state of Oregon's medical marijuana dispensary program, as well as the City of The Dalles with regard to its ability to legally operate and open for business. Of immediate relevance, is MVN's fate with regard to its proposed 'change of use' application filed last week with the Planning Department of The Dalles, concurrently with its state dispensary license application, the approval of both of which are currently pending.

In addition to the dozens of cities that have pursued temporary moratoriums pursuant to SB 1531 and the OHA's new rules, The Dalles is considering its regulatory options at the April 14, 2014 City Council meeting. Of particular concern to MVN and the medical marijuana patient community of The Dalles is the potential adoption of General Ordinance No. 14-1335, which would declare a moratorium on medical marijuana facilities, and declares an emergency.

Comment

1. State law does provide guidance as to what constitutes "reasonable regulations" for the purposes of local government adopting an ordinance regulating medical marijuana dispensaries.

SB 1531 provides in Section 2., "Notwithstanding ORS 633.733, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314, and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

MVN wants to provide safe access to patients in a regulated manner, licensed, audited and inspected by the state, as well as by the authorities of The Dalles. MVN also wants crime-free neighborhoods, safe roads, and to keep marijuana out of the hands of children and those not permitted to possess and use medical marijuana pursuant to the laws of the state. A licensed and regulated medical cannabis business is a better policy than requiring patients to enter into an unregulated black market. Furthermore, adopting a temporary ban would send the political

message that The Dalles is opposed to medical marijuana and the rights of patients to safe access.

2. Pursuant to its authority under SB 1531 to reasonably regulate 'conditions on the manner' in which a medical marijuana facility may dispense medical marijuana The Dalles could adopt a marijuana business license ordinance.

Oregon local governments from Marion County to Klamath Falls have considered and have enacted local licensing schemes for regulating marijuana businesses. Some Oregon cities like Keizer have developed local task forces to help craft marijuana-related local regulatory ordinances. Other cities like Portland have chosen to not take regulatory action, perhaps with an understanding that the state laws provide sufficient regulation with regard to medical marijuana facilities. The city of Beaverton drafted a marijuana business license ordinance which it did not adopt, but which MVN considers a model for The Dalles to consider. Adopting a marijuana business license would prevent a potential legal challenge from MVN and likely any other state licensed MMF or applicant, and would provide a new source of revenue, as well as lead to job creation and a diversified, rejuvenated economy for The Dalles.

Assuming that medical marijuana facility businesses are prohibited unless they are licensed, a 'marijuana business license ordinance' would provide The Dalles with a necessary and proper regulatory vehicle to monitor medical marijuana facilities in the short term, as well as legalized adult-use marijuana businesses in the event that Oregon elects to take the route of Washington and Colorado in the not-to-distant future. MVN wants to provide safe access to patients in a responsible, regulated manner. Imposing a temporary ban on facilities will only harm the most vulnerable of patients and will only exacerbate the problems caused by

prohibition. Like alcohol prohibition before it, cannabis prohibition enriches the black market and takes jobs away from law-abiding citizens and revenue from our state. And many patients will either have to go without medicine that improves their lives or be forced to use the black market.

While those that may be fearful of licensed facilities have legitimate concerns, the concerns about the potential for increased crime, less safe roads and intoxicated drivers, and more marijuana finding its way into the hands of children and those not permitted to possess medical marijuana under the law are largely unfounded by the facts and the experiences of other states. Please consider statistics and studies of other states, listen to the concerns of patients and providers and think about the consequences of pushing people into the unregulated black market. After a careful consideration of the facts and the plight of patients, MVN hopes that the City Council will choose regulation over the black market of prohibition.

3. The Very Few Patients In All of Wasco County Deserve Safe Access.

The Oregon Medical Marijuana Program keeps statistics on the number of medical marijuana patients in each county. According to the website's data, (available at <https://public.health.oregon.gov/diseasesconditions/chronicdisease/medicalmarijuanaprogram/pages/data.aspx>) as of April 1, 2014, Wasco County has a total of 384 patients.

Given the minute population of patients and the size of the market for cannabis medicine in The Dalles, the issue of dispensaries popping up on every available street corner does not seem to be an incredibly dire or pressing one. Given simple economics and the pragmatic reality of supply and demand, the hypothetical disaster situation does not seem likely to occur in The Dalles or any city in Wasco county for that matter. It is simply unlikely that small demand of the

legal market could bear the economics of over-supply for long, especially in light of the high fixed and variable costs that go along with operating a legally compliant MMF in Oregon.

4. The Dalles cannot rely on federal law to avoid complying with state law.

The federal government treats medical marijuana and recreational marijuana the same way as a matter of federal law. Under federal law, which has no medical marijuana exception, there is no legal distinction between medical marijuana and recreational adult use marijuana, such that these two distinct and logically separate issues at the state law level – the issue of outright legalization and the issue of medical marijuana regulation– are thus often conflated.

Under Oregon law, HB3460 (2013) created a regulated distribution system for excess medical marijuana(the amount cultivated in excess of the patient’s needs) by allowing patients to authorize their growers to distribute the patient’s excess medical marijuana to licensed medical marijuana facilities and be fully reimbursed by them. MMFs, in turn, are authorized by this law to be fully reimbursed by patients and their designated primary caregivers.

MVN relies principally on the arguments discussed in the attached memorandum from Legislative Counsel to Representative Peter Buckley for the proposition that the County is unable, legally, to do this. Additionally, MVN notes that recently the Michigan Supreme Court in *Ter Beek v. City of Wyoming* (February 6, 2014) reached the same conclusion regarding a municipal ordinance which prohibited the use of medical marijuana in the municipality.

Although *Ter Beek* concerned the use provision of the Michigan Medical Marijuana Act, the Oregon corollary of which the Oregon Supreme Court had held preempted in the *Emerald Steel Case*, the Michigan Supreme Court explained:

Furthermore, we have misgivings, mildly put, about Emerald Steel’s reasoning. In particular, in finding preemption, the Oregon Supreme Court characterized *Michigan Cannery* as a case of “state law permit[ing] what federal law prohibits,” and reasoned by analogy that “[a]ffirmatively authorizing a use that federal law prohibits stands as an

obstacle to the implementation and execution of the full purposes and objectives of the” CSA. *Emerald Steel*, 348 Or at 177-178.

Michigan Cannery, however, does not stand for the broad proposition that, if a state law permits something a federal law prohibits, it is preempted. Instead, Michigan Cannery involved a state law that not only permitted what federal law prohibited, but also required that certain federal guarantees be denied.

Indeed, the Oregon Supreme Court has since moderated this aspect of its analysis, clarifying that “*Emerald Steel* should not be construed as announcing a stand-alone rule that any state law that can be viewed as ‘affirmatively authorizing’ what federal law prohibits is preempted.” *Willis v Winters*, 350 Or 299, 310 n 6; 253 P3d 1058 (2011).

Ter Beek, page 18 at fn 6.

A copy of the opinion is submitted with these written comments.

5. MVN is concerned that it may have been denied its due process rights under state law as well as The Dalles Comprehensive Land Use and Development Ordinance (LUDO), specifically with regard to 3.010.020 and 3.010.035 and its right to the ordinary city planning and development processes, notwithstanding the fact that The Dalles by and through its staff, might have been planning to adopt a moratorium.

After requesting available times and dates to schedule a pre-application conference with the planning department of the City of The Dalles last month, by and through their legal counsel, a proposed change of use form, instead of getting to schedule a pre-application planning meeting with the Community Development and Planning Department. MVN was e-mailed a naked ‘proposed change of use’ application form by the senior planning manager, Dawn Hert, a week after originally calling to request a pre-application process, in accordance with the standard procedures for siting a business in The Dalles. Should the City approve this ordinance, MVN would raise these and related arguments before the Land Use Board of Appeals.

Insofar as future regulatory actions are concerned, MVN is ready and willing to work with City Counsel, Community Development and Planning, City Council, and other community partners to come up with reasonable time, place and manner regulations for the operation of MMF's upon which all could agree. MVN assumes that the City, like MVN, wants to avoid litigation if at all possible. Engaging in this conversation is the clear path towards achieving this goal.

Respectfully submitted this 14th day of April, 2014.

Bradley M. Steinman, OSB #136110
Attorney for Mountain View Naturals, LLC

RESOLUTION NO. 14-009

A RESOLUTION ADOPTING THE SECTION 3 PLAN TO COMPLY WITH 24 CFR, PART 135 OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT SECTION 3

WHEREAS, the United States Congress passed Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3), hereinafter referred to as the "Act", to further the goal of ensuring that federal funds benefit the residents of projects funded wholly or in part by those funds; and

WHEREAS, Part 135 of Section 3 established the standards and procedures to be followed to ensure that the objectives of Section 3 are met; and

WHEREAS, City staff has developed a Section 3 Plan in adherence to 24 CFR, Part 135 which comprehensively addresses the standards and procedures described in the Act; and

WHEREAS, the Section 3 Plan developed by City staff has been reviewed and approved by representatives from the Infrastructure Finance Authority of the State Business Oregon Department, which agency is responsible for monitoring financial assistance provided for the Mid-Columbia Housing Repair Program which receives funding under the Community Block Development Program, which in turn receives funding from the United States Department of Housing and Urban Development; and

WHEREAS, the City Council has determined that adoption of the Section 3 Plan developed by City staff is in the best interests of the welfare of the citizens of The Dalles;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES RESOLVES AS FOLLOWS:

Section 1. Policy Adopted. The Section 3 Plan, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved and adopted to ensure compliance with Federal law.

Section 2. Coordinator Designated. The City Attorney shall be designated as the Section 3 Coordinator for the City of The Dalles.

Section 3. Effective Date. This Resolution shall be effective as of April 28, 2014.

PASSED AND ADOPTED THIS 28TH DAY OF APRIL, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28TH DAY OF APRIL, 2014

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

City of The Dalles

SECTION 3 PLAN

General Policy Statement

It is the policy of the City of The Dalles to require its contractors to make a good faith effort to provide equal employment opportunity to all employees and applicants for employment with regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

The City of The Dalles implements this policy through the awarding of contracts to contractors, vendors, professional service providers/consultants and suppliers, to create employment and business opportunities for residents of the City of The Dalles and other qualified low and very low-income persons.

The policy will ensure that in good faith the City will have a reasonable level of success in the recruitment, employment, and utilization of Section 3 residents and other eligible persons and Section 3 business concerns working on contracts partially or wholly funded with the United States Department of Housing and Urban Development (HUD) monies. The City of The Dalles shall examine and consider a contractor's, professional service provider/consultant or vendor's potential for success by providing employment and business opportunities to Section 3 residents and business concerns prior to acting on any proposed contract award.

Good Faith Effort

At a minimum, the following tasks must be completed to demonstrate a good faith effort with the requirements of Section 3. The City and each contractor, subcontractor, professional services provider, vendor, or supplier seeking to establish a good faith effort as required should be filling all training positions with persons residing in the target area.

1. Send notices of job availability subcontracting opportunities subject to these requirements to recruitment sources, organizations and other community groups capable of referring eligible Section 3 applicants, including WorkSource Oregon.
2. Include in all solicitations and advertisements a statement to encourage eligible Section 3 residents to apply.
3. When using a newspaper of major circulation to request bid/quotes or to advertise employment opportunities to also advertise in minority-owned newspapers.
4. Maintain a list of all residents from the target area who have applied either on their own or by referral from any service, and employ such persons, if otherwise eligible and if a trainee position exists. (If the contractor has no vacancies, the applicant, if otherwise eligible, shall be listed for the first available vacancy.) A list of eligible applicants will be maintained for future vacancies.

Any construction contractor, professional services provider, vendor or supplier must certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligation under 24 CFR Part 135.

WHAT IF MY BUSINESS DOES NOT QUALIFY AS A SECTION 3 BUSINESS?

The City will, to the greatest extent feasible, offer contracting opportunities to Section 3 business concerns; however, in the event no Section 3 business bids on a contract, or bids but is not able to demonstrate to the City's satisfaction that it has the ability to perform successfully under the terms and conditions of the proposed contract, then that contract will be awarded to a non-Section 3 business concern that can meet the terms and conditions of the proposed contract through the competitive bidding process.

That business concern must meet, as all business must (including Section 3 businesses), the general conditions of compliance (refer to Section 3 Clause [Construction Contracts] and Section 3 Clause [Non- Construction Contracts]).

This will include:

1. Submitting a list of all positions necessary to complete contract, name of employees who will fill those positions, and names of all other employees.
2. Posting notices of any vacant positions, including training and/or apprenticeship positions, qualifications for positions, place where applications will be received and starting date of employment.
3. To the greatest extent possible, making available vacant positions, including training and/or apprenticeship positions, to Section 3 residents (all categories) in order of priority.
4. As positions are vacated during completions of contract, following guidelines enumerated in numbers 2 and 3 above.
5. Submitting Compliance Reports as required.
6. If notified of non-compliance, correcting non-compliance within allowable time period.

Section 3 Purpose

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) (Section 3) requires the City of The Dalles to ensure that employment and other economic and business opportunities generated by the Department of Housing and Urban Development (HUD) financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low and very low-income persons.

Section 3 Contracting Policy and Procedure

Section 3 residents must meet the minimum qualifications of the position to be filled and a Section 3 business concern must have the ability to and capability to perform successfully under the terms and conditions of the proposed contract.

The City of The Dalles will incorporate Section 3 in its existing Procurement Policy and adopt a Section 3 Contracting Policy and Procedure to be included in all procurements generated for use with HUD funding. This policy and procedure contains goal requirements for awarding contacts to Section 3 Business Concerns.

All contractor/businesses seeking Section 3 preference must before submitting bids/proposals to The City of The Dalles complete certifications, as appropriate, as acknowledgment of the Section 3 contracting and employment provisions required by this section. Such certifications shall be adequately supported with appropriate documentation as referenced in the form. Refer to Exhibit 4.

In addition the City of The Dalles has initiated efforts to enhance resident hiring in specific procurement areas. These initiatives are designed to set the requirements for resident hiring and developing and/or strengthening administrative procedures for facilitating contractors' hiring of Section 3 residents, other low-income and/or very low-income residents residing in the City of The Dalles. In promoting a good faith effort to enhance Section 3 compliance all procurement documents must meet the following:

1. Each bidder/proposer must include a Section 3 Opportunities Plan and Certification (Exhibit 5) or a separate schedule which indicates its commitment to meet the section 3 resident hiring requirements.
2. If a bidder/proposer fails to submit a Section 3 Opportunities Plan and Certification or a separate schedule and the related data along with the bid/proposal, such bid/proposal will be declared as "non-responsive".
3. For Invitations for Bids (IFB), where awards are made to the lowest, responsive and responsible bidder, the bidder's commitment to satisfy Section 3 residents hiring requirements will be a factor used in determining whether the bidder is "responsive".
4. For QBS's, RFQ's, RFP's and IFB's, contractors shall be required to detail the cost of the bid or proposal separately categorizing contract cost by labor (person hours and dollar amounts).

The City of The Dalles and their covered contractors, subcontractors, professional service provider/consultants or subrecipients, will, in good faith, comply with the requirements of Section 3 for new employment, training, or contracting opportunities resulting from the expenditure of HUD funding. The City's responsibility includes:

1. Providing a list of all Section 3 residents and business concerns within their area;
2. Advertise to have residents businesses complete the pre-qualifying certification form;

3. Develop a system to collect the pre-qualifying certification forms and to verify the accuracy of the completed forms;
4. Contract work (contracts of \$100,000 or more for construction or any non-construction activity leading to construction i.e., engineering, architectural services) with preference to Section 3 residents and business concerns by giving preference to Section 3 residents and business concerns located closer to the project site;
5. Require construction contractors, engineers, architects, program managers, vendors and suppliers, etc. to submit a Section 3 Opportunities Plan and Certification plan with their bid/proposal;
6. Informing businesses that they can use the WorkSource Oregon - First Source Hiring Agreement in complying with the Section 3 requirements;
7. Implementing procedures to notify Section 3 residents and business concerns about training, employment, and contracting opportunities generated by Section 3 covered assistance;
8. Notifying potential contractors working on Section 3 covered projects of their responsibilities;
9. Incorporating the Section 3 Clause into all covered solicitations and contracts [see 24 CFR Part 135.38];
10. Facilitating the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns;
11. Assisting and actively cooperating with the State in making contractors and subcontractors comply;
12. Refraining from entering into contracts with contractors that are in violation of Section 3 regulations;
13. Documenting actions taken to comply with Section 3;
14. Submitting Section 3 Annual Summary Reports (form HUD-60002) in accordance with 24 CFR Part 135.90; and
15. Informing any subrecipient/sub-grantee of the City of The Dalles CDBG funds that they must attempt to reach the minimum numerical goals set forth at 24 CFR Part 135.30, regardless of the number of subrecipients/sub-grantees that receive covered funding. The information and assistance that will be provided includes, but is not limited to the following:
 - a. Inform subrecipients/sub-grantees about the requirements of Section 3;
 - b. Assist subrecipients/sub-grantees and their contractors with achieving compliance;
 - c. Monitor subrecipient/sub-grantee performance with respect to meeting the requirements of Section 3; and
 - d. Report to HUD on the cumulative Section 3 activities taking place within their jurisdiction on an annual basis.

The existing City of The Dalles Procurement Policy also contains goal requirements for awarding contract to Small Disadvantaged Businesses, formerly Minority and Women Business Enterprises (M/WBE). The City's Procurement Policy will provide that this provision only applies to HUD funded contracts.

Section 3 Clause

The Section 3 Contract Clause specifies the requirements for contractors hired for Section 3 covered projects. The Section 3 Clause must be included in all Section 3 covered projects. The Section 3 Contract Clause is included in Exhibit 1.

Numeric Goals for Section 3 Employment & Training

It is the policy of the City of The Dalles to utilize residents and other Section 3 eligible person and businesses concerns in contracts partially or wholly funded with monies from the Department of Housing and Urban Development (HUD). The City of The Dalles has established employment and training goals that contractors and subcontractors should meet in order to comply with section 3 requirements. (Reference 24 CFR Part 135.30 – Numerical goal for meeting the greatest extent feasible requirement). The numerical goal is:

- Thirty percent (30%) of the aggregate number of new hires in any fiscal year.

It is the responsibility of the contractors, professional service providers/consultants, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. Any firm that does not meet the Section 3 numerical goals must demonstrate why meeting the goals were not feasible. All firms submitting bids or proposals are required to certify that they comply with the requirements of Section 3.

Numeric Goals for Contracting Activities

Absent evidence to the contrary, the City of The Dalles considers contractors, professional service providers/consultants, vendors and suppliers of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 CFR Part 135.30. Specifically:

1. 30 percent of the aggregate number of new hires shall be Section 3 residents;
2. 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
3. 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Businesses that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the state to make a compliance determination.

At least \$2 million, but less than \$4 million	3% of the labor dollars
At least \$4 million, but less than \$7 million	2% of the labor dollars
\$7 million or more	1 – ½% of the labor dollars

With this sliding formula, it is expected that an appropriate number of public housing residents and neighborhood residents with particular qualifications or willingness to begin unskilled labor will be able to participate in contracted labor efforts. A prime contractor, through its subcontractor(s), may satisfy the Section 3 resident hiring requirement set forth above.

1. Contractor/subcontractor or joint venture with a resident owned business. The business must be 51% or more owned by Sections 3 residents; or
2. The contractor/subcontractor that can demonstrate that at least 30% of the current employees of the company are Section 3 residents.
3. At least 30% of the contractor/subcontractor employees are Section 3 residents, within 3 years of the date of first employment with the company;
4. The contractor/subcontractor commits to subcontracting at least 25% of the total value of the contract to Section 3 sub-contractors, as defined above, and to provide the necessary evidence.
5. The contractor/subcontractor will incur the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth in the Resident Hiring Scale; or
6. The contractor/subcontractor makes a contribution to an Education Fund to provide assistance to residents to obtain training. The level of contribution would be commensurate with the sliding scale set forth in the Resident Hiring Scale.

Preference for Section 3 Residents in Training and Employment Opportunities

In providing training and employment opportunities, generated from the expenditure of Section 3 activities to Section 3 residents, the following order of preference will be followed:

1. Section 3 residents from the service area or neighborhood in which the Section 3 covered project is located.
2. Participants in HUD Youthbuild Programs.
3. Homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located.
4. Other Section 3 residents.

Section 3 Residents Recruitment, Training, and Employment Goals

City of The Dalles will develop resources to provide training and employment opportunities to Section 3 program participants by implementing the following:

1. Training opportunities will be advertised by distributing flyers via mass mailing and posting in common areas of the housing developments as well as all local public housing management offices.
2. The resident councils, resident management corporations, as well as neighborhood community organizations will be contacted to request their assistance in notifying residents of the available training and employment opportunities.
3. Employment opportunities will be advertised by posting job vacancies in common areas of any local public housing developments as well as contacting resident councils, resident management corporations, and neighborhood organizations.
4. A database will be developed of certified Section 3 residents of public housing and other Section 3 residents.
5. A database will be developed to maintain a skill assessment of all Section 3 residents of public housing and other Section 3 residents.
6. A database will be developed of eligible qualified Section 3 Business concerns to contact with respect to the availability of contract opportunities.
7. Relationships will be developed with local area employers in an effort to solicit job vacancies to determine skills needed in their workforce, thereby providing training to residents developing skills that will transfer into the external labor market.
8. A provision for a specific number of public housing or Section 3 program participants to be trained or employed by the contractor will be incorporated into the contract.

Assisting Contractors to Achieve Section 3 Hiring and Contracting Goals

The City of The Dalles will assist contractors with little or no experience in achieving Section 3 hiring and contracting goals by:

1. Requiring the contractor to present a list, to the Section 3 Coordinator, of the number of subcontracting and/or employment opportunities expected to be generated from the initial contract.
2. The Section 3 Coordinator will provide the contractor with a list of interested and qualified Section 3 residents for construction projects.
3. The Section 3 Coordinator will provide contractor with a list of Section 3 business concerns interested and qualified for construction projects.
4. The Section Coordinator will inform contractor of known issues that might affect Section 3 residents from performing job related duties.
5. The Section 3 Coordinator will review the new hire clause with contractors and subcontractors to ensure that the requirement is understood. It is not intended for contractors and subcontractors to terminate existing employees, but to make every effort feasible to employ Section 3 program participants before any other person, when hiring additional employees needed to complete proposed work to be performed with HUD (Federal) funds.

Preference for Contracting with Section 3 Business Concerns

A Section 3 Business Concern is one of the following:

1. Businesses that are 51 percent or more owned by Section 3 residents;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above.

The City of The Dalles, in compliance with Section 3 regulations, will require contractors and subcontractors (including professional service contractors) to direct their efforts towards contracts to Section 3 business concerns in the following order of priority:

1. Section 3 business concerns that provide economic opportunities for Section 3 residents in the service area or neighborhood in which the Section 3 covered project is located.
2. Business concerns that carry out HUD Youthbuild Programs.
3. Other Section 3 business concerns.

Contractors and subcontractors are expected to extend to the greatest extent feasible, efforts to achieve the numerical goals established by the City of The Dalles.

Evidence of Section 3 Certification

Any business seeking Section 3 preference in the awarding of contracts or purchase agreements with the City of The Dalles shall complete the Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability form, which can be obtained from the Section 3 Coordinator. The business seeking Section 3 preference must be able to provide adequate documentation as evidence of eligibility for preference under the Section 3 Program. The certification form is Exhibit 4 to this plan.

Certifications for Section 3 preference for business concerns must be submitted to the Section 3 Coordinator of the City of The Dalles prior to the submission of bids for approval. If the Section 3 Coordinator previously approved the business concern to be Section 3 certified, then the certification can be submitted along with the bid.

Effort to Award Contract Opportunities to Section 3 Business Concerns

The City of The Dalles will use the following methods to notify and contract with Section 3 business concerns when contracting opportunities exist.

1. Advertise contracting opportunities via newspaper, mailings, posting notices that provide general information about the work to be contracted and where to obtain additional information.
2. Provide written notice of contracting opportunities to all known Section 3 business concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.
3. Coordinate pre-bid meetings at which the Section 3 business concerns would be informed of upcoming contracting opportunities in advance.
4. Conduct workshops on contracting procedures to include bonding, insurance, and other pertinent requirements, in a timely manner in an effort to allow Section 3 business concerns the opportunity to take advantage of any upcoming contracting opportunities.
5. Contact the City of the Dalles Planning Department, business assistance agencies, Minority and Women's Business Enterprise (M/WBE) contractor associations and community organizations to inform them of contracting opportunities and to request their assistance in identifying Section 3 businesses.
6. Establish relationships with the Small Business Administration (SBA), Minority and Women's Business Enterprise (M/WBE) association, Community Development Corporations, and other sources as necessary to assist SPHA with educating and mentoring residents with a desire to start their own businesses.
7. Seek out referral sources in order to ensure job readiness for public housing residents through on-the-job training (OJT) and mentoring to obtain necessary skills that will transfer into the external labor market.
8. Develop resources or seek out training to assist residents interested in starting their own business to learn to prepare contracts, prepare taxes, and obtain licenses, bonding and insurance.

Contractor's Requirements in Employing Section 3 Residents/Participants

Under the City of The Dalles Section 3 Program, contractors, subcontractors, professional service providers/consultants, vendors and suppliers are required to submit a Section 3 Opportunities Plan and Certification and to:

1. Provide employment opportunities to Section 3 residents/participants in the priority order listed below:
 - a. Category 1 – Section 3 residents from the service area or neighborhood in which the Section 3 covered project is located;
 - b. Category 2 – Section 3 participant in HUD Youthbuild Programs carried out in the service area or neighborhood in which the Section 3 covered project is located;
 - c. Category 3 – Section 3 residents of Section 8 of the local Housing Authority as well as all other residents residing in the service area or neighborhood in which the Section 3 covered project is located. Section 8 residents must meet the income guidelines for Section 3 preference (refer to Section 3 Income Limits);

- d. Category 4 – Section 3 residents/homeless persons residing in the service area or neighborhood in which the Section 3 covered project is located;
 - e. Category 5 – Other Section 3 residents/participants.
2. After the award of contracts the contractor must, prior to beginning work, inform Section 3 participants of the development at which the work will be performed by providing the following:
 - a. Names of the Section 3 business concerns to be utilized;
 - b. Estimates of the number of employees to be utilized for contract;
 - c. Projected number of available positions, to include job descriptions and wage rates (construction wages consistent with Davis-Bacon);
 - d. Efforts that will be utilized to seek Section 3 participants.
 3. Contractors must notify the Section 3 Coordinator of their interests regarding employment of Section 3 participants prior to hiring. The Section 3 Coordinator will ensure that the participant is Section 3 eligible, by assessing the Section 3 database to ensure job readiness. Additionally, the legal department will be contacted to ensure that the individuals are not involved in any legal proceedings against/with the City of The Dalles.
 4. Submit a list of core employees (including administrative, clerical, planning and other positions pertinent to the construction trades) at the time of contract award. Document the performance of Section 3 participants (positive and negative), regarding punctuality, attendance, etc., and provide this information to the City Attorney, who shall serve as the Section 3 Coordinator.
 5. Immediately notify the Section 3 Coordinator if a participant quits, walks off, or is terminated for any reason. The contractor must provide written documentation of all such incidents to support such decisions to the Section 3 Coordinator to determine if an investigation is warranted.
 6. Businesses can use the WorkSource Oregon First-Source Hiring Agreement in complying with the Section 3 requirements.

Internal Section 3 Complaint Procedure

In an effort to resolve complaints generated due to non-compliance through an internal process, the City of The Dalles encourages submittal of such complaints to its Section 3 Coordinator as follows:

1. Complaints of non-compliance should be filed in writing and must contain the name of the complainant and brief description of the alleged violation of 24 CFR 135.
2. Complaints must be filed with thirty (30) calendar days after the complainant becomes aware of the alleged violation.

3. An investigation will be conducted if complaint is found to be valid. The Section 3 Coordinator will conduct an informal, but thorough investigation affording all interested parties, if any, an opportunity to submit testimony and/or evidence pertinent to the complaint.
4. The Section 3 Coordinator will provide written documentation detailing the findings of the investigation of the complaint. The Section 3 Coordinator will review the findings for accuracy and completeness before it is released to complainants. The findings will be made available not later than thirty (30) days after the filing of the complaint.

If complainants wish to have their concerns considered outside of the City a complaint may be filed with:

**Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410**

The complaint must be received not later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

Enforcement

To enforce the decision-making process pertaining to determining applicable percentages for resident hiring, enforcement strategies are set forth below.

During the post award or pre-bid conference, the objective shall be to impact critical Section 3 information to the contractor prior to commencement of the work/project. The following contract requirements shall be discussed in detail: (Non-construction contracts does not require Davis-Bacon)

**Davis-Bacon
Minority and Women Owned Business
Participation Resident Hiring Professional**

Each representative will define specific functional requirements and require the contractor to certify its understanding of the terms and condition of the contract as they pertain to Davis-Bacon, Resident Hiring and Minority and Women Owned Business participation.

Monitoring and Enforcement Authority and Responsibility

The function of monitoring and enforcing resident hiring will be carried out by the City of The Dalles Section 3 Coordinator, including all field activities.

DEFINITIONS

Assistant – the Assistant Secretary for Fair Housing and Equal Opportunity.

Business Concern – a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

Contractor - any entity which contracts to perform work generated the expenditure of Section 3 covered assistance, or for work in connection with a Section 3 covered project.

Employment Opportunities Generated by Section 3 Covered Assistance – all employment opportunities generated by the expenditure of Section 3 covered public assistance (i.e., operating assistance, development assistance and modernization assistance, (as described in Section 135.3 (a) (1)). With respect to Section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with Section 3 covered projects (as described in Section 135.3 (a) (2)), including management and administrative jobs. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Housing Authority (HA) – Public Housing Agency.

Housing Development – low-income housing owned, developed, or operated by public housing agencies in accordance with HUD's public housing program regulations codified in 24 CFR Chapter IX.

HUD Youthbuild Programs – programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

JTPA – The Job Training Partnership Act (29 U.S.C. 1579 (a)).

Low-income person – families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families.

Metropolitan Area – a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

New Hires – full-time employees for permanent, temporary or seasonal employment opportunities.

Recipient – any entity which receives Section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State unit of local government, PHA, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which Section 3 applies and does not include contractors.

Section 3 – Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 Business Concern – a business concern,

1. That is 51 percent or more owned by Section 3 resident: or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontractors to be awarded to business concerns that meet the qualifications set forth in paragraphs 1 or 2 above.

Section 3 Covered Assistance –

1. public housing development assistance provided pursuant to Section 5 of the 1937 Act;
2. public housing operating assistance provided pursuant to Section 9 of the 1937 Act;
3. public housing modernization assistance provided pursuant to Section 14 of the 1937 Act;
4. assistance provided under any HUD housing or community development program that is expended for work arising in connection with housing rehabilitation, construction, or other public construction project (which includes other buildings or improvements, regardless of ownership).

Section 3 Clause – the contract provisions set forth in Section 135.38.

Section 3 Covered Contracts – a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project.

Section 3 Covered Project - the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

Section 3 Resident – a public housing resident or an individual who resides in the metropolitan area or nonmetropolitan county in which the Section 3 covered assistance is expended and who is considered to be a low-to very low-income person.

Subcontractor – any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor’s obligation for the performance of work generated by the expenditure of Section 3 covered assistance, or arising in connection with a Section 3 covered project.

Very low-income person – families (including single persons) whose income do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of unusually high or low family incomes.

SECTION 3 CLAUSE

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 Clause):

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative or workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

- G. Contractor shall complete THE REQUIRED Section 3 report form 60002 and submit it to the City/County with the final construction pay estimate for the project.

The City/County of _____
RESIDENT EMPLOYMENT OPPORTUNITY DATA
ELIGIBILITY FOR PREFERENCE
CERTIFICATION FORM

Eligibility for Preference

A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

Certification for Resident Seeking Section 3 Preference in Training and Employment

I, _____, am a legal resident of the City/County of _____ and certify that I meet the income eligibility guidelines for a low- or very-low-income person as published on the reverse.

My permanent address is:

I have attached the following documentation as evidence of my status:

- a. Copy of lease demonstrating proof of residency in a public housing development
- b. Copy of receipt of public assistance such as a Section 8 certificate or voucher
- c. Copy of evidence of participation in a public assistance program such as Youthbuild, JTPA, Job Corps etc.
- d. Income tax records
- e. Other

Signature: _____

Print Name: _____ Date: _____

SECTION 3 INCOME LIMITS

All residents of public housing developments qualify as Section 3 residents. Additionally, individuals residing in the City/County of _____ who meet the income limits set forth below can also qualify for Section 3 status.

A picture identification card and proof of current residency is required.

Number in Household	Very Low Income	Low Income
1 individual		
2 individual		
3 individual		
4 individual		
5 individual		
6 individual		
7 individual		
8 individual		

EXHIBIT 5

INSTRUCTIONS FOR COMPLETING THE SECTION 3 OPPORTUNITIES PLAN (SERVICE & PROFESSIONAL CONTRACTS)

The purpose of Section 3 is to ensure that jobs and economic opportunities generated by HUD financial assistance for housing and community development programs shall be directed to low and very low income persons, particularly those who are recipients of government assistance for housing and business concerns which provide economic opportunities to low and very low income persons.

Section I

The Section 3 Opportunities Plan is to be completed for construction and professional service contracts. There are four (4) ways in which Section 3 can be fulfilled. They are listed in order of preference:

1. Subcontract or joint venture with a Section 3 resident owned business. The business must be 51% or more owned by Section 3 residents or Subcontractor/joint venture with a business whose permanent full-time employees include persons at least 30% of whom are currently Section 3 residents or within 3 three years of the date of first employment with the business concern were Section 3 residents, or
2. Direct hiring Section 3 residents of the service area or the neighborhood in which the covered project is located, or
3. Incur the cost of providing skilled training for residents in an amount commensurate with the sliding scale set forth. Such training shall be determined after consultation with the Section 3 Coordinator of the City/County of _____ or,
4. Contribute to a Section 3 resident educational fund in an amount commensurate with the sliding scale included in the Section 3 Conditions.

If a prime contractor is unable to satisfy the Section 3 resident hiring requirements per the above, the requirements may be satisfied through any subcontractors that may be involved in the project:

1. If the (sub)contractor has identified a resident owned business or a business which employs 30% or more Public Housing or Neighborhood residents, this paragraph is to be completed by indicating the number of resident owned businesses that will be used on the contract/spec number shown at the end of the paragraph.

2. If the (sub)contractor plans to hire Public Housing or Neighborhood residents to work for its company, paragraph two (2) must be completed with the contract/spec number and the percentage of compliance in hiring the resident(s).

For example, if your contract amount is \$100,000.00, the Section 3 dollar amount that must be expended is 10% of your labor dollars or \$10,000.00. If the whole dollar amount is to be expended on the resident's salary, then 100% is to be inserted on the percent line. If a percentage amount less than 100% will be expended on the resident's salary, that amount must be inserted on the line and the remaining percentage must be expended through subcontracting/joint venturing with a resident owned business or a business that employs 30% or more residents, or placed into _____ Section 3 Resident Educational Fund. In which case, the corresponding paragraph must be completed.

3. If the (sub)contractor has exhausted the first two (2) options, then the full amount of the contractor's Section 3 obligations will be placed into _____ Resident Educational Fund, in which case paragraph three (3) must be completed and paragraphs one (1) and two (2) will contain zeroes in the percentage lines.

Section II

The second portion of the Section 3 Opportunities Plan begins with the specification or request for proposal title and number.

Section III

The third section is to be completed by listing current staff to be used to complete the work bid upon.

1. List the job titles,
2. Complete the Needed column if additional staff will be required to fulfill the classification,
3. In the Total column, list the total number of staff plus the number needed,
4. In the _____ and low and very low income area residents (LIAR) columns, list the number of current staff who are residents of _____ public housing, or who are low or very low income neighborhood residents,
5. In the To Be Filled column, list the number of positions that fit into the low and very low-income _____ public housing residents _____ and low and very (LIAR) who will be hired.
6. In the Hiring Goal column, list the number of _____ Public Housing residents or LIAR you intend to hire.

Section IV

The final section is to be completed after the contract has been awarded, interviews have taken place and residents have been hired. The completed Section 3 Opportunities Plan must be submitted to the City/County of _____ Section 3 Coordinator.

Each contractor is required to attend a pre-construction conference with the City/County's Section 3 coordinator where contractual obligations will be explained, the contractor's Section 3 dollar amount will be determined, and the contractor's hiring goals will be discussed. The Section 3 coordinator will refer qualified residents to be interviewed by the contractor.

The Section 3 Opportunities Plan that is submitted with the QBS/RFQ/RFP/IFB and the final copy that is submitted to the Section 3 Coordinator must be signed and include the title of person executing the plan.

SECTION 3 OPPORTUNITIES PLAN

***Business Opportunities and Employment Training of the City/County of _____
Public Housing Residents and Low and Very Low Income Neighborhood Residents***

Section I. Opportunities Plan

The Contractor has identified _____ Section 3 resident owned business(es) or _____ business(es) which employ 30% or more Section 3 residents to comply with _____% of its Section 3 requirements covered under Contract# _____. (Option 1)

Alternately, the Contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.1 et seq. and this City/County of _____ Section 3 plan implemented through Resolution # _____ dated _____. The Contractor hereby submits this document to identify employment opportunities for Section 3 public housing residents and low and very low-income area residents, during the term of the contract between the Contractor and the City/County of _____. The Contractor affirms that the jobs identified shall be for meaningful employment that may or may not be related to the scope of services covered under Contract # _____. The Contractor has committed to employ the following in order to comply with _____% of its Section 3 requirements. (Option 2)

The above percentage(s) for Option 1 and 2 equal(s) 50% of the Contractor's Section 3 obligations. Option three (3) on page 1 of the instructions equal 25% of compliance and Option four (4) on page 1 of the instructions equals 25% of compliance. You may choose one option to comply or all; however, total compliance must equal 100%. The Contractor hereby agrees by signing below that any remaining percentages will be deducted from payouts placed in the _____ Section 3 Educational Fund.

Section II. Labor Survey

Project Title: _____

Job Title: _____

Local Contract/Agreement Number: _____

Job Title (1)	Needed (2)	Number of Positions			Hiring Goal		
		Total (a)	LICSDR(b)	LIAR (c)	To be Filled (4)	LICSDR (a)	LIAR (b)

Section III. Resident List

Section 3 resident employee information (jobs to be filled)

Job Title	LICSPHAR or LIAR Name	Address	Social Security Number

LICSPHAR= Low and very low income public housing authority resident
 LIAR= Low and Very low income area resident

Please check the Option(s) that describe your contracting efforts:

- Option 1: Subcontract with Section 3 Business(es) – 25%
- Option 2: Hire Section 3 residents/participants – 25%
- Option 3: I have a training program in place and am willing to train _____ residents – 25%
- Option 4: Contribute to the _____ training/educational fund for resident training – 25%

In the event I am awarded the contract, I have the option to submit my check in the compliance amount of the start of contract date, or allow _____ to deduct payment from my draw requests. (Compliance amount is based upon the labor dollars of the contract award.)

You may comply by choosing one or all options. Remember your compliance must be equal to 100% as noted on page 1, paragraph three (3), or any remaining percentages will be deducted from payouts and placed in the _____ resident training/educational fund account.

The failure of the contractor to comply with the above-approved plan shall be a material breach of the contract.

Contractor's Signature and Title

Date: _____

SECTION 3 OPPORTUNITIES PLAN CERTIFICATION

NAME OF PRIME CONTRACTOR/ PROFESSIONAL SERVICES PROVIDER:

Local contract/.Agreement

#: _____

CONTRACT Name: _____

WARNING: THIS DOCUMENT IS REQUIRED FOR ALL CONSTRUCTION OR LABOR RELATED PROCUREMENTS AND PROFESSIONAL SERVICE AGREEMENTS.

The Contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135.38 implementing Section 3 requirements. The contractor hereby submits this Section 3 Opportunities Plan.

The Contractor shall provide a status report identifying its progress in meeting the Section 3 goals established in this Section 3 Opportunities Plan on a quarterly basis throughout the contract period. The quarterly status report shall be submitted no later than 10 days after the end of each calendar quarter of the contract (e.g., April 10 for calendar quarter January 1 to March 31). The status report shall be in at least the same level of detail as the approved Section Opportunities Plan. For any goal not met, the report shall identify any other economic opportunities, which the contractor has provided, or intends to provide to Section 3 and neighborhood residents.

The failure of the Contractor to comply with the approved plan shall be a material breach of the contract.

Each Bidder/Proposer for a construction or labor related contract and professional services agreement must complete the Section 3 Opportunities Plan and submit all relevant information required herein. A prime contractor, through its' subcontractors may satisfy the Section 3 Resident Hiring Requirements. Please complete the Skill Needs Table in Section 1 of Section 3 Opportunities Plan in the following columns.

1. Indicate each category of employment for all phase of this contract;
2. The number of positions which will be needed in each category;

3. How many of those positions are currently filled;
 - a. The number filled by neighborhood residents, excluding _____ and _____ residents;
 - b. The number filled by Public Housing residents;
 - c. How many positions need to be filled;
4. Indicate your goal for the number of positions you intend to fill with:
 - a. Section 3 Residents
 - b. Low and Very low income area residents.

NOTE: The minimum of trainees is that which can reasonably be utilized in each occupation, and no less than the number established by the U.S. Secretary of Labor for construction and non-construction labor related occupations. The contractor shall fill all vacant positions with low-income persons (earning less than 80% of the median income in the City/County of _____ and these positions shall not be filled immediately prior to undertaking work in order to circumvent regulations as set forth at 24 C.F.R. Part 135 et seq: as amended.

II. SECTION 3 BUSINESSES SUBCONTRACTING OPPORTUNITIES

In a one (1) page letter on your company's letterhead:

1. Indicate the goals, expressed in terms of percentage of planning subcontracting dollars, for the use of Section 3 business concerns as subcontractors.
2. A statement of the total dollar amount to be subcontracted, total dollar amount to be subcontracted to Section 3 business concerns for building trades, and total dollar amount to be subcontracted to Section 3 business concerns for other than building trades work (maintenance, repair, modernization and redevelopment).
3. A description of the method used to develop the goals above and the efforts to be undertaken by the Contractor to meet those goals.

Acknowledged by:

(President or Authorized Officer)

Date: _____

RESOLUTION NO. 14-010

**A RESOLUTION ADOPTING A LIMITED ENGLISH PROFICIENCY
PLAN FOR THE CITY OF THE DALLES TO COMPLY WITH
REQUIREMENTS FOR RECEIPT OF FEDERAL FUNDING**

WHEREAS, the City of The Dalles applied for financial assistance through the Federal Department of Transportation and received a grant to operate The Dalles Dam Electric Shuttle Tours; and

WHEREAS, the City of The Dalles also applied for financial assistance through the Community Block Development Program administered by the United States Department of Housing and Urban Development, and received a grant for the Mid-Columbia Housing Repair Program; and

WHEREAS, City staff has been advised by representatives of these federal agencies that the City needs to develop a Limited English Proficiency (LEP) Plan in order to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d), et. seq., and other federal laws and regulations; and

WHEREAS, City staff developed a proposed LEP Plan for the City of The Dalles; and

WHEREAS, the LEP Plan developed by City staff has been reviewed and approved by representatives from the Infrastructure Finance Authority of the State Business Oregon Department, which agency is responsible for monitoring financial assistance provided for the Mid-Columbia Housing Repair Program which receives funding under the Community Block Development Program, which in turn receives funding from the United States Department of Housing and Urban Development, and a copy of the Plan has also been submitted to the United States Department of Transportation; and

WHEREAS, the City Council has determined that adoption of the LEP Plan developed by City staff is in the best interests of the welfare of the citizens of The Dalles;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES
RESOLVES AS FOLLOWS:**

Section 1. Policy Adopted. The Limited English Proficiency (LEP) Plan, a copy of which is attached hereto and incorporated herein by this reference, is hereby approved and adopted to ensure compliance with Federal law.

Section 2. Effective Date. This Resolution shall be effective as of April 28, 2014.

PASSED AND ADOPTED THIS 28TH DAY OF APRIL, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28TH DAY OF APRIL, 2014

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

City of The Dalles
Limited English Proficiency (LEP) Plan
Adopted April 1, 2014

CONTACT INFORMATION

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City of The Dalles
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Website address: www.ci.the-dalles.or.us

This document addresses the needs of the citizens of the City of The Dalles with
Limited English Proficiency

City of The Dalles Oregon Limited English Proficiency Plan

Introduction

The City of The Dalles, Oregon is situated in Wasco County, Oregon with an approximate population of 14,500. The City encompasses a multitude of services, including the Mayor and City Council, City Manager, City Attorney, Planning, Finance, Police, Public Works, and a Library which is jointly operated with Wasco County.

The population of The Dalles is predominantly English speaking, with the largest minority language being Spanish. English is the primary language of approximately 84.2% of the population, with 15.5% speaking Spanish as their primary language. Limited English proficiency within the Spanish population represents approximately 31% of The Dalles' population over the age of five.

The City of The Dalles (City) undertakes to ensure that persons with Limited English Proficiency (LEP) shall not be discriminated against nor denied meaningful access to, and participation in, the programs and services provided by the City. In order to ensure meaningful access and participation for LEP persons, the City takes reasonable steps to see that language services are provided according to the provisions of the City's LEP Plan as described below.

The LEP Plan applies to all City administered programs, services and facilities, regardless of whether they receive Federal financial support or not. However, the LEP Plan does not apply to the operation or administration of any properties or projects wherein the City is not the primary owner (i.e., the City is a funding agency and not the entity with primary control over said property) and the primary owner qualifies as the recipient or sub-recipient of federal financial assistance.

It is the intent of the City, in providing language services to LEP persons, to achieve a balance that ensures meaningful access to programs and services while not incurring undue burdens on City resources.

The City Manager's office is the central coordinator for the LEP Plan and language services. The office provides oversight for implementation of the LEP Plan, coordinates and facilitates delivery of LEP language services, ensures that staff is informed on LEP services and procedures and directs the monitoring and assessment of the LEP Plan's effectiveness.

Definitions

Limited English Proficiency person. Any person who does not speak English as their primary language and who has a limited ability to speak. Such person or persons shall be entitled to language assistance at no cost to themselves with respect to *a particular type of service, benefit, or encounter.*

Vital document. Any document that contains information that is critical for obtaining or maintaining the services or benefits that are supported by Federal funds, or that are required by

law. Such documents may include but are not limited to applications, consent forms, notices of participant rights and responsibilities, disciplinary notices, letters or notices that require a response from the participant or beneficiary, legal notices, and notices advising LEP persons of the availability of free language services.

Interpretation. The act of listening to spoken words in one language (the source) and orally translating it into another language (the target).

Translation. The replacement of a written text from one language into an equivalent written text in another language. NOTE: Some LEP persons cannot read in their own language and back up oral interpretation services may be needed for written documents.

Four-Factor Assessment. This is an assessment tool used by the City, as a recipient of federal funding, to determine the extent of its obligation to provide LEP services. These Four-Factors are: (1) the nature and importance of the program, activity, or service provided by the City of The Dalles; (2) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (3) the frequency with which LEP persons come into contact with the program; and (4) the resources available to the recipient of the Federal funds to assure meaningful access to services by LEP persons.

Who is Covered

Title VI of the Civil Rights Act of 1964, 42 U.S.C 2000(d), et. seq., and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance.

Under regulations implementing Title VI of 1964, 42 U.S.C 2000(d), et. seq., (title VI), recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with LEP. The purpose of the LEP is to ensure that the City, as a recipient of Federal Funding, is complying with its Title VI responsibilities and that access to its programs or activities, normally provided in English, are accessible to LEP persons.

In order to avoid discrimination against LEP persons on grounds of national origin, the City has taken adequate steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to the programs, services, and information the City provides, free of charge.

Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the Four-Factor analysis set forth in the LEP Guidance of the Federal Register (FR-4878-N-01) are to apply to programs and activities receiving federal assistance. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and

activities. To do this, the City has (1) conducted the Four-Factor assessment; (2) developed a language access plan (LAP); and (3) provided access to appropriate language assistance.

Coverage under Title VI and Executive Order 13166 extends to all of the City's programs or activities (i.e., to all parts of the City's operations). This is true, even if only one part of the City received the Federal assistance.

As the City encompasses a variety of services, application of the Four-Factor analysis varies depending upon the specific service.

Four-Factor Assessment

1. The nature and importance of the program, activity, or service provided by the City of The Dalles.

The City recognizes that, within the range of programs and services it provides, some programs and services, such as those that directly impact the well-being of the local population, are of higher priority than others. While it is the City's intent to provide meaningful access to all participants and eligible persons, the availability of resources may limit the provision of language services in some instances.

Activities such as outreach, intake forms, legal actions, life and safety notices, and the like, have a high priority. Information about and an understanding of these activities should be effectively communicated.

The Police Department's interaction with LEP persons is also primarily with Spanish speakers. The department has a Spanish-speaking administrative staff person, who helps facilitate these communications. Telephone translation services are also available. The Police provide an essential service and therefore accommodations for LEP persons are imperative in order to serve the public. For other services, the City provides on-call translation services.

In partnership with the US Army Corps of Engineers, the City has initiated a recreational and cultural experience known as The Dalles Dan Electric Shuttle Tours. This will be the City's only provision of public transit services. The Tour experience is a celebration of the local history and quality of life that the City would like to make available to the community and its visitors. By providing LEP persons with resources to access this experience, the City will reach a wider audience. However, this experience is not essential to the City's functioning or to the just treatment of its citizens, such as the Municipal Court and Police Services outlined below. For this reason, the extent and cost of accommodations for LEP persons should be proportionate. In the coming months, the City – in partnership with Columbia Cascade Housing – will initiate a home repair program known as the Mid-Columbia Home Repair Program. By providing LEP persons with resources to access this experience, the City will reach a wider audience. However, this experience is not essential to the City's functioning or to the just treatment of its citizens, such as the Municipal Court and Police Services outlined below. For this reason, the extent and cost of accommodations for LEP persons should be proportionate.

2. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee.

Data was gathered from the following sources to identify information on persons who speak languages other than English at home and who speak English “not well” or “not at all”, which classifies them as Limited English Proficient (LEP):

- a. 2000 Census Data
- b. American Community Survey and Fact Finder Surveys
- c. City departments that serve/interact with LEP persons
- d. Local community college ESOL program

A review of the data on LEP persons in The Dalles revealed that the highest percentage of people that spoke a language other than English at home were Spanish speakers. The Spanish speaking population was 15.5% of the total population (please see U.S. Census Bureau Data at the end of this appendix). The percentage of LEP individuals (spoke English “not well” or “not at all”) was 3% of the total population and 31% of the Spanish speaking population.

3. The frequency with which LEP individuals come into contact with the service.

In its daily operations, the City has three departments that most commonly interact with and serve persons with limited English proficiency:

- a. The Municipal Court. When the Court interacts with LEP persons, primarily Spanish speaking persons, it provides translation services through either local professional translators (two providers) or telephone translation service companies (two-four providers). These providers all bill the City on a time-used basis, which can be costly. However, this service is vital to ensuring citizens just access and treatment in the Court, validating the cost.
- b. The Police Department. This department’s interaction with LEP persons is also primarily with Spanish speakers. The department has a Spanish speaking administrative staff person, who helps facilitate these communications. Telephone translation services are also available. Like the Court, the Police provide an essential service and therefore accommodations for LEP persons are imperative in order to serve the public.
- c. The Library (a joint City-County facility). The Library provides many services to the community in general as well as to LEP persons in particular. Frequency of visits by LEP persons is about 2-3 times per week on average and most are Spanish speakers. The Library has a staff person, with limited Spanish abilities, who assists these persons with Library related inquiries. Additionally, the Library circulates about 2,000 English as a Second Language print materials each year. Information was also gathered from the local community college in The Dalles. Columbia Gorge Community College has an on-site ESOL (English for Speakers of Other Languages) Program.

Each year, they enroll approximately 75-100 students, the vast majority of whom are native Spanish speakers.

4. The resources available to the recipient of the Federal funds to assure meaningful access to the service by LEP persons.

The City's existing resources to service LEP persons are limited to those functions (Municipal Court and Police in particular) that are necessary to ensure just treatment of its citizens, including those whose native language is not English. For the purposes of The Dalles Dam Electric Shuttle Tours and Home Repair Projects, the City anticipates less need for LEP services and plans to adjust LEP service delivery accordingly. As outlined below, accommodations for LEP persons will include public information, translated materials, and a hiring preference for tour operators with some level of Spanish speaking abilities.

For The Dalles Dam Electric Shuttle Tours Project, the following accommodations are planned for both the "pre-implementation" stage and "operating" stage of the project:

- a. Public City Council Meeting to disseminate information and invite comment on The Dalles Dam Electric Shuttle Tour Project (the project has been discussed at previous meetings, but this meeting will provide final details for the project and its LEP service components).
- b. Tour schedules and brochures on site available in both English and Spanish.
- c. Tour information available in Spanish on the City's website.
- d. Encouragement to hire bilingual English/Spanish tour guides.

For the Mid-Columbia Home Repair Program, the following accommodations are planned for both the "pre-implementation" stage and "operating" stage of the project:

- a. Brochures on site available in both English and Spanish.
- b. Information available in Spanish on the Mid-Columbia Housing Resource Center website.
- c. Bilingual English/Spanish staff at Columbia Cascade Housing Corporation.

Every three years, the City of The Dalles will conduct informal research (internally and with other community organizations that serve LEP persons) to determine the continued appropriateness of LEP services provided by The Dalles Dam Electric Shuttle Tours and Home Repair Project. The City will use the Four-Factor Analysis as a guide for this research in order to assure financial feasibility and non-discriminatory service to LEP persons.

City of The Dalles Limited English Proficiency (LEP) Plan

The City provides language services to LEP persons by a variety of methods based upon the relative numbers of such persons and the frequency of contacts or anticipated contacts. Reasonable steps are taken to accomplish this. Specifically, this LEP Plan outlines the City's approach to working with persons needing language assistance:

- I. Identification of LEP Individuals who Need Language Assistance** Activities include:
- A. Posting of notices in the lobby of the City Hall and in separate lobbies of other City facilities accessible by the public. These posted notices will be in commonly encountered languages and will encourage LEP person needing language assistance to self-identify.
 - B. “Language Identification” cards (<http://www.lep.gov/resources/ISpeakCards2004.pdf>) will be available in the languages identified in the City’s area of operations. The cards will also be used by staff on a day-to-day basis to determine and document the need for particular language services during routine activities and encounters.
 - C. Notification to applicants for assistance, licensing, or permits that language services will be provided at no cost.
 - D. Periodic reviews with staff to determine if the needs of residents with limited English continue to be met.

II. Provision of Language Assistance Measures Procedures and activities for the provision language assistance include:

A. Types of Language Services Available

A.1. Written Translation Measures

- Postings in conspicuous places in City Hall, Police Department Main Lobby, and any other City facility accessed by the public informing applicants or members of the general public that translation services are available at no charge to the individual who is seeking services or information regarding such services.
- The City has a list of interpreters and translators for staff to use when language services are required for LEP persons.

A.2. Oral Translation Measures

- For the Police Department, the City shall strive to ensure that at a minimum, at least one bilingual-Spanish staff person is available during normal business hours. In the event this staff person is not available, the City shall either arrange for another qualified translator to be available, or to use a friend or family member of the LEP person if appropriate, or contract with the telephone interpretive service.
- For City Hall and other public facilities, the City shall use the services of the bilingual Spanish staff person if available, and if they are not available, the City shall either arrange for another qualified translator to be available, or to use a friend or family member of the LEP person if appropriate, or contract with the telephone interpretive service.

A.3. Additional Measures to be Considered and Used Based on an Assessment of Need

The following list outlines potential future measures that could be undertaken, should the level of need for LEP services increase from the current assessment.

- Use of and/or hiring bilingual staff to handle the majority of the verbal and written translation duties for the City. (Essential in the daily operations.) At the time of adoption of this LEP plan, one bilingual staff member is available during normal working hours.
- Centralizing language services and/or sharing language services with other Cities if/when available. (If needed to minimize costs.)
- Use of telephone (or video conferencing) interpreter services. (If prompt delivery of interpretation services is required.)
- Use of community volunteers (either individuals or community service agencies that provide services to one or more language groups). (When language service needs are more informal.)
- Pooling resources and/or standardization of documents and forms. (If needed to minimize costs.)
- Use of family members or friends. (When language service needs are more informal.)

B. Connecting Staff to Available Language Services Available

The City strives to ensure that at a minimum, at least one bilingual-Spanish speaking staff person is present during normal business hours, and shall provide interpretation in other languages when arranged for in advance.

C. Telephone System Protocols

If City staff cannot understand a LEP caller, and a translator is not immediately available, the caller's phone number is taken, and a bilingual interpreter/translator calls the individual back.

D. Responding to Written Communications from LEP Persons

The City uses a bilingual interpreter/translator to read and respond in the LEP's language in written communications.

E. Responding to In-Person Contact with LEP Persons

Should staff be unable to communicate with a LEP person, the City's bilingual interpreter/translator is contacted, and communications are either continued in-person or over the phone. Should the interpreter/translator be unavailable, contact information for the individual will be recorded, including nature of the inquiry, and an interpreter/translator will re-contact the person.

F. Ensuring the Competency of Interpreter and Translator Services

The City makes every reasonable effort to assure that the language services it provides to LEP persons are of the highest quality and that the competency of interpreters and translators is appropriate to the situation. This applies to both the use of internal bilingual employees and contracted interpreters and translators.

- 1) Interpreters (outside the use of internal bilingual employees). Oral interpretation of encounters, interviews, meetings and the like require a certain level of competency and professionalism on the part of the interpreter. These characteristics do not necessarily exist in a person who is simply bilingual. Likewise, formal certification while helpful may not always be required. Often the importance of the encounter or the consequences will direct the level of professionalism needed. When using an interpreter, the City uses the following general criteria to ensure effective communications with LEP persons:
 - a) Demonstrated proficiency in and ability to communicate information accurately in both English and in the other language and able to identify and employ the appropriate mode of interpreting (consecutive, simultaneous, summarization, or sight translation).
 - b) Knowledge in both languages of any specialized terms or concepts particular to the City programs or services and of any particularized vocabulary and phraseology used by the LEP person, or the ability to explain either in English or the necessary language, the specialized term(s), concept(s), particularized vocabulary or phraseology.
 - c) Understanding of and ability to follow confidentiality and impartiality rules to the same extent that the City employee for whom they are interpreting or to the extent that their position requires or both.
 - d) Understanding of and adherence to their role as interpreter without deviating into a role as counselor, legal advisor, or other role.
 - e) Awareness of regionalisms (dialects) used by the LEP persons for whom they are interpreting.
- 2) Translators (outside the use of internal bilingual employees). When selecting translators, the list of criteria applied to determine competency and professionalism for interpreters above shall be applied to the extent that those criteria are appropriate. If a staff member who speaks the necessary language is not available, the City shall obtain translation and interpretation services from a certified translation/interpretation service.

III. Staff Training to Be Provided

The City reviews its LEP Plan with staff. The frequency of staff encounters with LEP persons determines the level of review. All employees who are likely to have contact with LEP persons are informed of the City's LEP Plan, and on how to work effectively with in-person and telephone interpreters, and to understand the dynamics of interpretation among LEP providers and interpreters.

Staff having the greatest contact is the first to be trained to effectively implement the LEP Plan. Those staff having the least amount of contact with LEP persons, at a minimum, is trained to be fully aware of the Plan so that they may reinforce its importance and ensure implementation by other staff.

LEP training is part of the orientation for all new employees who work with LEP persons. On-going employees receive an orientation on the LEP Plan.

IV. Provision of Notice to LEP Persons

The City provides appropriate notice to LEP persons and language groups of the availability of free language services that ensure meaningful access to programs and services provided by the City. Notices in those appropriate languages informing LEP persons and groups shall be posted in common areas, offices, and anywhere that applications are taken. These notices shall explain how to receive language services.

V. LEP Plan Monitoring and Updating

The City monitors implementation of the LEP Plan on an ongoing basis, making revisions to policies and procedures as may be required periodically. The City also reviews (not less than annually) the overall effectiveness of its LEP Plan. This review considers information from the following sources and criteria as well as other factors as may be appropriate:

- 1) Changes in demographics including new language groups and changes in the proportion of existing language groups, types of services, and other needs.
- 2) Frequency of encounters with LEP persons. Whether existing language services are meeting needs of LEP persons.
- 3) Whether existing language services are meeting needs of LEP persons.
- 4) Availability of new resources including technology.
- 5) Whether identified sources for assistance are still available and viable.
- 6) How well staff understand and have implemented the LEP Plan.

- 7) Feedback from the community at large and from minority language groups and persons.

Based upon findings of the periodic review, the City shall revise the LEP Plan to ensure its effectiveness in meeting the access and participation needs of LEP groups and persons.

VI. Complaint Procedures and EO Monitoring

The City of The Dalles has a standard process for investigating all complaints. Members of the public may file a signed, written complaint up to one hundred and eighty (180) days from the date of alleged discrimination. Full procedures for filing a complaint, the City's procedures for investigating complaints, and the City's standard complaint form (in both English and Spanish) can be found as **Attachment B**. At a minimum, the complaint should include the following information:

- Name, mailing address, and how to contact complainant (i.e., telephone number, email address, etc.)
- How, when, where and why complainant alleges s/he was discriminated against. Include the location, names and contact information of any witnesses.
- Other significant information.

The complaint may be filed in writing at the following address:

City of The Dalles
City Attorney
313 Court Street
The Dalles, OR 97058
By Phone: 541 296-5481, extension 1122

TM-P028. Percent of Persons 5 Years and Over Who Speak a Language Other Than English at Home: 2000
 Universe: Population 5 years and over
 Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data
 City of The Dalles city, Oregon by Census Tract

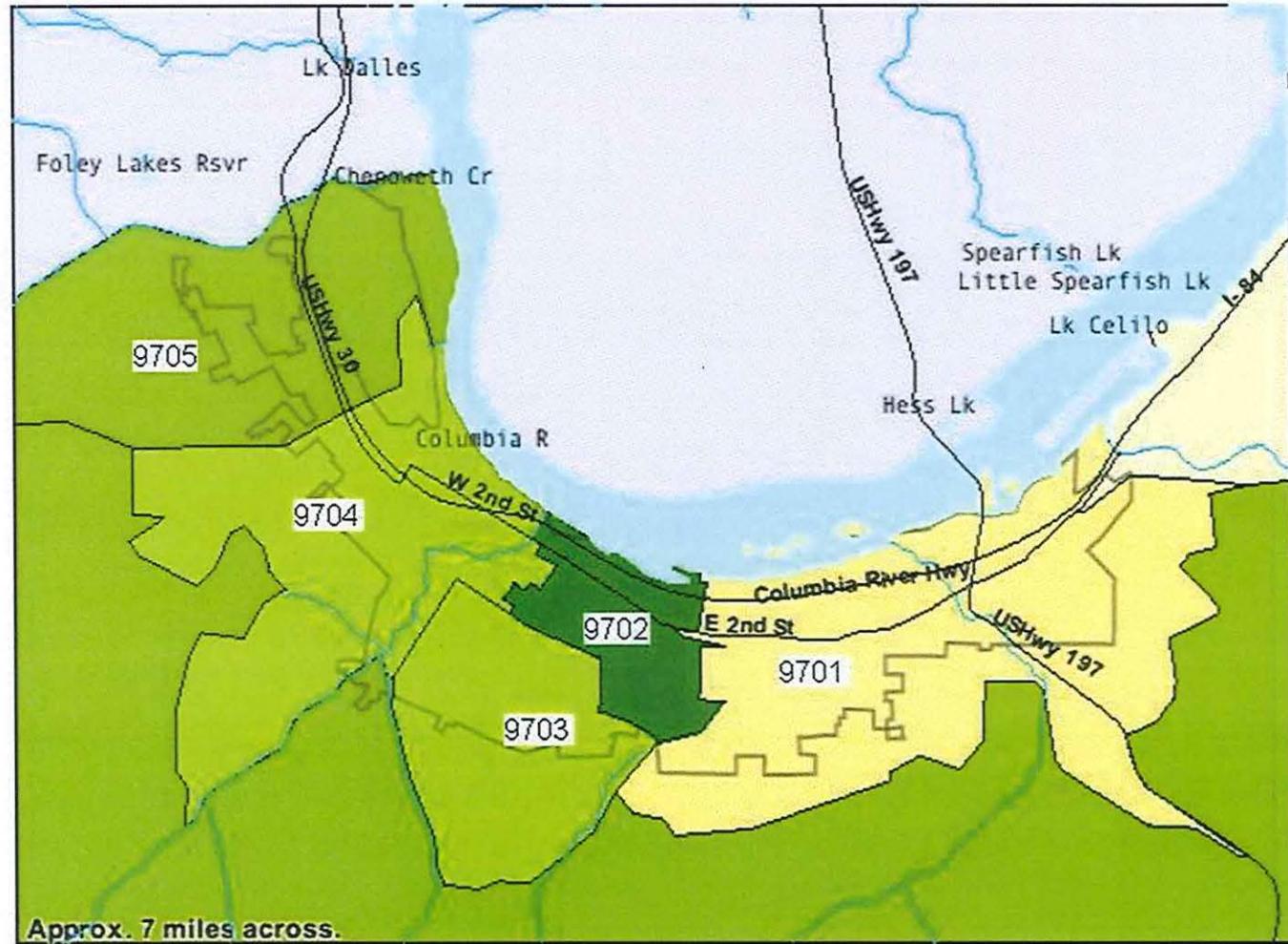
NOTE: Data based on a sample except in P2, P4, H3, and H4. For information on confidentiality protection, sampling error, nonsampling error (definitions) and count corrections see <http://factfinder.census.gov/home/leh/notes/notes/sf3.html>.

Data Classes

Percent	
	7.8 - 7.8
	9.4 - 9.4
	10.3 - 11.0
	11.8 - 12.7
	14.2 - 14.2

Features

-  Major Road
-  Street
-  Stream/Waterbody
-  Stream/Waterbody



Source: U.S. Census Bureau, Census 2000 Summary File 3, Matrix P19.

ENGLISH SPEAKING ABILITY (2000)

Tract 9701 Tract 9702 Tract 9703 Tract 9704 Tract 9705

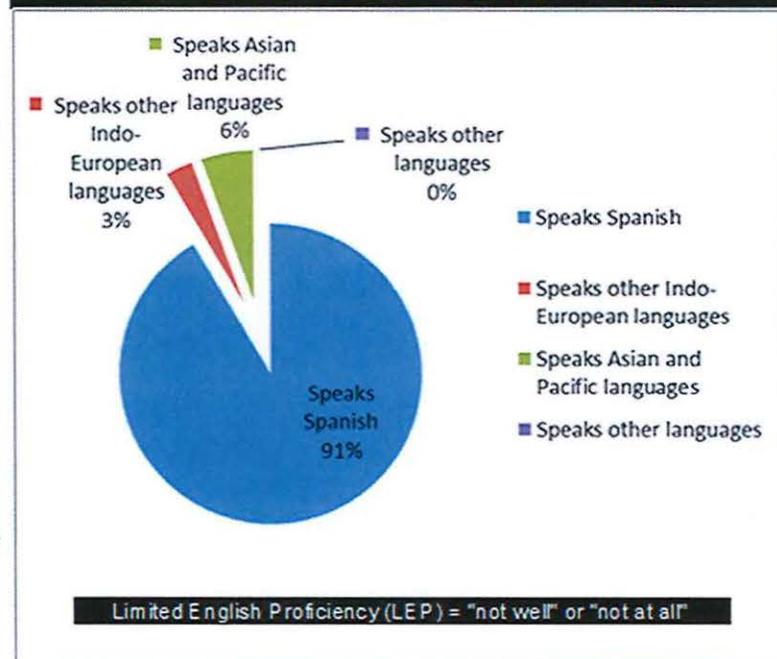
Population Totals: 3,407 2,645 2,561 2,433 2,968

Speak only English	3,086	2,269	2,298	2,165	2,617
Speak Spanish:					
Speak English "very well"	131	120	124	82	119
Speak English "well"	48	115	98	21	68
Speak English "not well"	53	111	23	42	112
Speak English "not at all"	30	0	0	15	36
Speak other Indo-European languages:					
Speak English "very well"	35	25	18	41	7
Speak English "well"	6	0	0	0	0
Speak English "not well"	9	5	0	0	0
Speak English "not at all"	0	0	0	0	0
Speak Asian and Pacific Island languages:					
Speak English "very well"	5	0	0	8	0
Speak English "well"	0	0	0	16	0
Speak English "not well"	0	0	0	27	0
Speak English "not at all"	0	0	0	0	0
Speak other languages:					
Speak English "very well"	0	0	0	16	9
Speak English "well"	4	0	0	0	0
Speak English "not well"	0	0	0	0	0
Speak English "not at all"	0	0	0	0	0

LANGUAGE SPOKEN IN HOME FOR CENSUS TRACTS 9701-9705 (2000)

LANGUAGE	Number	Percent
English Only	12,435	88.7%
Language Other Than English	1,579	29.1%
Spanish/Spanish Creole	1,348	15.5%
French	21	32.3%
German	79	0.6%
Portuguese, Scandinavian, Greek, Slavic, Indic, Chinese, Mon-Khmer/Cambodian, Vietnamese, Tagalog, Pacific Island, Native North American, and Other Languages	129	1.0%

LANGUAGE SPOKEN BY LIMITED ENGLISH PROFICIENCY INDIVIDUALS IN THE DALLES CENSUS TRACTS





CITY OF THE DALLES
Department of Public Works
1215 West First Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Contract Review Board 11, A	14-027

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

THRU: Nolan K. Young, City Manager *nyj*

DATE: April 7, 2014

ISSUE: Discussion related to utilizing Design-Build Contracting for Wastewater Treatment Plant Upgrade Phase 1 Project.

CITY COUNCIL GOALS: Goal 1, Tier 1, C: *Complete Design of the Phase 1 improvements under the Wastewater Master Plan.*

BACKGROUND: The Wastewater Treatment Plant Upgrade Phase 1 project is included in the current 2013-14 budget and proposed 2014-15 budgets consistent with the adopted Wastewater Facilities Master Plan and its associated Capital Improvement Plan. The project includes construction of a new influent pump station and headworks facility, conversion of an existing bio-solids storage tank into an anaerobic digester, and aesthetic improvements to enhance the appearance of the plant from key viewing areas. Staff has been researching an alternative method of completing the project called Design-Build (D-B) contracting. This report will provide an overview of D-B contracting compared with the methods historically used by public agencies for public works improvement projects.

The traditional project delivery method has been what is called Design-Bid-Build (D-B-B). Under this model, the first step is that an engineering firm is hired to design a project and develop cost estimates. Those specifications are then incorporated into a construction contract which is advertised for bid, and then a construction contractor is hired to build the project. Under D-B-B, current state regulations require that the engineering firm be selected based upon qualifications for a project of this size rather than price, and then the construction contractor is selected primarily based upon low bid. A lot of effort goes into the development of construction specifications for the bidding process in an attempt to be sure that all bidders understand the project, are bidding to do the

same work, and all bids will result in the same product. The specifications focus on establishing a minimum quantity and quality of work to be performed. However, all the design is completed before a construction contractor is ever involved in the project. As a result, unanticipated constructability or operational issues can arise that may require change orders authorizing additional work and requiring the issue of additional compensation to be addressed. When issues arise, the traditional D-B-B model also places the project owner in the middle between the construction contractor and the design engineer, often holding most of the risk associated with the project.

In comparison, under the D-B method of project delivery, the project owner issues one contract to a design-build team. Together, the design engineer and the construction contractor are responsible for delivering the project specified by the owner. This contracting model focuses on obtaining the best value for the money spent rather than just the lowest construction cost, which may or may not be the best value. D-B contracting relies on the formation of a project partnership between the owner and the design-build team with the shared goal of obtaining the best value solutions for the identified project goals. Since the team is formed at the time of contracting, the construction contractor is involved early in the design of the project, providing input that improves the efficiency of the construction phases. The number of change orders issued through the construction phase of a project is normally reduced, sometimes eliminated, since the designers and builders are already coordinating on the project and constructability issues are considered from day one.

The primary reason staff is interested in utilizing D-B contracting for this project is related to the constructability issue. This project involves very significant modifications to the wastewater treatment plant. These modifications must be made while the plant remains online and operational, all the while maintaining uninterrupted regulatory compliance. Having the construction contractor involved early in the design of the project is expected to help ensure that operational needs are met during the project and constructability efficiencies can be incorporated into the project.

Another potential benefit of the D-B method of project delivery is that it can provide greater opportunity for innovation and allows for the incorporation of associated best-value efficiencies on a project. By far, the greatest opportunities for project efficiencies and cost saving occur early in the design phase of a project. Having the construction contractor involved early in the design allows input to develop workable innovative solutions to issues and realize these efficiencies.

The D-B project delivery method has seen increasing use over the last couple decades. Historically, it has successfully been used in the transportation industry with water and wastewater utilities using it more in recent years. Most states, including Oregon, have adopted regulations allowing use of D-B contracting. According to national studies conducted by Penn State, the D-B method of project delivery results in an average of 6.1% lower project costs, 12% faster construction speed, 33% faster project delivery, 5.2% less cost inflation during the project, and 11% less project schedule growth. Another indication of the growing utilization of D-B contracting is that this year's national Design-Build For Water/Wastewater conference hosted by the Design Build Institute of America was co-hosted for the first time by both the American Water Works Association (AWWA – national drinking water association) and the Water Environment Federation (WEF – national wastewater association).

There are a number of ways that the Design-Build method of project delivery can be implemented. One way is to issue a qualification-based Request for Proposals (RFP), selecting a Design-Build team, and then negotiating a lump sum cost to design and build the project. This method can

involve a lot of uncertainty, which can mean greater risk and higher costs for both the owner and the D-B team, since a price is being developed for a project that hasn't been designed yet.

Staff is recommending that the City utilize a variant of the method called a Two-Step Progressive Design-Build project delivery model. Under this method, the D-B team is selected utilizing a two-step process. The first step is to issue a Request for Qualifications (RFQ). Any team or entity that is interested can submit a Statement of Qualifications (SOQ). Three teams are then short-listed based upon qualifications from those submitting SOQs and invited to submit formal proposals. The reason for the short-listing is that the development of proposals can be very expensive for interested firms, easily \$50,000 to \$100,000 for project of this size, and many firms will not pursue a project unless they know they have at least a 1 in 3 chance of being selected. Remembering that the intent is to hire the most qualified D-B team that is the best fit for the project, it follows that the best proposal will come from one of the three most qualified teams. The second step in the procurement process is to request formal Proposals from the three short-listed D-B teams.

At this point, staff is recommending that a Progressive Design-Build contracting method be utilized. The Request for Proposals will ask for technical information about the team's approach to the project, organizational structure, and cost to design the project. From the proposal process, which will likely include interviews, a Design-Build team will be selected and a contract negotiated. If a contract that is acceptable to both parties cannot be negotiated with the top-ranked team, negotiations will be initiated with the second-ranked team. This contract will then need to be approved by City Council before being finalized.

The RFP will specify that at a certain level of design completion, somewhere between 60 and 80%, the City will negotiate a Guaranteed Maximum Price (GMP) with the D-B team for construction of the project. City Council would need to authorize the contract amendment accepting the GMP. This is where the "progressive" nature of the contract applies. If, for some reason, a GMP acceptable to both parties cannot be negotiated, the original contract provides an "off-ramp" at this point that allows the two parties to terminate the contract. If that happens, the City pays the D-B team for the design work that was completed, the design can be finished by whatever means the City desires, and the City could then solicit bids for construction of the project; essentially, under this scenario, the project has been converted back to a Design-Bid-Build method. The "progressive" nature of the contract reduces the risk to both the City as the project owner and the design-build team since there is a lot more known about the project to be constructed when the GMP is negotiated, and the parties can part ways if it is in their best interest to do so. It should also be noted that all accounting for construction of the project is "open-book" and the City pays only for the actual work performed at what it costs plus the contractually agreed-upon mark-ups, up to the GMP.

State regulations require a certain process to be followed to utilize D-B contracting on public improvement projects. The first step is to prepare a report presenting draft findings that support using design-build over conventional design-bid-build methods for the project. That report is presented to the City Council along with a recommendation to exempt the project from normal competitive bidding requirements. The City Council then holds a Public Hearing to receive comments about the proposed exemption; notice of the hearing and availability of the draft findings must be advertised at least 14 days prior to the hearing. After the hearing, the Council can, if it chooses, accept the findings and authorize utilization of the design-build method of project delivery.

If, after this report, the Council supports the concept of pursuing a design-build contract for the Wastewater Treatment Plant Upgrade Phase 1 project, staff proposes to schedule the public hearing for May 12, 2014 and seek Council's authorization at that time.

BUDGET IMPLICATIONS: None at this time.

RECOMMENDATIONS:

1. Staff Recommendation: Indicate support for staff to pursue utilization of design-build contracting for the Wastewater Treatment Plant Upgrade Phase 1 project.



CITY OF THE DALLES
Department of Public Works
1215 West First Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Contract Review Board 11, B	14-028

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

THRU: Nolan K. Young, City Manager *nyj*

DATE: April 15, 2014

ISSUE: Award of Logging Contract for 2014 Salvage and Commercial Timber Sale in The Dalles Municipal Watershed.

CITY COUNCIL GOALS: NA

BACKGROUND: The Government Flats Complex Fire burned about 2700 acres of City-owned land within The Dalles Municipal Watershed. Some of the areas through which the fire burned contained mature conifer stands. A forestry management consultant working for the City has determined that there are enough remaining dead and dying trees from the fire on the City-owned properties to make a salvage timber sale economically feasible. In addition, some of the areas immediately adjacent to the burned stands has been marked and identified for a planned commercial thinning timber sale for about 10 years. The only reason these areas haven't already been harvested is that the domestic log market has been fairly low for several years and the City normally only harvests timber when it can maximize the revenues to the Water Fund from its timber resources.

With the good log market conditions that exist at this time, a timber sale has been designed to combine clear-cut salvage logging on about 39 acres where all the trees were killed and commercial thinning on about 94 acres adjacent to the salvage areas. The total volume of timber to be harvested is estimated to be about 1.4 million board feet.

WyEast Forestry Management, the City's forest management consultant for this harvest, is marketing the logs to the mills that will pay the best price for the types and class of logs that will be produced in the timber harvest.

The City advertised a Request for Proposals (RFP) to contractors to provide logging services to cut and haul the designated timber to selected mills. Two proposals were received in response to the RFP. After review, it was determined that one of the proposals was non-responsive in that it contained several deficiencies including failure to include a signed Affidavit of Non-collusion. The remaining proposal was from Dodge Logging which was deemed responsive. This is the same logging contractor who completed work for the City under Contract No. 2011-004, the Watershed Forest Fire Fuels Reduction Project in 2011. The RFP requested individual prices that included hauling logs to various mills; the proposal pricing sheet is attached to this report.

The logging contract (attached) specifies that the logger is to be paid based upon the amount of timber delivered to the mills. For sawlogs, pricing is based upon a "per thousand board feet" (MBF) volume basis while for pulp logs it is based upon a "per ton" weight basis. Pricing varies dependent upon location of the mills and associated hauling distances. The ultimate amount of money to be paid to the logger depends upon the actual volume of timber delivered to the mills and the mills selected based upon net value to the City. In addition to cutting and hauling costs, the logger will also be paid for road construction necessary within the Watershed to carry out the planned harvest activities.

The current project schedule anticipates beginning work in May and logging through the summer. All logging and hauling is to be completed by September 30, 2014. All slash disposal associated with the project, whether by burning or removal for biomass utilization, is to be completed by December 1, 2014.

BUDGET IMPLICATIONS: This timber harvest is estimated to yield approximately 1.4 million board feet of sawlogs. Based upon average logging and road construction costs presented in the proposal from Dodge Logging, it is estimated that about \$415,000 will be paid to the logger from the timber sale revenues. It is also estimated that approximately \$420,000 will be realized as net revenues to the City's Water Fund, Fund 51, from the timber sale.

RECOMMENDATIONS:

1. Staff Recommendation: *Move to authorize the City Manager to enter into contract with Dodge Logging for Contract No. 2014-009, the Watershed Timber Salvage and Commercial Thinning Project.*
2. Deny authorization for the contract and provide additional direction to staff.

AGREEMENT
Contract No. 2014-009

This Agreement made and entered this ____ day of _____, 2014, by and between the City of The Dalles, an Oregon municipal corporation, hereinafter called "City", WyEast Forestry Management, LLC., an Oregon corporation, hereinafter called "WyEast", and _____, hereinafter called "Contractor".

WITNESSETH

WHEREAS, WyEast has entered into a certain agreement with City, whereby WyEast has agreed to serve as forest manager for the City's watershed area located and identified in the maps attached hereto and incorporated herein by this reference; and

WHEREAS, pursuant thereto, WyEast is the exclusive agent for the City in the management of said area and in securing buyers for the forest products to be removed from said area; and

WHEREAS, WyEast as forest manager, has determined that certain timber shall be sold by City to _____ and removed from said area on behalf of the City of The Dalles; and

WHEREAS, Contractor desires to contract to log and remove the timber and forest products designated;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. City has hired the above named Contractor and hereby agrees that Contractor shall log and deliver to named purchasers, at a price and upon the terms, covenants, and conditions hereinafter set forth, all of the merchantable timber and forest products designated and marked for that purpose by WyEast, located, standing, and being upon those certain lands in Wasco County, State of Oregon, owned by City, and as more particularly described in Exhibit A (Salvage Harvest Plan) attached hereto and incorporated herein by this reference.

2. Payment for Logging

A. City covenants and agrees to pay Contractor for work under this contract as provided in attached Schedule A.

All of City's lands described in the contract documents are located in the Eastern Oregon Severance Tax Zone. Any severance tax due shall be paid by the City, provided that any other taxes and fees shall be paid by the Contractor including any road use fees. WyEast agrees to prepare tax returns for the City.

Contractor acknowledges that WyEast has been designated the exclusive agent of City in connection with timber management of the property described in the contract documents and in securing buyers for the forest products to be removed from said area. As the agent for City, WyEast shall prepare and lay out plans for harvesting forest products from the area in a manner consistent with the contract documents. Contractor agrees to remove the designated trees in a manner consistent with the contract documents and under direction of WyEast.

B. All payments shall be based upon the net scale and the net returns from the sale of the logs and other forest products.

C. Payment for all logs and other forest products sold shall be made to WyEast. WyEast shall disburse all funds within five (5) days of receipt in accordance with the payment schedule set forth in Schedule A. WyEast shall retain an amount equal to five percent (5%) of all payments to Contractor for forest products sold until such time as Contractor has, to the satisfaction of WyEast, complied with the terms of this contract respecting damage to City's property, including, but not limited to, any damage to roads, fences, bridges, streams, or damage to City's watershed arising from Contractor's activity, including, but not limited to, chemical and bacteriological pollution of Mill Creek or its tributaries, and disposal of slash has been completed.

3. Road Construction. Contractor has the right to construct new haul roads as designated by WyEast. Such roads shall be of sufficient width to facilitate log truck traffic. WyEast shall be the final judge as to the suitability of road construction. Contractor shall be paid at a rate of \$_____ per one hundred feet of road satisfactorily constructed. Payment for satisfactorily constructed roads shall be made by WyEast to Contractor from the City's share of the revenue from logs harvested and sold under this agreement.

4. Merchantability. All trees shall be utilized to as low a diameter in the tops as is practical, and to a minimum diameter of six (6) inches when merchantable. The log lengths shall be varied so as to secure the greatest possible utilization of merchantable material. WyEast shall provide a "preferred-length" sheet. A minimum of 80% of merchantable logs are to be delivered at preferred lengths. All merchantable logs shall be hauled to the purchaser's designated delivery site. If any merchantable logs are left in the woods, they shall be scaled by WyEast, and City shall deduct from Contractor's share of the net sale proceeds otherwise payable to Contractor, the amount the City would have received had Contractor hauled them to the purchaser's designated delivery site. The stumps shall be cut as low as is practical, but shall not be higher than twelve (12) inches above the ground on the high side.

5. Time. Within thirty (30) days from the date of this contract, Contractor shall, in good faith and in a substantial way, begin logging development of the designated timber. Thereafter, he/she shall continue logging development and the removal of said timber

diligently and without intermission, except as hereinafter specifically provided, until all of said timber has been removed. Logging shall be completed by Contractor on or before September 30, 2014, but this day may be extended by City at City's option. The fixing of this date does not excuse the Contractor from the primary duty of proceeding diligently and without intermission as set forth above. If City shall deem that Contractor has failed in this regard, Contractor shall have five (5) days within which to commence logging after written notice thereof from the City. After three (3) instances of this written notice being given, Contractor shall not thereafter be entitled to this notice, and City can declare default, upon failure of Contractor to perform hereunder without prior notice. In the event of Contractor failing to comply with the terms of this agreement, with or without notice from City, as required above, City may, at its option, declare this contract terminated and thereupon all logs then remaining on City's lands shall then become property of City and any of Contractor's rights, equities, or interests shall absolutely cease, and be at an end, without compensation to Contractor and all accumulated retainage shall be forfeited to the City. In the event Contractor shall be prevented at any time from continuing his/her logging development or operations and his/her removal of said timber because of strikes, fires whose origins or spread are not contributed to by any act or omission of Contractor, floods, heavy rains, muddy roads, or acts of God, or the public enemy, the period during which Contractor's operations shall be necessarily be suspended as a result of such causes shall not be deemed a breach of this section.

6. Title. Title to all merchantable forest products designated for removal under this contract, and to all logs now or hereafter being or remaining on City's land, shall be and remain in City until full payment of the purchase price thereof has been made to the City.

7. Scaling. The basis of all settlements shall be on the net price received from the purchasers. WyEast shall receive a copy of the scale from the purchasers at the time of payment, and shall have the right to scale-check any load. All logs shall be branded with City's log brand before the logs leave the landing.

In order to enable a routine check as to the quantity of timber logged and forest products removed, Contractor shall maintain accurate records of all loads delivered to the designated markets on load tickets provided to the Contractor by WyEast. The load ticket shall include the date, name of the truck operator, Contractor name, log brand number, designated market, log count, and sale unit number. Contractor shall maintain a record of loads delivered from each sale unit on the timber sale. A copy of each load ticket shall be provided to WyEast, and any unused tickets shall be returned to WyEast upon completion of the Contract work.

8. Logging Practices. Contractor shall conduct operations in an efficient, workmanlike manner, and in accordance with good standard selective logging practices, where applicable, as the same prevail in the West Coast timber industry. Contractor agrees that timber harvesting and removal of designated trees shall be conducted in a manner consistent with the Salvage Harvest Plan outlined in Exhibit A attached hereto and the Treatment Specifications set forth in Exhibit B attached hereto, both of which are incorporated herein by this reference. In addition, Contractor agrees to comply with all

State, Federal, and local laws and regulations. This contract shall be performed by Contractor in such a manner as to keep the damage to the remaining stand to a minimum.

9. Slash Disposal. The trees designated for selective harvesting shall be whole-tree logged. The Contractor agrees to and with the City that he/she will treat slash resulting from this logging in such a manner as to keep the fire hazard to a minimum.

Contractor shall limb all unyarded tops of harvested trees such that no slash protrudes higher than two feet (2) feet above the ground. In harvest units designated by City and WyEast, Contractor shall yard the tops of all harvested trees to the landing sites, and perform all logging manufacturing (long butting, bucking the rot from the log, etc.) on the landing sites rather than in the woods. Any accumulation of slash on any harvest unit will be disposed of in a manner acceptable to WyEast on or before December 1, 2014. All landing slash will be piled and burned or removed for bio-mass utilization by Contractor. Contractor can opt for slash disposal buyout with payment of \$8,000.00 to WyEast.

If the Oregon State Department of Forestry deems the amount of slash remaining in any area to be excessive upon completion of harvesting, and requires additional treatment or purchase of slash liability insurance from the State of Oregon, Contractor shall treat the slash to the satisfaction of the Oregon State Department of Forestry or purchase said slash liability insurance.

10. Erosion Control by Contractor. Erosion prevention and control work in compliance with the Treatment Specifications, including stream course protection, shall be completed within five (5) calendar days after skidding operations related to each landing are substantially completed, or after WyEast designates on-the-ground work where such designation is required. Said time limit shall be exclusive of full days lost in Contractor's operations due to causes beyond Contractor's control, as set forth in Section 5 above. Such on-the-ground designation shall be performed as promptly as is feasible, unless it is agreed in advance, in writing, that the location of such work can be established without physically identifying and marking the area requiring such work on-the-ground. Damage resulting from Contractor's operations due to failure to perform required work shall be repaired by Contractor.

Contractor shall construct waterbars on all skid roads and any haul roads designated by City and WyEast, at a minimum spacing of one hundred fifty (150) feet. Waterbars shall be constructed in such a manner as to ensure that water drainage is completely off of the road to the downhill or drain edge and extending a minimum of six (6) feet beyond the downhill edge of the road. The City and WyEast shall be the final judge of satisfactory construction of the waterbars. The spacing and construction standards of the waterbars may be altered only with the written approval of the City and WyEast.

11. Preservation of Markings and Monuments. Contractor shall not remove, alter, damage, or destroy any signs, posters, land survey corners, witness trees, or corner

reference tags pertaining to the timber harvest or land surveys. If the Contractor disturbs, damages, or destroys any land survey corner, Contractor shall reestablish such corner at Contractor' own expense.

12. Snags. All dead trees or snags shall be treated in a manner that will conform to the Oregon State Department of Forestry laws relating to the treatment of snags in the logging area.

13. Fire Precaution. Contractor shall conduct his/her logging operations upon said lands in compliance with all laws and regulations of the state of Oregon and of the United States, and of any agency or enforcement officer of the County of Wasco, or the State of Oregon or of the United States. During the time this agreement remains in force, Contractor shall make every reasonable effort to prevent and suppress forest fires on City's lands described in this agreement and in its vicinity, and shall require its employees likewise. Unless otherwise required hereby or prevented by circumstances over which Contractor has no control, Contractor shall place its equipment and employees at the disposal of any authorized forest officer for the purpose of fighting forest fires on or near said lands.

14. Truck Roads. Contractor shall have the right to use existing truck roads located on City property and shall be permitted to construct spur roads from those truck roads for the purpose of loading logs on trucks. Contractor shall secure the approval of City and WyEast before building or constructing any roads or devices on City's land. All haul roads shall be left in a condition satisfactory to the Oregon State Department of Forestry, City, and WyEast upon completion of logging activities.

15. Indemnity and Insurance. Contractor agrees to indemnify City and WyEast and to hold City and WyEast harmless from and against any and all loss, expense, damage claims, demands, fines, charges, liens, liabilities, actions and causes of action, or proceedings of any kind whatsoever, whether or not arising on account of damage to or loss of, or trespass upon property, or injury to or death of persons, arising directly or indirectly, out of or in connection with, the performance by Contractor of any of his/her obligations hereunder, or arising out of, or in connection with, any operations or activities of Contractor, including any such claim, loss or liability which may be caused or contributed to in whole or in part by City's or WyEast's own negligence; neither City nor WyEast shall have any liability to Contractor for any loss or damage caused by third parties or by any condition of the property.

Before commencing the work, the Proposer shall furnish the City Attorney with an original certificate of insurance signed by an authorized representative. The certificate shall cover all areas set out in the Contract Documents, and be issued by a company licensed to do business in the State of Oregon and acceptable to the City Attorney. The insurance coverage shall be maintained in effect for the term of the proposed project. The certificate of insurance shall provide the City of The Dalles is named as an additional insured, and shall provide for 30 days notice to the City of any cancellation of the insurance policy.

Insurance shall be in the minimum amounts of:

<u>Type of Insurance</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory Worker's Compensation
Commercial General Liability - Combined Single Limits	\$1,000,000 (each occurrence) \$2,000,000 (aggregate)
Loggers Broad Form	\$2,000,000

Policy must include coverage for products/completed operations.

Auto Liability - Combined Single Limits	\$500,000 All vehicles covered. Hired and non-owned auto liability
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16. Relationship of Contractor and City. It is agreed and understood that the relationship between City and Contractor is that of owner and independent contractor, and that no other relationship exists between them. Contractor is an independent contractor, and not an employee of City or WyEast.

17. Nondiscrimination. Contractor shall not discriminate against any person in hiring, promotion, termination, sale of forest products, or in any manner related to this agreement by reason of that person's age, sex, race, color, creed, national origin, political affiliation, or handicap.

18. Obligation of Contractor to Employees. Contractor shall, as a condition of this contract:

A. Make payment promptly, as due, to all persons supplying labor and material to Contractor for the prosecution of work under this contract, including Contractor's employees.

B. Pay all contributions or amounts due by Contractor to the Industrial Accident Fund and/or other worker's compensation carriers

C. Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished by Contractor, its employees or subcontractors, pursuant to this agreement.

D. Pay to the Department of Revenue of the State of Oregon, to the Internal Revenue Service of the United States and to the Social Security Administration all sums due as employer contributions and employee withholding.

19. Compliance with Oregon Labor Laws. Contractor shall comply with all applicable provisions of ORS Chapter 279 related to hours of work, holidays, medical coverage and compensation of employees, and shall assure that the required provisions are included in any subcontract let for construction or labor pursuant to this service contract.

20. Permits and Responsibilities. Contractor shall obtain all permits necessary to carry out its responsibilities in connection with this agreement. Contractor shall comply with all Federal, State, and local statutes, ordinances and regulations, including, but not limited to, applicable laws and regulations dealing with safety and environmental concerns, sales of forest products, attaining permits, paying taxes and transportation and scaling of forest products.

21. Termination For Convenience of City. In the event that this agreement is terminated by City prior to its normal expiration date, or prior to the completion of the designated work, the termination shall be accomplished in the following manner:

A. City shall send a notice of termination to WyEast by certified mail. WyEast shall in turn notify Contractor by certified mail of City's notice of termination. The notice given by City shall give the date of termination and shall state that the termination is for the convenience of the City.

B. Upon receipt of the termination notice, Contractor shall cease all operations on the property of City. Contractor shall prepare a summary of the status of the logging work as of the time operations were terminated, and shall forward such list to WyEast within five (5) days of receipt of termination notice.

C. City shall direct WyEast whether to complete or terminate the logging operations of the Contractor. Contractor will be paid for any work performed prior to termination, including pro rata payment for logs felled or bucked, but not delivered.

D. All work under this contract shall cease on the termination date. Contractor shall be entitled to such compensation for the work in progress as may be reasonably determined by WyEast. It is understood that Contractor has factored into its bid to perform this work, the costs of moving equipment in and moving it out upon completion. In the event of termination under this paragraph 20, Contractor shall be entitled to a pro rata reimbursement for these costs depending upon the extent to which the contract has been completed, and as shall be reasonably determined by WyEast.

22. Termination for Default. In the event of any material breach of this contract by Contractor, City or WyEast may, at its option, and in addition to other remedies, terminate this contract for default. On notice of default termination, Contractor shall cease all work and forward all remittance directly to WyEast.

Termination shall be without prejudice to City's and WyEast's rights to recover damages caused by Contractor's default. Such damages may include, but are not limited to, contractual, accounting, forest management, and increased project costs necessary to fulfill the Contractor's obligations pursuant to the terms and provisions of this agreement. Following termination, Contractor shall be entitled to payment for logs and forest products delivered less amounts reasonably deducted by City for such payments to cover damages caused by Contractor's default. The remedies of termination and suspension shall be optional remedies and shall be available in addition to any other remedy available under applicable law for breach of contract.

23. Fees, Costs, Disputes. In the event of disputes between the parties leading to litigation or arbitration, each party shall bear its own fees, costs, and attorney's fees regardless of the outcome of the dispute. The parties hereto agree that in the event of any dispute between the parties arising directly or indirectly out of this agreement between the parties, or relationship between the parties created as a result of this agreement, the parties shall submit such dispute(s) to arbitration, pursuant to the rules of arbitration of the American Arbitration Association. A dispute may be submitted to arbitration by any party. Contractor and City shall each select an arbitrator and the two arbitrators will select a third. The parties hereto agree that the arbitrator shall be selected from a panel of arbitrators with experience in the area of forest management; the list of arbitrators to be provided by the American Arbitration Association.

24. Assignment. Contractor may not assign, subcontract, or otherwise transfer, voluntary or involuntary, any of its interest in this contract without the prior written consent of the City or WyEast. Consent by the City or WyEast to one transfer shall not constitute consent to other transfers or a waiver of this provision.

25. Notice. Any notices required to be sent from one party to the other shall be sent by mail to the address of the party listed in this clause.

A. Notices to City:
Dave Anderson
Public Works Director
1215 W 1st Street
The Dalles, OR 97058

B. Notices to WyEast:
Paul Jones
WyEast Forestry Management, LLC
3624 WyEast Road
Hood River, OR 97031

C. Notices to Contractor:

26. Designation and Acceptance of Agent. City has appointed WyEast as its exclusive agent and Contractor hereby accepts WyEast as City's exclusive agent for the purpose of:

- A. Designating trees to be cut;
- B. Checking to determine whether logging work has been done in conformity with the terms of this contract;
- C. Scaling the logs;
- D. Specifying markets to be sold to;
- E. Collecting, itemizing, and (at City's option) disbursing monies realized from the sale of forest products;
- F. Inspection of road construction and bridges;
- G. Compliance with fire regulations and snag disposal;
- H. Overseeing the Contractor's compliance with the requirements of this contract.

IN WITNESS THEREOF, the agreement has been executed by the parties as of the day and year first written.

CITY OF THE DALLES

By: _____
City Manager

Approved as to Form: _____
City Attorney

Attest: _____
City Clerk

WYEAST FORESTRY MANAGEMENT, LLC

By: _____
President
 WyEast Forestry Management, LLC

CONTRACTOR

Company: _____

By: _____
Name/Title

**BID SCHEDULE
SCHEDULE A
Log Removal Pricing**

From All Locations within Project Area and assumed hauling out through The Dalles

<u>Species</u>	<u>Destination</u>	<u>Location</u>	<u>Cut, Load & Haul Price</u>	<u>Unit*</u>	
Douglas-fir	High Cascade/WKO	Hood River, OR	280.42	MBF	westside scale
"	SDS	Bingen, WA	280.42	"	westside scale
"	High Cascade/WKO	Carson, WA	298.16	"	westside scale
"	Warm Springs FP	Warm Springs, OR	325.16	"	westside scale
"	Blue Mtn. Lumber	Pendleton, OR	285.00	"	westside scale
True Firs	SDS Lumber	Bingen, WA	280.42	"	westside scale
"	High Cascade/WKO	Carson, WA	298.16	"	westside scale
"	Blue Mtn. Lumber	Pendleton, OR	285.00	"	westside scale
Ponderosa Pine	High Cascade/WKO	Carson, WA	298.16	"	westside scale
"	Blue Mtn. Lumber	Pendleton, OR	285.00	"	westside scale
"	Boise	Pilot Rock, OR	278.46	"	East side scale
"	SDS	Bingen, WA	280.42	"	westside scale
Unit 2C add'l price			0	"	
Unit 2F add'l price			0	"	
Pulp Log	Longview Fibre	Bingen, WA	38.65	Ton	
"	Boardman Pulp Co.	Boardman, OR	37.80	"	
Add'l per Operator:					
New Road Construction			#250 -	100 lineal feet	

* MBF = 1,000 board feet net sawlog scale as measured at destination. Tons = net weight.



AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Action Item 12, A	14-017

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager *ny*

DATE: February 25, 2014

ISSUE: Intergovernmental Agreement with Wasco County and Northern Wasco County School District 21 for Distribution of Enterprise Zone fees from Design, LLC

BACKGROUND: The City of The Dalles and Wasco County jointly sponsor a local enterprise zone. In September 2013 the City and County approved and signed a 15-year agreement for property tax exemption with Design, LLC for expansion of the Google facility in The Dalles. In return for signing of this agreement Design, LLC agreed to pay an annual fee of \$800,000 per year for each year the facility receives a tax exemption up to fifteen years.

At the January 13, 2014 City Council meeting the City Council approved an agreement between the City and the County for receipt and distribution of these funds. The agreement calls for the City and the County to approve and sign an intergovernmental agreement with each of the other agencies that receive a portion of the fee. The distribution of the annual fee includes 30% or \$240,000 a year being distributed to Northern Wasco County School District 21. The plan is for the funds to be used for either curb appeal projects related to buildings and grounds and/or improvements related to the mandated change to the Districts high school mascot. Attached is a proposed intergovernmental agreement between the City and County and the School District, formalizing that distribution.

BUDGET IMPLICATIONS: None. The annual project fee for the Design, LLC agreement will be paid to Wasco County and the County will distribute those funds as outlined by the various agreements.

COUNCIL ALTERNATIVES:

1. *Staff recommendation: Approve the Intergovernmental Agreement between the City of The Dalles, Wasco County and Northern Wasco County School District 21 concerning distribution and use of fees paid pursuant to Enterprise Zone Abatement Agreement executed 09/24/13, and authorize the Mayor to sign this agreement, contingent on approval by Wasco County Commissioners and Northern Wasco County School District 21.*
2. Amend and then approve the Intergovernmental Agreement between the City of The Dalles, Wasco County and Northern Wasco County School District 21 concerning distribution and use of fees paid pursuant to Enterprise Zone Abatement Agreement executed 09/24/13 and direct staff to propose the amendments to the County and District 21.
3. Postpone action on this item to allow for further work to be done on the Intergovernmental Agreement.

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF THE
DALLES, WASCO COUNTY AND THE DALLES SCHOOL DISTRICT
#21 CONCERNING DISTRIBUTION AND USE OF ANNUAL PROJECT
FEES PAID PURSUANT TO ENTERPRISE ZONE TAX ABATEMENT
AGREEMENT EXECUTED 09/24/2013**

This Intergovernmental Agreement is entered into this ____ day of _____, 2014, by and between the City of The Dalles, an Oregon municipal corporation, hereinafter called the "City", Wasco County, a political subdivision of the State of Oregon formed under the Oregon Constitution and ORS Chapter 203, hereinafter called the "County", and North Wasco County School District #21, hereinafter called "District"; each of which may also be referred to herein individually as a "Party" and collectively as the "Parties".

The purpose of this Agreement is to set forth the responsibilities of the Parties for implementation of the process concerning the distribution and use of fees to be paid by Design LLC pursuant to the Enterprise Zone Tax Abatement Agreement executed on September 24, 2013.

RECITALS:

WHEREAS, the State of Oregon has declared it a matter of statewide concern to promote intergovernmental cooperation for the purpose of furthering economy and efficiency in local government; and

WHEREAS, the legislature has given general authority for intergovernmental agreements by units of local government pursuant to the provisions of ORS 190.010 et. seq.; and

WHEREAS, the Oregon Legislative Assembly has adopted the provisions of ORS 285C.400 to 285C.420 to provide tax incentives to certified business firms that invest in a qualifying facility located within a nonurban enterprise zone in a county with chronically low income or unemployment; and

WHEREAS, the City of The Dalles and Wasco County jointly sponsor a nonurban enterprise zone known as The Dalles/Wasco County Enterprise Zone; and

WHEREAS, the City Council adopted Resolution No. 13-033 on September 23, 2013, approving a Second Enterprise Zone Tax Abatement Agreement with Wasco County and Design LLC; and

WHEREAS, the Wasco County Board of Commissioners voted to approve the above-mentioned Second Enterprise Zone Tax Abatement Agreement with the City and Design LLC on September 24, 2013; and

WHEREAS, pursuant to Section II(C)((2) of the Tax Abatement Agreement, Design LLC agreed to pay an annual Project Fee in the amount of \$800,000 to the City and Wasco County, the sponsor of the Enterprise Zone, on or before December 31, of each tax year in which the New Facility described in the Tax Abatement Agreement, is in service as of the preceding January 1, except that the annual Project Fee will not be due for any tax year in which the new Facility fails to qualify for the property tax exemption under ORS 285C.409(1)(c);

WHEREAS, the City and Wasco County have reached a mutual agreement as to the distribution of the Annual Project Fee for the Enterprise Zone which they jointly sponsor, with a portion of the Annual Project Fee to be distributed to the District; and

NOW, THEREFORE, it is mutually agreed between the parties as follows:

1. Distribution of Portion of Annual Project Fee. Pursuant to the agreement between the City and County, the portion of the \$800,000 Annual Project Fee to be distributed to the District shall be the sum of \$240,000. The City, County, and District acknowledge and agree that the first payment of the annual fee for the fifteen (15) year period contemplated in the Second Enterprise Zone Tax Abatement Agreement is anticipated to begin in the 2015/2016 fiscal year

2. Determination of Projects for funding; Payment of funds to District. By no later than April 1 of the first year of receipt of the Annual Project Fee by the County, District shall submit a plan for expenditure of funds for that year, on curb appeal projects related to buildings and grounds and/or improvements required as a result of a mandated change of the District's high school mascot, to the City and County for their approval. The plan submitted by the District may request the banking of funds for more than one year or payback of a multi-year loan in order to combine funds to do a project larger than one year's allocation. The City and County shall provide their response to the District's plan within 45 days of receipt of the expenditure plan. For each successive year for which the District seeks to receive funds under this Agreement, the District shall submit its plan for expenditure of the funds to the City and County by April 1, and the City and County shall provide their response to the proposed plan within 45 days of receipt of the proposed plan. The approved projects will receive funding from the portion of the Annual Project Fee which is paid to the District. The intent is that for the first five years the funds received under this agreement will be used on curb appeal projects or projects related to the mandated change to the high school mascot. The use of any funds received after first five years as allowed by this agreement will be negotiated between the District and City and County using the process outlined in this section for submission of a plan for expenditure of funds by the District, and review of that plan by the City and County.

For the first tax year in which the New Facility to be constructed by Design LLC is deemed to be in service as of the preceding January 1, and for any successive tax year in which the New Facility is deemed to be in service as of the preceding January 1 for that successive tax year, then on or before December 31 of the first qualifying tax year and any successive qualifying tax years, Design LLC will pay the Annual Project Fee of \$800,000 to the County. The County will take appropriate action to budget the amount of the Annual Project Fee to be disbursed. The City, County, and District understand and agree that the County intends to disburse the sum of \$240,000 allocated to the District within thirty (30) days of receipt of the Annual Project Fee from Design LLC or within thirty (30) days of approval of the annual plan for expenditure of the funds, whichever is later.

3. Annual Review of Provisions and Annual Report by District. The District also agrees that by no later than June 30 of any year during which this Agreement is in effect, representatives of the District will provide a report to the governing bodies of the City and County on the use of the funds which have been disbursed to the District.

4. Separate Accounts Required. The District will maintain separate accounts in which all monies received through the agreement will be identified and disbursed as allowed by this agreement.

5. Modification of Agreement. This Agreement may be amended by mutual written agreement of the Parties, signed by the Parties. The City and County specifically reserve the right as sponsor of the Enterprise Zone to make revisions concerning the distribution of the Annual Project Fee, including modification of the amounts disbursed and the entities receiving disbursements, and termination of the Annual Project Fee. Nothing in this Agreement shall be construed as restricting the right of the City or County to make changes concerning the uses of the Annual Project Fee, after the first year of receipt of the Annual Project Fee.

6. Term and Termination. The term of this Agreement shall commence upon the ___ day of _____, 2014, and shall be terminated upon the distribution of the last Annual Project Fee by City and County, unless earlier terminated as provided for in this Agreement. Either party shall have the right to terminate this Agreement for any cause by providing the other party thirty (30) days written notice to the other party. In the event this Agreement is terminated by the City or County prior to the distribution of the last Annual Project Fee scheduled to be paid, the City and County shall retain the

authority to determine the distribution of any Annual Project Fee paid by Design LLC following termination of the Agreement.

7. Agreement Effective. This Agreement when approved by the County Commission and executed by the authorized County officials, approved by the City Council and executed by its authorized officials, , and approved by the District and executed by its authorized officials, shall be then adopted and in effect and its terms and provisions enforceable by each respective body.

IN WITNESS WHEREOF, the County, the City, and the District have executed this Agreement the day and year first above written.

NORTHERN WASCO SCHOOL DISTRICT #21

By: _____
Name and Title

Approved as to Form:

Jason Corey, Attorney for Northern Wasco County School District #21

WASCO COUNTY

CITY OF THE DALLES

By: _____
Rod Runyon, Commissioner

By: _____
Stephen E. Lawrence, Mayor

Scott Hege, Commissioner

ATTEST:

Julie Krueger, MMC. City Clerk

Steve Kramer, Commissioner

Approved as to form:

Approved as to form:

Eric Nisley, District Attorney

Gene E. Parker, City Attorney



CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Action Items 12, B	14-029

TO: Honorable Mayor and City Council

FROM: Nolan K. Young, City Manager *ny*

DATE: April 15, 2014

ISSUE: Resolution No. 14-012 Authorizing Transfers of Funds from the General Fund Contingency to the General Fund City Council Department, Making Appropriations and Authorizing Expenditures for the Fiscal Year Ending June 30, 2014.

BACKGROUND: Oregon Budget Law recognizes that after the beginning of the fiscal year, changes in appropriations in the budget sometimes become necessary and so allows for those changes via supplemental budgets and budget amendments. Supplemental budgets are required when allocations are required for new resources that increase or decrease the total amount of the budget. Budget amendments are required when already allocated amounts are moved from one category to another within a fund.

The decision to make a \$20,000 donation to The Dalles Independence Day Festival and Fireworks event on July 4, 2014 was approved by the City Council at the April 14, 2014 Council meeting. The transfer from the General Fund Contingency proposed in this budget amendment resolution will provide the funds to the City Council Department of the General Fund to make that donation.

The group that is organizing the event has indicated that they need the funds as soon as possible in the current fiscal year in order to secure materials and place deposits on items needed for that celebration, even though the celebration itself is not scheduled until next fiscal year.

The funds in the Contingency line item are supported each year by the Beginning Fund Balance, which consists of those monies not expended in the previous year. There was some concern that those funds came from the Water and Wastewater utility user fees. However, the transfers that

come from those enterprise funds into the General Fund are specifically used to pay for services from the various General Fund departments that provide those administrative services to the Water and Wastewater operations. Those monies are expended by the various departments and are not included in the Beginning Fund Balances that support the Contingency line item each year.

BUDGET IMPLICATIONS: The Supplemental Budget Resolution No. 14-012 only transfers budget amounts between the General Fund Contingency and the General Fund City Council Department, so there is no increase or decrease in the total General Fund budget.

ALTERNATIVES:

- A. Move to adopt Resolution No. 14-012 Authorizing Transfers of Funds from the General Fund Contingency to the General Fund City Council Department, Making Appropriations and Authorizing Expenditures for the Fiscal Year Ending June 30, 2014.
- B. Council could chose to change the decision they made on April 14, 2014, and decline to make the donation, which would make this budget amendment unnecessary.

RESOLUTION NO. 14-012

A RESOLUTION AUTHORIZING TRANSFERS OF FUNDS FROM THE GENERAL FUND CONTINGENCY TO THE GENERAL FUND CITY COUNCIL DEPARTMENT, MAKING APPROPRIATIONS AND AUTHORIZING EXPENDITURES FOR THE FISCAL YEAR ENDING JUNE 30, 2014

WHEREAS, during the budget year certain funds may experience expenditures above approved category limits; and

WHEREAS, Oregon Budget Law recognizes these events and allows for transferring of funds between approved category limits; and

WHEREAS, the City Council, at their regular meeting on April 14, 2014, authorized a donation to the 2014 The Dalles Independence Day Festival and Fireworks in the amount of \$20,000; and

WHEREAS, some reallocation of resources is necessary to accommodate this donation in the FY13/14 Budget;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Authorizing Budget Transfers. The City Council hereby authorizes the following transfer of funds:

<u>FUND OR DEPT.</u>	<u>BUDGETED</u>	<u>RESOURCES NEEDED</u>	<u>REALLOCATED</u>
<u>GENERAL FUND (001)</u>			
from Contingency	\$ 611,995	\$ 591,995	- \$ 20,000
to City Council Department	\$ 240,798	\$ 260,798	+ \$ 20,000

Section 2. Effective Date. This Resolution shall be effective upon adoption.

PASSED AND ADOPTED THIS 28th DAY APRIL, 2014

Voting Yes, Councilors: _____
Voting No, Councilors: _____
Absent, Councilors: _____
Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28th DAY APRIL, 2014

SIGNED:

ATTEST:

Stephen E. Lawrence, Mayor

Julie Krueger, MMC, City Clerk



CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
April 28, 2014	Action Items 12, C	14-030

TO: Honorable Mayor and City Council

THRU: Nolan K. Young, City Manager *nyj*

FROM: Kate Mast, Finance Director

DATE: March 7, 2014

ISSUE: Resolution No. 14-008 Formally Authorizing a Utility Rate Discount Program for Low Income Senior and Disabled Persons, and Repealing Resolution No. 03-023.

PREVIOUS AGENDA STAFF REPORTS: #2014-011.

BACKGROUND: The City Council, at their regular meeting on February 10, 2014, reviewed the current Utility Rate Discount Program for low income senior and disabled customers and directed staff to develop a resolution to clarify and revise various elements of the program.

The proposed levels of eligibility will remain the same as the current program, but will be renamed to avoid confusion. Discount A (formerly called 10% discount) will include applicants that have qualifying income levels of more than 50%, but less than or equal to 100% of the Federal LIEAP income and Eligibility Guidelines. Discount B (formerly called 35% discount) will include applicants that have qualifying income levels of less than 50% of Federal LIEAP Income and Eligibility Guidelines.

Currently the program is using “frozen rates” that were set several years ago and the current percent of each of the discount are as follows:

Water – In-City	Discount A = 57.28%	Discount B = 69.15%
Water – Out-of-City	Discount A = 71.52%	Discount B = 79.43%
Sewer – In-City	Discount A = 65.43%	Discount B = 75.03%
Sewer – Out-of-City	Discount A = 79.67%	Discount B = 85.31%

To simplify the administration of the program, we are proposing to use the same percent of discount for both water and sewer, and in-city and out-of-city accounts, with the level of the eligibility being the only difference.

There was concern expressed during the discussion that reducing these discounts sharply in one step would cause hardship for those using the discount program. The proposed resolution includes a three year phased in program to reach the desired discounts of 25% for those that qualify between 50% and 100% of the federal poverty guidelines, and 50% for those that qualify less than 50%.

BUDGET IMPLICATIONS: Considering the rate increases for both water (every September) and sewer (every March), using the rate at January 1 each year, and using the same number of discount program participants that we currently have, the approximate loss of revenue due to the current discount program for the next three years is estimated as follows:

Fiscal Year	Water Revenue	Sewer Revenue	Total Revenue
FY14/15	-94,979.40	-77,559.84	-172,539.24
FY15/16	-106,532.40	-81,412.44	-187,944.84
FY16/17	-118,547.76	-85,228.44	-203,776.20

Based on the phased in discount rates proposed in the resolution, we estimate the loss of revenue for the next three years as follows:

Fiscal Year	Water Revenue	Sewer Revenue	Total Revenue
FY14/15	-87,881.13	-67,358.22	-155,239.35
FY15/16	-79,562.84	-58,085.16	-137,648.00
FY16/17	-69,026.98	-48,027.09	-117,054.07

Since the eligibility criteria is not changing from the current program, we estimate that approximately the same number of applicants will be processed through MCEDD as have been in the past few years. This being the case, we do not anticipate a significant change in the fees the City pays to MCEDD for this service per our current agreement.

ALTERNATIVES:

- A. ***Staff Recommendation: Move to adopt Resolution No. 14-008 Formally Authorizing a Utility Rate Discount Program for Low Income Senior and Disabled Persons, and Repealing Resolution No. 03-023.***
- B. Direct staff to make further changes to the proposed resolution and bring it back for further consideration.

RESOLUTION NO. 14-008

A RESOLUTION FORMALLY AUTHORIZING A UTILITY RATE DISCOUNT PROGRAM FOR LOW INCOME SENIOR AND DISABLED PERSONS, AND REPEALING RESOLUTON NO. 03-023

WHEREAS, the City of The Dalles has offered a discounted rate program for low income senior and disabled customers who hold accounts for the City's water and/or sanitary sewer service, which program has been administered through a contract with the Mid-Columbia Community Action Council (MCCAC) since April of 2000; and

WHEREAS, the City wishes to clarify and update the details of this program;

WHEREAS, at the City Council meeting on February 10, 2014, the City Council held a discussion session to review several issues related to the discounted rate program, and provided direction to City staff as to the elements of the program which should be revised in order to provide a utility rate discount program in the best interests of the health and welfare of the citizens of The Dalles;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Program Approved. The City Council hereby adopts and approves the Low Income Senior and Disabled Discount Program as follows:

A. Eligibility Criteria: All criteria must be met.

1. This program is for residential accounts only.
2. All applications must be submitted to the Community Action Programs (CAP) office in The Dalles, where eligibility shall be determined.
3. Applications must be renewed annually to verify continuing low income eligibility.
4. The utility account for the residence must be in the name of the person applying and qualifying for the Discount Program.
5. Applicants must qualify as Low Income. Low Income for this program is defined by the Federal Low Income Energy Assistance Program (LIEAP) income and eligibility guidelines which are adjusted annually.
6. Applicants must have legal status as either Senior (60 years of age or older) or Disabled.
7. Only the primary residence of the person applying and qualifying for the Discount Program is eligible to receive the Program Discount.

B. Discount Rates:

1. **Discount A.** Qualifying income levels of more than 50%, but less than or equal to 100% of Federal LIEAP Income and Eligibility Guidelines.
 - a) July 1, 2014 through June 30, 2015, the discount shall be 45% off the current rates for water and sewer services at each account location;

- b) July 1, 2015 through June 30, 2016, the discount shall be 35% off the current rates for water and sewer at each account location;
- c) Beginning July 1, 2016, the discount shall be 25% off the current rates for water and sewer at each account location.

2. **Discount B.** Qualifying income levels of less than 50% of Federal LIEAP Income and Eligibility Guidelines.

- a) July 1, 2014 through June 30, 2015, the discount shall be 70% off the current rates at each account location;
- b) July 1, 2015 through June 30, 2016, the discount shall be 60% off the current rates at each account location;
- c) Beginning July 1, 2016, the discount shall be 50% off the current rates at each account location.

C. Additional Program Standards:

- 1. The number of gallons included in the residential base rate for accounts qualifying for any discount shall be equivalent to the number of gallons included in the residential base rate for accounts receiving no discount.
- 2. No discount shall be applied to the residential rate for consumption over the gallons included in the residential base rate.
- 3. Utility accounts in the name of a person qualified to receive a residential discount, but are not the primary residence of that person are not eligible to receive these discounts.

Section 2. Program Eligibility Administration. The process to determine the eligibility of applicants for this program shall be administered by the Community Action Program (CAP) through a contract negotiated between the City and the Mid-Columbia Community Action Council (MCCAC).

Section 3. Repealing Resolution No. 03-023. Resolution No. 03-023 is hereby repealed.

Section 4. Effective Date. This Resolution shall be effective upon adoption by the City Council and approval of the Mayor.

PASSED AND ADOPTED THIS 28th DAY OF APRIL, 2014.

Voting Yes, Councilors: _____
 Voting No, Councilors: _____
 Absent, Councilors: _____
 Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28th DAY OF APRIL, 2014.

SIGNED:

ATTEST:

 Stephen E. Lawrence, Mayor

 Julie Krueger, MMC, City Clerk