

INTERLOCAL AGREEMENT

Between the City of Edmonds and Western Washington University

THIS Agreement is by and between the City of Edmonds, a Washington municipal corporation ("Edmonds"), and Western Washington University, a higher education institution of the State of Washington ("WWU"), known collectively as "the Parties."

I. RECITALS

WHEREAS, there are numerous pending municipal projects in Edmonds, the completion of which would result in sustainable ecological, economic and social benefits; and

WHEREAS, WWU's Sustainable Cities Partnership ("SCP") works with a single city each academic year, arranging to use the resources of WWU to undertake projects of benefit to said city; and

WHEREAS, Edmonds wishes to contract with WWU to be SCP's partner city for the 2016 – 2017 academic year; and

WHEREAS, RCW 39.34 (Interlocal Cooperation Act) provides for cooperation between governmental entities on the basis of mutual advantage and authorizes interlocal agreements to accomplish mutually beneficial purposes in the public interest;

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties agree as follows:

II. AGREEMENT

1. PURPOSE

The purpose of this Agreement is to establish the scope of work that WWU's SCP will perform for Edmonds, as well as the terms and conditions of the relationship between the Parties.

2. SERVICE

WWU SCP agrees to provide those services and deliverable products set forth in attached Exhibit "A," Scope of Work and Budget, incorporated herein by reference. Edmonds agrees to provide the staff collaboration and background data set forth in Exhibit "A."

3. ADMINISTRATION AND MANAGEMENT

- 3.1 The Parties are not creating any new or separate organization or entity to administer the provisions of this agreement. WWU shall administer the planning and implementation of the Scope of Work.
- 3.2 The Edmonds Planning Manager, Rob Chave, shall have primary responsibility for administering and approving services to be performed by WWU, and shall coordinate all communications between WWU and Edmonds.
- 3.3 The WWU SCP Program Coordinator, David Davidson, shall have primary responsibility for administering and approving services to be performed by WWU, and shall coordinate all communications between WWU and Edmonds.

4. INVOICE AND PAYMENT PROCEDURES

- 4.1 Edmonds shall reimburse WWU for incurred project expenses and program overhead expenses, as specified in attached Exhibit "A."
- 4.2 At the end of each academic quarter (i.e., on approximately December 31, 2016, March 31, 2017, and June 30, 2017) WWU shall submit to Edmonds an invoice for work performed in the prior quarter. Edmonds shall initiate authorization for payment after receipt of said invoice and shall make payment to WWU within approximately 45 days of initial receipt.

5. PROPERTY

- 5.1 *Real:* No real property shall be acquired or held under this Agreement.
- 5.2 *Intellectual:* Any and all reports, electronic databases and datasets, plans, drawings, videos, photographs, or other creation of the mind created by WWU SCP pursuant to completion of the Scope of Work shall be shared jointly among the Parties and may be used by Edmonds and WWU for any purpose. WWU retains intellectual property rights in documents and intangible property created by WWU prior to engagement with Edmonds, or not created by WWU for its performance of this Agreement.

6. MODIFICATION AND TERMINATION.

6.1 *Modification.* Any change, addition or other modification to this Agreement shall not be valid or binding upon any party hereto unless such change, addition or modification is in writing and executed by an authorized representative of the Parties hereto.

6.2 *Termination.* Termination of this Agreement may be initiated by either party hereto with or without cause. Such termination shall be memorialized by written agreement of all Parties hereto, which shall be executed by an authorized representative of each party. In the event of termination, Edmonds shall reimburse WWU pursuant to the terms of paragraph (7) below.

7. ADJUSTMENT OF BUDGET AND SCOPE OF WORK

7.1 Paragraph (4) of Exhibit "A" governs instances in which either party seeks to delete one or more specific projects from the Scope of Work.

7.2 In the event that WWU initiates termination of the Agreement, Edmonds shall reimburse WWU for only the cost of completed projects (i.e., projects for which deliverables have already been received by Edmonds) and for the cost of program overhead incurred as of the date of termination.

7.3 In the event that Edmonds initiates termination of the Agreement, WWU will complete projects that are underway and Edmonds shall reimburse WWU the actual costs incurred for said projects. WWU will not commence projects not yet underway (i.e., projects with scheduled start dates that fall after the date of termination of the Agreement) and will not invoice Edmonds for said projects. WWU will make its best effort (consistent with union contracts and labor laws) to minimize program overhead costs incurred after the date of termination of the Agreement, and Edmonds shall reimburse WWU for program overhead costs that are unavoidably incurred by WWU.

8. TERM

This Agreement shall become effective on the date upon which it has been executed by both Parties and posted on the website of Edmonds or WWU in accordance with RCW 39.34.040. The Agreement shall remain in effect until September 30, 2017.

9. LEGAL RELATIONS AND INDEMNIFICATION

The Parties agree to the following distribution and allocation of legal responsibility and indemnification:

- 9.1 Neither party to this Agreement will be considered the agent of the other nor does either party assume any responsibility to the other party for the consequences of any act or omission of any person or entity not a party to this Agreement.
- 9.2 The Parties shall separately maintain their own liability and casualty insurance policies as they, in their sole discretion, deem appropriate. The Parties further agree that no indemnification shall be provided for, except as specifically set forth below, and that the respective liability of the Parties to each other and to third persons shall be deemed in accordance with the laws of the State of Washington.
- 9.3 WWU will protect, defend, indemnify, and hold harmless Edmonds, its officers, employees, volunteers or agents from any and all costs, claims, judgments or awards of damages arising out of, or in any way resulting from, the acts or omissions of WWU, its officers, employees or agents. Edmonds will protect, defend, indemnify, and hold harmless WWU, its officers, employees or agents from any and all costs, claims, judgments or awards of damages arising out of, or in any way resulting from, the acts or omissions of Edmonds, its officers, employees volunteers or agents. In the event of concurrent liability, the parties shall have the right of contribution in proportion to the respective liability of each party. Nothing contained in this section shall be deemed to waive immunities established pursuant to state statutes or to create third party rights or immunities.
- 9.4 Notwithstanding the provisions set forth above, Edmonds understands and supports the project's academic and experiential learning benefits for WWU students. Edmonds acknowledges that many aspects of the project will be completed by WWU students under the supervision of WWU faculty, and that neither the faculty nor students are licensed professionals. Neither WWU, nor anyone acting on behalf of WWU, makes any warranty or representation, express or implied, with respect to the accuracy, completeness, or usefulness of the information provided pursuant to this agreement, whether or not contained in any written report; or that use of any data, information, method or process disclosed in any report may not infringe privately owned rights. Edmonds hereby releases WWU from liability for damages which may result to the City from the negligent acts or omissions of WWU students in the performance of work under this Agreement.
- 9.5 The terms of this section (9) shall survive the termination of the Agreement.

10. MISCELLANEOUS PROVISIONS.

- 10.1 *Entire Agreement.* This document is the complete and exclusive agreement among the Parties with respect to the SCP program. It supersedes all oral or written proposals and/or other communications among the Parties regarding the SCP.
- 10.2 *Severability.* If any provision of this Agreement is held to be invalid, illegal or unenforceable for whatever reason, that shall not affect or impair, in any manner, the validity, legality or enforceability of the remainder of this Agreement.
- 10.3 *Waivers.* A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement
- 10.4 *Status of Employees.* This Agreement shall not create any employment or worker's compensation rights, duties or obligations. No agent, employee or other representative of the Parties shall be deemed an employee of any other party hereto for any reason.
- 10.5 *Status of Agreement.* This Agreement is in addition to, and is not intended to replace, substitute, modify or otherwise amend any other agreement between the Parties. Those other agreements continue in effect according to the terms of those agreements.
- 10.6 *Rights and Remedies.* The rights and remedies provided in this Agreement are in addition to any other rights and remedies that may be provided by law.
- 10.7 *Third Parties.* The Parties do not intend to create any rights or benefits in any entity, organization or person that is not a party hereto.
- 10.8 *Venue.* Washington law shall govern the interpretation of this Agreement. Whatcom County shall be the venue of any arbitration or lawsuit arising out of this Agreement.
- 10.8 *Compliance with Laws.* WWU shall comply with all applicable federal, state and local laws, ordinances, rules, and regulations.
- 10.9 *Assignment.* The Parties hereto shall not assign or delegate any or all duty, obligation, right or interest in this Agreement.
- 10.10 *Nondiscrimination.* During the performance of this Agreement, the parties shall comply with all federal and state nondiscrimination laws and regulations and

policies. In the event of a party's noncompliance or refusal to comply with any nondiscrimination law or regulation, this Agreement may be rescinded, canceled, or terminated in whole or in part. The party shall, however, be given a reasonable time in which to cure this noncompliance.

10.11 *Force Majeure.* The obligations of the parties under this Agreement shall be suspended and excused if the performance of either is prevented or delayed by acts of nature, earthquakes, fire, flood, or the elements, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, war, compliances with any directive, order or regulation of any governmental authority or representative thereof made under claim or color of authority or for any reason beyond the control of either party whether or not similar to the foregoing.

10.12 *Records.* The Parties shall each maintain records in accordance with generally accepted accounting principles of the funds expended pursuant to this Agreement. Such records shall be available during normal working hours for the review of the other party, their accounting representatives or the State Auditor.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year last below written.

City of Edmonds

Western Washington University

David Earling, Mayor

Title

Date: _____

Date: _____

ATTEST/AUTHENTICATED:

Scott Passey, City Clerk

Title

Date: _____

APPROVED AS TO FORM:

Sharon Cates
Office of the City Attorney

Title

Date _____