

CHEHALIS CITY COUNCIL AGENDA
 CITY HALL
 350 N MARKET BOULEVARD, CHEHALIS, WA 98532

Terry F. Harris, District 1 Daryl J. Lund, District 2 Dr. Isaac S. Pope, District 4	Anthony E. Ketchum Sr., District 3 Mayor	Dennis Dawes, Position at Large, Mayor Pro Tem Chad E. Taylor, Position at Large Bob Spahr, Position at Large
---	---	---

Regular Meeting of November 8, 2010

6:00 p.m.

ITEM	ADMINISTRATION RECOMMENDATION	PAGE
1. <u>Call to Order.</u> (Mayor)		
2. <u>Pledge of Allegiance.</u> (Mayor)		

CITIZENS BUSINESS
This is an opportunity for members of the audience to address the council on matters not listed elsewhere on the agenda. Speaker identification forms are available at the door and may be given to the city clerk prior to the beginning of the meeting.

PROCLAMATIONS / PRESENTATIONS		
3. <u>Celebrating Women's Right to Vote in Washington State.</u> (Mayor Pro tem)	---	
4. <u>Employee Service Award – Judy Schave, 25 years.</u> (Mayor Pro tem)	---	

CONSENT CALENDAR		
5. <u>Minutes of the Regular Meeting of October 25, 2010.</u> (City Clerk)	APPROVE	1
6. <u>Vouchers and Transfers.</u> (Finance Manager)	APPROVE	4

STAFF AND CITY COUNCIL REPORTS		
7. <u>Staff Reports.</u>		
8. <u>Council Reports.</u>		
a. Councilor reports. (City Council)	INFORMATION ONLY	
b. Council committee reports. (City Council)	INFORMATION ONLY	

NEW BUSINESS		
9. <u>Lodging Tax Advisory Committee Recommendations for 2011 Tourism Funds.</u> (Councilor Harris)	APPROVE RECOMMENDATIONS OF THE LODGING TAX ADVISORY COMMITTEE FOR USE OF LODGING TAX FUNDS FOR 2011	6
10. <u>Expansion of National Avenue Mitigation Bank.</u> (City Attorney)	APPROVE THE AMENDED AND RESTATED MITIGATION BANK DEVELOPMENT AGREEMENT AND THE AMENDMENT TO MITIGATION BANK DEVELOPMENT AGREEMENT	12
11. <u>Appoint Council Representative to Regional Fire Planning Committee.</u> (Fire Chief)	APPOINT COUNCIL REPRESENTATIVE	63

THE CITY COUNCIL MAY ADD AND TAKE ACTION ON
OTHER ITEMS NOT LISTED ON THIS AGENDA

NEXT REGULAR CITY COUNCIL MEETING WILL BE ON MONDAY, NOVEMBER 22, 2010

October 25, 2010

The Chehalis city council met in regular session on Monday, October 25, 2010, in the Chehalis city hall. Mayor Ketchum called the meeting to order at 5:00 p.m. with the following council members present: Terry Harris, Dr. Isaac Pope, Bob Spahr, Daryl Lund, Chad Taylor, and Dennis Dawes. Staff present included: Merlin MacReynold, City Manager; Bill Hillier, City Attorney; Judy Schave, City Clerk; Tim Grochowski, Public Works Director; Russ Cox, Engineer Technician III; and Peggy Hammer, Human Resources Administrator.

1. **Executive Session.** Mayor Ketchum announced the council would be in executive session pursuant to RCW 42.30.110(1)(i) – potential litigation and RCW 42.30.140(4)(a) – collective bargaining for approximately one hour and there would be no decision following conclusion of the executive session.

Mayor Ketchum closed the executive session and announced the council would take a five minute recess before reopening the regular meeting at 6:13 p.m. Additional staff included: Glenn Schaffer, Police Chief; Bob Nacht, Community Development Director; and Eva Lindgren, Finance Manager. Members of the news media included Rachel Thomson from *The Chronicle*.

2. **Support for Chehalis Fire Department.** Malia Gislason (440 N Market Boulevard #308, Chehalis) stated she had always been partial to the fire department, noting their importance regarding medical emergencies. She felt the city had a great group of firefighters and not enough people gave them the kudos they deserved.

3. **Consent Calendar.** Councilor Dawes moved to approve the consent calendar comprised of the following:

- a. Minutes of the regular meeting of October 11, 2010; and
- b. Claim Vouchers No. 98179-98318 and 92010 in the amount of \$346,650.91 dated October 15, 2010.

The motion was seconded by Councilor Spahr and carried unanimously.

4. **Staff Reports.**

a. **Quarterly and September Financial Reports.** Eva Lindgren spoke briefly on the monthly financial report for September, as well as the third quarter report.

Ms. Lindgren focused on the quarterly report, noting it included the final adjusted numbers to create the beginning fund balances for each fund. She reported the actual fund balance for the general fund was higher than what was budgeted for by about \$100,000, adding once the interest allocations were entered the number dropped slightly from \$1.155 to \$1.138 million. Ms. Lindgren reported, in 2009, they did not budget for the retro pay. She noted by leaving the beginning fund balance a little lower than what was anticipated, it ended up being a wash for the retro pay paid out in 2010.

Councilor Lund inquired as to when they would be paying back the interfund loan to the utility funds for the purchase of the city hall building. City Manager MacReynold reported it would be paid in 2011. He stated they were going to try to create a situation using the revenue from the National Avenue wetland credits the city would start receiving in 2011, rather than coming to the council with a recommendation to go out for bonding or loan. City Manager MacReynold stated the city was projecting to receive between \$1 and \$1.2 million dollars from the wetland credits, which was about what the city owed on the building. He noted if everything worked out the city would have a general fund budget with no debt sometime next year.

Councilor Lund inquired about the water connection fees, noting they budgeted \$200,000 and had only taken in \$45,000. He wondered why the budget wasn't ran like a business, and asked how they were going to make up the \$155,000 in two months. City Manager MacReynold stated the enterprise funds were ran like a business, adding they had to charge enough to pay for the loans and cover expenses. He explained they would not be making up the entire difference by the end of the year. Ms. Lindgren noted they had discussed the issue in a previous meeting, adding her projections were based on erroneous assumptions. She reported she worked very closely with Tim Grochowski and his staff on coming up with much more realistic estimates for 2011. Ms. Lindgren stated the variance would be addressed in the next budget amendment.

October 25, 2010

b. **Quarterly Sales and Use Tax Report.** Ms. Lindgren talked briefly about sales and use tax, noting the October report was down by 24.6 percent compared to October 2009. Councilor Dawes recalled an inflated payment in October 2009, which accounted for a large amount of use tax that was remitted back to the city. Ms. Lindgren stated that was correct, noting a similar situation happened in March of 2010. She hoped it would start to swing in the opposite direction before the end of the year, but there was no guarantee that it would.

Ms. Lindgren reported they budgeted \$3.3 million in sales and use tax, which was on target for 2005 and 2009. Councilor Taylor asked if the shortfall had already been accounted for in the layoffs and other measures taken; and if Ms. Lindgren considered the decrease in sales tax revenue throughout the rest of the year. Ms. Lindgren indicated she had, adding her projection through the end of the year for sales and use tax was now \$3 million. She noted, as of October, they were at a negative 9.8 percent, which was right in the ballpark.

c. **Chehalis Renaissance Funding.** City Manager MacReynold reported Chehalis Community Renaissance Team Chair, Larry McGee, had received some feedback that the city was spending a lot of money on the Renaissance projects. He felt it would be helpful for the council to have a worksheet showing the sources of funding for each project. City Manager MacReynold stated it was impressive, the amount of funds the Renaissance group was accessing from other agencies and funding sources.

5. **Council Reports.**

a. **Update from Councilor Spahr.** Councilor Spahr reported he attended the cross-town football game on Friday evening, adding the Chehalis Bearcats were victorious over the Centralia Tigers. He noted Assistant Fire Chief/Fire Marshal Larry Allen was in a wager with the city of Centralia and ended up getting a pie in the face.

b. **Update on Chehalis Foundation.** Councilor Pope reported the Chehalis Foundation funded the development of "The Chehalis Story" to a DVD. He noted copies could be purchased from Bob Spahr in about two weeks, adding the proceeds would go to the Chehalis Foundation to continue to help fund local projects. Councilor Spahr briefly talked about the production, noting there was a lot of history and some real interesting stuff in the DVD.

c. **Update from Councilor Dawes.** Councilor Dawes reported, on October 18, he and most of the other councilors attended the neighborhood meeting regarding the American Behavioral Health Systems (ABHS) facility. He stated he was hopefully optimistic that things would get better. Councilor Dawes noted he had a chance to walk by the facility a few times since the meeting and saw a lot of the windows now had their blinds closed and he didn't see anyone out and about.

Councilor Dawes reported the Lewis County Historical Museum had their annual dinner coming up on November 14 at Kit Carson, adding they would be electing new officers sometime during the dinner/meeting.

d. **Meetings and Events Attended by Mayor Ketchum.** Mayor Ketchum noted he attended the following meetings and events:

- October 12 – attended Fire District #6 meeting, along with Councilors Dawes and Spahr
- October 18 – attended the neighborhood meeting with ABHS
- October 21 – attended the Industrial Commission luncheon
- October 22 – attended the safety city ribbon cutting ceremony

Mayor Ketchum reported he would not be at the next council meeting on November 8, because he would be in Japan.

e. **Update from Councilor Lund.** Councilor Lund reported he also attended the neighborhood meeting with ABHS. He also attended the Chehalis Community Farmers Market dinner, and a barbeque for Pope's Kids Place.

f. **Update from Councilor Harris** Councilor Harris thanked the Chehalis Business Association for putting up the Halloween decorations in the downtown area, as well as the landscaping in the planters.

October 25, 2010

Councilor Harris felt the ABHS meeting was very productive, adding he had been by the facility everyday and changes were visible.

Councilor Harris reported he sat in on the 2011 Budget review with Councilors Dawes and Taylor, adding it was very painful.

Councilor Harris noted he had the pleasure of refereeing a soccer game over on the new field at Tiger stadium in Centralia, adding he liked the pitch of the field and it was a nice facility.

There being no further business to come before the council, the meeting adjourned a 6:36 p.m.

Mayor



Attest:

City Clerk

SUGGESTED MOTION

I move that the council approve the minutes of the regular city council meeting of October 25, 2010.

CITY OF CHEHALIS
AGENDA REPORT

DATE: October 29, 2010
TO: The Honorable Mayor and City Council
FROM: Eva Lindgren, Finance Manager 
PREPARED BY: Michelle White, Accounting Tech II 
SUBJECT: Vouchers and Transfers

ISSUE

Council approval is requested of the following financial transactions:

1. Claim Vouchers No. 98319 through 98427 in the amount of \$171,379.31 dated October 29, 2010 and the transfer of \$72,361.23 from the General Fund, \$110.12 from the Arterial Street Fund, \$12,843.02 from the Tourism Fund, \$75.00 from the HUD Block Grant Fund, \$36,170.64 from the Gambling Enforcement Fund, \$43.50 from the Automotive Equipment Reserve Fund, \$28,342.20 the Wastewater Fund, \$19,095.85 from the Water Fund, \$537.78 from the Storm & Surface Water Utility Fund and \$1,799.97 from the Firemen's Pension Fund.

RECOMMENDATION/COUNCIL ACTION DESIRED



The administration recommends that the council approve the October 29, 2010 Claim Vouchers No. 98319 through 98427 in the amount of \$171,379.31.

SUGGESTED MOTION

I move to approve the October 29, 2010 Claim Vouchers No. 98319 through 98427 in the amount of \$171,379.31.

Reviewed by: , City Manager

CITY OF CHEHALIS
AGENDA REPORT

DATE: October 29, 2010
TO: The Honorable Mayor and City Council
FROM: Eva Lindgren, Finance Manager 
PREPARED BY: Michelle White, Accounting Tech II 
SUBJECT: Payroll Vouchers and Transfers

ISSUE

Council approval is requested of the following financial transactions:

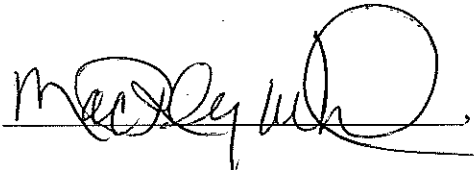
1. Payroll Vouchers No. 34148 through 34227 and Direct Deposit Payroll Vouchers No. 1830 through 1900 in the amount of \$704,074.26 dated October 29, 2010 and the transfer of \$529,037.26 from the General Fund, \$17,445.75 from the Arterial Street Fund, \$652.47 from the Garbage Fund, \$63,428.45 from the Wastewater Fund, \$69,983.01 from the Water Fund, \$18,905.72 from the Storm & Surface Water Utility Fund, and \$4,621.60 from the Firemen's Pension Fund.

RECOMMENDATION/COUNCIL ACTION DESIRED

The administration recommends that the council approve the October 29, 2010, Payroll Vouchers No. 34148 through 34227 and Payroll Vouchers No. 1830 through 1900 in the amount of \$704,074.26.

SUGGESTED MOTION

I move to approve the October 29, 2010, Payroll Vouchers No. 34148 through 34227 and Payroll Vouchers No. 1830 through 1900 in the amount of \$704,074.26.

Reviewed by: , City Manager

CITY OF CHEHALIS
AGENDA REPORT

DATE: October 6, 2010

TO: The Honorable Mayor and City Council

FROM: Lodging Tax Advisory Committee
Councilor Terry Harris (Chair)
Rick Burchett, Chehalis-Centralia Railroad and Museum
Lee Grimes, Veterans Memorial Museum
Natalie Ketchum, Best Western Park Place Inn & Suites
Satpal "Paul" Sohal, Chehalis Inn

SUBJECT: Lodging Tax Advisory Committee Recommendations for 2011 Tourism Funds

ISSUE

The Lodging Tax Advisory Committee (LTAC) met on October 6 to review the requests submitted by various organizations for 2011 tourism funds.

DISCUSSION

The following organizations made presentations to the LTAC for funding in 2011: Veterans Memorial Museum, Chehalis-Centralia Railroad and Museum, Premier Broadcasters (Chehalis Bridal Show), ARTrails, Babe Ruth, Visiting Nurses Foundation, Lewis County Historical Museum, Chehalis Business Association, Cascade Country Cook Off, Chehalis Garlic Fest, Centralia-Chehalis Chamber, and City of Chehalis.

The attachments to this report include 2011 Tourism Fund projections and requests, 2011 applications, and minutes from the October 6 LTAC meeting.

Upon council approval, all recipients must enter into a contract with the city for use of the funds. They are required to report on a quarterly basis how the funds are being spent.

After review and discussion, the committee recommended funding applicants at the following amounts:

<u>ORGANIZATION</u>	<u>AMOUNT</u>
Veterans Memorial Museum	\$ 22,500
Chehalis-Centralia Railroad & Museum	\$ 35,000
ARTrails	\$ 2,500
Premier Broadcasters (Bridal Show)	\$ 9,000
Babe Ruth	\$ 10,000 in 2011 and \$10,000 in 2012 to be held in reserves for use in 2013.
Visiting Nurses	\$ 2,500
Lewis County Historical Museum	\$ 17,000
Chehalis Business Association	\$ 15,000
Cascade Country Cook Off	\$ 12,500
Garlic Fest & Craft Show	\$ 20,000
City of Chehalis	\$ 19,900
Chamber (Sports)	\$ --0--
Chamber (Mobile Website)	\$ 5,000
Total	\$170,900

According to the resolution establishing the LTAC, the city council is to review membership on an annual basis and make changes as appropriate. In accordance with state law, the committee must have at least five members, appointed by the city council. Membership must include at least two representatives of businesses required to collect hotel-motel tax, two people involved in activities that are authorized to be funded by the tax, and one elected official who serves as chairperson. The number of persons representing businesses that collect the tax and the number of persons involved in activities authorized to be funded by the tax must be equal. There is no established term of membership.

Committee members include Ms. Natalie Ketchum of the Best Western Park Place Inn & Suites, and Mr. Paul Sohal of the Chehalis Inn, both representing businesses required to collect the tax. Members representing activities funded by the tax are Mr. Rick Burchett of the Chehalis-Centralia Railroad and Museum, and Mr. Lee Grimes from the Veterans Memorial Museum. Councilor Terry Harris is the council representative and acts as committee chair.

RECOMMENDATIONS/COUNCIL ACTION DESIRED

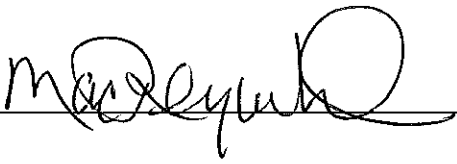
The Lodging Tax Advisory Committee recommends that the council approve its recommendations for use of the lodging tax funds for 2011, and the administration recommends the reappointments of Rick Burchett, Lee Grimes, Natalie Ketchum, and Paul Sohal to the city's Lodging Tax Advisory Committee.

SUGGESTED MOTION

I move that the council approve the recommendations of the Lodging Tax Advisory Committee for use of lodging tax funds for 2011 for the following organizations:

Veterans Memorial Museum	\$ 22,500
Chehalis-Centralia Railroad & Museum	\$ 35,000
ARTrails	\$ 2,500
Premier Broadcasters (Bridal Show)	\$ 9,000
Babe Ruth	\$ 10,000 in 2011 and \$10,000 in 2012 to be held in reserves for use in 2013.
Visiting Nurses	\$ 2,500
Lewis County Historical Museum	\$ 17,000
Chehalis Business Association	\$ 15,000
Cascade Country Cook Off	\$ 12,500
Garlic Fest & Craft Show	\$ 20,000
City of Chehalis	\$ 19,900
Chamber (Sports)	\$ --0--
Chamber (Mobile Website)	\$ 5,000

and that the council reappoints the memberships of Rick Burchett, Lee Grimes, Natalie Ketchum, and Paul Sohal to the Lodging Tax Advisory Committee.

Reviewed by  _____, City Manager

**CITY OF CHEHALIS
2011 TOURISM FUND PROJECTIONS AND REQUESTS**

Projected Beginning Fund Balance for 2011	\$ 85,980
Estimated 2011 Revenue	153,000
Total Estimated Revenue for 2011	238,980
	<u>- 50,000</u> (2011 ending fund balance reserve)
Total Available Revenue for 2011	\$188,980

		2007	2008	2009	2010	2011 Request	2011 LTAC Recommendation
1.	Veterans Memorial Museum	20,000	20,000	20,000	20,000	22,500	22,500
2.	Cheh-Cent Railroad & Museum	15,000	22,000	25,000	25,000	35,000	35,000
3.	ARTrails		5,000	10,000	5,000	15,000	2,500
4.	Premier Broadcasters (Bridal Show)				7,500	9,000	9,000
5.	Babe Ruth					20,000	10,000 *
6.	Visiting Nurses				2,500	10,000	2,500
7.	Lewis County Historical Museum	11,700	15,000	15,000	15,000	17,000	17,000
8.	Chehalis Business Association				10,000	26,000	15,000
9.	Cascade Country Cook Off			10,000	10,000	15,000	12,500
10.	Garlic Fest & Craft Show				10,000	20,000	20,000
11.	City of Chehalis (see note below)			57,000	27,000	19,900	19,900
12.	Chamber (sports)					10,000	-0-
13.	Chamber (mobile)					5,000	5,000
	TOTALS	46,700	62,000	137,000	132,000	224,400	170,900

Note: In prior years, the Tourism Fund included money for use by the city for marketing and promotion of Chehalis Business Association activities, Garlic Fest, Chehalis Bridal Fair, and the city in general. The city was informed by the State Auditor's Office that all organizations must apply for funding on their own behalf.

* The LTAC recommends allocating \$10,000 in 2011 and \$10,000 in 2012 to Babe Ruth to be held in reserves for use in 2013.

10/6/2010

Chehalis Lodging Tax Advisory Committee Meeting
October 6, 2010

The Lodging Tax Advisory Committee (LTAC) met on October 6, 2010 at 8:00 a.m. in the basement meeting room of Chehalis city hall to review applications for 2011 tourism funding. Members present were: Councilor Terry Harris, Chair; Rick Burchett, Chehalis-Centralia Railroad and Museum; Lee Grimes, Veterans Memorial Museum; Natalie Ketchum, Best Western; and Paul Sohal, Chehalis Inn. Chehalis staff members included Merlin MacReynold, City Manager; and Caryn Foley, City Manager's Administrative Assistant.

Call to Order

Councilor Harris called the meeting to order at 8:15 a.m.

Review of 2011 Revenue Projections

Ms. Foley stated the projected beginning fund balance for 2011 was \$85,980, with estimated revenues of \$153,000. As was recommended last year, \$50,000 will be reserved for an ending fund balance in case revenues come in less than projected. With those assumptions, \$188,980 is estimated revenue for 2011. She noted funding requests totaled \$221,900.

Review 2011 Requests

The following individuals presented requests for tourism funding. Please refer to each organization's application. Questions and/or additional comments, if applicable, are noted below.

1. Chip Duncan – Veterans Memorial Museum

Mr. Duncan announced he would be filling Lee Grimes' position as executive director of the museum effective the first of the year.

Following the deadline for lodging tax funding request applications, the museum decided they would like to do something to commemorate the 150th anniversary of the Civil War in 2011. Mr. Duncan requested an additional \$2,500 for the event.

2. Wanda Thompson and Mary Kay Nelson – Chehalis-Centralia Railroad and Museum

Mr. Sohal asked about the \$8,000 for consultant services shown in the proposed budget. Ms. Nelson stated those were for her marketing services, which were listed in the application.

Councilor Harris noted the city has ownership in the steam train so operating expenses can be used.

Ms. Ketchum asked why the joint coupon from the three museums (steam train, veterans, historical) were not made available to the hotels. Ms. Nelson stated she would make sure they were distributed more widely when they are reprinted.

3. Rick Petty – Premier Broadcasters (Chehalis Bridal Show)

Mr. Petty stated the increase in requested funding was for advertising in a wedding magazine, which hasn't been done in prior years. He added that following the event, the list of brides, along with their contact information and wedding dates, is provided to all of the vendors so they can then follow up with the brides. A display is also set up at Book 'n Brush after the bridal show with all of the vendor contact information.

Mr. Burchett asked if reimbursements are made to Premier Broadcasters, noting they are not a non-profit organization. Ms. Foley noted the city is the primary sponsor of this event so the circumstances are different.

Mr. Grimes asked how many resultant weddings are actually held in Chehalis. Mr. Petty estimated that a majority of them were held in Chehalis.

Ms. Ketchum stated she tracks groups staying in her hotel and she confirmed that the bridal show definitely generates heads in beds throughout the entire year.

Councilor Harris asked if a list of churches and/or granges were given out when the bride registers. Ms. Petty stated a list of churches is distributed, and he would certainly include the granges in next year's list.

4. Jan Nontell and Joanne Watson – ARTrails

Ms. Nontell stated that because the studio tours took place in September, they have not had time to complete their visitor tracking information, but from what they have compiled, at least 1000 people attended this year's event. That means people staying, eating and shopping in our area.

Ms. Ketchum asked how many artists are located in Chehalis. Ms. Nontell believed there were six.

Mr. Grimes stated ARTrails' request was going from \$5,000 in 2010 to \$15,000 in 2011. Ms. Nontell stated they requested \$15,000 in 2010, but were awarded \$5,000. She stated the increase would go to additional advertising – all outside a 50-mile radius of Chehalis and Centralia.

5. Jim Thomas – South Sound Senior Babe Ruth

Mr. Thomas explained that in order for this area to host the proposed regional tournaments in 2013, he needs to show the regional headquarters of Babe Ruth Baseball by April 2011 that he has the financial resources to hold the tournaments. He added he would like to coordinate with other Chehalis attractions such as the steam train to offer special rides for tournament participants. He stated all the games would be played at the new events center in Centralia, but Chehalis would be the host of one of the tournaments.

Councilor Harris asked if tourism funds could be used for this purpose. Mr. MacReynold stated that tourism funding has to be allocated to non-profit organizations and can be used for operations for events. Since the requested funding is not needed until 2013 the money could be set aside like was done for redevelopment of the city's website.

6. Lynn Ford – Visiting Nurses

Mr. Sohal noted that the Dickens of A Christmas ads that were included in the application packet only noted that the city of Centralia was a sponsor. Ms. Ford stated those ads were from 2009 and they only received funding from Centralia last year for that event. She noted that Visiting Nurses received no funding from the city of Centralia for 2011, as their funding was primarily going to the events center.

Mr. Grimes stated he would like to see a breakdown of attendance numbers for their events. Ms. Ford estimated there were 800 for Dickens of A Christmas and 300 for the Spring Home Tour.

Ms. Ketchum noted Chehalis was being asked to pay for a Centralia event, and Centralia was paying nothing.

7. Debbie Knapp – Lewis County Historical Museum

No additional comments/questions.

8. Judy DeVaul and Debbie Knapp – Chehalis Business Association

Ms. DeVaul stated the increased request was to support the marketing and promotion of additional events by the Chehalis Business Association (CBA). She noted that the first annual Planes, Trains and Automobiles was held this year and was very successful for its first year. The CBA also has a new website - chehalisinfo.com.

9. Jerry Boes, Judy DeVaul, Frank DeVaul – Cascade Country Cook-Off and Classic Car Show

Ms. DeVaul thanked city employees Lilly Wall and Tracey Cox for all of their help during the event.

Mr. Sohal indicated he didn't see a breakdown of the events marketing for 2010. Ms. Foley stated she has that information from the quarterly reports submitted and would be happy to get copies to Mr. Sohal.

10. Judy DeVaul and Frank DeVaul – Chehalis Garlic Fest & Craft Show

Mr. Burchett stated the application contained a summary of guests that were surveyed about whether or not they were staying overnight, but he would like to see the complete breakdown of the surveys.

11. Jim Valley and Dale Pullin – Centralia-Chehalis Chamber of Commerce

Councilor Harris asked what the committee was being asked to fund, noting the application indicated the money would be used to produce marketing materials and supplement a full-time marketing person to promote the Lewis County Sports Complex and Event Center. Mr. Pullin indicated the request was for marketing, which would consist of brochures, mailings, post cards, etc.

Mr. Sohal asked how many events were planned. Mr. Pullin stated there would probably be around eight events, plus all the tournaments.

Mr. Burchett questioned if the chamber would be the receiving agency, and he asked Mr. Pullin if his company, Sports Capitol NW, was a non-profit organization. Mr. Pullin stated his company was a for-profit, but he was contracting with the chamber to provide the marketing services.

Mr. MacReynold explained that Mr. Pullin talked with him some time ago about using tourism funds for the sports complex. After consulting with City Attorney Bill Hillier, Mr. Hillier advised that Mr. Pullin talk with the chamber about possibly working with them since the chamber is a non-profit.

12. Jim Valley Centralia-Chehalis Chamber of Commerce

Mr. Grimes asked if there would be an ongoing maintenance fee. Mr. Valley thought there would probably be a small annual fee for hosting the site.

Councilor Harris asked why Centralia was not asked to support this project since they would benefit. Mr. Valley stated Centralia started their process earlier this year, so he missed the deadline for submitting an application.

13. Merlin MacReynold – City of Chehalis

Mr. MacReynold noted the city tried something new this year by placing an ad in Sunset Magazine. Ms. Foley added the city has received close to 300 leads from the on-line listing that was included with the print ad. The leads are forwarded to the chamber for response, including general information about our area and anything specifically requested.

Mr. MacReynold stated it was important for the city to advertise what events we've got going on. He explained the city of Camas is several years ahead of Chehalis in their revitalization project similar to what we're doing with the Renaissance. They could not stress enough how important events have been to their success.

2011 Allocation Recommendations to City Council

Committee members reviewed a memo from City Attorney Bill Hillier (copy attached to these minutes). The committee wanted to make sure that their recommendations would comply with the State Auditor's Office. Mr. MacReynold stated that use of tourism funds sometimes changes from year to year with the Auditor's Office. The important thing is that the process is followed – proposals are made to the LTAC and they forward their recommendations to the city council for final action.

It was noted that during the presentations it is clear that several organizations are working together to create events that will generate overnight stays.

To assist the organizations, Ms. Ketchum will work on creating a guest book for the hotels to use to help track why people are staying in Chehalis.

The LTAC agreed to make the following recommendations to the city council:

Veterans Memorial Museum	\$ 22,500 (full funding)
Chehalis-Centralia Railroad and Museum	\$ 35,000 (full funding)
ARTrails	\$ 2,500 (partial funding)
Premier Broadcasters	\$ 9,000 (full funding)
Babe Ruth	\$ 10,000 in 2011 and \$10,000 in 2012 for use in 2013 (full funding)
Visiting Nurses	\$ 2,500 (partial funding)
Lewis County Historical Museum	\$ 17,000 (full funding)
Chehalis Business Association	\$ 15,000 (partial funding)
Cascade Country Cook Off	\$ 12,500 (partial funding)
Chehalis Garlic Fest	\$ 20,000 (full funding)
City of Chehalis	\$ 19,900 (full funding)
Chamber (sports)	\$ -0-
Chamber (mobile)	\$5,000 (full funding)
Total	\$170,900

The recommendations will be reviewed by the city council on November 8, 2010 at 6:00 p.m.

The meeting concluded at 1:45 p.m.

Minutes respectfully submitted by Caryn Foley, City Manager's Administrative Assistant.

CITY OF CHEHALIS

AGENDA REPORT

DATE: November 3, 2010
TO: The Honorable Mayor and City Council
FROM: William T. Hillier, City Attorney
SUBJECT: Expansion of National Avenue Mitigation Bank

ISSUE

Attached is an Amended and Restated Mitigation Bank Development Agreement, an Amendment to Mitigation Bank Development Agreement, and explanation letter from Daniel R. Mackesey of Womble Carlyle Sandridge & Rice.

DISCUSSION

The city administration has been dealing with attorneys from Womble Carlyle Sandridge & Rice, a law firm in Virginia, with regard to the expansion of a National Avenue Mitigation Bank. As you recall, the city has recently entered into an agreement whereby the property the city owns on National Avenue will be developed as a mitigation bank for the benefit of selling credits necessary for development by companies interested in development in the Northwest. WCEI Chehalis MB, LLC, is the sponsor that is developing the wetland property. WCEI has recently come into an opportunity to expand the mitigation bank as originally contemplated by the parties. Land adjacent to the city's property on National Avenue is available and will assist in enhancing the value of credits obtained in the development of the National Avenue Mitigation Bank. Additionally, the city has property on Highway 6 which can be included in the mitigation bank and will further enhance the number of credits available to the city.

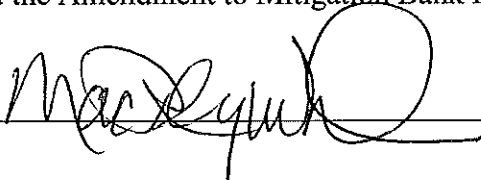
Staff has had continuing discussions with WCEI and has concluded that the expansion of the mitigation bank will be for the benefit of the city as a whole. The inclusion of city property and property belonging to a third party will clearly benefit not only the construction of the mitigation bank but the value of the credits being sold from the mitigation bank. The city administration is recommending to the council that you accept the amendment to the original Mitigation Development Agreement and allow the inclusion of the additional property for the benefit of the city. Attached is a copy of the amended and restated Mitigation Development Agreement, the amendment to the Mitigation Development Agreement, and an explanation letter from Dan Mackesey, an attorney with Womble Carlyle.

RECOMMENDATION/COUNCIL ACTION DESIRED

It is recommended that the council approve execution of the Amended and Restated Mitigation Bank Development Agreement and Amendment to Mitigation Bank Development Agreement as presented.

SUGGESTED MOTION

I move that the council approve the Amended and Restated Mitigation Bank Development Agreement and the Amendment to Mitigation Bank Development Agreement.

Reviewed by:  _____, City Manager

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

Fourth Floor
8065 Leesburg Pike
Tysons Corner, Virginia 22182-2738
Telephone: (703) 790-3310
Fax: (703) 790-2623
www.wcsr.com

Daniel R. Mackesey
Attorney
Direct Dial: (703)790-4682
Direct Fax: (703)918-2242
E-mail: dmackesey@wcsr.com

Mr. William Hillier, Esq.
299 NW Center St
Chehalis, Washington 98532

Re: Expansion of National Avenue Mitigation Bank

Dear Bill:

I am writing to you as counsel for WCEI Chehalis MB, LLC ("WCEI") to explain the background for the Amended and Restated Mitigation Bank Development Agreement that we sent you earlier and which provides for the inclusion of certain additional property in the National Avenue mitigation bank, including the City's SR-6 property.

We are checking a few additional due diligence items, but feel very confident about our ability to develop a successful mitigation bank on the National Avenue property. As you know, the regulators have been verbally supportive of our efforts to develop that site. Most recently we completed a cultural survey of the site and that came back clean.

For ecological and cost-efficiency reasons, we believe that it would be advantageous to expand the bank to include additional property. To that end, WCEI has have entered into a contract with K&K Adventures, LLC, that provides for the addition of all or some of the following parcels to the bank: 5605-83-6, 5605-83-7, 5605-83-8, 5605-85-1, and 5606-3-6, and part of 5610-5-0 (the "K&K Property"). (Note that not all of these properties are currently owned by K&K.) These parcels are shown on the plat attached as Exhibit A.

In addition, we have discussed the possibility of adding the City's property on State Route 6 (the "SR-6 Property") to the bank. Our interest in the site is dependent on reaching a satisfactory arrangement with WashDOT to remove soils from the site to a suitable level. While WashDOT has not yet committed to do so, WCEI representatives have had several encouraging discussions with WashDOT and understand that City officials have also had similarly positive discussions with WashDOT representatives. Before investing more time and money in our analysis of the SR-6 property, we would like to secure from the City the contractual right to include that site in the mitigation bank.

Finally, we are also interested in including in our bank other property. As I indicated on the phone, we have had preliminary discussions with TransAlta in that regard.

We believe that all of this will work to the City's advantage. First, we believe that the inclusion of the K&K Property with the National Avenue site will make the National Avenue site attractive to regulators and increase the per acre credit yield for the National Avenue assemblage overall. Accordingly, the City should receive greater revenues that are attributable to the

National Avenue site than the City would receive had the K&K Property not been included.

Secondly, we have structured the addition of properties in a way that will have the effect of accelerating the time when the City will receive proceeds from the bank. We have provided that credits will be allocated across all properties in the bank on a *pro rata* basis based on acreage, regardless of whether the credits are attributable to one property or another. Accordingly, the proceeds that the City receives will not necessarily be attributable to the National Avenue or SR-6 property itself, but to the bank as a whole.

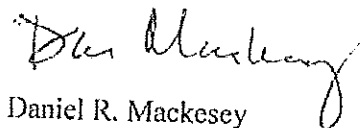
We have then provided that the first credits sold will be allocated to the City until the City's *pro rata* share of credits attributable to the National Avenue acreage has been exhausted, then the next credits sold will be allocated to K&K until K&K's *pro rata* share of credits has been exhausted, then the next credits sold will be allocated to the City until the City's *pro rata* share of credits attributable to the SR-6 acreage has been exhausted; and then the last credits sold will be allocated to the owner of any additional property that we add to the bank. The result is that the City should receive all of the proceeds attributable to its National Avenue property in the first two years as opposed to over a more extended period. Under this approach, the more property that is included in the bank, the sooner the City will receive its proceeds.

Finally, we plan to submit a prospectus for the bank to the regulatory officials the week of November 1 and intend to include the SR-6 Property as well as the National Avenue Property in the prospectus. We are alerting you to this because once we submit the prospectus, it will go out for public comment. If we have not entered into a contract for the SR-6 Property with the City yet, we will disclose that fact in the prospectus. If for some reason we do not proceed with the SR-6 Property, it can easily be dropped from the bank.

Bill, I appreciate your consideration of this matter. We are delighted with the prospects for the bank and the assistance we have received from you, Bob Nacht and the City and look forward to the successful launch of the bank. Bob Sokolove and I are happy to answer any questions that you or City officials may have.

Very truly yours,

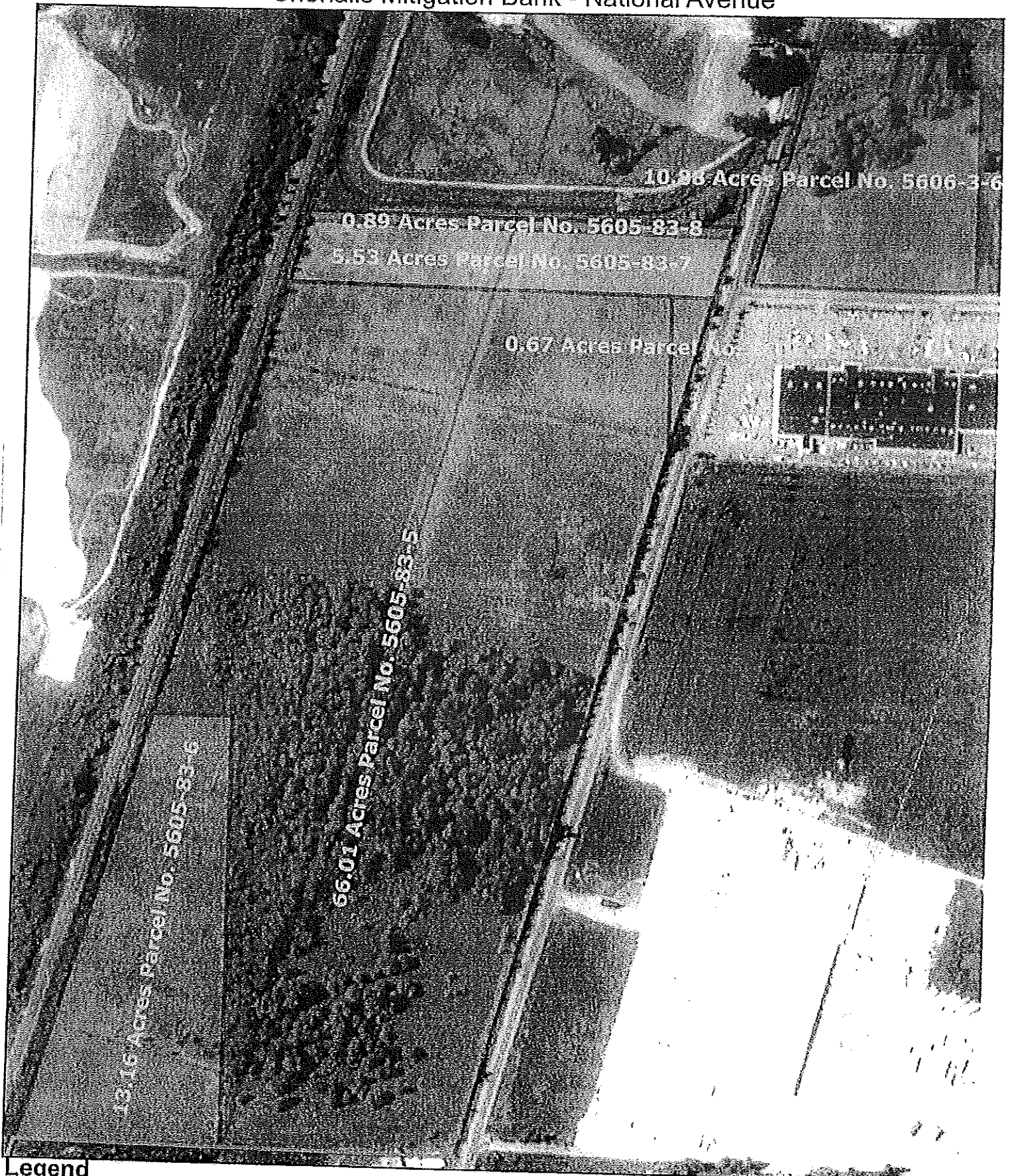
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company





Daniel R. Mackesey

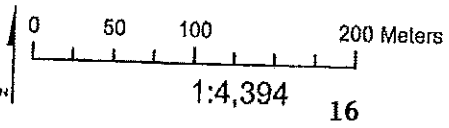
cc: Robert D. Sokolove

Chehalis Mitigation Bank - National Avenue



Legend

-  Klumper Parcels
-  Other ownership



**AMENDED AND RESTATED
MITIGATION BANK DEVELOPMENT AGREEMENT**

THIS AMENDED AND RESTATED MITIGATION BANK DEVELOPMENT AGREEMENT (this "Agreement") is made between the City and Sponsor as of the "Effective Date" defined in Section 1 below and supersedes that certain Mitigation Bank Development Agreement between the City and Sponsor bearing an Effective Date of June 29, 2010, all as set forth in that certain Amendment to Mitigation Bank Development Agreement dated October __, 2010.

1. **Defined Terms.** When used in this Agreement, the following capitalized terms shall have the indicated meanings:

"Additional City Credits":

The City's proportionate share of the total amount of any type of Credit, e.g., Wetlands Credits, storm restoration Credits, derived from the contribution of Additional City Property to the Mitigation Project, which shall be determined by multiplying the total amount of such type of Credit derived from the Mitigation Project by City's Additional Proportionate Share. For purposes of such calculation, the amount of a type of Credit shall be deemed to be the amount of the applicable unit value of such Credit, e.g., acres in the case of Wetlands Credits, linear feet in the case of stream restoration Credits.

"Additional City Property":

The approximately 69.5 acre parcel owned by the City and located on State Route 6 in the City of Chehalis, as more particularly described in Exhibit A-2 hereto.

"Bank Instrument":

A document, approved by governmental officials pursuant to the Regulations, governing the establishment, development, operation and use of a Mitigation Bank on the Property (and the K&K Property if Sponsor so elects), or other comparable documentation required by regulatory officials in connection with an Other

Mitigation Project. A Bank Instrument is not final until Regulatory Approval occurs.

“City”:

City of Chehalis, Washington.

“City National Avenue Credits”:

The City’s proportionate share of any type of Credit, e.g., Wetlands Credits, stream restoration Credits, derived from the contribution of the National Avenue Property to the Project which shall be determined by multiplying the total amount of such type of Credit derived from the Mitigation Project by the City’s National Avenue Proportionate Share. For purposes of such calculation, the amount of a type of Credit shall be deemed to be the amount of the applicable unit value of such Credit, e.g., acres in the case of Wetlands Credits, linear feet in the case of stream restoration Credits.

“City In-kind Wetlands Credits”:

As defined in Section 4.1.

“City’s Additional Proportionate Share”:

A fraction, the numerator of which is the total number of acres of the Additional City Property that is included in the Mitigation Project, and the denominator of which is the total number of acres in the Project Property that are included in the Mitigation Project.

“City’s National Avenue Proportionate Share”:

A fraction, the numerator of which is the total number of acres of the National Avenue Property that is included in the Mitigation Project, and the denominator of which is the total number of acres in the Project Property that is included in the Mitigation Project.

“Credit”:

A unit representing the accrual or attainment of aquatic, habitat, or other functions released to the Sponsor pursuant to the Bank Instrument or in accordance with the Regulations in respect of the Mitigation

Project, regardless of whether denoted as a "credit."

"Credit Fair Market Value":

With respect to a particular type of Credit, the average of the Credit price of comparable Credits in the last three (3) sales transactions of comparable Credits from the Mitigation Project at the time of an applicable Noncash Transaction. If three (3) such sales transactions have not occurred at such time, then the Credit Fair Market Value shall be the fair market value of the applicable Credit(s), which, if the parties cannot agree upon such value, shall be determined pursuant to the provisions of Section 27.

"Effective Date":

The date set forth as such under the parties' signatures.

"Hazardous Materials":

As defined in Section 8.3.

"K&K"

K & K Adventures, L.L.C., a Washington limited liability company.

"K&K Property":

That property which is the subject of that certain Mitigation Bank Development Agreement bearing an Effective Date of September 21, 2010, between K & K and Sponsor, as more particularly described in Exhibit A-3 hereto.

"K&K Credits":

K&K's proportionate share of the total amount of any type of Credit, e.g., Wetlands Credits, storm restoration Credits, derived from the contribution of K&K Property to the Mitigation Project, which shall be determined by multiplying the total amount of such type of Credit derived from the Mitigation Project by K&K's Proportionate Share. For purposes of such calculation, the amount of a type of Credit shall be deemed to be the amount of the applicable unit value of such Credit, e.g., acres in the case of

Wetlands Credits, linear feet in the case of stream restoration Credits.

“K&K’s Proportionate Share”:

A fraction, the numerator of which is the total number of acres of the K&K Property that is included in the Mitigation Project, and the denominator of which is the total number of acres in the Project Property that is included in the Mitigation Project.

“Maintenance and Monitoring Obligations”:

The obligation to maintain and monitor the Property after completion of the Site Work (or, if the Mitigation Project is completed in phases, after completion of the Site Work for the applicable phase) in the manner prescribed by the Bank Instrument and consistent with the Site Protection Instrument.

“Maintenance and Monitoring Period”:

The period that the Bank Instrument requires the Sponsor to maintain and monitor the Property.

“Mitigation Bank”:

A site, or suite of sites, established on all or part of the Project Property as a “Mitigation Bank” pursuant to the Regulations, where resources (e.g., wetlands, streams, riparian areas, and/or habitats) are restored, established, developed, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts upon corresponding resources.

“Mitigation Project”:

A Mitigation Bank and/or Other Mitigation Project.

“National Avenue Property”

The approximately 66-acre parcel owned by the City of Chehalis and located on National Avenue in the City of Chehalis, as more particularly described in Exhibit A-1 hereto.

“ <u>Noncash Transaction</u> ”:	The assignment or other transfer of a Credit to the City, the City’s affiliates, the City’s designee, or at the City’s request for consideration that is in whole or in part non-monetary. (This definition shall not be construed to limit Sponsor’s rights under Section 3.4.)
“ <u>Other Mitigation Project</u> ”:	Any project on the Property (and the K&K Property if Sponsor so elects) which results in a Credit that is not from a Mitigation Bank, e.g., a “turnkey” mitigation project for a single end user.
“ <u>Prior Mitigation Projects</u> ”:	Prior mitigation projects for the benefit of Providence Hospital and the Port of Chehalis that designated portions of the National Avenue Property for mitigation.
“ <u>Proceeds</u> ”:	Monetary consideration received in respect of the assignment or other transfer of Credits, any other form of mitigation credit, transferable development rights, or grants of easements or rights to use the Property in connection with the development of (but not necessarily derived from) the establishment of a Mitigation Project. Proceeds shall not include proceeds of sale of a fee simple interest in the Property (and the K&K Property if Sponsor so elects) or tax savings.
“ <u>Project Account</u> ”:	The account established pursuant to Section 4.2 in which all Proceeds shall be deposited.
“ <u>Project Property</u> ”:	The Property and the K&K Property.
“ <u>Property</u> ”:	The National Avenue Property and the Additional City Property.
“ <u>Regulations</u> ”:	33 CFR Part 322 (Compensatory Mitigation for Losses of Aquatic Resources), 40 CFR 230, Subpart J (Compensatory Mitigation for Losses of Aquatic Resources), and other

applicable federal, state or local regulations or statutes.

“Regulatory Approval”:

Final approval of a Bank Instrument for an Other Mitigation Project or pursuant to 33 CFR Sec. 332.8, 40 CFR 230.98 and/or other applicable Regulations.

“Site Protection Instrument”:

An encumbrance on the Project Property in the form required by the Bank Instrument, placing certain permanent restrictions or requirements on the use of the Property to uses permitted or required by the Bank Instrument. The Site Protection Instrument shall be executed by the City (with respect to the Property only) and recorded in the land records of the jurisdiction(s) in which the Property is located.

“Site Work”:

Any and all work performed on the Project Property to restore, establish, develop, enhance, and/or preserve wetland and other resources of the Project Property in accordance with the Bank Instrument and consistent with the Site Protection Instrument.

“Site Work Costs”:

All hard and soft costs of performing the Site Work, including, but not limited to design and engineering costs incurred by Sponsor and payable to a Subcontractor, but excluding profit and overhead of Sponsor or Sponsor’s Affiliates.

“Sponsor”:

WCEI Chehalis MB, LLC, a North Carolina limited liability company.

“Subcontractor”:

A third-party contractor, engineer, consultant or other person engaged or retained by Sponsor to perform all or any part of the Sponsor’s duties and obligations including, but not limited to, a feasibility analysis, Site Work, and/or Maintenance and Monitoring Obligations.

“Surviving Provisions”:

Sections 1, 4, 8, 9, 12, 13, 14, 15, 16, 18-30.

“Wetlands Credit”:

A one acre wetlands credit provided for and released in accordance with the Bank Instrument. In the case of an Other Mitigation Project each acre of wetland mitigation credited to an end user shall be deemed a “Wetlands Credit.” A Wetlands Credit is one type of “Credit.”

Other capitalized terms shall have the meanings ascribed to them elsewhere in the Agreement.

2. **Agreement.** The City hereby grants Sponsor the exclusive right to create a Mitigation Project on the Property and perform tasks related thereto, on the terms and for the consideration provided in this Agreement.

3. **Sponsor Services.**

3.1 **Regulatory Approval.** In the event that Sponsor determines, in its sole discretion, that development of a Mitigation Project is economically and ecologically feasible, Sponsor shall, subject to Sponsor’s rights under Sections 5.2 and 5.3 hereof, take such reasonable steps as are necessary to obtain Regulatory Approval for such Mitigation Project, including (i) conducting negotiations with regulatory officials, (ii) preparing a draft Bank Instrument and the Site Protection Instrument; and (iii) negotiating the terms of the Bank Instrument and the Site Protection Instrument with governmental officials.

3.2 **Site Development.** Sponsor will be responsible for causing to be completed all Site Work required pursuant to the Bank Instrument. Sponsor shall be responsible for procuring, through a contractor’s bond or otherwise, the financial assurances required under the Bank Instrument for performance of the Site Work.

3.3 **Maintenance.** After completion of the Site Work, Sponsor shall be responsible for the Maintenance and Monitoring Obligations during the Maintenance and Monitoring Period. Sponsor shall be responsible for procuring the financial assurances required by the Bank Instrument with respect to the Maintenance and Monitoring Obligations. Any costs incurred in performing the Maintenance and Monitoring Obligations shall be paid by Sponsor from Proceeds as described in Section 4.2. In the event that all or any portion of the Property is conveyed, donated to, or otherwise encumbered by a grant to a governmental or nonprofit entity that is prepared to assume all or a part of the Maintenance and Monitoring Obligations, the City

shall cooperate with Sponsor in facilitating the assumption of the Maintenance and Monitoring Obligations and shall thereafter release Sponsor of its obligations under this Section 3.3 to the extent of such assumption.

3.4 Credit Sales. Sponsor shall be responsible for and have the sole authority for negotiating with governmental officials and seeking Regulatory Approval of the number and types of Credits, as well as the release schedule for Credits. Sponsor shall be responsible for and have the sole authority for identifying potential purchasers of Credits, negotiating and closing the sale or other transfer of Credits, facilitating governmental approval of Credit sales and transfers, and fulfilling the reporting requirements under the Bank Instrument and the Regulations.

4. Consideration; Credit Sale Proceeds and Other Interests.

4.1 Wetlands Credits to be Allocated to the City. The City shall be allocated and granted three (3) Wetlands Credits from the Mitigation Project at no cost to the City (the "City In-kind Wetlands Credits").

4.2 Allocation of Proceeds. The first Credits of any particular type sold shall be deemed "City National Avenue Credits" until the City's National Avenue Proportionate Share of such type of Credit has been reached; provided, however, the City In-kind Wetlands Credits shall be deemed City National Avenue Credits and shall be credited against the City's National Avenue Proportionate Share of wetland credits. After all City National Avenue Credits of a particular type have been sold (or in the case of City In-Kind Wetlands Credits, granted to the City) then until K&K's Proportionate Share of such type of Credits has been reached, the next Credits of such type sold or transferred shall be deemed K&K Credits. Thereafter, the balance of such type of Credits, i.e., City's Additional Proportionate Share of such type of Credit, shall be deemed Additional City Credits. The City acknowledges that the practical effect of this provision is that the City will likely receive most of its allocable share of Proceeds from sales of City National Avenue Credits before K&K receives any of its allocable share of Proceeds, and the City will likely receive all or most of its allocable share of Proceeds from sales of Additional City Credits after K&K receives most of its allocable share of Proceeds. Proceeds shall be deposited by Sponsor in a segregated account (the "Project Account") and, **subject to the priorities provided above**, each disbursement of Proceeds attributable to the City

National Avenue Credits and the City Additional Credits shall be allocated and disbursed according to the following:

(i) One hundred percent (100%) of the Proceeds from the first twelve (12) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed exclusively to Sponsor;

(ii) Twenty percent (20%) of the Proceeds from the thirteenth (13th) up to and including the seventeenth (17th) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iii) Twenty percent (20%) of the Proceeds from the first thirty and one-third percent (30.33%) of Wetlands Credits that are Additional City Credits shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iv) Thirty-five percent (35%) of the Proceeds from all additional Wetlands Credits that are either City National Avenue Credits or Additional City Credits sold shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; and

(iv) Thirty-five percent (35%) of all remaining Proceeds attributable to City National Avenue Credits or Additional City Credits e.g., from such Credits that are not Wetlands Credits, shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; *provided, however*, if there are not at least twenty (20) Wetlands Credits that are National Avenue Credits, then Proceeds from other National Avenue Credits, e.g., stream restoration Credits, shall be equitably allocated and disbursed so as to provide Sponsor and the City with approximately the same respective shares of Proceeds as they would have received if all Proceeds had been in respect of Wetlands Credits.

For purposes of allocating Proceeds pursuant to this provision, regardless of the terms of any Bank Instrument or any agreement between Sponsor and an end user providing for Wetlands Credits that are either City National Avenue Credits or Additional City Credits,

if payments made by an end user are made in lump sum installments, the first installment(s) shall be allocated to the first deemed sold Wetlands Credits that are City National Avenue Credits until 17 Wetlands Credits are deemed sold or, in the case of Wetlands Credits that are Additional City Credits, until thirty and one-third percent (30.33%) of Wetlands Credits that are Additional City Credits are deemed sold. For example, if an end user entered into an agreement to pay Three Million Dollars (\$3,000,000) in three installments of One Million Dollars (\$1,000,000) for thirty (30) Wetland Credits that are deemed City National Avenue Credits, for purposes of this provision the entire initial installment would be allocated to the initial ten (10) Wetlands Credits, with the result that the entire initial installment would be allocated and disbursed to Sponsor, regardless of whether the agreement with the end user explicitly provided that the initial installment was a partial payment for all thirty (30) Wetlands Credits.

Notwithstanding the foregoing, in the case of any Noncash Transaction, Sponsor shall be entitled to receive from the next available Proceeds that would otherwise be payable to the City, or from the City if sufficient available Proceeds are not anticipated within the next six (6) months (and only to the extent the City has received Proceeds), Sponsor's applicable percentage (as determined pursuant to this Section 4.2) of the Credit Fair Market Value of the subject Credits; *provided, however*, Sponsor shall not be entitled to receive the Credit Fair Market Value in respect of the City's Wetlands Credits, no further consideration (other than performing the City's obligations under this Agreement) being payable to Sponsor in respect thereof.

4.3 No Reconciliation. The City acknowledges that it is unlikely that all Credits of a particular type from the Mitigation Project will be sold at the same price (i.e., subsequent Credits may sell at a lower or higher price than those sold previously from the same Mitigation Project), thus Proceeds received from the sale of City National Avenue Credits and/or Additional City Credits may or may not exceed Proceeds received from the same number and type of K&K Credits. No "true up" or reallocation of Proceeds after all Credits are sold shall occur among the City, K&K and Sponsor to account for such variations in price.

4.4 Disbursement of Proceeds. Proceeds shall be allocated and disbursed within thirty (30) days after receipt. Sponsor shall not disburse its share of any Proceeds from the Project Account before disbursing the City's corresponding share of such Proceeds. The City's share of Proceeds shall be disbursed by check or wire transfer in accordance with the wire transfer instructions attached hereto as Schedule 4.3.

4.5 Project Account. The Project Account shall be a segregated account in a federally insured bank or banks. All interest earned on such Project Account shall be allocated sixty-five percent (65%) to Sponsor and thirty-five (35%) to the City until the Proceeds from all City National Avenue Credits have been disbursed; thereafter, sixty-five (65%) to Sponsor and thirty-five (35%) percent to K&K until the Proceeds from all the K&K Credits have been disbursed; and thereafter sixty-five percent (65%) to Sponsor and thirty-five (35%) to the City. All accrued fees, costs and expenses incurred in connection with maintaining the Project Account shall be paid by Sponsor. Only Sponsor shall have signature authority over the Project Account.

4.6 Accounting. Sponsor shall be responsible for complying with all accounting and reporting requirements relating to the sale or other transfer of Credits, as required by the Bank Instrument or the Regulations. In addition, Sponsor shall provide the City with periodic accountings, no less often than quarterly, showing Credits sold and Credits remaining to be sold, and the allocation and disbursement of Proceeds.

5. Termination Rights.

5.1 The City's and Sponsor's Right to Terminate if Regulatory Approval Not Obtained. In the event that Regulatory Approval does not occur on or before the second (2nd) anniversary of the Effective Date for any reason, the City and Sponsor shall each have the right, in each party's sole and absolute discretion, to terminate this Agreement by giving written notice thereof to the other, whereupon both parties shall be released from all liabilities or obligations arising under this Agreement except for the Surviving Provisions, which shall survive such termination. Notwithstanding the foregoing and for avoidance of doubt, neither party shall have the right to terminate this Agreement *after* Regulatory Approval occurs.

5.2 Sponsor's Right to Terminate. Sponsor shall have the right, if it determines in its sole and absolute discretion, that the Mitigation Project is not

environmentally, economically, regulatorily or otherwise feasible from Sponsor's perspective, to terminate this Agreement by giving written notice, whereupon both parties shall be released from all liabilities or obligations arising under this Agreement except for the Surviving Provisions, which shall survive such termination. In the event of such termination, Sponsor shall deliver to the City (a) copies of third party studies, analyses and tests, if any, received by Sponsor in connection with its due diligence, and (b) copies of the most recent draft of any prospectus or Bank Instrument, if any, prepared by Sponsor, or at Sponsor's request, with respect to the Property.

6. **Entry on the Property / Insurance.** Sponsor, its employees, agents, servants, and Subcontractors, may enter on the Property from time to time to perform due diligence, obtain Regulatory Approval, complete the Site Work, and perform Maintenance and Monitoring Obligations as well as any other work Sponsor deems necessary or appropriate in connection with the Mitigation Project. The City acknowledges that the Bank Instrument will require Sponsor to cause Site Work to be completed on the Property and that Subcontractors may be using heavy equipment to complete such Site Work on the Property. The City shall allow entry upon the Property to any governmental authorities engaged in the Regulatory Approval or otherwise monitoring any aspect of the Mitigation Project. Sponsor and the City shall obtain and maintain, and Sponsor shall cause each Subcontractor who is engaged in site development work on the Property to obtain and maintain, the insurance in accordance with the requirements specified in Schedule 6 attached to this Agreement.

7. **Property.** Sponsor, in its sole and absolute discretion, shall determine which portion of the Property, if not the entire Property, shall be subject to the Bank Instrument and Site Protection Instrument. In the event that less than the entirety of the Property becomes subject to the Bank Instrument and Site Protection Instrument, any reference to "Property" in this Agreement shall be deemed to include only that portion of the Property that is the subject of the Bank Instrument and Site Protection Instrument. A metes and bound description of the Property shall be proposed in connection with the preparation of the Bank Instrument.

8. **Representations and Warranties of the City.** Subject to the exceptions specified in Schedule 8 hereto, the City hereby represents and warrants to Sponsor that to the best of the City's knowledge:

8.1 No Changes. There is no proposed or pending condemnation, change in zoning, or roadway construction or construction or allocation of utilities affecting any portion of the Property.

8.2 No Interests in Property. There is no legal or equitable interest in the Property owned or claimed by any party or entity other than the City (including, but not limited to, any mortgages or deeds of trust) and there are no proffers or agreements with governmental authorities or private parties which affect any portion of the Property.

8.3 Environmental. To the best of the City's knowledge, the Property (including surface and subsurface soil, surface water, ground water, and improvements, if any) is free of any substantial amounts of waste or debris and is free of all flammable or explosive materials, petroleum or petroleum products, natural gas or synthetic gas usable for fuel, radioactive materials, asbestos, radon, PCBs or any other toxic wastes or substances, including, without limitation, any substances now or hereafter defined or included in the definition of "Hazardous Substances," "Hazardous Materials," "Toxic Materials" or "Toxic Substances" under any federal, state or local governmental law or regulation (all of the foregoing are collectively referred to herein as "Hazardous Materials"), and that there are no graveyards lying within the Property, nor any special or unusual environmental condition affecting any portion of the Property (such as a landfill). To the best the City's knowledge, the Property has not been used to generate, manufacture, refine, transfer, treat, store, handle or dispose of Hazardous Materials and the City has not received any written or oral communications from governmental authorities concerning, nor is the City otherwise aware of, the possible presence of Hazardous Materials on or in the vicinity of the Property. To the best of the City's knowledge, there is no item or site of archaeological or historical interest on the Property.

8.4 Litigation. There is no pending or threatened litigation arising from or in any way related to the Property or that could materially, adversely affect the City. There are no unpaid, outstanding judgments for damages against the City or matters which, with the passage of time, could become a judgment against the City.

8.5 No Leases. No party has a leasehold interest in the Property other than possible leases in connection with the Prior Mitigation Projects.

8.6 Authority. The City has full right, power and authority to enter into, execute, acknowledge and deliver this Agreement and to perform the City's obligations hereunder.

8.7 No Adverse Circumstances. There are no circumstances which exist, or with the passage of time may exist, that would prevent or impede Sponsor from exercising Sponsor's rights hereunder, or Sponsor and the City from performing their respective obligations under this Agreement.

9. Representations and Warranties of Sponsor. Sponsor hereby represents and warrants to the City that Sponsor has full right, power and authority to enter into, execute, acknowledge and deliver this Agreement and to perform Sponsor's obligations hereunder.

10. Covenants of the City. The City hereby covenants to Sponsor that from and after the Effective Date and so long as this Agreement is in effect:

10.1 Cooperation. The City shall cooperate with Sponsor, Sponsor's employees, agents and contractors and any governmental officials in connection with: (a) Sponsor's efforts to obtain Regulatory Approval (including, but not limited to, acknowledgement and representation of Sponsor as the "Sponsor" under the Regulations); (b) performance of Sponsor's due diligence, the Site Work and the Maintenance and Monitoring Obligations; and (c) performance of all obligations under the Bank Instrument and Site Protection Instrument. The City shall make available to consult with Sponsor, the City's employees who are knowledgeable about the Property, and, shall provide Sponsor access to all files, records, and studies in its possession or control relating to the physical characteristics of the Property and the ecology of it, drainage of the Property and adjacent properties, location of utilities on the Property, Prior Mitigation Projects on the Property and/or the establishment of wetlands on the Property.

10.2 No Further Encumbrance. The City shall not permit or place further encumbrances against the Property without the prior written consent of Sponsor.

10.3 Use. The City shall not permit the Property to be used for any purpose that is inconsistent with, or would impede, delay, or make more costly, the development and operation of a Mitigation Project, or after the Site Protection Instrument is recorded, would be inconsistent with the Site Protection Instrument.

10.4 Notices. The City shall provide prompt written notice to Sponsor of any threatened or potential lawsuits, condemnation, lien or encumbrance, violation of any laws or regulations, or governmental action that is in any way related to the Property or could materially adversely affect Sponsor or the City and of which the City receives notice or has knowledge.

10.5 Contacting Regulatory Authorities. The City shall not contact and shall not authorize, encourage or permit others to contact, any regulatory authorities regarding the Mitigation Project or Regulatory Approval, unless consented to in writing by Sponsor; *provided, however*, nothing herein shall preclude the City from responding to inquiries of regulatory authorities regarding such matters.

10.6 Site Protection Instrument. The City shall execute and Sponsor shall record the Site Protection Instrument in the proper jurisdiction(s) after request by Sponsor; provided, however, the City shall not be required to execute nor permit the recordation of the Site Protection Instrument prior to the occurrence of Regulatory Approval. The City shall comply with all provisions and restrictions of the Site Protection Instrument; provided, however, that the Maintenance and Monitoring Obligations shall be the responsibility of Sponsor pursuant to, and to the extent required under, the Bank Instrument. Notwithstanding the foregoing, the City shall not cause or, to the extent within the City's reasonable control, permit circumstances to exist that would result in (i) a violation of the Site Protection Instrument, (ii) an increase in the costs of complying with the provisions of the Bank Instrument, or (iii) an adverse effect on the availability or aggregate value of Credits from the Property.

11. Covenants of Sponsor. Sponsor hereby covenants to the City that:

11.1 Fulfillment of Obligations of Sponsor. Sponsor shall fulfill the obligations of the "sponsor" of the Mitigation Bank under the Bank Instrument and the Regulations including, but not limited to, completion of Site Work and completion of Maintenance and Monitoring Obligations during the Maintenance and Monitoring Period in accordance with Section 3 above.

11.2 Utility Accommodation. Sponsor acknowledges that there are certain utilities on the Property that Sponsor will have to work around (or relocate, at Sponsor's cost, subject to the City's consent).

11.3 Prior Mitigation Projects. Sponsor shall have the right to reaffirm, modify, terminate or clarify any agreements, commitments or arrangements relating to the Prior Mitigation Projects. The City shall cooperate with Sponsor in connection therewith. The parties acknowledge that the consent of regulatory authorities may be required for any such action.

11.4 Mechanic's Lien. Sponsor shall not knowingly permit any mechanics', laborers', or materialmen's lien on account of labor or materials furnished by or at the direction of Sponsor to encumber the Property without complying with the remainder of this Section 11.4. In the event the Property becomes subject to any such lien, Sponsor shall have the right to contest such lien and in connection therewith shall take such actions, e.g., posting a bond, as are reasonably required in the applicable jurisdiction to assure that the City's interest in the Property is not jeopardized.

11.5 Notices. Sponsor shall keep the City reasonably apprised of the status or completion of Regulatory Approval, Site Work and performance of due diligence and Maintenance and Monitoring Obligations.

12. Default.

12.1 Limitation on Damages. IN NO EVENT SHALL EITHER PARTY, ITS EMPLOYEES, AGENTS OR CONTRACTORS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 Limitation on Remedies. Subject to the limitation on damages in Section 12.1 above and the notice and cure requirements of Section 12.3 below, if either party (a "Defaulting Party") defaults in the performance of its obligations under this Agreement or breaches its representations or warranties hereunder (any such default or breach being a "Default"), the exclusive remedies of the other party (the "Non-defaulting Party") shall be limited to (i) terminating this Agreement, and (ii) seeking to recover damages for such Default from the Defaulting Party; provided, however, either party, as a Non-defaulting Party, shall also

have the right to seek equitable relief, including, but not limited to, a temporary restraining order, preliminary injunction and/or permanent injunction in respect of any Default by the other party to the extent such equitable remedies are available. The rights of a Non-defaulting Party are cumulative. In the event of a termination of this Agreement in respect of a Default, both parties shall be deemed released from all further liabilities and obligations accruing under this Agreement after the date of termination except for any Surviving Provisions.

12.3 Notice. Notwithstanding the provisions of Sections 12.1 and 12.2 above, the Non-defaulting Party shall not exercise any remedies in respect of a Default unless and until the Non-defaulting Party has given notice to the Defaulting Party of such Default, and the Defaulting Party has failed to cure such Default within thirty (30) days after the giving of such notice, or if the same is not amenable to cure within thirty (30) days, begins to cure such Default within such thirty (30) day period and thereafter diligently pursues such cure.

13. Litigation. Notwithstanding the provisions of Section 12, if any party resorts to litigation to enforce its rights under this Agreement, any judgment awarded to the prevailing party shall include all reasonable litigation expenses of the prevailing party, including, without limitation, reasonable attorney's fees and costs and experts' fees.

14. Multiple Owners. [Intentionally Deleted]

15. Notices. All notices hereunder shall be in writing and shall be deemed given when delivered on a business day by facsimile with confirmation of receipt, or when delivered by hand, or one business day after mailing by national overnight delivery service to the parties hereto at their respective facsimile numbers and/or addresses set forth below, or at such other numbers or addresses of which either party may notify the other parties in accordance with the provisions hereof:

As to Owner:

As to the City:

City of Chehalis
350 N Market Boulevard, Rm. 101
Chehalis, WA 98532
Fax: 360-748-0651

With a copy to:

Hillier, Scheibmeir, Vey and Kelly
299 NW Center Street
Chehalis, WA 98532
Attn: William T. Hillier
Fax: 360-748-9533

As to Sponsor:

WCEI Chehalis MB, LLC
c/o Womble Carlyle Ecology Innovations, LLC
8065 Leesburg Pike
Vienna, Virginia 22182
Attn. Robert D. Sokolove
Fax: (703) 918-2268

With a copy to:

Womble Carlyle Sandridge & Rice, PLLC
8065 Leesburg Pike
Fourth Floor
Vienna, Virginia 22182
Attn. Daniel R. Mackesey, Esquire
Fax: (703) 918-2242

16. Indemnification.

16.1 Indemnification Obligations of the City. Subject to the limitations of Section 12.1 of this Agreement, the City shall indemnify and hold harmless Sponsor, its members, officers, employees, affiliates and agents against any claims, damages, liabilities, losses, fines, penalties, and costs (including reasonable attorney's fees) arising out of (a) any environmental condition or Hazardous Materials on the Property not caused by or occurring as a result of the actions of Sponsor, its employees, agents or contractors, and (b) any Default of the City.

16.2 Indemnification Obligations of Sponsor. Subject to the limitations of Section 12.1 of this Agreement, Sponsor shall indemnify and hold harmless the City, its members, officers, employees and agents against any claims, damages, liabilities, losses, fines, penalties, and costs (including reasonable attorney's fees) arising out of (a) any

environmental condition or Hazardous Materials on the Property caused by or occurring as a result of the actions of Sponsor, its employees, agents or contractors, and (b) any Default of Sponsor; provided, however, the foregoing indemnity shall not apply to the mere discovery of any environmental condition or Hazardous Materials on the Property that existed prior to Sponsor's entry on the Property.

17. **Time.** Time is of the essence of all matters set forth in this Agreement.

18. **Exhibits and Schedules.** Each of the exhibits and schedules attached to this Agreement is incorporated herein by reference. Any exhibit not available at the time this Agreement is executed shall be agreed upon, initialed, and attached by the parties as soon after execution as is practicable, but failure to attach any exhibit shall not affect the validity of this Agreement unless the parties are in material disagreement as to the contents thereof.

19. **Entire Agreement.** Except as provided in Section 18 hereof, this Agreement contains the entire agreement between the parties hereto and is intended to be an integration of all prior or contemporaneous agreements, conditions or undertakings between them; there are no promises, agreements, conditions, undertakings, warranties or representations (whether oral or written, express or implied) between them other than as herein set forth.

20. **Modification in Writing.** No change or modification of this Agreement shall be valid unless in writing signed by both the City and Sponsor; and no purported or alleged waiver of any provision hereof shall be valid or effective unless in writing signed by the party against whom it is sought to be enforced.

21. **Binding on Successors; Assignment.** This Agreement shall run with the Property and shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. This Agreement shall not be assigned by Sponsor without the prior written consent of the City, such consent not to be unreasonably delayed, withheld or conditioned provided that the successor party assumes the obligations of the assigning party under the Agreement.

22. **Memorandum of Agreement.** Simultaneously with its execution hereof, the City and Sponsor have executed a certain Memorandum of Mitigation Bank Development Agreement (the "Memorandum") substantially in the form attached hereto as Schedule 22. Sponsor may cause the Memorandum to be recorded in the applicable land records of the

jurisdiction(s) in which the Property is located at Sponsor's expense, and if it does so, shall cause the Memorandum to be released of record within 60 days after (i) the earlier to occur of undisputed (or fully adjudicated) termination of this Agreement or recordation of the Site Protection Instrument and (ii) the giving of notice from the City requesting that the Memorandum be released of record. The City shall cause all holders of interests in the Property as of the Effective Date, if any, including, but not limited to, lenders and trustees under deeds of trust, to subordinate their respective interests to the rights of Sponsor under this Agreement by consenting to this Agreement in writing and executing the Memorandum.

23. Limitation on Use of Property. the City acknowledges that recordation of the Site Protection Instrument will restrict the usage of the Property to only the uses set forth in such Site Protection Instrument; provided however, without limiting Sponsor's rights under Section 11.3, the foregoing shall not preclude the continued use of the Property for existing utility purposes and for the Prior Mitigation Projects, to the extent such Prior Mitigation Projects have not been terminated at the time of recordation of the Site Projection Instrument.

24. Waiver of Jury Trial. THE CITY AND SPONSOR HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT. THE INCLUSION OF THIS PROVISION SHALL NOT LIMIT THE EFFECT OF SECTION 27 HEREOF.

25. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute but one Agreement.

26. Severability. If any term, provision covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ a valid, legal, nonvoid and enforceable alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

27. **Dispute Resolution.** In the event of any dispute arising under or related to this Agreement, the parties shall first attempt to resolve it informally among themselves. If after ten (10) days following written notification of a dispute, the parties should be unable to resolve the dispute among themselves, the parties shall mediate the dispute through a mutually acceptable party within thirty (30) days after the end of the 10-day informal resolution period above. If the parties should still be unable to resolve the dispute through mediation, then such dispute shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association. In the event of arbitration, the arbitrator shall have authority to grant full legal and equitable relief, including specific performance of this Agreement. Any mediation or arbitration under this Section 27 shall take place at a mutually acceptable location in the State of Washington, with the disputing parties sharing the cost thereof. Judgment on an award rendered by an arbitrator may be entered in any court having competent jurisdiction for enforcement. Subject to the provisions of Section 13 hereof, each party shall be responsible for its own attorneys' fees incurred in connection with any mediation or arbitration pursuant to this Section.

28. **Applicable Law.** The laws of the State of Washington shall govern the validity, performance and enforcement of this Agreement, without reference to the conflicts of law principles of the State of Washington.

29. **Confidentiality.** [Intentionally Deleted]

30. **Acknowledgements and Disclosures.**

30.1 **Potential Conflict of Interest Disclosure.** The Disclosure attached hereto as Schedule 30.1 is hereby incorporated herein by reference. By executing this Agreement, the City acknowledges that the City has read and understands the disclosure contained in Schedule 30.1, its consent to the roles of Sponsor and Womble Carlyle Sandridge & Rice, PLLC as described in Schedule 30.1, and its agreement that it has had a reasonable opportunity to consult with independent counsel.

30.2 **the City's Present Intention.** The City is entering into this Agreement in connection with its continued ownership of the Property and has no present intention of selling or otherwise transferring the Property or its interest in the Mitigation Project.

30.3 No Assurance of Regulatory Approval. The necessary Regulatory Approval may not be issued on a timely basis or at all, or governmental authorities may impose unanticipated or unfavorable terms and conditions which could cause abandonment of the Mitigation Project or a material adverse effect on the allocation and disbursement of Proceeds to the City and to Sponsor.

30.4 No Assurance of Credit Sales or Prices. Sponsor may not be able to sell sufficient Credits at prices necessary to permit the distribution of substantial cash to the City or Sponsor. The price of Credits is market driven and various factors including the availability of other competing Credits in the service area of the Mitigation Project or the lack of demand for Credits may affect the amount and timing of Proceeds available for allocation and disbursement to the City and to Sponsor.

30.5 Unanticipated Site Condition or Site Work Costs. The Site Work may be more expensive than anticipated or there may be unanticipated environmental or archaeological conditions that increase the cost of or delay completion of the Site Work, with the result that the Sponsor may not be able to complete the Site Work within the timeframe anticipated or required by regulatory authorities or may not be able to complete the Site Work at all, which could cause abandonment of the Mitigation Project or a material adverse effect on the timing of distributions of Proceeds to the City and to Sponsor under this Agreement.

30.6 No Forward-Looking Projections. Sponsor shall not be deemed to have made to the City any representation or warranty with respect to any projections, estimates or budgets or other forward-looking information heretofore delivered or made available to the City concerning the amount or timing of the allocation and disbursement of Proceeds or other revenues to the City, Site Work Costs or other expenses, or results of operations or the financial condition of the Mitigation Project.

31. Additional Property. The City acknowledges that Sponsor is contemplating the possibility of incorporating additional land owned by one or more third parties (“Unidentified Property”) in the Mitigation Project. The City hereby consents to the inclusion of and acknowledges that Sponsor may include Unidentified Property in the Mitigation Project as Sponsor deems appropriate in Sponsor’s sole discretion, provided that the Proceeds from the sale

of a particular type of Credit that are attributable to the additional area of such Unidentified Property shall be allocated and disbursed only after the Proceeds from all City National Avenue Credits, K&K Credits and Additional City Credits of such type have been allocated and disbursed to the City, K&K and Sponsor. Accordingly, in the event Unidentified Property is incorporated and included in the Mitigation Project in accordance with the foregoing, this Agreement shall be deemed to have been amended as set forth on Schedule 31 without further action of the City or Sponsor; provided, however, the City and Sponsor agree to execute such further assurances and commercially reasonable documents as are required to confirm or give effect to the provisions of this Section 31.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned parties have duly executed this Agreement under seal on the dates indicated beneath their respective signatures below.

BY EXECUTING THIS AGREEMENT, THE CITY ACKNOWLEDGES THAT IT INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT, THAT THE CITY HAS READ AND UNDERSTANDS THE DISCLOSURE CONTAINED IN SCHEDULE 30, ITS CONSENT TO THE ROLES OF SPONSOR AND WOMBLE CARLYLE SANDRIDGE & RICE, PLLC AS DESCRIBED IN SCHEDULE 30, AND ITS AGREEMENT THAT IT HAS HAD A REASONABLE OPPORTUNITY TO CONSULT WITH INDEPENDENT COUNSEL.

WITNESS/ATTEST:

THE CITY:

City of Chehalis, Washington

By: _____ /s/ _____
Merlin G. MacReynold, City Manager

SPONSOR:

WCEI Chehalis MB, LLC, a North Carolina limited liability company

_____ By: _____ /s/ _____
Robert D. Sokolove, President

Effective Date: the City and Sponsor hereby agree that the "Effective Date" of this Agreement is _____.

Exhibits

- A-1 Description of National Avenue Property
- A-2 Description of the Additional City Property
- A-3 Description of K&K Property

Schedules

- 4.3 Wire Instructions of the City
- 6 Insurance Requirements
- 8 Exceptions to Representations and Warranties of the City
- 22 Memorandum of Mitigation Bank Development Agreement
- 30.1 Disclosure
- 31 Additional Provisions that Apply in the Event Sponsor Incorporates Unidentified Property in the Mitigation Project

EXHIBIT A-1

National Avenue Property Description

EXHIBIT A-2

Additional City Property Description

EXHIBIT A-3

K&K Property Description

Lewis County Tax Parcels 005606-003-006, 005605-083-006, and 005605-083-007, as further described in that certain Quitclaim Deed dated December 31, 2009, from Kevin T. Klumper and Rhonda J. Klumper, husband and wife, to K & K Adventures, L.L.C., and recorded among the land records of Lewis County, Washington on January 9, 2009 and that certain Statutory Warranty Deed dated July 16, 2009, from Betty J. Sgarlata-Floe to K & K Adventures, L.L.C., and recorded among the land records of Lewis County, Washington on July 21, 2009, and Lewis County Tax Parcel 005610-005-000, 005605-085-001 and 005605-083-008.

SCHEDULE 4.3

WIRE INSTRUCTIONS OF THE CITY

_____ Bank

Routing No.: _____

Account Name: _____

Account No.: _____

Note: Payment from _____

SCHEDULE 6

INSURANCE REQUIREMENTS

Sponsor

Sponsor shall maintain commercial general liability insurance with environmental professional coverage of not less than \$3 million per occurrence and in the aggregate so long as site development work is continuing. Sponsor shall provide the City with a certificate of insurance evidencing its compliance with its obligations under this provision and naming the City as an additional insured thereunder. Sponsor shall cause each and every Subcontractor that enters onto the Property to obtain and maintain insurance coverage specified in this Schedule 6 hereto prior to their entry onto any Property.

Subcontractors

Subcontractors shall obtain and maintain the following insurance:

- Comprehensive General Liability: \$1,000,000 combined single limit for bodily injury and property damage each occurrence and \$2,000,000 annual aggregate.
- Comprehensive Automobile Liability: \$1,000,000 combined single limit for property damage and personal injury. The coverage shall apply to all owned, hired and non-owned vehicles.

the City and Sponsor must be named as Certificate Holder and as an additional insured under the General Liability and Automobile Liability Insurance Policies.

- Workers Compensation:

Workers Comp: statutory limits

Upon consultation with and consent by the City, the insurance coverage specified in Schedule 6 hereto may be adjusted from time to time to take into account circumstances including, among other matters, the type of service performed by a Subcontractor. Sponsor shall cause copies of Subcontractor's insurance certificates to be provided to the City

SCHEDULE 8

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF THE CITY

the City hereby discloses the existence of the following matters as exceptions to the indicated representations and warranties provided in Section 8 of the Agreement:

8.2 Prior Mitigation Projects

City sewer line

SCHEDULE 22

MEMORANDUM OF MITIGATION BANK DEVELOPMENT AGREEMENT

This instrument was prepared by and when recorded return to:

Daniel R. Mackesey, Esquire
WCEI Chehalis MB, LLC
c/o Womble Carlyle Sandridge & Rice, PLLC
8065 Leesburg Pike, Suite 400
Vienna, Virginia 22182

**MEMORANDUM OF AMENDED AND RESTATED MITIGATION BANK
DEVELOPMENT AGREEMENT**

THIS MEMORANDUM OF AMENDED & RESTATED MITIGATION BANK DEVELOPMENT AGREEMENT ("Memorandum"), made this ____ day of _____ of 20__, by _____ ("the City") and WCEI Chehalis MB, LLC ("Sponsor").

the City and Sponsor have entered into that certain Mitigation Bank Development Agreement dated as of June 29, 2010, and that certain Amended and Restated Mitigation Bank Development Agreement dated as of _____, 2010 (collectively, the "Agreement") pursuant to which the City has granted to Sponsor certain exclusive rights to develop a "Mitigation Project" (as that term is defined in the Agreement) on the real property described on EXHIBIT A attached hereto (the "Property"). Any capitalized term that is used in this Memorandum, but that is not defined in this Memorandum, is defined in the Agreement. Such Agreement includes the obligation of the City to permanently restrict the use of the Property in accordance with the requirements of the regulatory approval of the Mitigation Project and a Site Protection Agreement (described in the Agreement), and provides for the allocation of proceeds of such Mitigation Project between the City and Sponsor.

Any instrument recorded after the date of this Agreement shall be subject and subordinate to the provisions of the Agreement and the Site Protection Instrument, which shall be an encumbrance on the Property permanently restricting the use of the Property to uses permitted or required by the regulatory authorities approving the Mitigation Project.

Further information concerning the Agreement can be obtained from Sponsor at 703-790-7921 (Robert Sokolove) or 703-790-4682 (Daniel Mackesey).

[signatures on following pages]

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

THE CITY:

WITNESS/ATTEST:

By:

Name: _____

Title: _____

State of _____

County of _____

On _____ before me, _____ (name and title), personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Memorandum and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the Memorandum the person, or the entity upon behalf of which the person acted, executed the Memorandum.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

NOTARY PUBLIC, State of _____

WITNESS my hand and official seal.

Signature: _____

(Seal)

Printed Name: _____

My commission expires: _____

SPONSOR:

WCEI Chehalis MB, LLC, a North Carolina limited liability company

By: _____
Name: Robert D. Sokolove

Commonwealth of _____

County of _____

On _____ before me, _____, _____, personally appeared, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within Memorandum and acknowledged to me that he/she executed the same in his/her authorized capacity as _____ of WCEI Camp Cooley Ranch MB, LLC, and that by his/her signature on the Memorandum the person, or the entity upon behalf of which the person acted, executed the Memorandum.

I certify under penalty of perjury under the laws of the Commonwealth of _____ that the foregoing paragraph is true and correct.

NOTARY PUBLIC, Commonwealth of _____

WITNESS my hand and official seal.

Signature: _____ (Seal)
Printed Name: _____
My commission expires: _____

EXHIBIT TO MEMORANDUM
THE PROPERTY

Schedule 30.1

DISCLOSURE

(a) WCEI Chehalis MB, LLC ("Sponsor") discloses to the City that Sponsor is affiliated with the law firm Womble Carlyle Sandridge & Rice, PLLC ("WCSR"). WCSR indirectly owns a majority interest in Sponsor. While the Mitigation Bank Development Agreement (this "Agreement") between Sponsor and the City of Chehalis, Washington ("the City") in which this Disclosure is incorporated by reference does not create an attorney-client relationship between the City and WCSR, Sponsor may retain WCSR to provide services to Sponsor in connection with the transaction and matters described in this Agreement. In addition, the City may engage WCSR directly to provide legal services to the City in connection with the transaction described in this Agreement or in connection with any other matter. Any such engagement of WCSR by the City must be pursuant to and subject to a separate written agreement between WCSR and the City.

(b) Since WCSR may ultimately provide legal services to the City in connection with the Mitigation Project described in this Agreement, your attention is directed to Rule 1.8(a) of the ABA Model Rules of Professional Conduct, which provides as follows:

A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest directly adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
3. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(c) The following is general summary of the terms of this Agreement:

1. If Sponsor determines to proceed with a mitigation project, which may include a mitigation bank, on the property described on Exhibit A-1 ("National Avenue Property") and Exhibit A-2 ("Additional City Property") to this Agreement (collectively, the "Property"); such a mitigation project being referred to herein as the "Mitigation Project," Sponsor shall (i) seek regulatory approval of a bank instrument establishing the Mitigation Project (the "Bank Instrument"); (ii) be responsible for construction of all site improvements required as a condition of regulatory approval in connection with a Mitigation Project; (iii) be responsible for all maintenance

and monitoring obligations of site improvements after completion of them, as required; and (iv) be responsible for and have the sole authority for identifying potential purchasers of "Credits" (as defined in Section 1 of the Agreement), negotiating and closing the sale or other transfer of Credits, and facilitating governmental approval of Credit sales and transfers, all as more specifically provided in Section 3 of this Agreement. The Mitigation Project may include other property described on Exhibit A-3 to this Agreement (the "K&K Property").

2. Sponsor shall be responsible for all costs of establishing, developing and maintaining and monitoring the Mitigation Project as described in Section 3 of this Agreement.

3. The City shall be allocated and granted three (3) wetlands credit acres without charge ("the City Wetlands Credits") as consideration for entering into this Agreement.

4. Credits shall be allocated between the City and K & K Adventures, L.L.C. ("K&K") based on the proportion that the number of acres in either the National Avenue Property, Additional City Property or the K&K Property bear to the total number of acres in the Mitigation Project (each, the "City National Avenue Credits", "Additional City Credits" or "K&K Credits," respectively). Additional property may be added to the Mitigation Project, in which event the acreage of such property shall be added to the acreage of the Mitigation Project and Credits will be allocated to such additional property proportionately in the manner that they are allocated to K&K and the City.

5. The first credits of any particular type sold shall be deemed credits allocated to the City from the National Avenue Property. After the City is allocated its proportion of such type of credits, the next credits of such particular type shall be allocated to K&K until it is allocated its proportion of such type of credits. Remaining credits of such type shall be allocated to the City as credits from the Additional City Property. In the event that additional property is added to the Mitigation Project, credits shall be allocated to such property after allocation of all Credits to the City.

6. Consideration received in respect of the transfer of Credits, or grants of easements or rights to use the Property in connection with (but not necessarily derived from) the establishment of a Mitigation Project ("Proceeds") shall be allocated and disbursed in the following order:

(i) One hundred percent (100%) of the Proceeds from the first twelve (12) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed exclusively to Sponsor;

(ii) Twenty percent (20%) of the Proceeds from the thirteenth (13th) up to and including the seventeenth (17th) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iii) Twenty percent (20%) of the Proceeds from the first thirty and one-third percent (30.33%) of Wetlands Credits that are Additional City Credits shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iv) Thirty-five percent (35%) of the Proceeds from all additional Wetlands Credits that are either City National Avenue Credits or Additional City Credits

sold shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; and

(iv) Thirty-five percent (35%) of all remaining Proceeds attributable to City National Avenue Credits or Additional City Credits e.g., from such Credits that are not Wetlands Credits, shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; provided, however, if there are not at least twenty (20) Wetlands Credits that are National Avenue Credits, then Proceeds from other National Avenue Credits, e.g., stream restoration Credits, shall be equitably allocated and disbursed so as to provide Sponsor and the City with approximately the same respective shares of Proceeds as they would have received if all Proceeds had been in respect of Wetlands Credits.

7. The City or Sponsor may terminate this Agreement in the event that final regulatory approval of the Mitigation Project does not occur on or before the second (2nd) anniversary of the effective date of the Agreement by giving written notice thereof to Sponsor. Sponsor may terminate this Agreement, if it determines in its discretion, that the Mitigation Project is not environmentally, economically, regulatorily or otherwise feasible by giving written notice thereof to the City.

8. The general terms described above are subject to the further terms and provisions of this Agreement, all of which are binding on the City and Sponsor, and the City is directed to read all of the terms and conditions of this Agreement carefully.

The terms of this Agreement were negotiated primarily by Robert Nacht, Community Development Director, and William Hillier, City Attorney, on behalf of the City and Daniel Mackesey, Chair of the Management Committee of Sponsor, on an arms length basis. The City acknowledges that it has read and understands the above summary of terms of this Agreement.

(d) The following applies if WCSR is currently or becomes legal counsel for the City. One of the concerns addressed by Rule 1.8(a) is that a lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with the client. The parties believe this transaction is fair to the City and that this Agreement sets forth the terms of the transaction in a manner which the City understands. Nevertheless, if the City ever perceives a conflict of interest arising as a result of the role of WCSR and/or its relationship to Sponsor, the parties agree to take appropriate steps to resolve that conflict in a manner that is consistent with WCSR's ethical obligations, which resolution may include using a different legal services provider other than WCSR if either the City or WCSR deem appropriate.

(e) The City is advised to seek independent legal counsel in connection with entering into this Agreement as well as the role of Sponsor and WCSR in connection with the Mitigation Project and their relationship to each other. The City acknowledges that it has consulted with William Hillier, a licensed attorney practicing in the state of Washington, in connection with this issue.

SCHEDULE 31

ADDITIONAL PROVISIONS THAT APPLY IN THE EVENT SPONSOR INCORPORATES UNIDENTIFIED PROPERTY IN THE MITIGATION PROJECT

In the event Sponsor incorporates Unidentified Property in the Mitigation Project pursuant to Section 31, the following provisions shall apply:

1. The following new definitions shall be deemed to be incorporated in Section 1 of the Agreement:

- “Unidentified Credit”: The Unidentified Owner’s proportionate share of the total amount of any type of Credit, e.g., Wetlands Credits, storm restoration Credits, derived from the contribution of Unidentified Property to the Mitigation Project, which shall be determined by multiplying the total amount of such type of Credit by Unidentified Owner’s Proportionate Share. For purposes of such calculation, the amount of a type of Credit shall be deemed to be the amount of the applicable unit value of such Credit, e.g., acres in the case of Wetlands Credits, linear feet in the case of stream restoration Credits.
- “Unidentified Owner” The owner or owners of Unidentified Property.
- “Unidentified Property”: Any property that is incorporated and included in the Mitigation Project pursuant to Section 31.
- “Unidentified Owner’s Proportionate Share”: A fraction, the numerator of which is the total number of acres of the Unidentified Property included in the Mitigation Project, and the denominator of which is the total number of acres in the Project Property included in the Mitigation Project.

2. The following definitions set forth in Section 1 of the Agreement shall be deemed amended and restated as follows:

“Project Property”: The Property, the K&K Property and the Unidentified Property.”

3. Sections 4.2 and 4.3 of the Agreement shall be deemed amended and restated as follows:

“
4.2 Allocation of Proceeds. The first Credits of any particular type sold shall be deemed “City National Avenue Credits” until the City’s National Avenue Proportionate Share of such type of Credit has been reached; provided, however, the City In-kind Wetlands Credits shall be deemed City National Avenue Credits and shall be credited against the City National Avenue Credits to which the City is entitled. After all City National Avenue Credits of a particular type have been sold or credited as aforesaid, then until K&K’s Proportionate Share of such type of Credits has been reached, the next Credits of such type sold or transferred shall be deemed K&K Credits. After all K&K Credits of a particular type have been sold or credited as aforesaid, then until the Additional City Proportionate Share of such type of Credits has been reached, the next Credits of such type sold or transferred shall be deemed Additional City Credits. Thereafter, the balance of such type of Credits, i.e., Unidentified Owner’s Proportionate Share of such type of Credit, shall be deemed Unidentified Owner Credits. The City acknowledges that the practical effect of this provision is that the City will likely receive most of its allocable share of Proceeds from sales of City National Avenue Credits before K&K receives any of its allocable share of Proceeds, and the City will likely receive all or most of its allocable share of Proceeds from sales of Additional City Credits after K&K receives most of its allocable share of Proceeds and before Unidentified Owner receives its allocable share of Proceeds. Proceeds shall be deposited by Sponsor in a segregated account (the “Project Account”) and, subject to the priorities provided above, each disbursement of Proceeds attributable to the City National Avenue Credits and the City Additional Credits shall be allocated and disbursed according to the following:

(i) One hundred percent (100%) of the Proceeds from the first twelve (12) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed exclusively to Sponsor;

(ii) Twenty percent (20%) of the Proceeds from the thirteenth (13th) up to and including the seventeenth (17th) Wetlands Credits that are City National Avenue Credits sold shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iii) Twenty percent (20%) of the Proceeds from the first thirty and one-third percent (30.33%) of Wetlands Credits that are Additional City Credits shall be allocated and disbursed to the City and eighty percent (80%) of such Proceeds shall be allocated and disbursed to Sponsor;

(iv) Thirty-five percent (35%) of the Proceeds from all additional Wetlands Credits that are either City National Avenue Credits or Additional City Credits sold shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; and

(iv) Thirty-five percent (35%) of all remaining Proceeds attributable to City National Avenue Credits or Additional City Credits e.g., from such Credits that are not Wetlands Credits, shall be allocated and disbursed to the City and sixty-five percent (65%) of such Proceeds shall be allocated and disbursed to Sponsor; *provided, however*, if there are not at least twenty (20) Wetlands Credits that are National Avenue Credits, then Proceeds from other National Avenue Credits, e.g., stream restoration Credits, shall be equitably allocated and disbursed so as to provide Sponsor and the City with approximately the same respective shares of Proceeds as they would have received if all Proceeds had been in respect of Wetlands Credits.

For purposes of allocating Proceeds pursuant to this provision, regardless of the terms of any Bank Instrument or any agreement between Sponsor and an end user providing for the sale of Credits, the first payments received in respect of the sale of Credits shall be allocated to the first Credits of such type that are deemed sold. For example, if an end user entered into an agreement to pay Three Million Dollars (\$3,000,000) in three

installments of One Million Dollars (\$1,000,000) for thirty (30) Wetland Credits that are deemed City National Avenue Credits, the entire initial installment would be allocated to the initial ten (10) Wetlands Credits, with the result that the entire initial installment would be allocated and disbursed to Sponsor, regardless of whether the agreement with the end user explicitly provided that the initial installment was a partial payment for all thirty (30) Wetlands Credits.

Notwithstanding the foregoing, in the case of any Noncash Transaction, Sponsor shall be entitled to receive from the next available Proceeds that would otherwise be payable to the City, or from the City if sufficient available Proceeds are not anticipated within the next six (6) months (and only to the extent the City has received Proceeds), Sponsor's applicable percentage (as determined pursuant to this Section 4.2) of the Credit Fair Market Value of the subject Credits; *provided, however*, Sponsor shall not be entitled to receive the Credit Fair Market Value in respect of the City's Wetlands Credits, no further consideration (other than performing the City's obligations under this Agreement) being payable to Sponsor in respect thereof.

4.3 No Reconciliation. The City acknowledges that it is unlikely that all Credits of a particular type from the Mitigation Project will be sold at the same price (i.e., subsequent Credits may sell at a lower or higher price than those sold previously from the same Mitigation Project), thus Proceeds received from the sale of City National Avenue Credits and/or Additional City Credits may or may not exceed Proceeds received from the same number and type of K&K Credits or Unidentified Owner Credits. No "true up" or reallocation of Proceeds after all Credits are sold shall occur among the City, K&K, Unidentified Owner and Sponsor to account for such variations in price.

4. Section 4.5 of the Agreement shall be deemed amended and restated as follows:

"4.5 Project Account. The Project Account shall be a segregated account in a federally insured bank or banks. All interest earned on such Project Account shall be allocated sixty-five percent (65%) to Sponsor and thirty-five (35%) to the City until the Proceeds from all National Avenue City Credits have been disbursed; thereafter, sixty-five (65%) to Sponsor and thirty-five (35%) percent to K&K until the Proceeds from all K&K Credits have been disbursed; thereafter sixty-five percent (65%) to Sponsor and thirty-five (35%) to the City until the Proceeds from all Additional City Credits have been disbursed;

and thereafter sixty-five percent (65%) to Sponsor and thirty-five (35%) to Unidentified Owner. All accrued fees, costs and expenses incurred in connection with maintaining the Project Account shall be paid by Sponsor. Only Sponsor shall have signature authority over the Project Account.”

AMENDMENT TO MITIGATION BANK DEVELOPMENT AGREEMENT

THIS AMENDMENT TO MITIGATION BANK DEVELOPMENT AGREEMENT (this "Amendment") is made between City of Chehalis, Washington ("City") and WCEI Chehalis MB, LLC, a North Carolina limited liability company ("Sponsor") as of _____, 2010 (the "Effective Date").

RECITALS

WHEREAS, Sponsor and City entered into that certain Mitigation Bank Development Agreement dated as of June 29, 2010 (the "Agreement") providing for the development of a mitigation project (the "Mitigation Project") on an approximately 66 acre parcel owned by the City on National Avenue (the "Original City Property");

WHEREAS, City and Sponsor have agreed to include in the Mitigation Project contemplated by the Agreement certain property (the "K&K Property") owned or controlled by K&K Adventures, L.L.C., a Washington limited liability company ("K&K") and more particularly described in that certain Mitigation Bank Development Agreement between Sponsor and K&K bearing an Effective Date of September 21, 2010 (the "K&K Agreement");

WHEREAS, City and Sponsor desire to include in the Mitigation Project additional property owned or controlled by City and legally described on Exhibit A attached hereto (the "Additional Property");

WHEREAS, City and Sponsor also desire to provide for the possible inclusion of additional property ("Unidentified Property") in the Mitigation Project;

WHEREAS, the expansion of the Mitigation Project to include the K&K Property, the Additional Property and the Unidentified Property will result in an increase in the number of mitigation credits derived from the Mitigation Project;

WHEREAS, the K&K Agreement generally provides that (i) credits will be allocated among City and K&K in proportion to the area of the land that they contribute to the Mitigation Project, (ii) K&K will be allocated proceeds from the sale or transfer of credits in the same ratios as the Agreement provides for City, and (iii) proceeds from the sale of any particular type of credit derived from the expanded Mitigation Project shall be paid and disbursed first to City until proceeds from all such credits that are attributable to the Original City Property (based on the proportionate allocation described in clause (i) above) have been paid and disbursed to City, then to K&K until proceeds from all such credits that are so attributable to the K&K Property have been paid and disbursed to K&K, and then to City in respect of such credits that are so attributable to the Additional Property (all subject, however, to the withholding of "Reserves" as described in the Agreement and the K&K Agreement); and

WHEREAS, City and Sponsor desire to provide that proceeds payable in respect of credits attributable to Unidentified Property will be allocated and paid after the allocation and disbursement of proceeds payable in respect of Original City Property and Additional Property; and

WHEREAS, Sponsor and City desire to amend and restate the Agreement to account for the expansion of the Mitigation Project to include the K&K Property, the Additional Property and the Unidentified Property, to provide for the allocation of proceeds as described above, and to address certain other matters.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, City and Sponsor covenant and agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated by reference as is fully set forth herein.
2. **Amended and Restated Mitigation Bank Development Agreement.** The Agreement is hereby amended and restated to read as set forth on and replaced by the Amended and Restated Mitigation Bank Development Agreement attached hereto as Exhibit A and by this reference made a part hereof.

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned parties have duly executed this Amendment under seal on the Effective Date.

WITNESS/ATTEST:

CITY:

City of Chehalis, Washington

By:

Merlin G. MacReynold, City Manager

SPONSOR:

WCEI Chehalis MB, LLC, a North Carolina limited liability company

By:

Robert D. Sokolove, President

EXHIBIT A

Amended and Restated Mitigation Bank Development Agreement

CITY OF CHEHALIS

AGENDA REPORT

DATE: November 4, 2010
TO: The Honorable Mayor and City Council
FROM: Kelvin Johnson, Fire Chief
SUBJECT: Appointment of Council Representative to Regional Fire Planning Committee

ISSUE

To form a planning committee to review options for providing fire services within the area.

DISCUSSION

The issue of annexation in some manner between Lewis County Fire District 6 and the city of Chehalis has been discussed numerous times over the years. The last formal presentation was that of annexing a portion of the UGA within Fire District 6's jurisdiction which was conducted by the FCS Group in 2008. This was determined by the Council to not be economically feasible at the time.

The Washington State Legislature in the past few years has provided another option for communities to provide Fire Services to their area. This option is called a Regional Fire Protection Service Authority, commonly referred to as an RFA (Regional Fire Authority). This means has gained popularity throughout the State as fire departments, both Cities and Fire Districts, look for ways to appropriately fund and provide an ever increasing level of service.

During the joint meeting of the Fire District 6 Commissioners and representatives of the city of Chehalis council on September 14, 2010, it was decided to form a planning committee to look at any and all options for providing fire services to their areas.

The first meeting was held October 27, 2010 and a planning committee group make-up was decided upon. A city of Chehalis council representative position is needed on the planning committee group.

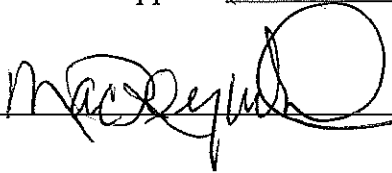
RECOMMENDATION/COUNCIL ACTION DESIRED

The administration recommends that the council appoint a member to the regional fire planning committee.

SUGGESTED MOTION

I move that the council appoint (council member name) to the regional fire planning committee.

Reviewed by:



_____, City Manager

Combining Fire Service Entities – Considerations and Options (10-15-10)

Alternative Description	Overall Option Comparison	Contractual/Functional Consolidations	Annexation	Regional Fire Protection Service Authority (RFPSA)
<p>Governance: <u>Contractual Consolidation:</u></p> <ul style="list-style-type: none"> • Flexible; may create joint governance board, entities legally remain separate. <p><u>Annexation of City into District or RFPSA:</u></p> <ul style="list-style-type: none"> • Board consists of District 6 Commissioners only. <p><u>RFPSA</u></p> <ul style="list-style-type: none"> • Equal joint governance by elected officials of participating entities. <p>Finances: <u>Contractual Consolidation:</u></p> <ul style="list-style-type: none"> • District Tax levy max. • City funding component can be negotiated. • EMS levy remains constant. • Debt service – separate. <p><u>City Annex into District 6</u></p> <ul style="list-style-type: none"> • District tax levy max. • Debt financing negotiated. • City tax levy capacity reduced by amount of District levy from \$3.60. <p><u>RFPSA</u></p> <ul style="list-style-type: none"> • Fire tax levy max @ \$1.50. • EMS tax levy max @ \$.50. • Debt financing negotiable • City tax levy capacity reduced from \$3.75. 	<p>Under this alternative, the participating entities would contract with one entity for services (can be limited or full scope):</p> <ul style="list-style-type: none"> • Option for fire districts, cities, and RFA's. • Pros include: <ul style="list-style-type: none"> - Flexibility - Allows for gradual change • Cons: <ul style="list-style-type: none"> - Complexity - Subject to political changes - Multiple entities may be cumbersome 	<p>Under this alternative, the City would become part of Fire District #6.</p> <p>Annexation is the Statutory method for one entity (City) to become part of another entity (District). May also be used to bring an entity into a RFPSA.</p> <ul style="list-style-type: none"> • Brings incorporated area into the District or RFA. • On annexation, District average levy rate is applied to City residents. • Pros: <ul style="list-style-type: none"> - One entity • Cons: <ul style="list-style-type: none"> - City no longer has control of fire & EMS - District or RFPSA Fire Levy rate is currently at \$0.00, with statutory max of \$1.50. - District or RFPSA EMS levy rate is currently at \$0.00, with statutory max of \$0.50 • Voted on independently by both the District and City voters. 	<p>A flexible approach for coordinated fire service. A Regional Fire Service Protection Authority (RFPSA). A municipal corporation that allows fire districts and cities to join together to provide fire and EMS services.</p> <ul style="list-style-type: none"> • New entity replaces participating entities. • Operates pursuant to a "Plan" for governance and finance; Plan (from Planning Committee, 3 elected officials from each entity) is approved by elected officials and presented to voters. • Equalizes taxation. • Plan specifies funding, and may provide for levy amount at lower or higher level. • Joint /equal governance by elected officials. RCW doesn't state the size of the governance board, just that it must be equal. • Simple majority vote required by combined voting population 	

Alternative	Overall Option Comparison	Contractual/Functional Consolidations	Annexation	Regional Fire Protection Service Authority (RFPSA)
<p>Advantages</p>	<p><u>Personnel Contractual Consolidation</u></p> <ul style="list-style-type: none"> • Flexible – one or two employers must be defined within contract. <p><u>Annexation & RFPSA</u></p> <ul style="list-style-type: none"> • One employer, employee transfers by statute and may be subject to negotiation. • Transfer rights defined. 		<ul style="list-style-type: none"> • One entity. • Both City and District represented: voters elect District Commissioners. City residents eligible to serve on Board in later years. • Annexation results in levy capacity for City that is available for future levy. Council could specify uses (streets, etc.). (Note: levy capacity could also be seen as a disadvantage) 	<ul style="list-style-type: none"> • Flexibility of Plan. • Governance and funding determined by Plan. • Retains usual powers of a fire district board. • Nine Successful RFPSA's, many others are in the planning process. • Citizens retain voting authority over future funding requests. • Does allow for future expansion.
<p>Disadvantages</p>		<ul style="list-style-type: none"> • Requires both City and District to jointly submit measures to keep economic "balance". • Coordination of parallel ballot measures can be problematic. 	<ul style="list-style-type: none"> • City no longer has direct control of fire service- Fire District 6 governs • City tax levy capacity is reduced by amount of District levy from \$3.60 • Annexation results in levy capacity for City – equals tax increase if levy capacity is used by Council. • The vote of the electorate could result in one entity passing, the other failing. 	<ul style="list-style-type: none"> • RFPSA may result in levy capacity for City - equals tax increase if levy capacity is used by Council (similar to annexation)

Lewis County Fire District 6
Board of Fire Commissioners
Special Meeting

Planning Committee Meeting
October 27, 2010

Background

Lewis County Fire District 6 and the Chehalis City Council agreed to form a Planning Committee on September 14, 2010 following a two year period, in which the Chehalis Fire Department and the Fire District have began sharing training opportunities and providing joint responses to pre-designated area's within the City and Fire District.

Process

- Identify agencies wishing to be part of the process.
- Develop the Planning Committee.
- Present evaluation and options presented by the Planning Committee to a Stakeholder Group.
- Stakeholder Group reviews information from the Planning Committee and provides recommendations to Elected Officials of participating agencies.
- Elected Officials use Stakeholder Groups recommendation to establish direction of Agencies.
- Elected Officials present information to Voters for approval.
- Voters will determine level of service desired based on approval/denial of ballot measure.

Opportunities

- Contractual/Functional Consolidations
 - Inter-Governmental Agreements
 - Inter-Local Agreements
- Annexation
- Regional Fire Protection Service Authority
- Continue with Current Operations

Planning Committee

- Purpose – Perform a systematic comparison of the agencies and evaluate potential opportunities that may exist between Lewis County Fire District 6 and the City of Chehalis Fire Department, and any other interested contiguous Fire District in Lewis County.

Planning Committee

What do we need?

- Facilitator – Establish ground rules for the committee, oversee and guide the process of the committee, provides motivation and ensures the work group remains focused and on task without becoming bogged down on minor details.
- Suggestions?

Planning Committee

What do we need?

- **Committee Members**
 - 1 Elected/Appointed Official from each Agency participating.
 - 1 Fire Chief from each Agency participating.
 - 1 Labor Rep/Personnel Rep from Agency Participating (e.g. paid or volunteer)
 - 1 Secretary/Administrative person
 - 1 Spokesperson/Public Information Officer
- **Suggestions?**

Planning Committee

What do we need?

- Dedicated members who will be able to attend scheduled meetings and complete agreed upon work products while maintaining the integrity of the committee in producing a non-biased evaluation and forward thinking direction for those agencies involved.

Planning Committee

- Next Steps
 - Invite agencies to participate.
 - Identify Planning Committee Members
 - Identify Facilitator
 - Establish Timelines for completion of these steps.
 - Comments -