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CITY OF LA CENTER

REPORT OF INVESTIGATION

By: Kenneth Wilson

February 26, 2018



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FACT FINDING REPORT

City of La Center

February 26, 2018

I. SYNOPSIS

This investigation was initiated as a result of a decision by Mayor Thornton to seek a RFP (Request for Proposals) as an alternative to the operation of the City's Waste Water Treatment Plant (WWTP). Mayor Thornton authorized Public Works Director Jeff Sarvis to research the best option to move the discussion forward to the City Council. Mr. Sarvis contacted consultant Paul Eisenhardt (Eisenhardt Group) who expressed interest in working with the City to prepare a comprehensive RFP and to conduct the review of all responses. On December 13, 2016, Mayor Thornton signed an agreement to retain Mr. Eisenhardt for contract services related to working with the City and Mr. Sarvis in preparing and evaluating the RFP and qualified proposals. **(EXHIBIT #1)** Mr. Eisenhardt made a presentation to the City Council on February 13, 2017, at which he laid out his proposal for the "RFP Purpose" and "Objectives." The "RFP Purpose", as presented to council, included a statement to the effect:

The purpose of the RFP is to solicit qualifications to determine qualified/experienced firms and then continue to review and evaluate competitive sealed proposals from the firms evaluated as meeting the

This report is submitted pursuant to the terms of the Professional Services Agreement between the City of La Center and Wilson Investigative Services dated October 6, 2017.

Minimum Qualifications...

Mr. Eisenhardt also identified the following “Objectives” of the RFP, as well as summarized six separate “Criteria” to be used in evaluating those responses meeting minimum qualifications.

Objectives:

- 1) High quality, service oriented operation & maintenance of the wastewater utility without significant cost increases for the current utility operation. Future operations and costs that demonstrate quality, reliability, cost effectiveness, and continued regulatory compliance.
- 2) Full-time staffing for treatment plant operation & maintenance and performance of assigned collection system roles and responsibilities. Staff shall be properly certified. Access to regional and national resources and systems for augmentation of on –site staff and systems.
- 3) Responsibility for comprehensive maintenance (best practices) for all facilities under the responsibility of the contract O & M firm.
- 4) Development and implementation of systems and operations procedures to include computerized maintenance management systems, development of standardized SOP’s for operation & maintenance. Continued updating of the comprehensive SCADA control for operation of facilities and long term asset management.

Criteria:

- 1) Long term view of wastewater treatment plant (WWTP) for collection system
 - Operational continuity
 - Redundancy and backup for plant operations to gain dedicated backup and risk reduction of staff changes and turnover
 - Regulatory requirements – confidence to meet
 - 2) Costs vs. Value
 - Key is provision of high value, quality services not a significant cost reduction with the implicit reduction of service quality and value received
 - 3) Staffing
 - Keep the existing staff whole: employment, wages, benefits, years of service recognition
 - Training to include O&M, systems, safety, certification
 - 4) Ownership & Control
 - Continued City ownership of facilities
 - Usage of performance benchmarks for contract operations
 - Comprehensive maintenance program and clear contract operator responsibilities
 - 5) Prepare for the long term future and growth of La Center – WWTP capacity and operation
 - Now Phase 1A of 4 Phase plant
 - 6) Protect the Community in the contract (performance, valued received, accountability)
- (EXHIBIT #2)**

Following Mr. Eisenhardt’s presentation to council, Council Member Cervený made a motion, seconded by Council Member Currey, to the effect: “Approve to authorize the Mayor and staff to proceed with publishing request for proposals for the procurement of services related to the contract operations of the La Center Wastewater systems.” The motion was passed unanimously. **(EXHIBIT #3)**

Following several council work sessions and public meetings, at which Mr. Eisenhardt made follow-up presentations and citizen input was received, the City council voted at their meeting on the July 26, 2017, to retain the current operation and maintenance of the La Center Wastewater Utility. The motion was made by Council Member Luiz and seconded by Council Member Williams. Council Members Birdwell-Currey, Luiz and Williams voted in favor of the motion and voting opposed were Council Members Valenzuela and Cervený. **(EXHIBIT #4)**

II. SCOPE

The scope of this engagement was “to conduct an investigation regarding complaints pertaining to the Finance Director Suzanne Levis. Upon mutual agreement of Wilson Investigative Services (WIS) and the City, the scope of this investigation may be expanded depending on information learned during the course of this investigation which would warrant further inquiry. The City and WIS agree that this Professional Services Agreement will include any additional matters that WIS investigates at the direction of the City.

III. SUMMARY OF ISSUES

1. Was any of the alleged conduct by the Finance Director a violation of City Policy?
2. Were any laws violated by the alleged conduct of the Finance Director?
3. Does any of the alleged conduct by the Finance Director constitute a misrepresentation of financial documents?
4. To what extent do the City of La Center’s policies and principles apply to the alleged conduct of the Finance Director?

IV. COMPLAINT

On October 26, 2017, Mayor Thornton sent a memorandum to all council members which summarized the following allegations against Ms. Levis:

- Whether Ms. Levis misrepresented or falsified financial data in documents submitted in connection with the WWTP RFP;
- Whether Ms. Levis misrepresented information to the union in connection with this matter;
- Whether Ms. Levis put personal interests ahead of her professional duties in attempting to influence council members regarding this matter;
- Whether Ms. Levis was insubordinate in engaging in efforts to negotiate salaries and enter into agreements with the union without my (Mayor’s) authorization or knowledge. **(EXHIBIT #5)**

V. EXECUTIVE SUMMARY

The above allegations formed the basis of this investigation, as summarized below:

➤ **Misrepresentation and/or falsification of financial data in documents submitted in connection with the WWTP RFP:**

This allegation stems from a difference between the financial data reported in the City’s 2017 Council approved budget and that information provided in the published RFP, as well as information provided to council members by Ms. Levis regarding the RFP and considered during their contracting-out deliberations. **Finding: Substantiated.**

On 11-7-16, Ms. Levis sent an email to Mr. Sarvis with the subject: Salary Matrix. The attached 5-step matrix was for the years 2016, 2017 and 2018. The matrix included Operator 1 & 3 and Maintenance 1-3 positions, each showing an hourly rate for each of the 5 steps. **(EXHIBIT # 80)**

On 11-17-16, Mr. Kearns sent an email to Mr. Sarvis, Ms. Levis and Mayor Thornton with the Subject: Exchange employee – MOU. The email included a draft MOU referencing the transfer of Mr. Klinski from Public Works to Wastewater. **(EXHIBIT #81)**

On 11-20-16, at 6:48 PM, Ms. Levis sent an email to Mr. Lewis which read; “We are in the middle of a minor crisis over contracting-out sewer services – Jeff and I need more TIME to make a decent recommendation. I’ll forward you another email – please just try to give us a bit more time on this one...” **(Emphasis original to document.) (EXHIBIT #6 & #60)**

On 11-20-16, at 6:52 PM, Ms. Levis sent another email to Mr. Lewis which stated; “Scruffy message but **Jeff and I are still trying to present a decent scenario of alternatives for contracting-out sewer services** – Mayor is trying to circumvent bid law; circumvent PW Director... super nutty situation. If you can, **please recommend a stall until we can articulate a decent/legal response.**” **(Emphasis added) (EXHIBIT #7)**

The City of La Center’s 2017 budget was approved on November 22, 2016. The Excel worksheets leading up to the final budget reflected the total compensation for the soon to be vacant WWTP Supervisor¹, including the base salary of \$91,501 and a \$1,200 per year for cell phone reimbursement as \$92,701, plus benefits of \$37,141, for a total cost of \$129,842. The base salary for the then vacant WWTP Operator 1, at Step 2, was \$53,061, plus an additional \$250 for BA work was budgeted for \$53,311 + \$28,490 in benefits, for a total of \$81,801. The WWTP Operator III Birdwell’s base salary of \$61,942², plus an additional \$10,800 in overtime was budgeted for \$72,742 + \$33,658 in benefits, for a total of \$106,400. The total for salaries, additional compensation and benefits for the three WWTP positions was \$318,042. At the time the 2017 City budget was finalized, Mr. Klinski worked in Public Works as a Maintenance 1, at step 5 and his base salary was \$59,634, along with \$400 in overtime, \$1,500 in VC Buy, and \$3,150 in pager pay and \$575 for BA Work, totaled \$65,259. His benefits were budgeted at \$41,224, for a total of \$106,482.³ Starting as early as 11-17-16, there were discussions between Mr. Sarvis and Mr. Kearns concerning preparing a Memorandum of Understanding to temporarily transfer Mr. Klinski from Public Works to the WWTP. According to an email from Mr. Sarvis, dated 3-22-17, Mr. Klinski had began working in the WWTP on 12-1-16, with the understanding that Mr. Klinski would be kept whole regarding all of his benefits. On 3-21-17, Mr. Klinski requested in writing to permanently transfer to the WWTP, effective 3-24-17. (My analysis focused only the 3-FTE’s working in the Sewer Department as reported to the City Council in November 2016 to the same 3-FTE’s salaries and benefits reported to the RFP contract proposers). **(EXHIBIT #8, #82 and #83)**

On 2-23-17, at 11:42 AM, Ms. Levis sent an email to Mayor Thornton with the Subject line of: RFP spreadsheet. The email included an attachment named: RFP budget.xlsx. This attachment was the 2017 “Company Budget” for the 3-FTE’s in the WWTP. It did not break down the individual salaries and benefits for the 3-FTE’s, but the total budget for the Contract Proposers was \$313,604. **(EXHIBIT #9)**

¹ Ms. Levis prepared the original 2017 budget prior to the resignation of Sue Lawrence effective 11-30-16.

² The base salary is for an Operator 3, Step 3

³ The figures of \$65,259 plus \$41,223 for the WWTP Operator 1’s salary and benefits that Ms. Levis used in her email to Ms. Obermeyer, dated 3-15-17, were actually the amounts being paid to Mr. Klinski as a Maintenance 1, Step 5 employee. Considering the understanding in effect at the time that Mr. Klinski would be kept whole while working in the WWTP as an Operator 1, Step 5, the figures used for the Operator 1’s salary seem reasonable. Operator 1, Step 5 was 3% higher than his Maintenance 1, Step 5 salary in Public Works, but anything less would have been a decrease in his salary.

On 3-15-17, at 11:51 AM, Ms. Levis sent an email to Ms. Lisa Obermeyer of CH2M, the breakdown for each of the 3-FTE's working in the WWTP for which they would be responsible as: \$67,700 + \$32,464, for a total of \$100,164 for the WWTP Supervisor's salary and benefits. The Operator 1 was reported as: \$65,259 + \$41,223, for a total of \$106,482 and the salary and benefits for the Operator 3 position as being \$72,742 + \$33,657, for a total of \$106,399. The total compensation and benefits, including overtime, reported to the RFP contract proposers by email was \$313,045. This amount was later changed in the RFP proposed budget for the 3-FTE's to \$313,604. The difference between these two numbers is \$559, which is the amount Ms. Levis acknowledged to be the amount of an error she was unable to find. Ms. Levis stated in an email to Mr. Kearns on 7-24-17, that she was unable to recreate how or from where she came up with the base salary for the WWTP Supervisor of \$67,700.00. Ms. Levis also added the comment to her email, "Lastly, in checking my math it looks like somewhere I added \$559 into the mix... not sure what I did... my bad."⁴ **(EXHIBIT #10 & #29)**

On 3-22-17, Mr. Sarvis sent an email to Ms. Corbin, Mayor Thornton and Ms. Levis. Attached to the email was a "MOU WWTP Temporary Assignment - 11.28.16.docx." In the email, Mr. Sarvis provided background of how long Mr. Klinski had been working in the WWTP where he had voluntarily transferred on 12-1-16. **(EXHIBIT #82)**

On 3-31-17, Mr. Sarvis sent an email to Ms. Corbin with the Subject: Transfer, WW Employee. There were three attachments to the email. **(EXHIBIT #83)**

On 6-19-17, at 8:20 AM, Mayor Thornton sent an email to Ms. Levis with an attachment named: Comp & hire dates- xlsx. The body of the email said:

Per our conversation last Friday and in preparation for upcoming 2018 budget discussions, please provide me with an updated spreadsheet (see attached) with all current comp and hire dates. **(EXHIBIT #11)**

The attached spreadsheet showed the 2017 budgeted salary for the WWTP Supervisor as \$92,701 + \$38,019 in benefits, for a total of \$130,720. One WWTP Operator, hired on 1-1-11, had a base salary of \$72,742 + \$34,391 in benefits, for a total of \$107,133. The second WWTP Operator, (position to be filled) had a salary of \$53,311⁵ and benefits of \$10,373, for a total of \$63,684. Although the spreadsheet has one column showing "2016 Total Comp (calc-ed)", the other columns show 2017 and the salaries showing under the 2016 column appear to be salaries for 2017. Regardless, the benefits showing for the second WWTP Operator vacant position were \$10,373. It is unknown how the total benefits were determined for this position. **(EXHIBIT #11)**

On 6-19-17, at 4:33 PM, Ms. Levis responded to Mayor Thornton's 8:20 AM email, by providing an attached spreadsheet without comment. The spreadsheet showed the salary of the WWTP Supervisor to be: \$67,700 + \$32,464 in benefits, for a total of \$100,164. One WWTP Operator, hired on 1-1-11 had a salary of \$72,742 + \$33,657 in benefits, for a total of \$106,400. The second WWTP Operator, hired on 2-1-11, had a salary of \$65,259 + \$41,223 in benefits, for a total of \$106,481. The total cost for all three FTE's was \$313,045. **(EXHIBIT #12)**

On 7-6-17, at 4:34 PM, Ms. Levis sent an email to Mayor Thornton with an attachment named: Sewer Operations Fund – Budget-to Actual 2013-2017. The 2017 budget amount for Operations' salaries & benefits totaled \$313,604 and the 2017 budget for "Administrative Salaries & Benefits of \$207,314. **(EXHIBIT #13)**

On 7-7-17, at 8:44 AM, Ms. Levis sent an email to Mr. Sarvis with an attachment named: Sewer Operations Fund – Budget-to Actual 2013-2017. The 2017 budget amount for Operations' salaries & benefits totaled \$313,604 and the 2017 budget for "Administrative Salaries & Benefits of \$207,314. **(EXHIBIT #14)**

⁴ There has never been an explanation from Ms. Levis where the salary of \$67,700 for the WWTP Supervisor came from

⁵ This salary equates to a base salary of \$53,061 or \$25.51/hr, equivalent to an Operator 1, Step 2, plus \$250 for BA work

On 7-7-17, at 2:41 PM, Ms. Levis sent an email to Mr. Sarvis with an attachment named: 7.12.17 Fin Staff report-1, 6.1-B Budget, and Historical Sewer Op fund costs. The staff report was address to Mayor Thornton and dated 7-12-17. The staff report states:

Council Member Luiz requested a copy of the budget-to-actual reports of the Sewer Operations fund for the past five years. You will note this presentation is different than the format used in the adopted budget.

The first attachment (page 3) is the budget that was provided in the published Request for Proposals (RFP). For Council Member Luiz's request, I prepared an 'apples to apples' comparison by presenting the historical data (2013-2016) in the same format (pages 4 & 50. You would have seen a similar format starting on page 27 of Paul Eisenhardt's report (from the June 28th council meeting. The "Total Service Fee" from the proposals was compared to the City's comparable budget.

There are three components to this budget: **Company Budget (operations). Pass-thru & City budget.** In the RFP, the Operations plus the salary for three FTEs portion was designated as the contractor's budget. The pass-thru costs will continue to be paid by the City (but had a cap) and the City budget is for the administrative costs (admin salaries, City insurance, etc.)

Some of the historical budget variations are explained below... **(EXHIBIT #15)**

The two spreadsheets attached to the email show the 2017 budget amount for Operations' salaries & benefits totaled \$313,604 and the 2017 budget for "Administrative Salaries & Benefits of \$207,314. The "footnote" for the first number of \$313,604 states: "In the 'Contractor Budget' this is the cost (salary + benefits) of the 3 City operators; includes an Operator 1, an Operator 2 and a Supervisor. The City will continue to incur/pay Administrative salaries, including portions of the PW Director, the Finance Director and finance support staff as listed in the "City Budget." The footnote for the \$207,314 figure states: "In 2016 the City performed a time-allocation study of the Finance Department staff which resulted in additional salary cost being allocated to the WWTP." **(EXHIBIT #15)**

On 7-13-17, at 10:19 AM, Ms. Levis sent an email to Council Member Al Luiz that read:

Al – I'm so sorry this took so long – the Mayor still wants to review my accompanying staff report but here are the numbers you requested.

The format is DIFFERENT than you are using (sic) to seeing on the 'normal' budget; this was the format suggested by Paul Eisenhardt (RFP consultant). The first attachment is the budget provided in the RFP; the second is a historical budget-to-actual converted into the same format... **(EXHIBIT #16)**

The attached spreadsheets show the 2017 budget amount for Operations' salaries & benefits totaled \$313,604 and the 2017 budget for "Administrative Salaries & Benefits of \$207,314. **(EXHIBIT #16)**

On 7-14-17, at 9:10 AM, Ms. Levis sent Mayor Thornton an email with an attachment named: Staff Report – salary allocations 7.14.17. The accompanying document shows an allocation of \$207,437 from the Finance Department to the Sewer Plant. Portions of the positions being allocated to the Sewer Plant included: Engineer, (2) Accountants, Utility Billing Clerk, Finance Director and Public Works Director. **(EXHIBIT #17)**

On 7-17-17, at 8:52 AM, Ms. Levis sent Mayor Thornton an email with an attachment named: Staff Report – salary allocations 7.14.17. The accompanying attachment reflected the actual percentages of each allocated position,

totaling \$207,437. The allocated positions are the equivalent of two FTE's. Ms. Levis indicated as a footnote on both Staff Reports to the Mayor that "Originally I planned on allocating Tony's hours on a pro-rata method but had to make some changes to accommodate accounting necessities. The budget should reflect more of Tony's \$ allocated to the General Fund and less \$ to the Sewer Fund."⁶ **(EXHIBIT #18)**

On 7-17-17, at 9:04 AM, Ms. Levis sent Mayor Thornton an email with an attachment named: Staff Report 7.26.17 (historical budget to actual). Attached to this email is a copy of the same Staff Report to the Mayor dated 7-12-17, referenced above. The accompanying spreadsheets also include the two spreadsheets showing the 2017 budget amount for Operations' salaries & benefits totaling \$313,604 and the 2017 budget for "Administrative Salaries & Benefits of \$207,314. The footnotes for both sets of numbers are also the same. **(EXHIBIT #19)**

On 7-19-17, at 4:09 PM, Ms. Levis sent an email to Mr. Wirkus that read:

The City is interested in offering High Deductible Health Plan (HDHP) and an accompanying VEBA HRA plan allowing for employer contributions into an account established for participants. The new plan is entirely optional and offered alongside existing options. Employee participation in the new plan would be voluntary. We would like to offer this enrollment option before the month of July is out. Would you like to meet and discuss this option? **(EXHIBIT #20)**

On 7-20-17, at 10:19 AM, Ms. Levis forwarded to Mr. Sarvis the 3-15-17 email to Ms. Obermeyer. The email read: "You then forwarded this info to the other vendors..." **(EXHIBIT #21)**

On 7-20-17, at 10:52 AM, Ms. Levis sent an email to Council Member Al Luiz, with c.c. to Mayor Thornton, and Mr. Kearns which read: "In the spreadsheet that I sent you (and the RFP that was issued) I used a salary figure for the Supervisor's position that does not tie out to the contract. I did disclose this to the vendors (see the email below)⁷ but the Mayor is very concerned about this number and feels that it is misleading as I have not yet bargained the new salary amount with the union."⁸ The Mayor feels that this number is wrong and understates the City's cost. So in the interest of full disclosure, I am letting you know about this. I am not going to be presenting the spreadsheet that I provided you at the work session or meeting or providing it to any other council members." **(Emphasis added)** **(EXHIBIT #22)**⁹

On 7-21-17, at 9:14 AM, Mayor Thornton sent an email to HR Consultant Corbin that included an attachment showing three scenarios regarding the salaries and benefits of the three FTE's at the WWTP. The first scenario shows the salary and benefits for 3-FTE's totaling \$313,045, with the supervisor's position receiving \$67,700 salary and \$32,464 in benefits. The scenario indicates these were the figures provided by Ms. Levis to the "Contract Operators", also reflecting 3-FTE's. The second scenario shows the supervisor's salary at \$92,701 and benefit at \$38,019, totaling \$343,601. This is the amount that the City would have paid if Sue Lawrence remained the supervisor of the WWTP. The third scenario for 3-FTE's reflect the salary for the vacant WWTP Operator position as \$53,311 and benefit costs to the City of \$10,373, prior to Mr. Klinski's transfer to the WWTP. The total for the three FTE's under this scenario totaled \$301,538. These three scenarios are then compared against the 2017 City Budget that was approved in 2016, which showed the total salary and benefit costs for the WWTP operation as \$376,118 for salaries and \$149,798 for benefits, for a total budget cost of \$525,915. From \$525,915 the attachment

⁶ Unknown if this explanation might explain the difference between the reported \$207,437 and the reported \$207,314

⁷ See email dated 3-15-17 to Lisa Obermeyer CH2M

⁸ This is the first reference identified to "bargaining the new salary amount"

⁹ Ms. Levis' attorney states the "email to Al Ms. Levis discussed Mayor Thornton's comments on the issue – this is contemporaneous evidence indicating that the mayor and Ms. Levis had discussed the subject matter."

showed \$207,437 was subtracted for the Administrative payroll and benefit expenses allocated to the WWTP, leaving the Operations amount of \$318,479 for the salary and benefits of the three FTE's working in the WWTP. **(EXHIBIT #23)**

On 7-21-17, at 11:50 AM, Ms. Levis sent an email to Mayor Thornton that included two attachments named "LCEEA (16-18).pdf and LCEEA salary matrix.pdf." The first attachment was a copy of the Working Agreement between the City and the La Center Exempt Employee Association for the period from January 1, 2016 through December 31, 2018. This document was signed by Mayor Thornton on 10-5-16. "Article 14: Wages": set out an 8 step salary matrix for 2016, 2017 and 2018. The two attached salary matrixes included salaries for each step for employees hired before 1-1-16 and for those employees hired after 1-1-16. When comparing the 2017 salary matrix for the WWTP supervisor position hired after 1-1-16 to the 2017 WWTP Supervisor position in the Working Agreement with the union, all of the other positions align exactly and by step, but not the WWTP Supervisor position. They align for step 1, but then the salary in the matrix is less than that reflected in the Working Agreement in each step thereafter, starting at being less in Step 2 by \$5.72 and by step 8 being \$47.91 less/per month. **(EXHIBIT #24)**

On 7-21-17, at 4:25 PM, Ms. Levis received an email from Ms. Tracy Blehm, with the HR department at the City of Ridgefield.¹⁰ The email was apparently in response to a phone conversation since there is no email from Ms. Levis requesting information regarding the 2017 salary ranges for their WWTP Operators. The email from Ms. Blehm indicated the City of Ridgefield had a 9-step scale for an Operator and a "new" 9-step scale for a Senior Operator. **(EXHIBIT #84)**

On 7-24-17, at 8:10 AM, Mr. Sarvis sent an email to Ms. Levis that included Consultant Paul Eisenhardt's PowerPoint presentation to the City Council for 7-26-17. Mr. Eisenhardt's slide #10 was a comparison of costs between the City and the Veolia Company. Including within the cost figures was the salary and benefit costs for the 3 FTE's working in the WWTP as provided by Ms. Levis and based on the information that was provided in the RFP and supplemented by Ms. Levis in her email dated 3-15-17, at 11:51 AM, to Ms. Lisa Obermeyer of CH2M. The City Finance Administrative costs for the two allocated FTE's was not included in either total because it was anticipated that the City would retain the costs of those two FTE's regardless whether the City contracted out the Operation and Maintenance of the WWTP. For year one, Mr. Eisenhardt projected the cost using Veolia would be \$594,000, compared to the City's cost of retaining the operation of \$615,000. In year two, the projected cost for Veolia operating the WWTP would be \$617,000 and the City's cost for retaining the operation was \$593,000. Using a Net Present Value computation comparison between Veolia and the City showed a Veolia contract would cost the City \$3,992,000 and the cost for the City to retain the WWTP operation was \$3,824,000. **(EXHIBIT #25)**

On 7-24-17, at 8:52 AM, Mayor Thornton sent an email to Ms. Levis which read:

After reviewing your email below to Lisa Obermeyer dated March 15, 2017, **(EXHIBIT #10)**, you listed the salaries and benefits (including OT) for the 2017 budget provided in the RFP. As a result, I have several questions:

1. Why did the City use a budgeted salary amount of \$67,700 for the Supervisor Level III (or possibly Level IV) when calculating the City's salary and benefit amount for the comparative analysis in response to the

¹⁰ Matt Jenkins worked as a Senior WWTP Operator for the City of Ridgefield. He indicated he was at step 7 in 2017, making \$34.53/hr or \$71,822.40/yr. Mr. Jenkins stated his salary would increase by 3% in 2018, plus he received approximately 104 hours annually for scheduled "on-call" pay, plus unscheduled O.T. and call-out pay. Not counting the O.T. and call-out pay, Mr. Jenkins was making in excess of \$75,500 for the City of Ridgefield.

RFP proposals for contact operations for the WWTP? This budgeted salary is \$23,801 lower (\$91,501 – \$67,700) than the salary the City was paying the previous WWTP supervisor. In my view, this Supervisor Level III budget salary is clearly not in keeping with what the City will need to offer a potential candidate.

2. In addition, the \$67,700 budgeted salary amount is \$6,231 (\$73,932 – \$67,700) lower than what is indicated in the 2017 LCEEA CBA salary matrix for a Wastewater Systems Supervisor. You advised Janice Corbin and I (sic) on Wed, 07/19/2017, your reduced salary range for the WWTP Supervisory position had not been negotiated with the LCEEF. This reduced salary range also had not been discussed nor approved by me or the City's HR Consultant Janice Corbin. Has the Collective Bargaining Unit agreed to this change? If so, when was (sic) approved and with whom?
3. If the City has not negotiated the revised salary and benefits for the WWTP Supervisor position indicated in your email, what are your next steps to get this accomplished? (Emphasis added)¹¹

Please provide an accurate and realistic budget salary and benefit amount the City will need to offer a potential Supervisor Certification Level III WWTP Operator (or possibly Level IV) candidate in order for an accurate cost comparison with the contractors' proposals. I need to have your responses no later than the close of business today. Thank you. **(EXHIBIT #26)**

On 7-24-17, at 9:18 AM, Ms. Levis sent an email to Jeromy Wirkus and Anthony Cooper, including an attachment named "City Proposal.pdf." The email read:

As per our conversation, the City¹² is requesting to reopen negotiations for the 2016-2018 LCEEA contract for ONLY the salary matrix of the (currently vacant WWTP supervisor position. Please see the attached. The City is not requesting any other changes to the contract; both the PW Supervisor and the Engineer's salary matrixes will remain unchanged. **(Emphasis added) (EXHIBIT #27)**

The attached Salary Matrix states "The City is proposing to modify ONLY the (currently) vacant Supervisor salary matrix, the PW Supervisor and Engineer salary matrixes remain the same." The attached matrix shows the current 2017 and 2018 WWTP Supervisor salary, both monthly and annually and also shows the "proposed" salary for both years, monthly and annually. The "current" figures match those amounts reflected in the City's Working Agreement with the union. The proposed figures show a reduction in the WWTP Supervisor's salary for each of the eight steps, ranging from \$3,131 to \$4,426 in 2017 and \$3,179 to \$4,426 in 2018. **(Underlining added) (EXHIBIT #27)**

On 7-24-17, at 1:41 PM, Anthony Cooper sent Mr. Wirkus an email that read: "The new wage rate wage (sic) for the WWTP Supervisor will be alright with me." **(EXHIBIT #28)**

On 7-24-17, at 2:18 PM, Ms. Levis sent an email to City Attorney Dan Kearns which included two attachments. The first attachment was the "City Proposed" Salary Matrix and a draft LCEEA MOU. The text of the email included language by Ms. Levis;

"Below is what I am proposing to sent to Greg/Janice Corbin"... do you mind fixing up the MOU?"

The balance of the email read:

Jeromy was in my office for a Sonitrol question this AM so I brought up the proposed salary matrix. He was fine with my proposed changes and agreed that we had conversations in the past about lowering the salary matrixes when positions were vacant.

¹¹ This is the first email from Mayor Thornton to Ms. Levis after he was copied on her 7-20-17 email to Council Member Luiz wherein she made the statement "I have not yet bargained the new salary amount with the union."

¹² Neither the Mayor nor the Council had requested, on behalf of the City, to reopen negotiations for the 2016-2018 LCEEA contract for ONLY the salary matrix of the (currently vacant WWTP supervisor position).

So I sent him the attached and hope to hear back soon.

What the City would offer an applicant would be contingent on their qualifications and experience. \$67,700 (which was reflected in the RFP) seems low but in discussion with the PW Director, he stated his preference is to start at Step 1. I can't recreate where I came up with the \$67,700 but the amount that I've just discussed with Jeromy is only off this amount by \$3,100 (Step 1= \$70,800. (Emphasis added)

If I can get a 'TA' on this by tomorrow I can put out a memo documenting the change and the reason for it. **(EXHIBIT #29)**

On 7-24-17, at 2:44 PM, Mr. Wirkus sent an email to Ms. Levis that read: "Tony and I talked about this and agree that as long as our matrixes remain the same we're ok with the City's request." **(EXHIBIT #30)**

On 7-24-17, at 2:46 PM, Ms. Levis sent an email to Mr. Wirkus and Mr. Cooper that read: "Thank you both! I'll get a quick MOU drafted and we are good to go! Thx again, both of you!" **(EXHIBIT #31)**

On 7-24-17, at 3:40 PM, Ms. Levis sent an email to Mr. Kearns that read: "How does this look?" Attached to the email was a proposed "Memo to Mayor Thornton" dated 7-24-17 "RE: WWTP salary matrix" **(EXHIBIT #32)**

On 7-24-17, at 3:51 PM, Mr. Kearns sent an email to Ms. Levis that read:

It is worth mentioning that the salary amounts you projected were based on what you planned to negotiate in the next go-around of collective bargaining. Also, the amount that you say is an overstatement (sic), isn't that an estimated amount of possible overstatement, and that it is projection and not a precise science. Finally, you should also state that you advised the RFP respondents that the amount was a projection, and that they knew, or should have known how to reflect that element of uncertainty in their proposals – right? **(Emphasis added) (EXHIBIT #32 & #33)**

On 7-24-17, at 3:51 PM, Ms. Levis responded to Mr. Kearns by saying, "Correct – good point." **(EXHIBIT #34)**

On 7-25-17, at 7:59 AM, Ms. Levis sent an email to Mayor Thornton with an attachment named: 7.26.17 Memo – WWTP Supervisor Salary Matrix. pdf. The body of the email read:

Jeromy was in my office for a Sonitrol question this AM so I brought up the proposed lower salary matrix. He was fine with my proposed changes and agreed that we had conversations in the past about lowering the salary matrixes when positions were vacant. We came up with a revised salary matrix; later in the day he emailed me acceptance of the new matrix. I'll need to get an MOU signed and approved by council but as the salary costs went down (about 4%) it should be an easy sell.

I've attached a memo to present to Council to explain the difference in the costs.

The attachment, dated 7-24-17, is similar to the draft Memo to Mayor Thornton Ms. Levis sent to Mr. Kearns for review and feedback. The final memo sent to Mayor Thornton read:

To: Mayor Thornton, La Center City Council
From: Suzanne Levis, Finance Director/Clerk
Date: July 24, 2017
Re: Salary amounts per RFP

The 2017 adopted budget included salary costs for the (then) supervisor and two operators. Between the adoption of that budget and the issuance of the RFP (Spring 2017) there were, as you are aware, a few personnel changes at the plant. The supervisor resigned; the remaining Op I was promoted to an Op III and a Public Works maintenance worker was transferred to the sewer department.

The salary amounts in the RFP (prepared in the spring of 2016)¹³ reflected the changes above. While preparing the information for the RFP it was also the City's intention to renegotiate a lower WWTP Supervisor salary matrix; the RFP reflected this estimate of the proposed salary matrix and was disclosed to the vendors.¹⁴

Since then, the City has negotiated the new salary matrix with the La Center Exempt Employees Association for the WWTP supervisor position.

The RFP salary amount reflected an annual salary of \$67,700 (Step I) which was an estimate of the proposed new salary matrix. The actual negotiated amount (Step 1) is \$70,800 so the salary estimate that is presented in the RFP and used for comparison purposes is over by \$3,100 (assuming the position was filled at Step 1) or by as much as \$12,000 if the position is filled at the mid-range salary. IF the position were to be filled, the salary would be negotiated based on the qualification and experience of the individual. **(Emphasis added) (EXHIBIT #35)**

On 7-25-17, at 8:08 AM, Ms. Levis submitted her weekly projects spreadsheet to Mayor Thornton.¹⁵ **(EXHIBIT #36)**

On 7-25-17, at 11:36 AM, Ms. Levis drafted a MOU and asked Mr. Kearns "Can you fix this MOU for LCEEA?" **(EXHIBIT #37)**

On 7-25-17, at 11:50 AM, Ms. Levis sent Mayor Thornton an email which included an attachment called "WWTP Sup Salary Matrix Analysis." The attachment showed a "Former" 5-step salary matrix for 2017 and 2018 for the WWTP Supervisor and also showed a "Former" and "New 8-step matrix for both years for the position. The document also included monthly and annual totals for the "former" and "new" salaries. The "new" step 1 of the 8-step ranges begins at \$70,800/year, which coincides with the MOU salary negotiated with the Union. **(EXHIBIT #38)**

On 7-25-17, at 12:35 PM, Mayor Thornton sent an email to consultant Eisenhardt which read:

Please see the attached spreadsheet and adjust your Power Point presentation with the updated City budgeted salary and benefit information. The \$313,045 budgeted salary and benefit needs to be updated to \$332,800. Please feel free to call me with any questions. **(EXHIBIT #39)**

In this spreadsheet, the Mayor increased the salary and benefit for the WWTP Supervisor position to \$81,000 + \$38,800, from the previous amounts of \$67,700 + \$32,464 that were used in the RFP. The Mayor felt the \$67,700 salary was unreasonably low and was misleading.

¹³ Mr. Eisenhardt did not have a Personal Services Agreement until 12/16 and his first presentation to City Council was in 2/17

¹⁴ I found no discussion or emails relating to negotiating a lower salary matrix for the WWTP Supervisor during this time period. The first reference was on 7-24-17 when Mr. Kearns suggested to Ms. Levis "... the salary amounts you projected were based on what you planned to negotiate in the next go-around of collective bargaining."

¹⁵ The weekly spreadsheet does not include any reference to negotiating an MOU. Counsel for Ms. Levis suggests there was no need for her to include this item in her weekly tasks/project reports because she and the Mayor had had numerous conversations on this topic. The weekly report would not necessarily omit such a task if it was considered or being worked on, regardless of the number of conversations Ms. Levis might have had with the Mayor.

On 7-25-17, at 3:53 PM, Mr. Kearns sent an email to Ms. Levis that read: “PERC has not gotten back to me yet with the unit certification order, but in the meantime, the attached MOU should do the trick.” The version of the MOU sent by Mr. Kearns to Ms. Levis became the version signed by Mr. Wirkus, but never seen or signed by the Mayor. **(EXHIBIT #40)**

On 7-25-17, at 4:33 PM, Ms. Levis sent an email to Mr. Kearns that read;

This afternoon we had a presentation from AWC on the new (and really comparatively awful) medical plan for 2018... Corbin sat in on it.

Afterwards, in the lobby, while everyone was still milling around she told Aaron—loudly—that Jeromy had negotiated lower wages for the WWTP employees, and indicated that the City was going to go after all the unions for the same concessions. She made it sound like what Jeromy did opened up their contract (it did not; and it’s two different unions).

So the employees come out of this meeting pretty disheartened by the news about their health care costs and she – in the lobby- riles them all up with this garbage. They were ticked!!!

It. Was. Surreal. **(EXHIBIT #41)**

On 7-26-17, at 8:20 AM, Mayor Thornton sent an email to Ms. Jenny Olive, asking her to include the updated salary analysis in the City Council’s meeting packet. **(EXHIBIT #42)**

On 7-26-17, at 9:30 AM, Mayor Thornton sent an email to Ms. Levis and Mr. Wirkus which read:

I will not sign any MOA that adopts an 8 step salary range of the Wastewater Treatment Supervisor which was hastily negotiated without my approval or per my instructions to Suzanne and all managers that all labor relations issues are to be reviewed by Summit Law and Janice Corbin before any implementation is to occur. Instructions in this regard seem to be selectively followed when it best meets the needs of individual employees, or when it is convenient for individuals without regard to the impact, such negotiations may have on other unions, employees, or the community as a whole.

I want to remind you both that as the Mayor, I have the final say in what the City will do and not do specifically to changing salary ranges or negotiating with the unions. Therefore, any draft MOA that you both tentatively agreed to implement is void. The salary ranges for the Wastewater Treatment Supervisor will be reported to the City Council as it is stated (5 steps) in the existing collective bargaining agreement which remains in place through the end of 2018.¹⁶ **(EXHIBIT #43)**

On 7-26-17, at 10:13 AM, Ms. Levis sent an email to Mr. Sarvis and Mr. Kearns which read:

For the record, I discussed my intention of renegotiating the WWTP supervisor salary matrix with the Mayor several times over the last few weeks. On the 19th I had a conversation with the Mayor and Corbin; the subject was again discussed (I told them that was my intention and that was the reason the wages were lower in the RFP and that I had disclosed same to the vendors) and Corbin agreed it was a good idea to try to lower the salary matrix.

The Mayor and I had a discussion about the same the next day in my office (20th); again he agreed it was a good idea but expressed doubt that I’d be able to achieve it.

¹⁶ The existing Collective Bargaining Agreement effective to the end of 2018 for the Wastewater Treatment Supervisor was an 8-step salary range.

I spoke with both Corbin and the Mayor on the 25th about my successfully having negotiated a lower salary matrix for the position with Jeromy (LCEEA); neither one expressed any concern or had an issue with my doing so. In fact, Corbin told the union/Aaron on July 26th in the City hall lobby that “*Jeromy had signed an MOU to lower wages*”, which would also indicate that my actions were fine. **(EXHIBIT #44)**

On 7-26-17, at 11:01 AM, Mayor Thornton sent an email to Ms. Levis, along with an attached “Expectations of Professional Conduct”. The email read:

I would prefer to have delivered this memorandum to you in person, but as of late the only information I receive from you is via email, it seems communicating via email is your preferred style of receiving information. Although I am disappointed that our communications have become this strained, I do want to clarify my expectations of our future relationship.

My mission to make things better for this community remains the same, a perspective that I do not feel everyone else shares. I don’t feel we share the same mission, which may be a starting point for a future conversation. The purpose of the attached memorandum is to clearly state my expectations of you in your role as a director for the City of La Center. It is my sincere hope that once the issue of whether the City decides to privatize the Wastewater Treatment Plant has been addressed, that we can meet and discuss improving our communications, and our working relationship. **(EXHIBIT #45)**

The attached Expectations of Professional Conduct read:

As the Mayor and your immediate supervisor, you are responsible for carrying out my directions, to support the initiatives I have asked the City Council to consider and to remain committed to maintaining a fiscally conservative approach in managing City operations in your capacity as a director with the City. I appreciate that you have disclosed to me that you do not support the privatizing of the Wastewater Treatment Plant and my fiscal conservative approach to managing City resources. However, I expect you as a professional to represent my perspective to City's workforce, members of the City Council, and the community.

I value your professional recommendations, but your personal opinion is not relevant when conducting City business. If you are confused about my direction in this regard, please ask me my preference before you begin voicing your personal opinion.

Whether the City elects to privatize the Wastewater Treatment Plant is a decision that is to be made by the City Council. You may speak to the accuracy of the financial data submitted by the contractors or the City's fiscal history, but you are not at liberty to share your perspective about whether the City should privatize the Treatment Plant. Also, you are not to voice your opinion or speak to any labor relations issues as to whether the City must bargain with the Union before making this decision. Summit Law has given a legal opinion stating the City does not have to bargain its decision to privatize the Treatment Plant according to existing contract language. The City does have to bargain the impacts, which Janice Corbin, at my direction is attempting to do. You (sic) continued statements that the issue has to be bargained before a decision can be made is making it difficult for the impact bargaining to be accomplished. I am directing you to have no further involvement in the privatization efforts stated above or regarding the Labor Relations aspects of the Wastewater Treatment Plant. **(Emphasis original in document)**

As a final point, you have openly speculated that my approach regarding fiscal sustainability is unwarranted. Regardless of your personal views, I expect you to remain vigilant in my decision to wait and see what impact the new tribal casino will have on the City's fiscal sustainability. My position, and

thus the message I expect you to carry out and present to others, is that the City is uncertain about the impact of the financial future and will proceed with caution.

Any changes in financial documents, salary ranges, or decisions that impact Labor Relations is (sic) to be reviewed by me before you discuss the issue with the union, or forward such information to City Council. To act contrary to my instructions will be considered an act of insubordination on your behalf. **(EXHIBIT #46)**

The salaries and benefits provided to the RFP proposers by Ms. Levis on March 15, 2017, do not represent the numbers presented to the City Council in November 2016 that were approved by the Council for the 2017 budget. Ms. Levis stated the \$67,700 salary for the WWTP Supervisor was the salary she “intended” to negotiate while the position was vacant. That argument is contradicted by the salary figure of \$92,701 used in the 2017 Council approved budget. It was not until July 25th before any effort was made by Ms. Levis to negotiate a new salary matrix for the WWTP Supervisor position. It was also not before July 21st before Ms. Levis attempted to determine what the City of Ridgefield was paying their WWTP Operators. The email from Mr. Kearns, dated 7-24-17, suggested to Ms. Levis “... the salary amounts you projected were based on what you planned to negotiate in the next go-around of collective bargaining.”¹⁷ Both the Mayor and Ms. Corbin said Ms. Levis was not authorized to undertake any labor negotiation and specifically, Ms. Levis had been previously directed to leave all Labor Relations and Human Resource work to Ms. Corbin.

It was always the intent of the RFP to keep all WWTP employees “whole” concerning their salary and benefits. The only WWTP employees for whom the RFP proposers were to be responsible were the 3-FTE’s working in the Sewer Department. However, at the time of the RFP, one position, (the WWTP Supervisor) was vacant. The RFP provided links to the pdf version of the 2017 City budget, as well as to other documents, but the City budget lacked the detail found in Excel spreadsheets for the RFP respondents to determine the actual salary and benefit breakdown for each position. In response to a question from one RFP respondent, Ms. Levis and later by Mr. Sarvis, responded by an email dated March 15, 2017 with more detailed information. The RFP proposers relied on the accuracy of the information provided to them in preparation of their proposals. There is no question that there were two sets of numbers, (one of which is acknowledged to represent a \$559 error) specifically \$313,604 and \$313,045 in the RFP for contracting-out the 3-FTE’s in the salaries and benefits for the WWTP operation and maintenance and both sets of numbers disagree with what was included as salary and benefit costs for the Sewer Department in the City’s approved 2017 budget of \$318,479.¹⁸ Since both sets of dollars in the RFP include a proposed salary for the then vacant WWTP supervisor of \$67,700.00/yr¹⁹, plus benefits that, according to Mayor Thornton, were totally out of line with what the City would reasonably be expected to pay a new WWTP supervisor. If the City paid a new supervisor \$81,000.00/yr²⁰, plus benefits, the annual cost for salaries and benefits would have been \$332,761. If the City were to pay a new supervisor closer to the amount that was paid to Sue Lawrence, prior to her resignation, which was \$92,701.00, the annual cost for salaries and benefits would have been \$343,601.²¹ As it turned out, the City hired Mr. Matt Jenkins on 11-1-17 for \$85,707.00 and his salary goes to \$90,088.00 in January 2018, not including benefits. Ms. Levis negotiated a new and lower salary matrix than what had been approved in the two-year Collective Bargaining Agreement with Mr. Wirkus on 7-25-17, which increased the annual salary reflected in the RFP from \$67,700.00 to \$70,800.00 in a MOU. Regardless, the proposed salary of \$70,800.00 was still significantly lower than what the City ultimately negotiated to pay Mr. Jenkins as the new WWTP Supervisor and

¹⁷ The next “go-around of collective bargaining” was not until 12/31/ 2018 when the current contract expired.

¹⁸ See Exhibit #23

¹⁹ Proposed by Ms. Levis in budget and RFP

²⁰ Estimated salary by Mayor Thornton

²¹ See Exhibit #39

both figures were substantially less than what was in the current Collective Bargaining Agreement, with the exception that \$70,800 was the entry level (step 1) salary for the WWTP Supervisor. The issue of whether there was a misrepresentation and/or falsification of financial information by Ms. Levis is a subjective determination. The information was arguably inaccurate, but was there a conscious intent to deceive and/or mislead either the Council and/or the RFP respondents? Ms. Levis has made no secret she was against the proposed contracting-out of the WWTP. In addition, Ms. Levis provided different total sewer fund usage figures to the Council and/or in financial documents at different times. These figures ranged from \$1,056,292.00, \$1,056,293.00, \$1,060,287.00 and \$1,060,723.00. To date, I have not received an explanation how or why these numbers differ. **(EXHIBITs #2, 8, 68, 86 and 87)**

By providing inaccurate financial information to the Council, was Ms. Levis attempting to sway the City Council Members and/or attempting to sabotage the RFP process? If lower salary and benefit costs were provided to the RFP respondents than what it actually cost the City in salary and benefits, it seems counter-intuitive that her intention was to convince the Council Members the City could do the work less expensively. The original RFP stressed the City was not looking at cost savings as a determining factor for a successful RFP respondent. At some point in time, prior to the Council making their final vote on the contracting-out issue, the focus of the discussion by the Council and others shifted to focusing on cost differences. This shift necessitated consultant Eisenhardt to perform additional work than what was originally anticipated. By providing the Council with the annual WWTP supervisor salary of \$67,700.00 as the budgeted amount for the contractor, Ms. Levis knew or should have known that figure was totally unreasonable; especially in light of the fact the City is now paying Mr. Jenkins \$90,088. Ms. Levis and Mr. Sarvis have repeatedly said they believed they could have negotiated a much lower salary with Mr. Jenkins. However, Mr. Jenkins stated during his interview, that he was making approximately \$80,000 working at the WWTP for the City of Ridgefield and he would not have applied for the City of La Center position at a salary lower than what he was making.

On 9-25-17, at 1:51 PM, Mr. Sarvis sent an email to Ms. Corbin, Ms. Levis and Mayor Thornton, suggesting hiring Mr. Jenkins at Step 6 of the City's salary matrix and then automatically increasing his salary to Step 7 on January 1, 2018. That would have meant starting Mr. Jenkins at \$82,080/year in 2017 and increasing that to \$85,812 in 2018. Both figures are substantially more than the \$67,700 reported to the Council and in the RFP. **(EXHIBIT #85)**

To assist in this analysis, I prepared the following spreadsheet which compares the total compensation and benefits, including overtime and additional benefits, as approved by the Council for the 2017 budget to those salaries and benefits reported to the RFP Contract proposers, which also include overtime and additional benefits.²² As is evident in the spreadsheet, the RFP reduced the salary and benefits for the Supervisor position by \$25,001, and increased the benefits for the WWTP 1 Operator by \$12,733. I then looked at the difference between \$313,045 in the 3-15-17 Obermeyer email and \$318,043 in the 2017 City budget. The net difference was \$4,998 more for the City compared to the successful bidders' costs. The RFP was written so that the successful contractor, if the City decided to contract-out the operation of the WWTP, would be responsible for paying for the salaries and benefits for 3-FTE's, a cost that would be passed back to the City in the form of a contract fee.²³ The WWTP Supervisor position was vacant and the contractor indicated they would provide their own Supervisor at a salary and benefit package of their choice. The RFP did require the successful bidder to hire the City's two WWTP Operators at their current full compensation and benefits in order to keep them "whole". By increasing the benefits for one Operator and by including City budgeted overtime in the RFP for the other Operator as part of his total salary, the two City employees would have seen a significant increase in their salaries if they decided to work for the successful

²² Overtime is not a guaranteed benefits

²³ This potentially would save the City money had the Council voted to contract out the operation of the WWTP and would have also provided the two Operators a higher income.

contractor. The lowering of the salary and benefit for the WWTP Supervisor had no impact on any current City employee because the position was vacant.

(SEE FOLLOWING PAGE)

Upon considering Ms. Levis' response to a written follow-up question, I reexamined the budget spreadsheets with her explanation in mind. I then prepared the following Exhibit that confirmed much of what she said. At the time the 2017 budget was approved, there was a vacant Operator position in the WWTP and Mr. Klinski was working as a Maintenance worker in Public Works. By the time the Obermeyer email was sent on 3-15-17 to the RFP respondents, Mr. Klinski was working as a temporary Operator in the WWTP, with the intent to become permanent. Hence the difference between the salary and benefits for the vacant Operator 1 position in the WWTP's budget compared to what was provided in the RFP detail information.

Comparison of S & B costs in Obermeyer email to Adopted 2017 Budget

	Per Obermeyer email	Employee	Footnotes		Per 2017 adopted budget	Footnotes	Name	Diff
Salary								
Op 1	\$65,259	(Klinski Maint. Step 5)	1 - 4 & 6		\$53,311	1, 4	Vacant Op	\$11,948
Op 3	\$72,742	Birdwell	1, 2 & 3		\$72,742	1 & 3	Birdwell	\$0
Supervisor	\$67,700	Vacant	2		\$92,701	1, 5	Lawrence	-\$25,001
Sub Totals	\$205,701		2		\$218,755	1		-\$13,054
Benefits								
Op 1	\$41,223	(Klinski Maint. Step 5)	1 & 2		\$28,490	1	Vacant Op	\$12,733
Op 3	\$33,657	Birdwell	1 & 2		\$33,657	1 & 2	Birdwell	\$0
Supervisor	\$32,464	Vacant	2		\$37,141	1	Lawrence	-\$4,677
Sub Totals	\$107,344		2		\$99,288	1		\$8,056
	\$313,045		2		\$318,043	1		-\$4,998
	\$559		7					
Op I	\$106,482	Klinski	1 & 2		\$81,801	1	Vacant Op	\$24,681
OpIII	\$106,399	Birdwell	1 & 2		\$106,399	1	Birdwell	\$0
Supervisor	\$100,164	Vacant	2		\$129,842	1	Lawrence	-\$29,678
Sub Totals	\$313,045		2		\$318,043	1		-\$4,998
Footnote # 1:	Matched with 2017 budget							
Footnote # 2	Matched with 3-15-17 email							
Footnote # 3	Includes O.T.							
Footnote # 4	Includes \$250 BA work							
Footnote # 5	Includes \$1,200 cell phone							
Footnote # 6	Includes VC Buy & pager							
Footnote #7	Diff. between \$313,604 and \$313,045							

(EXHIBIT #48)

On 9-29-17, at 10:38 AM, Ms. Levis sent an email to Mayor Thornton that included the attachment named: “Summary 2018 budget.pdf” and “Draft 2018 budget worksheet.xlsx”. **(EXHIBIT #68)**

➤ **Misrepresentation of information to the union:**

This allegation stems from Ms. Levis negotiating a lower salary for the vacant WWTP Supervisor position with the union (LCEEA) which the Mayor believed was unreasonably low and it was improbable that the City would be able to fill the position at the salary range proposed. A second component of the allegation is whether Ms. Levis misrepresented her authority to negotiate Labor Relations issues with the union. **Finding: Substantiated in part**

On July 27, 2017, when Ms. Levis negotiated a new salary range with the union representative, Mr. Wirkus, she used the base salary of \$70,800.00 and established a new 8-step salary matrix starting at Step 1. The new salary matrix represented a 4% decrease from the previous matrix. At the time of her negotiations with Mr. Wirkus, the position of the WWTP Supervisor was vacant and Ms. Levis and Mr. Wirkus stated there had been prior discussions to lower salaries for different positions when the positions became vacant. Since the union understood that only the salary of the WWTP Supervisor would be affected by the salary change, it appears the union clearly understood what they were agreeing to.²⁴ What is in question was whether Ms. Levis had the authority from the Mayor to negotiate with the union and whether she communicated that to Mr. Wirkus. A separate question, to be considered below, was whether Ms. Levis knew the Mayor had specifically told her all Labor Relations and HR issues were to be handled by Consultant Janice Corbin. The Mayor and Ms. Corbin separately stated Ms. Levis had been informed prior to July 19, 2017 and again on the 19th, that she was to leave all Labor Relations and Human Resource issues to Ms. Corbin. Mr. Wirkus and Ms. Levis stated Ms. Levis had been involved in prior MOU discussions under the previous Mayor and they had no reason to believe she did not have that authority under the current Mayor.²⁵ Ms. Levis, through legal counsel, provided examples of previous contract negotiations in which she was involved. Those particular contract negotiations appear to have been at a time when a union contract was being renegotiated and not mid-term of an existing contract. If the Mayor and Ms. Corbin are to be believed, Ms. Levis failed to communicate to Mr. Wirkus the Mayor’s verbal directive to her and/or Ms. Levis specifically chose to ignore his directive to have Ms. Corbin engage in all contract/labor negotiations.

➤ **Placing personal interests ahead of professional duties in an attempt to influence council members:**

This allegation relates to the belief Ms. Levis had a personal and/or ulterior motive and/or stood to personally benefit from the council’s decision concerning whether to contract-out the operation and maintenance of the City’s WWTP. **Finding: Substantiated in part**

It is acknowledged that Ms. Levis did not agree with the Mayor to outsource the operation and maintenance of the City’s Wastewater Treatment Plant. Ms. Levis said she was not concerned how the outsourcing might personally impact her position and/or salary. Most of her work and level of responsibility/supervisory authority would remain the same either way. If she had a concern how it might impact her domestic partner, Public Works Director Jeff Sarvis, she did not express that. Mr. Sarvis stated he too was not concerned how the contracting-out of the operation and maintenance of the WWTP might impact his job or salary. However, there is circumstantial evidence to conclude Ms. Levis put her personal opinions ahead of her professional duties and had an ulterior motive against contracting-out of the WWTP. The circumstantial evidence consists of her two emails to Mr. Lewis on 11-20-16 wherein she expressed a personal opinion to the effect of being “in the middle of a minor crisis over contracting-out sewer services – Jeff and I need more TIME to make a decent recommendation.” Also on the same day Ms. Levis sent another email to Mr. Lewis which read in part; “Jeff and I are still trying to present a decent scenario of

²⁴ The union (LCEEA) represented only three positions, one of which was the WWTP Supervisor.

²⁵ There is nothing in Ms. Levis’ “Classification Description” or “Employment Agreement” related to Labor Relations, even though her legal counsel argues both are written broadly enough to allow it.

alternatives for contracting-out sewer services... If you can, please recommend a stall until we can articulate a decent/legal response.” Ms. Levis also provide one council member with documents she later acknowledged were not accurate and she was not going to present the same information to other council members. Her potential ulterior motive was simply to keep the status quo and not relinquish any level of responsibility for herself and/or Mr. Sarvis. (See email to Council Member Luis, dated 7-20-17) **(Emphasis added) (EXHIBIT #22)**

➤ **Being insubordinate to the Mayor in her efforts to negotiate salaries and enter into agreements with the union without the Mayor’s authorization or knowledge.**²⁶

This allegation relates to the Mayor’s and Ms. Corbin’s statements that the Mayor had specifically directed Ms. Levis to leave all Human Resource and Labor Relations issues up to Consultant Janice Corbin.

Finding: Substantiated

On July 19, 2017, during a meeting between Ms. Levis, HR Consultant Janice Corbin and Mayor Thornton, the Mayor and Ms. Corbin stated the Mayor specifically told Ms. Levis that all Labor Negotiations and Labor Relations were to go through Ms. Corbin. Previously, during a meeting in April 2017, the Mayor said he told Ms. Levis that all HR functions for the City would be handled by Ms. Corbin.

On 7-31-17, at 11:00 AM, Ms. Levis sent an email to Mr. Wirkus regarding a question concerning an additional insurance plan. The email reads:

No rush at all to get back to me – Corbin has taken over everything. And she’s in no hurry to amend. So just disregard until you hear further from her. **(Emphasis added)**

On the other hand, are you guys ok with the City offering the high-deductible Kaiser plan? The City council adopted it last week and I’ve rec’d an ok from LCPOA-civil (email below).

City’s adopting the resolution last night doesn’t mean that we can offer it to your members (we can offer to the other groups) but it’s an additional, optional choice while still maintaining the traditional plan. Would you please respond to me one way or the other on the new/additional Kaiser plan?
(EXHIBIT #47)

Ms. Levis provided the following memo addressed²⁷ to Mayor Thornton, dated July 31, 2017:

In an email dated July 26, 2017, Mayor Thornton wrote that he would not sign any MOU for a new salary matrix for the WWTP supervisor's position. His reasons were that he would not sign any MOU that was *'hastily negotiated without ... approval or per ... instructions ... that all labor relation issues are to be reviewed by Summit Law and Janice Corbin'*.

This directive is contrary to the numerous prior conversations I had with the Mayor, regarding the salary matrix.

²⁶ Black’s Law Dictionary, Seventh Edition: **Insubordination**: “A willful disregard of an employer’s instruction, esp. behavior that gives the employer cause to terminate a worker’s employment.”

²⁷ There is no record of this memo actually being sent to Mayor Thornton and the Mayor states he has never seen the memo. Counsel for Ms. Levis acknowledged the memo was not sent to Mayor Thornton and the document described as a Memorandum to the Mayor was actually Ms. Levis’ attempt to memorialize her thoughts and sequence of events. The Mayor and Ms. Corbin strongly disagree with most of the claims in the 7-31-17 document.

During July 2017 I discussed my intention of trying to negotiate a lower salary matrix for the WWTP supervisor's position several times with the Mayor and was never given any feedback that I should not attempt this nor (sic) any indication that I was doing this without his approval.

In the WWTP outsourcing RFP I used a lower salary range for the supervisor's position as I was intending to try to negotiate a lower salary. During numerous discussions regarding the RFP the Mayor and I discussed my intentions about negotiating a lower salary matrix and again, I never received any feedback that this was contrary to his wishes.

On July 19 I had a conversation with the Mayor and Corbin at City hall in the council chambers. The subject was again discussed (I told them my intention of negotiating a lower salary matrix; the lower salary matrix amounts were reflected in the RFP and that I had disclosed same to the vendors). Corbin did agree it was a good idea to try to lower the salary matrix. I did not receive any feedback or indication that my intention of negotiating a new salary matrix was contrary to the Mayor's wishes.

The next day, July 20th, the Mayor was in my office and we again discussed the lower salary range in particular as to how it related to the RFP (lower salary cost); he agreed it was a good idea (to try to lower the salary matrix) but expressed doubt that I'd be able to achieve it. So again, I did not receive any feedback that my actions were contrary to his wishes.

On July 20 I cc-ed (sic) the Mayor on an email to Council Member Luiz where I explained the lower salary number in the RFP (due to expectation of negotiating a lower salary matrix); I again did not receive any feedback from the Mayor that this action was contrary to the Mayor's wishes.

I spoke with both Corbin and the Mayor on the July 25 about my successfully having negotiated a lower salary matrix for the position with Jeromy (LCEEA); neither one expressed any admonishment or expressed concern with my doing so. In fact Corbin asked if I had made any headway on the medical issue since the union member "was in such a giving mood" or words to the (sic) that effect.

On July 25 the Mayor called me on my office line and asked me to send him the new salary matrix; I did so. The document that I sent reported a 4% reduction in the salary matrix.

On July 25 after an AWC presentation on health plans at City hall, Corbin told the union/ Aaron in the City hall lobby that "*Jeromy had signed an MOU to lower wages*", and said something to Aaron that the City was going to try to reduce everyone's wages by 4%. If this MOU was so contrary to the Mayor's direction why was this MOU used as a negotiating point by Corbin?

On July 26 I received an emailed admonishment from the Mayor which read: Suzanne and Jeromy: *I will not sign any MOA that adopts an 8 step salary range of the Wastewater Treatment Supervisor which was hastily negotiated without my approval or per my instructions to Suzanne and all managers that all Labor Relations issues are to be reviewed by Summit Law and Janice Corbin before any implementation is to occur. Instructions in this regard seem to be selectively followed when it best meets the needs of individual employees, or when it is convenient for individuals without regard to the impact, such negotiations may have on other unions, employees, or the community as a whole. I want to remind you both that as the Mayor, I have the final say in what the City will do and not do specifically to changing salary ranges or negotiating with the unions. Therefore, any draft MOA that you both tentatively agreed to implement is void. The salary ranges for the Wastewater Treatment Supervisor will be reported to*

*the City Council as it is stated (5 Steps) in the existing collective bargaining agreement which remains in place through the end of 2018.*²⁸

This emailed directive surprised me and as I've reported in the paragraphs above, I thought I was acting with the Mayor's knowledge and approval. I've had numerous discussions with the Mayor about the new salary matrix; both the Mayor and Corbin agreed it was a 'good idea' to lower the matrix and I never received any directive to the contrary.

I will however, void the signed MOU and advertise the position at the higher salary matrix. **(Italics original to document) (EXHIBIT #51)**

On 11-7-17, HR Consultant Janice Corbin responded to some of the above statements with the comment:

I would say that she (Ms. Levis) has selective listening. And, she told my remarks to Aaron totally out of context and was aware of the entire conversation... Why would we send a memo telling her the MOA wouldn't be approved IF we were in support of her actions? In fact, at the meeting on the 19th - I was furious with her, and the Mayor told her that she was not to have anything to do with the union from that point forward. **(EXHIBIT #52)**

On 11-19-17, Ms. Corbin provided the following information:

I had a limited role in the RFP process until late in May of 2017. I had a couple of casual conversation with Suzanne and Jeff specific to what constituted mandatory subjects of (sic) bargaining. Suzanne and Jeff had just returned to (sic) the annual Labor Relations conference and had attended a workshop specific to mandatory subject of (sic) bargaining. I was a presenter at the LRI conference and have been for over 16 years.

I continued to say throughout these casual conversations that the City did not have to bargain whether they were going to contract-out the work of the WWTP.

Suzanne disagreed with my position about whether contracting-out the work had to be bargained and presented her perspective to Summit Law, which agreed with her position.

I continued to disagree with Suzanne and Jeff, and early in July, I contacted Summit and made reference to the CBA, Section 1.2. *The City may continue the practice of allowing supervisory personnel to perform bargaining unit work, provided that it does not cause a reduction of hours or positions for current bargaining unit employees and this practice may continue in the event that a layoff occurs. The City may contract-out bargaining unit work provided such action does not result in the layoff of bargaining unit employees.*

Clearly the language above allows for the City to contract out the work of the WWTP, as long as no employee is laid off. I confirmed the City would not be laying off an employee, and instead, the City would give the employee the option of taking a position with the contractor or remaining with the City.

Summit Law agreed with me; information that I shared with Suzanne and Jeff. They continued to disagree with me, and began saying the City could do the work of WWTP cheaper than any of the contractors.

²⁸ The referenced Collective Bargaining Agreement, effective from 1-1-16 through 12-31-18, was signed by Mayor Thornton on 10-5-16, was an 8 step and not a 5 step salary matrix, pursuant to Article 14.

Sometime later, the Mayor brought to my attention the discrepancies in the salary range that Suzanne had placed in the RFP documents for the WWTP supervisor's position. The salary for the position in the RFP was not obvious to me. The Mayor explained the salary was reported to be \$67,500²⁹ which was not accurate. In the RFP,³⁰ Suzanne had written that she thought the salary could be negotiated to the lower level.

It was then that I told the Mayor that Suzanne could not make such a statement as to do so was a contract violation. By stating such in the RFP, Suzanne was giving the union (for exempt employees) grounds for a grievance and the information was inaccurate. Further, it was not likely that we could hire an employee at a salary range less than the salary of one employee that reported to the supervisor. Not likely that we could hire for an employee for less money.

The Mayor and I meet with Suzanne on Wednesday, July 19th in the late afternoon to discuss the conflict that existed with her placing the lesser salary in the RFP. She was unable to explain her reasoning for putting the lesser salary in the RFP other than to say that she had disclosed for (sic) her reasons to lessen the salary of (sic) \$67,500.³¹ She became agitated with my questioning of her and said something to the effect of, "Ok, it wasn't correct, how do I fix it." (sic)

I specifically told her that she didn't understand Labor Relations and as a result, she didn't give Summit all of the critical information. The Mayor told her that all Labor Relations communications was (sic) to be coordinated through me and that she was not to have anything further to do with Labor Relations. By the way, all human resources functions had been reassigned to me in April to which Suzanne said she was grateful for no longer having to do HR. Yet, she continued to interject herself in HR as was the case in this instance.

At the close of the meeting, Mayor Thornton told Suzanne to correct the information so it could be sent out to others. He asked her to get it to her (sic) ASAP. He never did get it. I told her that if she corrected the issue, there would be no need to talk with the union.

On Tuesday, July 25th, as I was driving down, I received an email from Suzanne that she had talked with the Jeremy Wermus (sic) late on Monday afternoon regarding a different issue, and she had negotiated a lower salary for the WWTP supervisor position. Although it wasn't as low as the \$67,500 as identified in the RFP, it was 4% less than the original salary range of \$73,500. She said she had gotten Jeremy to sign off on an MOA. I was surprised since she had been told to correct the mistake, and that all union relations was (sic) to be coordinated through me.

When I arrived in La Center I did go to City Hall and asked what was going on. She shared what she had put in the email. As I was leaving City Hall, I did turn to Aaron Wilkinson and Jeremy Wermus (sic) who happened to be in the parking lot and said, "Well, Jeremy just negotiated a lower salary for everyone." I asked Jeremy if he signed an MOA, and he said, "Yeah!"

²⁹ Actually \$67,700

³⁰ This was written in the 3-15-17 email to RFP respondents and not specifically in the RFP

³¹ Ms. Levis' reasons were based on a belief she could negotiate a lower salary

I went to City Hall and spoke with the Mayor. He had not seen an MOA – we never did see it. After discussing it with him, he sent her an email that told her he would not approve the MOA. I informed the union the MOA was not approved.

To my knowledge the salary at 4% less remained in the information shared with the City Council. The next evening, the City Council voted to not contract-out the WWTP.

I reworked the job description and placed the original salary range in the job flyer. Matt Jenkins was hired at \$85,682 and then with step increases and COLA, he will be at 90K (in January 2018).

It is true that the Mayor and I both had talked about the fact that salaries were higher than all comparable cities. Suzanne had apparently talked about (sic) during previous negotiations, but the timing of this particular situation was only generated by the WWTP RPF (sic) and that (sic) fact that Suzanne had said she didn't support contracting-out the WWTP. She said this during my (sic) the July 19th meeting in front of the Mayor and me.

The Mayor sent both she and Jeff a memo on the 27th of that same week and told them that they are to speak to the City's position and to keep their personal opinions to themselves. **(EXHIBIT #53)**

I provided both Mayor Thornton and Ms. Corbin the "memorialized memo" by Ms. Lewis dated 7-31-17 and asked for their comments, independent of each other. The Mayor responded on 12-18-17 with the following:

The Finance Director (FD) copied me in her email to City Council Member Al Luiz on 7/20/2017. That email contained a forwarded email the FD sent to Lisa Obermeyer dated 3/15/2017 when the FD provided the Salary and Benefits (S&B) for the Waste Water Treatment Plant (WWTP) positions.³² My response to that email was an email to the FD dated 7/24/2017. In that email, I requested an explanation from the FD to try to ascertain why she had used the low salary amount of \$67,700 for the WWTP Supervisor position. I was questioning the amount because that salary greatly underestimated what the City would need to offer a potential candidate in order to fill the vacant position inasmuch as the former WWTP Supervisor's salary was \$91,501 and a budgeted WWTP Supervisor's salary in that amount was even lower than the salary of one of the employees that person would be supervising at the plant. Furthermore, as a result of the 7/19/2017 meeting I had with Janice Corbin and the FD, I learned the WWTP supervisor salary number used in the 2017 budget for the RFP was significantly lower than the La Center Exempt Employees Association (LCEEA) salary matrix would allow. I needed to understand why the FD knowingly used a salary number in the RFP budget, a budget she and the Public Works Director (PWD) developed, that was much lower than the 2017 LCEEA salary matrix would allow.

The first question in my 7/24/2017 email to the FD refers to a comment she made to me on 7/13/2017, in reference to the WWTP RFP, when she told me, "We proved that we (the City) can do it cheaper than the contractor." At the time, the FD's comment made no sense because up until that point, I thought she understood the objective of the RFP was not about (the lowest cost) but rather high quality, service orientated operation and maintenance of the wastewater utility without a significant cost increase for the current operation of the WWTP. That is what had been previously discussed numerous times with her, the PWD and the RFP Consultant, Paul Eisenhardt and was how the RFP was scoped by the FD and PWD. Of

³² This was the first time the Mayor became aware the RFP and the detail salary and benefit information provided to the contract proposers included the WWTP Supervisor salary of \$67,700.00

note is the fact that in none of the RFP meetings I had with the FD, the PWD, or both, was the topic of (the lowest cost) ever mentioned. The RFP, authored and scoped by the PWD and FD, and unanimously approved by the La Center City Council was to request proposals for high value, quality service not near-term cost reduction for the operation and maintenance of the WWTP. The FD's comment "We proved we can do it cheaper than the contractor" was irrelevant because it was not one of the criteria or requirement for the objective of the RFP. As a result of the FD injecting her opinion on the subject, it expanded the scope of the RFP, causing the consultant to spend additional time on the RFP in order for him to compare the contractor's proposal to the City's costs for operating the WWTP. Expanding the scope also resulted in a significantly higher consulting fee for the City. When I read the FD's email on 7/20/2017, my concern was that the costs for the City's operation of the plant, when compared to the contractor's proposal had been misrepresented (understated) because the City would be unable to find a qualified candidate to fill the WWTP supervisor position for her budgeted amount of \$67,700 and that salary amount may adversely affect the RFP process, which it clearly did. Moreover, I wanted to understand why she used the budgeted salary amount of \$67,700 in the RFP, knowing it had not been negotiated with the LCEEA due to the fact that I, nor Janice Corbin, had been made aware by the FD, or anyone else, that there had been any discussion(s) regarding the same. Learning the FD used a salary amount in the RFP for the WWTP Supervisor position that was lower than the beginning salary in the salary matrix and that the salary had not been negotiated with the LCEEA, I questioned the FD as to what her next steps would be to try fix this unrealistic salary figure.³³ I recognized the FD had put the City at risk of a possible Unfair Labor Practice (ULP) and the LCEEA would need to be informed that the salary matrix had been modified without their knowledge or input. My question to the FD regarding what are your next steps to get this accomplished was absolutely not a directive but rather questioning her what she was contemplating as a possible action to get the situation resolved. The FD failed to keep me informed of any action she initiated with the LCEEA and any negotiation conducted by the FD with the LCEEA was without my knowledge and/or consent. As the FD's direct supervisor, I wanted the FD to discuss with me what she would suggest as a plan of action and to not continue to act unilaterally with the LCEEA. Not only was the FD not keeping me informed of any discussion with the LCEEA, she had not followed my direct and explicit instruction to keep Janice Corbin (the City's HR consultant) informed of all HR and personnel related issues for the City. It then became clear the FD had completely disregarded my instructions to her that all HR and personnel issues for the City must be reviewed and approved by Janice Corbin.

Following are my comments regarding the memo dated 07/31/2017:

- (1) I never saw or received the 7/31/2017 memo the FD claimed she provided to me. The first time I saw it was on 12/11/2017, when you emailed it to me.
- (2) During the 07/19/2017 meeting between Janice Corbin, the FD and myself, the FD advised us she had conversations in the past with the two LCEEA members Tony Cooper and Jeromy Wirkus about the LCEEA salary matrix and that they had agreed the matrix should be lower but it had not been bargained. This was the first time I had heard anything about the subject. I did not discuss, advise or instruct the FD to negotiate a lower salary matrix for the WWTP supervisor's position, nor was I ever made aware by the FD (or anyone else) of any negotiation taking place regarding the LCEEA salary matrix at any time. I was confident the HR Consultant Janice Corbin would be aware if any negotiation with the LCEEA had been in the works at that point.

³³ See the Mayor's email dated 7-24-17 to Ms. Levis in which he stated, "If the City has not negotiated the revised salary and benefits for the WWTP Supervisor position indicated in your email, what are your next steps to get this accomplished? (Emphasis added)

(3) On 7/19/2017, when Janice Corbin and I met with the FD, we discussed the salary for the WWTP supervisor as identified in the 2017 RFP budget provided to the contractors that was significantly lower than what it would be if the City was to fill the vacant supervisor's position. Again, my concern was that the costs for the City's operations of the plant, when compared to the proposal from the contractor's proposal, had been misrepresented (understated). Up until this point, I was not looking at the salary matrixes to calculate the WWTP operators' salaries. My salary comparisons between the City and the contractor were done by using a schedule the FD emailed to me on 6/19/2017, titled Salary cost + hire date which contained the budgeted salary and benefit costs for every position in the City. I was not referencing the 2017 LCEEA salary matrix.³⁴ Until the 7/19/2017 meeting with the FD and Janice Corbin, I was not aware of the potential issues that may occur with the LCEEA as a result of the low salary amount used in the RFP budget. Janice Corbin brought it to my and the FD's attention at the 7/19/2017 meeting when it became apparent the FD had created a potential situation where the LCEEA could file a ULP as a result of what the FD had done. Moreover, at that meeting, the FD asked for Janice Corbin's help on how to fix the situation and told Janice and I she did not know what she was doing with HR and union related matters. It became clear to me at that meeting, due to Janice Corbin bringing it to my and the FD's attention, that the WWTP Supervisor's salary used in the 2017 RFP budget had not been negotiated with the LCEEA and that the City would now need to disclose this amount to the union which would likely result in the union filing an ULP.

(4) The last paragraph in the FD's 7/31/2017 Memo you sent me states that, "I had numerous conversations discussions with the Mayor about the new salary matrix" is simply not true. I did not have any conversations with the FD regarding the LCEEA salary matrix until the meeting I had with the FD and Janice Corbin on 7/19/2017. The FD acted completely without my knowledge and/or approval to negotiate a new salary matrix with the LCEEA prior to and following that meeting. The FD never said anything to me prior to our 7/19/2017 meeting at all. At no time did the FD tell me she was planning on or was in the process of negotiating with the LCEEA to lower the salary matrix, nor did she ever discuss negotiating with the LCEEA in any of my staff meetings. She never included she was negotiating with the LCEEA in any of her weekly project reports provided to me weekly beginning in August of 2016.³⁵ More importantly, had I, or Janice Corbin, known the FD was thinking about negotiating with the LCEEA, I would have reminded her of my direct and explicit directive to her and all of the directors, that all HR and personnel matters were to be handled by Janice Corbin. This was a topic I had to remind the FD about numerous times, including at several of my staff meetings over the course of the past year.

To be clear, I first became aware the FD had any conversation with the LCEEA in an effort to lower the salary matrix was when she disclosed it to Janice Corbin and I on 7/19/2017. **(EXHIBIT #54)**

On 12-20-17, Ms. Corbin identified multiple and specific occasions where Mayor Thornton expressed verbally to Ms. Levis the limitations of her role in Labor Relations and HR issues.

Ms. Corbin said Ms. Levis agreed that Ms. Corbin would be assuming responsibilities for HR and Labor Relations during a March 2, 2017 training event that included team development and strategies for managing employees. Ms. Levis agreed that was not her expertise. Ms. Corbin said the Mayor also confirmed to Ms. Levis that Ms. Corbin would be assuming responsibility for managing Labor Relations and Human Resources.

³⁴ The attachment referenced by the Mayor shows the salary and benefits of the 3-FTE's in the WWTP. The salary of the Supervisor position is shown as \$67,700. This is substantially different from the document Ms. Levis sent to the Mayor on 9-14-16, also named Salary & Hire Dates. That earlier document listed the Supervisor's salary as \$92,701.

³⁵ A review of Ms. Levis' weekly progress reports to the Mayor confirm no reference to negotiating a new salary matrix or a MOU/MOA

March 15, 2017: Ms. Corbin said she sent an email to all three Directors, which included Ms. Levis, notifying them that she would be meeting with the union in a Labor-Management format and invited them to provide input and told them she would do her best to keep them updated about issues involving the union.

May 10, 2017: Ms. Corbin said Ms. Levis brought to the Mayor's attention that the police union had an opener in the contract re: 2018 COLA. She asked the Mayor if she should contact Summit to have them begin negotiating the COLA. The Mayor responded that he would prefer that Ms. Corbin do it. Ms. Levis later sent Ms. Corbin the COLA information.

May 12, 2017: Ms. Corbin said Ms. Levis sent her an email re: Response to a grievance sent by union: change in working hours. Ms. Corbin said Ms. Levis sent her some draft language and Ms. Corbin responded with corrected language and instructions. Ms. Corbin then follow up with a phone call involving all three directors in which she explained how the union's grievance was not legitimate since no contract language had been violated specific to lunch breaks. The union dropped the issue.

May 25, 2017: Ms. Corbin said there was training specific to managers regarding Labor Relations and all managers, with the exception of Sgt. Olsen, were present. Ms. Corbin said during the training, Mayor Thornton again affirmed that Ms. Corbin would be overseeing Labor Relations and HR. Ms. Corbin said at the training event she spoke about those issues that were a mandatory subject to bargaining specific to the WWTP. Ms. Corbin said she clearly stated that the issue of contracting-out the work was not mandatory, but the City needed to make sure the employees were kept whole with no changes.

June 8, 2017: Ms. Corbin said Ms. Levis sent an email to the unions re: revisions to drug/alcohol testing. Ms. Corbin and Ms. Levis discussed the hiring process of the new Community Development Director since Ms. Corbin was coordinating the hiring process. Ms. Levis told Ms. Corbin that the City had to drug test the individual, to which Ms. Corbin responded that we couldn't test him as he didn't have a safety-sensitive position.

July 19, 2017: Ms. Corbin said the Mayor and her met with Ms. Levis in the City Council Chambers. She said the purpose of the meeting was to verify with Ms. Levis whether or not she had used the salary of \$67,500³⁶ in the RFP for the WWTP Supervisor position. Ms. Levis said she had disclosed in the RFP that the salary would have to be negotiated.³⁷ Ms. Corbin said the Mayor told Ms. Levis that all Labor Relation issues needed to be screened by Ms. Corbin.

July 24, 2017: Ms. Corbin said she received an email forwarded from the Mayor in which Ms. Levis said she had just successfully negotiated a lower salary for the WWTP Supervisor position.³⁸ Ms. Corbin said the email was

³⁶ Actually \$67,700

³⁷ In the March 15, 2017 email from Ms. Corbin to Ms. Obermeyer, there is no reference to negotiating salaries, other than to say "if we end up filling that position (sic) will advertise the position for a salary range of \$66,000-\$81,172. The email also makes the statement "Here is the breakdown for the 2017 budget provided in the RFP." The 2017 City's budget does not include the salary of \$67,700 for the WWTP Supervisor; however the detail that went into the RFP respondents' budget did include this amount. It is unclear whose 2017 budget Ms. Levis was referring. Step one in the CBA for the WWTP Supervisor for 2017 was \$73,932/year and step one for 2018 was \$75,041/year. Step 8 in 2017 would top out at \$91,501 and \$92,874 in 2018. The 3-15-17 email to Ms. Obermeyer inaccurately stated the "position would be advertised for a salary range of \$66,000 to \$81,172." The revised salary matrix Ms. Levis proposed in the MOU started at \$70,800 to \$87,072 in 2017 and went to \$71,868 to \$88,380 in 2018. It remains unclear how the range of \$66,000-\$81,172, as represented to the RFP respondents, was determined.

³⁸ The email to Council Member Luis, dated 7-20-17, did not say Ms. Levis had successfully negotiated a lower salary for the WWTP Supervisor. The email said "I have not yet bargained the new salary amount with the union."

addressed to Council Member Luis and c.c.'d to the Mayor. Ms. Corbin said she had never been consulted about negotiating an MOA with the union. **(EXHIBIT #22 & #55)**

In addition to the emails noted above by Ms. Corbin, below are additional email communications between Ms. Levis, Mayor Thornton and Ms. Corbin related to HR and Labor Relations issues:

On March 14, 2017, at 7:35 PM, Ms. Levis sent an email to Ms. Corbin with the subject "Help!!!!" The email read:
Not sure how to proceed... would it be possible to get a facilitate conversation between Lydia & Jenny?
Lydia approached me in mild distress late this afternoon about Jenny's recent comments/attitude. I'd rather you rec'd the account directly from Lydia so it's unbiased. Or?? Since you are coming down tomorrow the timing might be good. **(EXHIBIT #56)**

On March 15, 2017, at 2:53 AM, Ms. Corbin responded to Ms. Levis with an email that read:
Happy help. (sic) I will come up around 10:30 if that is ok. This is why I am here to support you all.
(EXHIBIT #57)

On May 11, 2017, at 7:17 PM, Ms. Levis sent an email to Ms. Corbin that read:
Greg's preference is to have you negotiate the 2018 COLA for the police CBA (we agreed to re-open for just the 2018 COLA) – is this something you'd be interested in taking on? Is so, let me know how I can assist. We can have the City Attorney run the topic up the council flagpole at an exec session to find out a range that the council would accept. I'll have comps ready. **(Emphasis added)**

As long as you are talking to the union, there are a few other items that have come up.

Drug policy – our CURRENT policy provides for a UA for new hires that are NON-safety positions and for on the job accidents or incidents. Obviously we need to remove those provisions and leave only the reasonable suspicion. You would think this would be a no-brainer to get the union to buy off on this but if I present it, there we be push back. Can you assist with this one? It's pretty simple, just removing a few paragraphs.

Text messaging policy – I have a draft test message policy that I want to get thru. It's also pretty simple;

1. Text ONLY transitory text messages (I'm running 10 minutes late to work"; the truck repair is done and ready to be picky up")
2. Transitory text messages may be deleted
3. Transitory text message may not be deleted if there is a public records request.
4. Do NOT text non-transitory messages (items that must be retained)

The proposed texting policy speaks briefly to discipline:

The failure to follow this policy may expose the City to damages and attorney's fees under Washington's Public Records Act, and therefore, the failure to follow this policy may subject the employee to appropriate discipline.

So need to be run up the union flagpole...

In summary, three items:

1. COLA for 2018 PD contract
2. Drug policy revisions
3. Text messaging policy

Are you interested in taking any/all of these on? I'll send you the full versions of the policies if so.
(EXHIBIT #58)

➤ **Disrespectful Behavior Towards Mayor**

This allegation is the result of reviewing emails to and from Ms. Levis where the tone and tenor of the email sounded disrespectful and disparaging towards the Mayor. For example:

On 11-20-16, at 6:52 PM, Ms. Levis sent an email to Mr. Lewis which read in part: "Mayor is trying to circumvent bid law; circumvent PW Director... Super nutty situation." (EXHIBIT #7 & #61)

On 11-20-17, Ms. Levis responded in an email chain with Mr. Lewis to the effect: "We don't know what he wants... possible he doesn't want Sue but the numbers don't nec (sic) support that decision..." (EXHIBIT #6 & #60)

On 11-20-16, Ms. Levis responded in an email chain with Mr. Lewis to the effect: "We did a very unplanned work session – Mayor announced it on Wed for the following Mon. CH2M did not have any costs whatsoever... Jeff n (sic) I argued over the process – both got r (sic) butts chewed as result." (EXHIBIT #7)

Out of the thousands of emails I reviewed, the above three emails stood out. A potential mitigating factor, to put the above emails into context of what was happening in Ms. Levis' personal life at the time, is her father was very sick and near death in another state.

VI. MS. LEVIS' EMPLOYMENT AGREEMENT

Ms. Levis is employed by the City of La Center pursuant to an Employment Agreement signed by then Mayor James Irish dated 1-1-11. Her duties and responsibilities are enumerated in a Classification Description attached to and part of the Employment Agreement.

**CITY OF LA CENTER
EMPLOYMENT AGREEMENT - FINANCE DIRECTOR**

This Employment Agreement (the "Agreement") is entered into on, and shall be effective, as of January 1, 2011 (the "effective date"), by and between the CITY OF LA CENTER, Washington, a Washington municipal corporation ("Employer" or "City") and SUZANNE LEVIS ("Employee").

RECITALS

As an integral part of this Agreement, the parties acknowledge and agree that:

- A. Employer wishes to employ Employee as City Finance Director of the City of La Center; and
- B. Employee is willing to accept and is qualified to be employed as City Finance Director of the City of La Center on the terms and conditions set forth in this Employment Agreement.
- C. Employee and Employer in lieu of certain rights as afforded by City Code agree to enter into and be bound by this Employment Agreement as the exclusive contract controlling their Employer-Employee relationship.

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

1. EMPLOYMENT DUTIES

Employer hereby employs Employee, and Employee accepts employment as the City's Finance Director to perform the functions and duties set forth in the attached job description, which is attached hereto as **Exhibit A** and is incorporated herein and made a part hereof by this reference, and such other legally permissible and proper duties and functions as Employer may from time to time assign.

2. TERM AND RENEWAL

A. This Agreement of employment is for an indefinite term of employment; subject, however, to the limitations, notices, requirements, payments and matters set forth herein.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee as City Finance Director at any time, subject to the provision set forth in Paragraph 7 of this Agreement and applicable state and federal law.

C. Nothing in the Agreement shall prevent, limit or otherwise interfere with the rights of the Employee to resign her position with Employer at any time, subject to a 30-day Notice and the provisions of the Agreement.

3. COMPENSATION AND BENEFITS

Upon execution and thereafter under the provisions of the Agreement, Employer shall provide Employee the following compensation and benefits and maintain them during Employee's tenure in her position as Finance Director:

A. No Reduction in Benefits. Employer shall not at any time during the term of the Employee's tenure in office reduce the salary, compensation, or other benefits of Employee, including office arrangements, except to the same nature and degree as Employer makes across the board reductions for all City employees. Employer, however, reserves the right to institute a furlough or reduced work hour program, which if implemented, would affect Employee in a manner consistent with other full-time employees at her executive level.

4. ANNUAL REVIEW AND PERFORMANCE EVALUATION

The Mayor shall review and evaluate the performance of the Employee at least annually by November 1st of each year relative to Employee's job description, attached to this Agreement as Exhibit A, and other duties. This review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee during the annual review period for expectations to be accomplished in the following year as stated below. Further, the Mayor shall provide Employee with a written summary of the findings of the Employer and provide adequate opportunity for the Employee to discuss her evaluation with the Employer. The actual format for the annual review and performance evaluation shall be at the discretion of the employer and will be shared with the Employee prior to the review and evaluation.

During the annual review process, the Employer and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the Finance Department and to the attainment of the Employer's policy objectives, which generally shall be attainable within agreed upon

time limits and the annual operating and capital budgets and appropriations provided. Employer and Employee will establish a relative priority among those various goals and objectives and reduce these ranked goals and objectives to writing.

7. DISCIPLINE, RESIGNATION, TERMINATION AND SEVERANCE PAY

Employee serves at the will and pleasure of the Mayor and may be terminated with or without cause by the Mayor with the concurrence of a majority of the City Council in accordance with the provisions of this section. Discipline shall be governed by section 7F. Termination may be without cause (section 7A), with cause (section 7B), by reason of Employee's death (section 7D), permanent disability (section 7E), or resignation (section 7C). Immediately upon the effective date of Employee's termination or resignation, Employee shall cease to perform any activities on behalf of, and will cease to hold himself out as representing, Employer and will forfeit and return all City issued equipment and other City owned property assigned to or in the possession of the Employee.

- A. **Termination without Cause.** In the event Employee is terminated without Cause (as defined in Section 7B below) or is requested to resign without cause (as defined in Section 7B below), Employer shall provide Employee severance compensation in the amount of six months of salary, based on the salary earned as of the date of termination. Additionally, Employer shall provide and pay the entire premium for COBRA health insurance continuation coverage for Employee and 90% of the Employee's dependents, if any, health coverage benefits for six months from the date of termination. The salary portion of this severance compensation shall be paid monthly, in quarterly installments or in lump sum, at the Employee's election. In the event Employee secures gainful employment within 6 months following termination that includes health insurance at least equal to that provided by Employer, Employer shall not be obligated to provide post-termination health insurance coverage once Employee's new health insurance takes effect.

When the Employee is terminated without cause, the Employer shall be authorized to make any payroll or other compensation deductions required or allowed by law. Upon termination without cause, Employer shall compensate Employee for 100% of all accrued unused vacation and 100% of all accrued unused supplemental leave for that year, 100% of all unused floating holidays for that year at an hourly rate based on the salary earned on the date of termination. Employee is entitled to written notice no less than 30 days prior to the effective date of termination explaining reasons for termination, if any. The Mayor may, at his/her sole discretion, suspend the Employee during the 30-day notification period with pay. Employer and Employee may, by mutual consent, agree on a time certain effective date for termination.

- B. **Termination for Cause.** Employer may terminate the Employee's employment and/or other rights under this Agreement without notice for cause as defined in this section. Conduct that constitutes "cause" as defined herein shall constitute a material breach of this contract and shall void the Employer's obligation to provide severance compensation to Employee. **Within** 30 days of Employer's termination of Employee for cause, Employer shall pay to Employee her base salary through the date of termination and no other severance or compensation. For purposes of this section, "cause" shall mean any of the following:

1. Dishonesty or willful misconduct, including, but not limited to fraud, embezzlement, theft, criminal misconduct, misfeasance or malfeasance;
2. Material breach of this Agreement or misconduct by Employee;
3. Violation of any requirement of the Personnel Policy and Employee Manual;

4. Unreasonable or repeated neglect or refusal to perform the essential duties and responsibilities as assigned to Employee; or
5. Conviction or indictment of a felony or any crime which involves fraud, embezzlement, theft, or dishonesty.

Provided the Mayor acts in good faith, a determination of cause as defined in this subsection shall be within the sole and exclusive discretion of the Mayor, with the concurrence of the majority of the City Council. The Employee's termination for cause shall not be effective unless and until Employer has provided Employee written notice explaining the particular cause for termination and Employer has given Employee a reasonable opportunity to correct (if correctable) and explain her actions. Employee's failure or refusal to carry out, implement, or adhere to unlawful policies, directives, duties, or instructions that are not reasonably capable of being performed generally, or specifically by her shall not constitute cause.

- F. **Discipline.** Employee shall be subject to discipline, up to and including termination, for violation of any requirement of the Personnel Policy and Employee Manual, insubordination or neglect of duty. Discipline shall be progressive and documented in writing, with a copy placed in Employee's personnel file. The Mayor shall be responsible for all disciplinary actions and shall be the final decision maker in determining what constitutes cause for discipline and the appropriate penalty for all disciplinary action.

CLASSIFICATION DESCRIPTION
FINANCE DIRECTOR
(Exhibit A)

GENERAL SUMMARY

The Finance Director is responsible for the management, planning and operation of the City's Finance and Administration department. Responsibilities include the management of departmental funds, monitoring the receipt, disbursement and accounting for all City money; maintaining accounting controls to provide financial records, reports and statements; and the maintenance of all City records and proceedings of the City of La Center Council. This position reports to the Mayor. **(Emphasis added)**

DESIRED QUALIFICATIONS

All City employees are expected to work and act as a team player in interactions with other City employees and provide a high level of customer service to the public, other agencies, and elected/appointed officials.

ESSENTIAL FUNCTIONS/MAJOR RESPONSIBILITIES

(The essential functions/major responsibilities listed below are intended only as examples of the type of work performed by this position. The omission of specific statements of duties does not exclude them from this position. Duties and responsibilities are subject to change by the employer as the needs of the employer and requirements of the job change).

- 1) Provides financial administration for the City, including preparing the municipal budget, administration of accounts payable/receivable, payroll, month and year- end reports and reconciliation.
- 2) Provides supervision over finance/permitting staff with responsibility for hiring, promoting, assigning, evaluating performance, coaching and developing, disciplining and discharging

employees with the approval of the Mayor.

- 3) Prepares reports and oversees record management and ordinance development per RCW.
- 4) Administers and oversees internal auditing procedures.
- 5) Perform statutory duties of a City Clerk.
- 6) Works with department heads regarding City personnel matters such as calculating benefits, hours and eligibility; handling grievances, processing personnel changes; handling termination issues; administering the new hire process; and maintaining personnel files.
- 7) Administers and oversees the City IT service management, including the City's website.
- 8) Performs related duties as assigned. **(Emphasis added)**

LEVEL OF SUPERVISION

This position operates independently with no direct supervision.

SPECIFIC JOB SKILLS AND SPECIAL QUALIFICATIONS

- Ability to select, supervise, assign, evaluate, discipline and discharge department staff.
- High level of interpersonal, teamwork, and communication skills needed for dealings with other City officials, external agencies, consultants, contractors, employees and the public.
- Interpret and enforce RCWs in a consistent manner.
- Communicate clearly and concisely, both verbally and in writing.
- Establish and maintain effective, cooperative working relationships with officials, other employees, and the general public.
- Read, write, and speak the English language at a level necessary for efficient job performance.

Participation in on-going professional development and education is required. **(EXHIBIT #62)**

VII. CITY OF LA CENTER GUIDING PRINCIPLES

The purpose of Guiding Principles is to provide employees at all levels of the organization with clarity about what behavior and performance each of the City's employees is responsible for demonstrating when in the workplace. In addition, Guiding Principles will provide everyone in the workplace with a mechanism for holding each other mutually accountability. For example, an employee can refer to the Guiding Principles when dealing with a colleague that is displaying disrespectful or troublesome behavior. Guiding Principles are a tool that an employee may use to communicate a problem or concern to a coworker in a non-confrontational or threatening manner.

➤ **Personal and Professional Accountability**

- The work that you are responsible for performing in your job is done on the behalf of our community, and as such you are representing the City of La Center. Always strive to deliver services in a polite, courteous, and cooperative manner whether interacting with a customer or a coworker.
- Be accountable for your own job performance, while recognizing that your job is reliant on the work of others. As a member of a team and a small City, all employees must rely on each other you are interconnected with your coworkers and management representatives and your work impacts their ability to perform effectively. It is also important to remember that most employees are managing a full workload and thus patience is a critical element of being part of a team.
- Perform all job duties within the standards set forth for your position and notify the supervisor when backlogs or unexpected work may result in a delay in completing essential tasks. Similarly, seek assistance from a

coworker or a supervisor when you encounter a problem or difficulties disrupt the ability of you to perform the work assigned to you.

- A key component of personal accountability is to own your mistakes, and to explore how the mistake may be resolved. Similarly, when you find the mistake of a colleague it is important to remember that despite our best efforts to convey respectfully that a mistake has been identified, the individual that made the mistake will be emotionally hurt (although our intent is not intentional). When we accept personal responsibility for our mistakes, it allows any opportunity for trust to be maintained or reinstated.

➤ **Customer Service**

- As a public servant it is your responsibility to provide the customers [citizens] with accurate information about services, regulations and processes. Respond in a timely and professional manner, politely and courteously while providing clear and concise information. If you are unable to address the customer's concerns, or if the request is not feasible, provide the customer with information about alternative steps. Recognize that you may not always be able to satisfy the needs of the customer, but you can provide clear and concise information in a respectful and polite manner.
- Listening is an essential part of being respectful. Active listening means giving the speaker your full attention without judging the speaker while working to understand their point of view. Gaining insight or understanding about the speaker's perspective does not mean you must agree with that perspective.

➤ **Integrity**

- Integrity means that your words and actions are the same whether you are speaking with peers, supervisors, or other professionals. Work honorably and professionally, providing a full day of good effort for a full day of pay.
- Perform your job within the ethical standards of the organization, and always act in a manner that will further the mission, vision and values of the organization. If you are unsure of how to act ethically in a specific situation, ask your supervisor for information or clarification regarding ethical standards.

➤ **Mutual Respect**

Demonstrating respect to everyone is essential specific to professional accountability. Treating everyone with respect is not negotiable in the workplace. Others do not have to earn our respect as it is extended automatic regardless of the behavior of the other person. Rather than reacting to the disrespect of behavior as directed to you, tell the offender what behavior you expect if they want you to continue to listen to them.

- Respect requires that we listen to the other person, and despite their behavior, to give the other person the benefit of doubt with the understanding that everyone is trying to do their best. If the individual is unable to cooperate with your instructions or limit how they treat you, then you may discontinue the conversation or the relationship.
- Trust is conditional and may wane from time to time due to the actions of the other person regardless of whether their actions intentional or unintentionally violated trust. To trust someone means that you have an expectation that the other person will, the majority of the time, demonstrate integrity, take responsibility for his/her behavior. Extending respect to others does not require that you trust them; however, trust cannot be extended without first demonstrating respect.

- Refrain from using insulting, threatening, or offensive language in the workplace. Use caution joking in the workplace as the terminology being used may violate anti-discrimination and harassment policies. It is important to not direct jokes at a coworker's work performance, ethnicity or personal appearance.

➤ **Manage Conflict**

- Conflict does and will occur in the workplace. Conflict occurs when two individuals have a different perspective or understanding about the same issue. When experiencing a conflict or difference with a coworker, it is the responsibility of each person to seek out the other person to talk things through.
- Key to resolving the conflict and not further complicating the conflict is to take your concerns directly to the individual. To discuss the conflict with others rather than talking with the individual which you are having a conflict with only heightens the intensity of the conflict. Seek assistance from a supervisor or a professional (EAP) if the conflict is persistent and begins to disrupt the workplace. Key to resolving conflict is to focus on a goal common to each person followed with outlining what each needs to do to maintain a congenial relationship.
- Be honest in sharing your views without criticizing, finding fault, or undermining the views of others. Direct any feedback at the idea or concept, and not at the individual offering the idea or concept. Give honest but respectful feedback.
- Gossip is defined as hearsay information that is passed from one person to another in a manner that is meant to discredit a third person. Do not participate in spreading gossip and rumors, and do not tolerate it from others as it sabotages the team's ability to work together effectively. It is disrespectful, nonproductive, and a selfishly motivated act that impedes employees from performing their jobs.

➤ **Teamwork**

- Teamwork is demonstrated when you expand your perspective from simply performing your individual tasks to helping ensure the Department's overall mission is accomplished by giving assistance, encouragement and support to coworkers. Look for ways to energize and support the work of others so that work of the unit is accomplished with little difficulty and greater employee satisfaction.
- Offer assistance to others and take pride in the achievements of the team. Group recognition for a job "well done" serves as a foundation for receiving future recognition and far outweighs the brevity of congratulations directed at a single individual.

➤ **Gossip**

- Do not participate in spreading gossip and rumors, and do not tolerate it from coworkers. The gossip is only successful in spreading gossip when others listen to the half-truths and misinformation that is promoted by this individual.
- Gossip is defined as hearsay information that is shared to disparage the character of others while attempting to promote themselves as being in the know or being important.
- The behaviors of rumor and gossip sabotage a team's ability to work together effectively. It is disrespectful, nonproductive, and a selfishly motivated act that impedes employees from performing their jobs. Verify the accuracy of information before repeating it. If you hear something that concerns you about an issue in the workplace, talk directly to your supervisor about the issue. If you hear something that concerns you about an

individual in the workplace, talk directly to the individual. Rumor, gossip, and sabotage are not respectful or helpful, and impede employees' ability to perform their jobs as it ultimately creates fear and mistrust among team members.

Note: The foundation of the Guiding Principles may be found in the City's Personnel Policies, the job descriptions of the various positions within the City, and in general within the scope of the best practices of each industry, i.e., policing, public works, and finance. **(EXHIBIT #63)**

VIII. CITY OF LA CENTER PERSONNEL POLICIES

CHAPTER 1 ~ PURPOSE AND SCOPE

1.1 Purpose - Important – Please Read

These personnel policies serve as a general informational guide to La Center's current employment practices and procedures. As a result, these policies are guidelines only, not promises of specific treatment in specific situations. These personnel policies are not intended to be, nor should they be construed as, an express or implied contract or any type of promise or guarantee of specific treatment upon which you may rely, or as a guarantee of employment for any specific duration. With the exception of employees working under an employment contract or union contract, all City employees are considered at-will employees and may be terminated from City employment at any time, with or without cause and with or without notice. No supervisor, department head, agent, or representative of La Center, has the authority to enter into any agreement with an individual employee for employment for any specified period or to make any written or verbal commitments contrary to the foregoing, unless such agreement is in a written employment contract signed by the Mayor, with the authorization of the Council where required. All employees are required to obtain, retain, read, understand and comply with the policies set forth in this Policy Manual. All employees shall acknowledge in writing that they have received a copy of this Policy Manual. *See Appendix E.*

1.2 Scope of the Policies

These personnel policies apply to all City employees. In cases where these policies conflict with any City ordinance, Civil Service rules or regulations, the provisions of a collective bargaining agreement, state or federal law, the terms of that law or agreement shall prevail. In all other cases, these policies apply. While these policies primarily explain personnel matters affecting City employees, the rules set forth in these policies regarding conduct, professionalism, confidentiality, and prohibitions against discrimination in the workplace shall also apply to all City volunteers and elected officials.

These policies shall also apply in addition to any other policies the City Council has adopted by resolution or ordinance, and from time to time may amend or adopt, such as the confidentiality policy adopted by Resolution 2002-231, policies governing the use of City credit cards in Resolution 2004-248, and policies governing reimbursement of City officials and employees for City business related expenses in Resolution 08-296.

CHAPTER 2 ~ GENERAL POLICIES AND PRACTICES

2.6 Anti-Disruption Policy

Any conduct in the workplace or while on City time that is disruptive to the normal operations of City business or invades the rights of others will not be tolerated. While on City time, employees are expected to maintain their focus on professional and work-related matters and to treat each other and the public with respect. The City also respects individuals' privacy interests, their right to a belief system that may differ from that of other employees, and political freedoms. Thus, all employees are expected to maintain work relationships that respect and adhere to the City's expectations. This includes refraining from spreading harmful rumors, gossiping or discussing non-business related information about others. Other disruptive

conduct includes but is not limited to discrimination, harassment, threats, insults, intimidation, ridicule, profanity, vulgarity, stereotyping, physical or verbal abuse, ignoring the rights of others, and displaying insensitivity to the beliefs and customs of others. If conduct occurring outside the workplace violates these principals, but impacts the working relationship between employees or otherwise disrupts City business, the City may take such non-work related conduct into account in taking corrective action against the responsible employee(s).

Conduct Towards Co-Workers and the Public: All employees are expected to treat their co-workers and the public with courtesy and respect. While employees may disagree with one another, or even with aspects of the City policies, management directives, or other practices, they are expected to resolve their concerns in a way that is not disruptive of the City's business, and does not undermine the quality of the workplace for others. If you have concerns, you are expected to address those concerns with an appropriate member of the management team to see if your concerns can be resolved. Employees are not to act in a way that is considered combative or threatening to other co-workers or the public.

Also, gossip in the workplace, particularly if it is unfounded or humiliating, destroys co-worker morale. All employees are charged with the responsibility of avoiding or stopping harmful gossip in the workplace. Any information unrelated to an employee's job performance or dealing with non-City business, that you may find hurtful or demoralizing if the statements were made about you, should be considered prohibited gossip under this policy. If you learn of harmful gossip and are uncomfortable telling your co-workers to stop, report such conduct to the responsible employees' supervisor, who will take appropriate action.

Similarly, disagreements and animosities among employees can be detrimental to the work environment for all co-workers. The City expects such disagreements and animosities to be removed from the workplace, or resolved productively with the help of a supervisor or human resources specialist. Any unresolved disagreements of this nature that impact employee performance and morale will be dealt with as a performance problem or disciplinary matter.

Employees are also expected to conduct themselves professionally at all times. The City will not tolerate abusive or foul language, discourteous or insulting conduct, threats of any kind (even in jest), violence, intimidation or intentional destruction of property. Such conduct will result in disciplinary action, up to and including termination.

CHAPTER 6 ~ PERFORMANCE EVALUATIONS AND TRAINING

6.1 Performance Evaluations

To achieve La Center's goal to train, promote and retain the best qualified employees for every job, the City conducts periodic performance evaluations for all positions. Employees are normally evaluated by their supervisor prior to completion of their trial/probationary period and usually once annually thereafter. Performance evaluations are part of an employee's personnel record and may be a factor in determining the employee's conversion to regular status, or whether the employee receives a wage increase, is to be promoted, transferred, demoted, laid off, or terminated.

Performance evaluations are designed to be an opportunity for regular 2-way communication between the employee and his or her supervisor. All performance evaluations will be prepared then discussed with the employee by an appropriate supervisory employee. In the event an employee is not performing up to the City's and the supervisor's standards, the supervisor will generally establish a time frame for improvement,

along with identifying the tools needed for improvement. If the employee fails to improve in the time frame specified, the employee may be subject to demotion or termination.

CHAPTER 9 ~ EMPLOYEE RESPONSIBILITIES AND CONDUCT

9.1 General Code of Conduct

All employees are expected to represent La Center to the public in a professional manner that is courteous, efficient and helpful. Employees must maintain a clean and neat appearance appropriate to their work assignment, as determined by their position and supervisor.

Since the proper working relationship between employees and the City depends on each employee's ongoing job performance, professional conduct and behavior, the City has established the following minimum standards of personal conduct: basic tact and courtesy towards customers, potential customers and fellow employees; adherence to City policies, procedures, safety rules and safe work practices; compliance with directions from supervisors and management; preserving and protecting the City's equipment, grounds, facilities and resources; and providing orderly and cost-efficient services to its customers and abiding by the Anti-Disruption Policy set forth in this policy manual.

La Center is a relatively small organization. To make the most efficient use of personnel, the City reserves the right to change an employee's work conditions and duties as originally assigned. If these arrangements become necessary, the City expects the employee's best cooperation. **(EXHIBIT #64)**

IX. CITY OF LA CENTER MUNICIPAL CODES

Chapter 1.01: Code Adoption

Section 2.10.030: Finance Director Duties

(1) The Finance Director, subject to applicable provisions of state law and the ordinances of the City of La Center, shall:

- a) Be responsible for all duties of the City clerk as established by state law or the municipal code, including those duties enumerated in RCW 35A.42.040; record and certify all ordinances and resolutions of the City; serve as custodian of the City seal and all official City records; publish all legal notices unless otherwise provided by law, and perform other duties as may be required by state law, City ordinance, or as the Mayor or City council may direct.
- b) Be responsible and serve as the City's chief financial officer, perform all duties as established by statute or ordinance, including those set forth in RCW 35A.42.010, and such other duties as may be required by state law, City ordinance, or as the Mayor or council may direct. **(Emphasis added)**

Chapter 2.52 Exempt Employees

Section 2.52.010: Applicability and exemption

The exempt employees that are subject to this chapter shall be the positions of chief of police, public works director, clerk/treasurer and finance director (collectively the "exempt employees"). These positions shall be administratively exempt under 29 CFR Part 541.2 (Fair Labor Standards Act), from the payment of overtime or the accrual of compensatory time.

Section 2.52.030 Annual evaluation.

Exempt employees serve at the pleasure of the Mayor, who shall review and evaluate the performance of exempt employees at least once per year. Exempt employees will be provided a written summary of the evaluation and afforded opportunity to discuss the evaluation with the Mayor. An employee may be disciplined or terminated by the Mayor for cause, which shall be a material deviation from, or violation of any provision of, the employee's job description or the Personnel Policy and Employee Manual.

Section 2.52.040 Application of the Personnel Policy and Employee Manual.

The Personnel Policy and Employee Manual, as amended from time to time, shall apply to all City employees, including exempt employees...

Chapter 2.55 Improper Governmental Action-Protection against retaliation

Section 2.55.010 Policy

It is the policy of the City of La Center (1) to encourage reporting by its employees of improper governmental action taken by the City of La Center officers or employees and (2) to protect the City of La Center employees who have reported improper governmental actions in accordance with the City of La Center's policies and procedures.

Section 2.55.020 Definitions

As used in this policy, the following terms shall have the meanings indicated:

- (2) "Improper governmental action" means any action by a City of La Center officer or employee:
- a) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment, and
 - b) That (i) is a violation of any federal, state, or local law or rule, (ii) is an abuse of authority, (iii) is of substantial and specific danger to the public health or safety or (iv) is a gross waste of public funds.

"Improper governmental action" does not include personnel actions, including employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of collective bargaining or civil services laws, alleged violations of labor agreements or reprimands.

- (3) "Retaliatory action" means any adverse change in the terms or conditions of the City of La Center employee's employment.

Chapter 3.20 Public Works Contracts

Section 3.20.010 Bids - Required when.

The construction of any public work or improvement, by contract or day-labor, whenever the cost of such work or improvement, including the cost of materials, supplies and equipment, will not exceed the sum of \$5,000, may be done without calling of bids therefor. Whenever the cost of such work or improvement will exceed \$5,000, the same shall be done by contract after a call for bids which shall be awarded to the lowest responsible bidder, provided that the City council shall have the power by resolution to reject any and all bids and to make further calls for bids in the same manner as the original call, or if in its judgment the improvement or work, including the purchase of supplies, materials and equipment, can be done by the City at less cost than the lowest bid submitted, it may do so without making a further call for bids or awarding any contract therefor. (Emphasis added)

Section 3.20.020 Bids - Notice required.

Whenever it is necessary to issue a call for bids in accordance with LCMC 3.20.010, notice of the call for bids shall be given by posting notice thereof in three public places in the City of La Center, Washington, and by publication in the official newspaper once each week for two consecutive weeks before the date fixed for opening the bids...

Section 3.20.040 Purchases requiring bids.

Any purchase of supplies, materials, equipment or services, except for public work or improvement, where the cost thereof exceeds \$1,000 shall be made upon call for bids in the same method and under the same conditions as required in this chapter on a call for bids for public work or improvement.
(EXHIBIT #65)

X. RCW'S REVIEWED FOR POTENTIAL APPLICABILITY (EXHIBIT #66)

RCW 9.18 BIDDING OFFENSES

RCW 9.18.120 Suppression of competitive bidding.

- (1) When any competitive bid or bids are to be or have been solicited, requested, or advertised for by the State of Washington, or any county, City, town or other municipal corporation therein, or any department of either thereof, for any work or improvement to be done or constructed for or by such state, county, City, town, or other municipal corporation, or any department of either thereof, it shall be unlawful for any person acting for himself or herself or as agent of another, or as agent for or as a member of any partnership, unincorporated firm or association, or as an officer or agent of any corporation, to offer, give, or promise to give, any money, check, draft, property, or other thing of value, to another or to any firm, association, or corporation for the purpose of inducing such other person, firm, association, or corporation, either to refrain from submitting any bids upon such public work or improvement, or to enter into any agreement, understanding or arrangement whereby full and unrestricted competition for the securing of such public work will be suppressed, prevented, or eliminated; and it shall be unlawful for any person to solicit, accept, or receive any money, check, draft, property, or other thing of value upon a promise or understanding, express or implied, that he or she individually or as an agent or officer of another person, persons, or corporation, will refrain from bidding upon such public work or improvement, or that he or she will on behalf of himself or herself or such others submit or permit another to submit for him or her any bid upon such public work or improvement in such sum as to eliminate full and unrestricted competition thereon.
- (2) A person violating this section is guilty of a gross misdemeanor.

RCW 9.18.130 Collusion to prevent competitive bidding—Penalty.

- (1) It shall be unlawful for any person for himself or herself or as an agent or officer of any other person, persons, or corporation to in any manner enter into collusion or an understanding with any other person, persons, or corporation to prevent or eliminate full and unrestricted competition upon any public work or improvement mentioned in RCW 9.18.120.
- (2) A person violating this section is guilty of a gross misdemeanor. **(Emphasis added)**

RCW 9A.04.110 Definitions.

In this title unless a different meaning plainly is required:

- (3) "Benefit" is any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary;
- (8) "Government" includes any branch, subdivision, or agency of the government of this state and any county, City, district, or other local governmental unit;
- (9) "Governmental function" includes any activity which a public servant is legally authorized or permitted to undertake on behalf of a government;
- (12) "Malice" and "maliciously" shall import an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty;
- (13) "**Officer**" and "**public officer**" means a person holding office under a City, county, or state government, or the federal government who performs a public function and in so doing is vested with the

exercise of some sovereign power of government, and includes all assistants, deputies, clerks, and employees of any public officer and all persons lawfully exercising or assuming to exercise any of the powers or functions of a public officer;

(14) "Omission" means a failure to act;

(16) "Pecuniary benefit" means any gain or advantage in the form of money, property, commercial interest, or anything else the primary significance of which is economic gain;

(23) "**Public servant**" means any person other than a witness who presently occupies the position of or has been elected, appointed, or designated to become any officer or employee of government, including a legislator, judge, judicial officer, juror, and any person participating as an advisor, consultant, or otherwise in performing a governmental function; **(Emphasis added)**

RCW 9A.80.010 Official misconduct.

(1) A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

(a) He or she intentionally commits an unauthorized act under color of law; or

(b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

(2) Official misconduct is a gross misdemeanor. **(Emphasis added)**

RCW 35A.12.020 - Appointive officers—Duties—Compensation.

The appointive officers shall be those provided for by charter or ordinance and shall include a City clerk and a chief law enforcement officer. The office of City clerk may be merged with that of a City treasurer, if any, with an appropriate title designated therefor. Provision shall be made for obtaining legal counsel for the City, either by appointment of a City attorney on a full-time or part-time basis, or by any reasonable contractual arrangement for such professional services. The authority, duties and qualifications of all appointive officers shall be prescribed by charter or ordinance, consistent with the provisions of this title, and any amendments thereto, and the compensation of appointive officers shall be prescribed by ordinance: PROVIDED, That the compensation of an appointed municipal judge shall be within applicable statutory limits.

RCW 35A.12.080 Oath and bond of officers.

Any officer before entering upon the performance of his or her duties may be required to take an oath or affirmation as prescribed by charter or by ordinance for the faithful performance of his or her duties. The oath or affirmation shall be filed with the county auditor. The clerk, treasurer, if any, chief of police, and such other officers or employees as may be designated by ordinance or by charter shall be required to furnish annually an official bond conditioned on the honest and faithful performance of their official duties. The terms and penalty of official bonds and the surety therefor shall be prescribed by ordinance or charter and the bond shall be approved by the chief administrative officer of the City. The premiums on such bonds shall be paid by the City. When the furnishing of an official bond is required of an officer or employee, compliance with such provisions shall be an essential part of qualification for office. **(Emphasis added)**

RCW 35A.12.090 - Appointment and removal of officers—Terms.

The Mayor shall have the power of appointment and removal of all appointive officers and employees subject to any applicable law, rule, or regulation relating to civil service. The head of a department or office of the City government may be authorized by the Mayor to appoint and remove subordinates in such department or office, subject to any applicable civil service provisions. All appointments of City officers and employees shall be made on the basis of ability and training or experience of the appointees in the duties they are to perform, from among persons having such qualifications as may be prescribed by ordinance or by

charter, and in compliance with provisions of any merit system applicable to such City. Confirmation by the City council of appointments of officers and employees shall be required only when the City charter, or the council by ordinance, provides for confirmation of such appointments. Confirmation of Mayoral appointments by the council may be required by the council in any instance where qualifications for the office or position have not been established by ordinance or charter provision. Appointive offices shall be without definite term unless a term is established for such office by law, charter or ordinance. **(Emphasis added)**

RCW 35A.21.030 Mandatory duties of code City officers.

Except as otherwise provided in this title, every officer of a code City shall perform, in the manner provided, all duties of his or her office which are imposed by state law on officers of every other class of City who occupy a like position and perform like functions. **(Emphasis added)**

RCW 35A.33 BUDGETS IN CODE CITIES

RCW 35A.33.010 Definitions.

Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Chief administrative officer" as used in this chapter includes the Mayor of cities having a Mayor-council form of government, the commissioners in cities having a commission form of government, the City manager, or any other City official designated by the charter or ordinances of such City under the plan of government governing the same, or the budget or finance officer designated by the Mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(2) "**Clerk**" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he or she may be known in any code City.

(3) "Council" as used in this chapter includes the commissioners in cities having a commission form of government and any other group of City officials serving as the legislative body of a code City.

(4) "Department" as used in this chapter includes each office, division, service, system or institution of the City for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the code City pursuant to authority given under RCW [1.16.030](#).

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter have the meaning prescribed in "Governmental Accounting, Auditing and Financial Reporting" prepared by the National Committee on Governmental Accounting, 1968. **(Emphasis added)**

RCW 35A.33.020 Applicability of chapter.

The provisions of this chapter apply to all code cities except those which have adopted an ordinance under RCW [35A.34.040](#) providing for a biennial budget. In addition, this chapter shall not apply to any municipal utility or enterprise for which separate budgeting provisions are made by general state law.

RCW 35A.33.040 Classification and segregation of budget estimates.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington finance officers

association, the association of Washington cities and the association of Washington City managers.
(Emphasis added)

RCW 35A.33.050 Proposed preliminary budget.

On or before the first business day in the third month prior to the beginning of the fiscal year of a code City or at such other time as the City may provide by ordinance or charter, the clerk or other person designated by the charter, by ordinances, or by the chief administrative officer of the City shall submit to the chief administrative officer a proposed preliminary budget which shall set forth the complete financial program of the City for the ensuing fiscal year, showing the expenditure program requested by each department and the sources of revenue by which each such program is proposed to be financed.

The revenue section shall set forth in comparative and tabular form for each fund the actual receipts for the last completed fiscal year, the estimated receipts for the current fiscal year and the estimated receipts for the ensuing fiscal year, which shall include the amount to be raised from ad valorem taxes and unencumbered fund balances estimated to be available at the close of the current fiscal year.

The expenditure section shall set forth in comparative and tabular form for each fund and every department operating within each fund the actual expenditures for the last completed fiscal year, the appropriations for the current fiscal year and the estimated expenditures for the ensuing fiscal year. The salary or salary range for each office, position or job classification shall be set forth separately together with the title or position designation thereof: PROVIDED, That salaries may be set out in total amounts under each department if a detailed schedule of such salaries and positions be attached to and made a part of the budget document. (Emphasis added)

RCW 35A.33.052 Preliminary budget.

The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the City's next fiscal year he or she shall file it with the City clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the City's next fiscal year.

RCW 35A.33.055 Budget message—Preliminary hearings.

In every code City a budget message prepared by or under the direction of the City's chief administrative officer shall be submitted as a part of the preliminary budget to the City's legislative body at least sixty days before the beginning of the City's next fiscal year and shall contain the following:

- (1) An explanation of the budget document;
- (2) An outline of the recommended financial policies and programs of the City for the ensuing fiscal year;
- (3) A statement of the relation of the recommended appropriation to such policies and programs;
- (4) A statement of the reason for salient changes from the previous year in appropriation and revenue items;
- (5) An explanation for any recommended major changes in financial policy.

Prior to the final hearing on the budget, the legislative body or a committee thereof, shall schedule hearings on the budget or parts thereof, and may require the presence of department heads to give information regarding estimates and programs.

RCW 35A.33.075 Budget adoption.

Following conclusion of the hearing, and prior to the beginning of the fiscal year, the legislative body shall make such adjustments and changes as it deems necessary or proper and after determining the allowance in each item, department, classification and fund, and shall by ordinance, adopt the budget in its final form and content. Appropriations shall be limited to the total estimated revenues contained therein including the amount to be raised by ad valorem taxes and the unencumbered fund balances estimated to be available at the close of the current fiscal year. Such ordinances may adopt the final budget by reference: PROVIDED, That the ordinance adopting such budget shall set forth in summary form the totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined.

A complete copy of the final budget as adopted shall be transmitted to the state auditor, and to the Association of Washington cities.

RCW 35A.33.102 Registered warrants - Appropriations.

In adopting the final budget for any fiscal year, the council shall appropriate from estimated revenue sources available, a sufficient amount to pay the principal and interest on all outstanding registered warrants issued since the adoption of the last preceding budget except those issued and identified as revenue warrants and except those for which an appropriation previously has been made: PROVIDED, That no portion of the revenues which are restricted in use by law may be appropriated for the redemption of warrants issued against a utility or other special purpose fund of a self-supporting nature: PROVIDED FURTHER, That all or any portion of the City's outstanding registered warrants may be funded into bonds in any manner authorized by law.

RCW 35A.33.105 Adjustment of wages, etc., of employees permissible budget notwithstanding.

Notwithstanding the appropriations for any salary, or salary range of any employee or employees adopted in a final budget, the legislative body of any code City may, by ordinance, change the wages, hours, and conditions of employment of any or all of its appointive employees if sufficient funds are available for appropriation to such purposes.

RCW 35A.33.110 Forms – Accounting - Supervision by state.

The state auditor is empowered to make and install the forms and classifications required by this chapter to define what expenditures are chargeable to each budget class and to establish the accounting and cost systems necessary to secure accurate budget information.

RCW 35A.33.120 Funds - Limitations on expenditures - Transfers and adjustments.

The expenditures as classified and itemized in the final budget shall constitute the City's appropriations for the ensuing fiscal year. Unless otherwise ordered by a court of competent jurisdiction, and subject to further limitations imposed by ordinance of the code City, the expenditure of City funds or the incurring of current liabilities on behalf of the City shall be limited to the following:

- (1) The total amount appropriated for each fund in the budget for the current fiscal year, without regard to the individual items contained therein, except that this limitation shall not apply to wage adjustments authorized by RCW [35A.33.105](#); and
- (2) The unexpended appropriation balances of a preceding budget which may be carried forward from prior fiscal years pursuant to RCW [35A.33.150](#); and
- (3) Funds received from the sale of bonds or warrants which have been duly authorized according to law; and

- (4) Funds received in excess of estimated revenues during the current fiscal year, when authorized by an ordinance amending the original budget; and
- (5) Expenditures required for emergencies, as authorized in RCW [35A.33.080](#) and [35A.33.090](#).

Transfers between individual appropriations within any one fund may be made during the current fiscal year by order of the City's chief administrative officer subject to such regulations, if any, as may be imposed by the City council. Notwithstanding the provisions of RCW [43.09.210](#) or of any statute to the contrary, transfers, as herein authorized, may be made within the same fund regardless of the various offices, departments or divisions of the City which may be affected.

The City council, upon a finding that it is to the best interests of the code City to decrease, revoke or recall all or any portion of the total appropriations provided for any one fund, may, by ordinance, approved by the vote of one more than the majority of all members thereof, stating the facts and findings for doing so, decrease, revoke or recall all or any portion of an unexpended fund balance, and by said ordinance, or a subsequent ordinance adopted by a like majority, the moneys thus released may be reappropriated for another purpose or purposes, without limitation to department, division or fund, unless the use of such moneys is otherwise restricted by law, charter, or ordinance.

RCW 35A.33.122 Administration, oversight, or supervision of utility - Reimbursement from utility budget authorized.

Whenever any code City apportions a percentage of the City manager's, administrator's, or supervisor's time, or the time of other management or general government staff, for administration, oversight, or supervision of a utility operated by the City, or to provide services to the utility, the utility budget may identify such services and budget for reimbursement of the City's current expense fund for the value of such services.

RCW 35A.33.125 Limitation on expenditures—Void.

Liabilities incurred by any officer or employee of the City in excess of any budget appropriations shall not be a liability of the City. The clerk shall issue no warrant and the City council or other authorized person shall approve no claim for an expenditure in excess of the total amount appropriated for any individual fund, except upon an order of a court of competent jurisdiction or for emergencies as provided in this chapter.

RCW 35A.33.140 Funds—Quarterly report of status.

At such intervals as may be required by City charter or ordinance, however, being not less than quarterly, the clerk shall submit to the City's legislative body and chief administrative officer a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding reporting period and like information for the whole of the current fiscal year to the first day of the current reporting period together with the unexpended balance of each appropriation. The report shall also show the receipts from all sources.

RCW 35A.33.160 Violations and penalties.

Upon the conviction of any City official, department head or other City employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or City ordinance or charter, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he or she shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation.

RCW 35A.42.010 City treasurer—Miscellaneous authority and duties.

In addition to authority granted and duties imposed upon code City treasurers by this title, code City treasurers, or the officers designated by charter or ordinance to perform the duties of a treasurer, shall have the duties and the authority to perform the following: (1) As provided in RCW [8.12.500](#) relating to bonds and compensation payments in eminent domain proceedings; (2) as provided in RCW [68.52.050](#) relating to cemetery improvement funds; (3) as provided in RCW [41.28.080](#) relating to custody of employees' retirement funds; (4) as provided in RCW [47.08.100](#) relating to the use of City street funds; (5) as provided in RCW [46.68.080](#) relating to motor vehicle funds; (6) as provided in RCW [41.16.020](#) and chapter [41.20](#) RCW relating to police and firefighters' relief and pension boards; (7) as provided in chapter [42.20](#) RCW relating to misappropriation of funds; and (8) as provided in chapter [39.60](#) RCW relating to investment of municipal funds. The treasurer shall be subject to the penalties imposed for the violation of any of such provisions. Where a provision of this title, or the general law, names the City treasurer as an officer of a board or other body, or assigns duties to a City treasurer, such position shall be filled, or such duties performed, by the officer of a code City who is performing the duties usually performed by a City treasurer, although he or she may not have that designation.

RCW 35A.42.020 Qualification, removal, code of ethics, duties.

Except as otherwise provided in this title, every elective and appointive officer and all employees of code cities shall: (1) Be possessed of the qualifications and be subject to forfeiture of office, impeachment or removal and recall as provided in chapter [42.04](#) RCW and RCW [9.81.040](#); and (2) provide official bonds in accordance with the requirements of this title, and as required in compliance with chapters [42.08](#) and [48.28](#) RCW.

When vacancies in public offices in code cities shall occur the term of a replacement officer shall be fixed as provided in chapter [42.12](#) RCW. A public officer charged with misconduct as defined in chapter [42.20](#) RCW, shall be charged and, upon conviction, punished as provided for such misconduct in chapter [42.20](#) RCW. The officers and employees of code cities shall be guided and governed by the code of ethics as provided in chapter [42.23](#) RCW. Vouchers for the payment of public funds and the provisions for certifying the same shall be as provided in chapter [42.24](#) RCW. The meetings of any board, agency, or commission of a code City shall be open to the public to the extent and notice given in the manner required by *chapter [42.32](#) RCW.

RCW 35A.42.040 City clerks and controllers

In addition to any specific enumeration of duties of City clerks in a code City's charter or ordinances, and without limiting the generality of RCW [35A.21.030](#) of this title, the clerks of all code cities shall perform the following duties in the manner prescribed, to wit: (1) Certification of City streets as part of the highway system in accordance with the provisions of RCW [47.24.010](#); (2) perform the functions of a member of a firefighters' pension board as provided by RCW [41.16.020](#); (3) keep a record of ordinances of the City and provide copies thereof as authorized by RCW [5.44.080](#); (4) serve as applicable the trustees of any police relief and pension board as authorized by RCW [41.20.010](#); and (5) serve as secretary-treasurer of volunteer firefighters' relief and pension boards as provided in RCW [41.24.060](#).

RCW 35A.42.050 Public officers and employees—Conduct

In addition to provisions of general law relating to public officials and others in public administration, employment or public works, the duties and conduct of such officers and other persons shall be governed by: (1) Chapter [9A.68](#) RCW relating to bribery of a public officer; (2) Article II, section 30 of the Constitution

of the state of Washington relating to bribery or corrupt solicitation; (3) RCW [35.17.150](#) relating to misconduct in code cities having a commission form of government; (4) chapter [42.23](#) RCW in regard to interest in contracts; (5) chapter [29A.84](#) RCW relating to misconduct in connection with elections; (6) RCW [49.44.060](#) relating to grafting by employees; (7) RCW [49.44.020](#) and [49.44.030](#) relating to the giving or solicitation of a bribe to a labor representative; (8) chapter [42.20](#) RCW relating to misconduct of a public officer; (9) RCW [49.52.050](#) and [49.52.090](#) relating to rebating by employees; and (10) chapter [9.18](#) RCW relating to bribery and grafting.

RCW 39.04.110 Penalty for False Entries

Any director, supervisor, officer or employee of the state and any commissioner, trustee, supervisor, officer or **employee of any municipality** who shall knowingly make any false entry in any account or record required by this chapter or who shall knowingly certify to any false statement in any certificate required by the chapter, shall be guilty of a misdemeanor. **(Emphasis added)**

Misconduct of Public Officers

RCW 42.20.040 False report.

Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor. **(Emphasis added)**

RCW 42.20.050 Public officer making false certificate.

Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he or she knows to be false, in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor.

RCW 42.20.060 Falsely auditing and paying claims.

Every public officer, or person holding or discharging the duties of any public office or place of trust under the state or in any county, town or City, a part of whose duty it is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state or such county, town or City, who shall knowingly audit, allow or pay, or, directly or indirectly, consent to or in any way connive at the auditing, allowance or payment of any claim or demand against the state or such county, town or City, which is false or fraudulent or contains any charge, item or claim which is false or fraudulent, shall be guilty of a gross misdemeanor.

RCW 42.20.070 Misappropriation and falsification of accounts by public officer.

Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, City, town, or any school, diking, drainage, or irrigation district, who:

- (1) Appropriates to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or
- (2) Knowingly keeps any false account, or makes any false entry or erasure in any account, of or relating to any money so received by him or her; or
- (3) Fraudulently alters, falsifies, conceals, destroys, or obliterates any such account; or
- (4) Willfully omits or refuses to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, City, town, or such school, diking, drainage, or irrigation district or to the proper

officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

RCW 42.20.080 Other violations by officers.

Every officer or other person mentioned in RCW 42.20.070, who shall willfully disobey any provision of law regulating his or her official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor. (Emphasis added)

RCW 42.20.090 Misappropriation, etc., by treasurer.

Every state, county, City, or town treasurer who willfully misappropriates any moneys, funds, or securities received by or deposited with him or her as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his or her office, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years or by a fine of not more than five thousand dollars.

RCW 42.20.100 Failure of duty by public officer a misdemeanor.

Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their willful neglect to perform such duty, except where otherwise specially provided for, shall be a misdemeanor. (Emphasis added)

Code of Ethics for Municipal Officers

RCW 42.23.010 Declaration of purpose.

It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in chapter 268, Laws of 1961, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve.

RCW 42.23.020 Definitions.

For the purpose of chapter 268, Laws of 1961:

- (1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;
- (2) "**Municipal officer**" and "**officer**" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;
- (3) "Contract" shall include any contract, sale, lease or purchase;
- (4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality. (Emphasis added)

RCW 42.23.030 Interest in contracts prohibited—Exceptions.

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the

benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

- (1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;
- (2) The designation of public depositaries for municipal funds;
- (3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;
- (4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;
- (5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a City with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;
- (6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.
(b) However, in the case of a particular officer of a second-class City or town, or a noncharter optional code City, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW [36.32.240](#), the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.
(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW [70.44.460](#), the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.
(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.
(d) The exceptions provided in this subsection (6) do not apply to:
(i) A sale or lease by the municipality as the seller or lessor;
(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a City with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or
(iii) Contracts for legal services, except for reimbursement of expenditures.
(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;
- (7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the

property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW [28A.330.240](#), that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW [28A.330.240](#), that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in *RCW [28A.150.040](#), the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

Findings—Intent—1999 c 261: "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." (**Emphasis added**)

RCW 42.23.040 Remote interests.

A municipal officer is not interested in a contract, within the meaning of RCW [42.23.030](#), if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party;
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

RCW 42.23.050 Prohibited contracts void—Penalties for violation of chapter.

Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.

RCW 42.23.060 Local charter controls chapter.

If any provision of this chapter conflicts with any provision of a City or county charter, or with any provision of a City-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

RCW 42.23.070 Prohibited acts.

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

RCW 42.41 Local Government Whistleblower Protection

RCW 42.41.010 Policy.

It is the policy of the legislature that local government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions of local government officials and employees. The purpose of this chapter is to protect local government employees who make good-faith reports to appropriate governmental bodies and to provide remedies for such individuals who are subjected to retaliation for having made such reports.

RCW 42.41.020 Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1)(a) "Improper governmental action" means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter [41.08](#), 41.12, 41.14, 41.56, 41.59, or [53.18](#) RCW or RCW [54.04.170](#) and [54.04.180](#).

(2) "Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter [43.52](#) RCW. It includes, but is not limited to cities, counties, school districts, and special purpose districts.

(3) "Retaliatory action" means: (a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

(4) "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property.

RCW 42.41.030 Right to report improper governmental action—Policies and procedures.

(1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

(4) Each local government shall permanently post a summary of the procedures for reporting information on an alleged improper governmental action and the procedures for protection against retaliatory actions described in RCW [42.41.040](#) in a place where all employees will have reasonable access to it. A copy of the summary shall be made available to any employee upon request.

(5) A local government may require as part of its policy that, except in the case of an emergency, before an employee provides information of an improper governmental action to a person or an entity who is not a public official or a person listed pursuant to subsection (3) of this section, the employee shall submit a written report to the local government. Where a local government has adopted such a policy under this section, an employee who fails to make a good faith attempt to follow the policy shall not receive the protections of this chapter.

(6) If a local government has failed to adopt a policy as required by subsection (2) of this section, an employee may report alleged improper government action directly to the county prosecuting attorney or, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper government action, to the state auditor. The cost incurred by the state auditor in such investigations shall be paid by the local government through the municipal revolving account authorized in RCW [43.09.282](#).

(7) The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing.

RCW 42.41.040 Retaliatory action unlawful—Relief by whistleblower—Penalty.

(1) It is unlawful for any local government official or employee to take retaliatory action against a local government employee because the employee provided information in good faith in accordance with the provisions of this chapter that an improper governmental action occurred.

(2) In order to seek relief under this chapter, a local government employee shall provide a written notice of the charge of retaliatory action to the governing body of the local government that:

- (a) Specifies the alleged retaliatory action; and
- (b) Specifies the relief requested.

(3) The charge shall be delivered to the local government no later than thirty days after the occurrence of the alleged retaliatory action. The local government has thirty days to respond to the charge of retaliatory action and request for relief.

(4) Upon receipt of either the response of the local government or after the last day upon which the local government could respond, the local government employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief as defined in this section. The request for a hearing shall be delivered to the local government within fifteen days of delivery of the response from the local government, or within fifteen days of the last day on which the local government could respond.

(5) Within five working days of receipt of the request for hearing, the local government shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge. Except as otherwise provided in this section, the proceedings shall comply with RCW [34.05.410](#) through [34.05.598](#).

(6) The employee, as the initiating party, must prove his or her claim by a preponderance of the evidence. The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five days after the date the request for hearing was delivered to the local government. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

(7) Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorneys' fees to the prevailing party.

(8) If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend

to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed. All penalties recovered shall be paid to the local government administrative hearings account created in RCW [42.41.060](#).

(9) The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to superior court.

RCW 42.41.045 Prohibition on intimidation of whistleblower—Nondisclosure of protected information.

(1) A local government official or employee may not use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter.

(2) Nothing in this section authorizes an individual to disclose information prohibited by law.

Local Government Accounting

RCW 43.09.200 Local government accounting—Uniform system of accounting.

The state auditor shall formulate, prescribe, and install a system of accounting and reporting for all local governments, which shall be uniform for every public institution, and every public office, and every public account of the same class.

The system shall exhibit true accounts and detailed statements of funds collected, received, and expended for account of the public for any purpose whatever, and by all public officers, employees, or other persons.

The accounts shall show the receipt, use, and disposition of all public property, and the income, if any, derived therefrom; all sources of public income, and the amounts due and received from each source; all receipts, vouchers, and other documents kept, or required to be kept, necessary to isolate and prove the validity of every transaction; all statements and reports made or required to be made, for the internal administration of the office to which they pertain; and all reports published or required to be published, for the information of the people regarding any and all details of the financial administration of public affairs.

(Emphasis added)

RCW 43.09.205 Local government accounting - Costs of public works - Standard form.

The state auditor shall prescribe a standard form with which the accounts and records of costs of all local governments shall be maintained as required under RCW [39.04.070](#).

RCW 43.09.210 Local government accounting - Separate accounts for each fund or activity - Exemption for agency surplus personal property.

Separate accounts shall be kept for every appropriation or fund of a taxing or legislative body showing date and manner of each payment made therefrom, the name, address, and vocation of each person, organization, corporation, or association to whom paid, and for what purpose paid.

Separate accounts shall be kept for each department, public improvement, undertaking, institution, and public service industry under the jurisdiction of every taxing body.

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another. All unexpended

balances of appropriations shall be transferred to the fund from which appropriated, whenever the account with an appropriation is closed.

RCW 43.09.220 Local government accounting - Separate accounts for public service industries.

Separate accounts shall be kept for every public service industry of every local government, which shall show the true and entire cost of the ownership and operation thereof, the amount collected annually by general or special taxation for service rendered to the public, and the amount and character of the service rendered therefor, and the amount collected annually from private users for service rendered to them, and the amount and character of the service rendered therefor. **(Emphasis added)**

RCW 43.09.230 Local government accounting - Annual reports - Comparative statistics.

The state auditor shall require from every local government financial reports covering the full period of each fiscal year, in accordance with the forms and methods prescribed by the state auditor, which shall be uniform for all accounts of the same class. Such reports shall be prepared, certified, and filed with the state auditor within one hundred fifty days after the close of each fiscal year. The reports shall contain accurate statements, in summarized form, of all collections made, or receipts received, by the officers from all sources; all accounts due the public treasury, but not collected; and all expenditures for every purpose, and by what authority authorized; and also: (1) A statement of all costs of ownership and operation, and of all income, of each and every public service industry owned and operated by a local government; (2) a statement of the entire public debt of every local government, to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, and the provisions made for the payment thereof; (3) a classified statement of all receipts and expenditures by any public institution; and (4) a statement of all expenditures for Labor Relations consultants, with the identification of each consultant, compensation, and the terms and conditions of each agreement or arrangement; together with such other information as may be required by the state auditor. The reports shall be certified as to their correctness by the state auditor, the state auditor's deputies, or other person legally authorized to make such certification. Their substance shall be published in an annual volume of comparative statistics at the expense of the state as a public document. **(Emphasis added)**

RCW 43.09.240 Local government accounting - Public officers and employees - Duty to account and report - Removal from office - Deposit of collections.

Every public officer and employee of a local government shall keep all accounts of his or her office in the form prescribed and make all reports required by the state auditor. Any public officer or employee who refuses or willfully neglects to perform such duties shall be subject to removal from office in an appropriate proceeding for that purpose brought by the attorney general or by any prosecuting attorney. Every public officer and employee, whose duty it is to collect or receive payments due or for the use of the public shall deposit such moneys collected or received by him or her with the treasurer of the local government once every twenty-four consecutive hours. The treasurer may in his or her discretion grant an exception where such daily transfers would not be administratively practical or feasible as long as the treasurer has received a written request from the department, district, or agency, and where the department, district, or agency certifies that the money is held with proper safekeeping and that the entity carries out proper theft protection to reduce risk of loss of funds. Exceptions granted by the treasurer shall state the frequency with which deposits are required as long as no exception exceeds a time period greater than one deposit per week. In case a public officer or employee collects or receives funds for the account of a local government of which he or she is an officer or employee, the treasurer shall, by Friday of each week, pay to the proper officer of the local government for the account of which the collection was made or payment received, the

full amount collected or received during the current week for the account of the district. (**Emphasis added**)
(**EXHIBIT #66**)

XI. WITNESSES

Background

I spoke to (23) twenty-three individuals in connection to the above complaint. The fact finding focused on the issues identified in Section III. Most of the persons interviewed appeared cooperative, but there was still some reluctance to provide full information. One comment I received was to the effect, “I still have to work with these people.” (**EXHIBIT #67**)

Interviews in alphabetical order

1. Bill Birdwell (WWTP Staff)
2. Heather Birdwell-Currey (Council Member) *** **Against contracting-out**
3. Elizabeth Cervený (Council Member) *****For contracting-out**
4. Anthony (Tony) Cooper (Public Works)
5. Janice Corbin (HR Consultant)
6. Marc Denney (Police Chief)
7. Eric Eisemann (Land Use Consultant)
8. Paul Eisenhardt (RFP Consultant)
9. Janice Fowler (Accountant)
10. Naomi Hansen (Staff)
11. Matt Jenkins (WWTP Supervisor)
12. Jeromy Klinski (WWTP Staff)
13. Suzanne Levis (Finance Director) (Interviewed with legal counsel)
14. Paul Lewis (Finance Consultant)
15. Al Luiz (Council Member) *** **Against contracting-out**
16. Jenny Olive (Staff)
17. Jeff Sarvis (Public Works Director) (Interviewed with legal counsel)
18. Greg Thornton (Mayor)
19. Joe Valenzuela (Council Member) *****For contracting-out**
20. Paul Vernon (Sr. Accountant)
21. Aaron Wilkinson (Public Works)
22. Randy Williams (Council Member) *** **Against contracting-out**
23. Jeromy Wirkus (Public Works)

WWTP RFP:

REQUEST FOR PROPOSALS

CONTRACT OPERATION, MAINTENANCE, AND MANAGEMENT

THE CITY OF LA CENTER, WASHINGTON

WASTEWATER TREATMENT & COLLECTION FACILITIES

Issued by:

THE CITY OF LA CENTER, WASHINGTON

Issued: 02/22/17

Proposal Submission Date: 04/12/17 @ 2pm PDT

INTRODUCTION

1.1 BACKGROUND

City Summary: La Center is located in Clark County, Washington, United States. The current population as established by the office of financial management is 3,150 persons. The City prides itself in providing excellent services and offers small community living with convenient commutes to larger cities. The City's growth is largely residential with approximately 1,010 service connections and 1,360 Equivalent Residential Units (ERU's). All but 975 ERU's are made up from residential housing. The remaining 385 ERU's are composed of government, schools and commercial business of which 274 ERU's are used by three local cardrooms.

Additional information is available at the La Center website: "<http://www.ci.lacenter.wa.us>" and the adopted 2017 budget. Additional information posted on the website includes: Upcoming Capital Improvement Projects; Comprehensive Plan Update.

As discussed and displayed in the adopted 2017 budget, La Center is in a strong financial position, anticipates and is planning for modest growth, and its wastewater utility delivers excellent, cost effective performance.

Wastewater Utility: The current facility provides 3.0 MGD of treatment capacity and was designed by Kennedy Jenks Engineers. The facility was constructed with SBR treatment technology in 2006, upgraded to the existing MBR facility constructed in 2009. The facility operates with a full-time staff of three with WA State requirements for a grade III operator.

The City understands that Proposals may provide a Contract Operations budget that exceeds or is less than the \$'s currently budgeted by the City for 2017. For example, the RFP requests provision of services not

currently budgeted for SCADA system upgrades and for development and implementation of a computerized maintenance management system (CMMS). The City is prepared to make budget adjustments to accommodate the “best value” proposal budget. The budget discussion provided below summarizes the currently budgeted information.

The total budget for wastewater utility operations is \$ 1,056,000 for 2017. The City will retain \$543,000 of that budget for administrative salaries, tasks and workscope not assigned to the contract operations Company, and for additional expenditures for repair & replacement and systems development. \$426,000 of the 2017 budget address workscope items assigned to the contract operator Company. Another \$87,000 of the budget address costs that will “pass through” for utilities paid by the City; the Company will be responsible for utility costs over the usage cap (+/- 10% as per Proposal Form 4, located on page 4-1 of the RFP).

Elaboration of staffing is provided in Appendix C. Budget details and history are summarized in “2017 Budget”, which is located in the Electronic Data Library. Detailed history of historical Repair & Replacements costs can be found in “Detailed R&R (2014-2016) in the Electronic Data Library.

The utility operates as a City Department under the management of the Public Works Director, Jeffrey Sarvis. Contact information is: tel: (360) 263-7661, email: jsarvis@ci.lacenter.wa.us. The utility’s long time Superintendent recently left, and the City has not advertised for the position. The utility has been minus one full time operator since February 2016 and is currently operating with one-grade level III operator and one operator in training. The former Superintendent does consult to the utility as requested by the Public Works Director.

OVERVIEW OF VENDOR SCOPE OF SERVICES

In providing the wastewater treatment services outlined in this RFP, the City will require that any successful Proposer perform all activities associated with operation, maintenance and management of Facilities in accordance with all existing and future regulatory requirements.

Services shall be provided in a safe, secure, effective, and efficient manner and shall be in full compliance with all applicable laws, rules, regulations and permits.

The City recognizes and acknowledges that respondents to this RFP are requested to provide costs for the operation, maintenance, and management costs associated with the successful implementation of the respondent’s approach for providing wastewater treatment services. The City intends to review these cost estimates as part of the RFP evaluation process and will utilize a lifecycle costing analysis to compare cost alternatives. The City’s assessment of the completeness and validity of the costs provided by each Proposer will be a key factor, but not the only factor, in evaluating the Proposals received by the City.

2.3 REFERENCE DOCUMENTS AVAILABLE

The CITY has established an electronic Data Library for usage by all Proposers. Contact information for gaining password-restricted access to the Data Library materials may be obtained from CITY designated contact Naomi Hansen of the Department of Public Works.

Name: Naomi Hansen
Tel: 360-263-7665
Email: nhansen@ci.lacenter.wa.us

A comprehensive set of reports and data is available to vendors in the CITY's RFP Data Library. A listing of key Data Library contents is available in Appendix E.

Proposers will be able to review the documents in the Data Library by gaining password access to the electronic site containing the materials and data in electronic form.

ACCURACY OF RFP AND RELATED DOCUMENTS

The City will utilize its best efforts to provide complete and accurate information but assumes no responsibility for the completeness or accuracy of specific technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process. Without limiting the generality of the foregoing, the City will not be bound by or be responsible for any explanation or interpretation of the proposed documents other than those prepared in writing. In no event may a Proposer to this RFP rely upon any oral statement by the City or its agents, advisors or consultants.

The contract will be awarded to the Proposer whose Proposal is responsive to this RFP, contains the most favorable evaluated bid price based on the objective measurable (quantitative) criteria as well as qualitative criteria detailed in this RFP, and is deemed most favorable to the CITY, in accordance with the requirements and procedures detailed in the City of La Center municipal code and State of Washington laws as applicable. In making this determination, the CITY shall take into consideration factors beyond price in determining the selection of the best or superior Proposal. Such award shall be subject to the approval of the CITY Council of the CITY of La Center. (Emphasis added)

APPENDIX C

EXISTING FACILITY STAFFING & BUDGET

City Staffing for Contract O&M Workslope

As discussed in Section 1.1 – Background, the La Center facility operates with a full-time staff of three with WA State requirements for a grade III operator. The utility operates as a City Department under the management of the Public Works Director, Jeffrey Sarvis. Contact information is: tel: (360) 263-7661, email: jsarvis@ci.lacenter.wa.us. The utilities long time Superintendent recently left and the City has not advertised for the position. The utility has been minus one full time operator since February 2016 and is currently operating with one-grade level III operator and one operator in training. The former Superintendent does consult to the utility as requested by the Public Works Director. Workslope provided by the Utility staff for contract operations includes the following:

1) Operation and maintenance of the MBR Tertiary Wastewater Treatment Facility to include sludge disposal using on-site dewatering and dryer facilities

2) Pumping station operation and maintenance

3) Overall responsibility for collection system maintenance, trouble shooting and customer response

Collection system responsibilities for the wastewater utility staff are addressing line blockages, line breaks & overflows, pump station inspections (monthly, quarterly, annually), system wide maintenance including annual cleaning and videoing of collection lines. The entire collection system has been recently cleaned/videoed and records are available at the WWTP. There is approximately 12,480 LF of the system (hot spots) that are cleaned more regularly. The list of required cleaning maintenance is included in the library made available with the document. Most work is completed using outside contracting services with staff directing and accompanying them as they perform the work. Vector truck equipment and operators, when needed, is obtained as an outside, contracted service. The Utility staff (3 positions) do not do meter readings.

Additional information on Facility staffing is provided in the Electronic Library (see Appendix E for access).

Appendix C- 2

City Budget for the Wastewater Utility

The budget for 2017 is located in the electronic library [2017 Budget] and provides historical, actual costs from 2012 through 2016. The 2017 Budget is provided in the following three components.

1) **Company Budget:** includes costs for the three Operators (City equivalent of a State Grade I, State Grade III, and an exempt State Grade 4 / Supervisor) and the “Operations” budget for a total of \$426,000 for operations. These costs are available to the Company. Detailed, supplementary information on historical Repair and Replacement is in the electronic library [Detailed R&R (2014-2016)]. “Pass-through” costs: these are the utility expenses (historical and 2017 budget). The City will continue to pay those costs up to the usage cap (kwh for electricity and therms for natural gas) specified by the Company; the Company is responsible for costs of usage in excess of the usage cap provided the flow and loadings remain within the established range. Should the flow and loadings vary from the established range on a 12 –month moving average by more than +/- 10%, then adjustments to the usage cap shall be made and the City payment levels adjusted accordingly.

2) **City Budget:** these are administrative salaries and costs that the City will continue to pay.

The combined total budget of these three components is \$1,056,000. In addition, the City has an additional \$25,000 reserved for repair and replacement in the Sewer Capital Fund, for use as authorized by the Public Works Director.

Debt service is budgeted at \$263,000 for 2017. **(Emphasis added) (EXHIBIT #2)**

(SEE FOLLOWING PAGE)

2017 BUDGET EXPENSES FOR COMPANY/CONTRACTOR
& THE CITY
AS INCLUDED IN (APPENDIX C) OF THE RFP

2017 Budget	Footnote
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COMPANY BUDGET

Wages

Contract Operators (salary + benefits)	313,604	[1]
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Operations

Uniforms	2,000	
Lab.Supplies	25,000	
Small Tools & Minor Equip	2,000	[2]
Critical spare parts	5,000	[2]
Office Supplies	1,000	
Operations	20,000	[2]
Maintenance	20,000	[2]
Collection system maint.	23,000	[2]
Fuel	1,000	
Training-Travel	5,000	
Permits	8,500	
Total Operations	112,500	

Contractor Budget	426,104
--------------------------	----------------

Pass-thru costs (CITY costs)

		[3]
Telephone	2,200	
Plant-ElectriCity-Stations	64,000	
Plant water-stations	1,000	
N W Natural Gas	18,000	
Waste Connections (trash)	1,500	
Total pass-thru (City costs)	86,700	

- [1] In the "**Company/Contractor Budget**" this is the cost (salary + benefits) of the 3 City operators; includes an Operator I, an Operator II and a Supervisor. The City will continue to incur/pay Administrative salaries, including portions of the PW Director, the Finance Director and finance support staff as listed in the "City Budget".

CITY BUDGET REFERENCED IN RFP

Administrative Salary/Benefits

Office Supplies

Professional Services

Postage

AWC Insurance

HVAC

IT Contract - Springbrook UB

Misc.

Interlocal Recording fees

Taxes other than Inc Tax

Sewer main - pump station update

Trans from Operations to Debt

Trans from Operations to Cap/Equip

City Budget

Total Uses - Sewer Fund

2017 Budget	Footnote
----------------	----------

207,314

4,500

40,000

11,000

18,875

2,000

4,800

1,000

24,000

135,000

95,000

543,489

1,056,293

- [2] Detailed information for 2014, 2015, 2016 is provided as a spreadsheet, in the Appendix I, labeled Detailed R&R (2014-2016); City will continue to pay HVAC costs
- [3] The utility costs will be paid by the City; Contractor is responsible for costs exceeding the usage cap as provided in Proposal Form 4, located on page PF4-1 of the RFP
- [4] In 2016 the City performed a time-allocation study of the Finance Department staff which resulted in additional salary cost being allocated to the WWTP

(EXHIBIT #2)

2017 CITY OF LA CENTER BUDGET

For Fiscal Year

January 1, 2017 – December 31, 2017

Final Budget 11/22/2016

Basis of Accounting

The basis of accounting specifically relates to the timing of the measurements made, regardless of the nature of the measurement, on either the cash or accrual method. The City uses single- entry, “cash basis” accounting which is a departure from generally accepted accounting principles (GAAP). Under the cash basis method, revenues and other financial resource increments are recognized when they are received – that is, when they become both “measurable” and “available” to finance expenditures of the current period. Expenditures are recognized when the fund liability is paid. The Washington State Auditor’s Office divides cities into two categories as follows:

Category 1: Cities with populations of 25,000 or more. Local governments in this category must use a unique chart of accounts for budgeting and reporting in conformity with generally accepted accounting principles (GAAP).

Category 2: Cities and towns with populations under 25,000. Local governments in this category may follow single-entry accounting and cash-basis reporting procedures that are not intended to reflect financial condition and result in conformance with GAAP.

The City of La Center reports as a Category 2 government. The City reports the result of its financial operations on a calendar year.

Financial and budgetary controls are derived from the City’s accounting system that is based on a *fund* structure. Funds are independent fiscal and accounting entities containing a self-balancing set of accounts segregated for the purpose of carrying out basic functions in accordance with special regulations, restrictions or limitations. In addition to being the basis for the accounting system, the funds also provide the legal budgetary control level for all expenditures. The City Council approves appropriations for all budgeted funds on a fund basis. The department heads are responsible to the Mayor for monitoring individual budgets.

In the last few years, we have reorganized and streamlined the fund structure to make it easier for Council and citizens to understand the City’s finances. The following are the fund types used by the City of La Center.

General Fund

The General fund is the City’s primary operating fund and is used to track the revenues and expenses associated with basic City services that are not required to be accounted for in other funds. This includes services such as police, parks, public works and support services such as finance. These services are funded by general purpose tax revenues and other revenues that are unrestricted. The City Council, with input from the public, has the ability to distribute the funds in a way that best meets the needs of the community.

Sewer Fund - Operations

Sewer activities are required to be accounted for in separate enterprise funds. These funds are required to be self-supporting and are treated as separate from the other funds of the City. (EXHIBIT #8)

**Historical at a Summary Level
Fund Balances, Revenues and Expenditures**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016 Proj YE</u>	<u>2017 Budget</u>
Beg Cash Balances					
General	301,298	467,973	666,258	908,417	1,579,601
Reserve	17,235,210	16,449,150	4,537,762	4,540,010	4,578,548
Impact	112,232	149,054	175,180	268,231	340,034
Capital Projects	176,571	94,746	4,577,295	4,742,434	4,844,819
Vehicle/Equip (general)	8,982	5,428	304,063	286,405	348,725
Sewer (Operations)	51,674	106,524	311,182	377,301	655,177
Sewer (Capital/Equip)		-	484,704	558,101	260,308
Sewer (Debt Service)		-	5,694,812	5,266,259	550,459
TOTAL BEG CASH	17,885,968	17,272,874	16,751,256	16,947,159	13,157,671
Revenues					
General	4,029,951	4,074,881	3,886,984	4,451,022	3,460,152
Reserve	343,957	75,613	2,247	38,538	86,933
Impact	161,732	93,027	169,952	140,533	468,845
Capital Projects	697,614	4,843,169	293,060	900,501	2,459,919
Vehicle/Equip (general)	100,000	398,253	106,238	113,708	6,621
Sewer (Operations)	1,576,373	1,037,205	1,126,913	1,169,401	1,119,054
Sewer (Capital/Equip)		508,221	104,231	99,464	5,099,942
Sewer (Debt Service)		6,513,719	317,845	284,201	338,742
TOTAL REVENUE	6,909,627	17,544,088	6,007,472	7,197,368	13,040,208
Expenditures					
General	3,863,276	3,876,596	3,644,825	3,779,839	3,709,197
Reserve	1,130,018	11,987,000	-	-	-
Impact	124,910	66,902	76,901	68,730	284,229
Capital Projects	779,439	360,619	127,921	798,117	2,709,688
Vehicle/Equip (general)	103,554	99,617	123,897	51,388	-
Sewer (Operations)	1,521,524	832,547	1,060,793	891,525	1,060,723
Sewer (Capital/Equip)		23,517	30,834	397,258	5,025,000
Sewer (Debt Service)		818,908	746,399	5,000,000	263,504
TOTAL EXPENDITURES	7,522,722	18,065,705	5,811,570	10,986,856	13,052,340

Historical Expenditures - Detailed by Fund

Sewer Fund	<i>Final 2016 Budget</i>	<i>Proj YE 2016</i>	<i>2017 Budget</i>
Salary	309,165	279,661	376,118
Benefits	113,114	106,543	149,798
Supplies	104,500	73,816	105,250
Services	247,891	176,125	174,557
Intergov	22,000	26,381	25,000
Debt Service	-	-	-
Capital	-	-	-
Trans - OUT	229,000	229,000	230,000
Totals	1,025,670		1,060,723
891,525			

PERSONNEL COSTS-ALL FUNDS

	<u>FTEs</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Finance	3.10	262,761	89,978	352,739
Legislative	6.00	24,700	1,964	26,664
Police	10.25	929,737	393,463	1,323,200
Planning	2.25	151,515	61,774	213,289
Public Works	3.90	332,028	161,252	493,279
Parks	2.75	216,923	89,583	306,505
Sewer	5.00	376,118	149,798	525,916
	33.25	2,293,781	947,811	3,241,592

(EXHIBIT #8)

GENERAL FUND – FINANCE DEPARTMENT

	<u>2016</u> <u>Final</u> <u>Budget</u>	<u>2016</u> <u>Year End</u>	<u>2017</u> <u>Budget</u> <u>Amount</u>
Salary	288,912	294,813	262,761
Benefits	113,018	111,519	89,978
Supplies	5,000	5,000	5,000
Services	181,519	179,679	205,250
Intergov	9,560	8,787	11,750
Capital (<\$5K)	1,000	30,000	-
Total Expenditures	599,009	629,798	574,739

Change from 2016 Budget to 2017 Budget -4.05%

Change from 2016 Projected YE to 2017 Budget 5.14%

The Finance Department has four full-time and one part-time positions; two Accountants, one Utility Billing Clerk, an Assistant City Clerk and the Finance Director. A portion of the salaries of the Finance Director, the accountants and the Utility Billing Clerk's salary are allocated to the *Waste Water Treatment Plant*. The Assistant City Clerk's position was reduced to a part-time position in 2013. The Finance Department directs all finance functions for the City of La Center. This includes annual budgeting, financial reporting, investment activities, general accounting, purchasing, payroll, accounts receivable and payable, taxes/fees, financial planning and preparation of various documents for state, federal, City departments and other professional organizations. The Finance Department also handles customer services, information services, business and dog licenses.

(EXHIBIT #8)

Sewer Operations Fund

	2013	2014	2015	Final 2016 Budget	2016 Proj YE	2017 Budget
Beginning Fund Balance	51,674	106,524	311,182	400,232	377,301	655,177
Annual Revenues						
Finance Charges (late fees)	16,690	17,656	21,962	18,000	31,237	20,000
Cap. Fac. Charge (SDC)	87,815	-	-	-	-	-
Other	5,536	36,315	20,447	22,000	25,654	20,354
Sewer - User charges revenue	866,111	977,270	1,075,646	1,088,754	1,107,767	1,066,260
Misc - Sewer Fund	222	5,964	8,858	5,024	4,744	12,440
Interfund Loan receipt	600,000	-	-	-	-	-
Annual Revenues	1,576,373	1,037,205	1,126,913	1,133,778	1,169,401	1,119,054
Annual Expenditures:						
Sewer - Salary	308,237	325,286	302,863	309,165	279,661	376,118
Sewer - Benefits	120,139	126,587	112,768	113,114	106,543	149,798
Sewer - Supplies	74,608	64,398	60,745	104,500	73,816	105,250
Sewer - Services	169,726	238,136	340,889	247,891	176,125	174,557
Interlocal Recording fees	1,392	580	72	-	526	1,000
Taxes other than Inc Tax	20,203	21,093	23,456	22,000	25,855	24,000
Sewer main - pump station update	37,907	3,469	-	-	-	-
Redemption Of LT Debt.	734,816	-	-	-	-	-
Interest Expense for LT Debt	54,496	-	-	-	-	-
Trans from Operations to Debt	-	53,000	125,000	134,000	134,000	135,000
Trans from Operations to Cap/Equip	-	-	95,000	95,000	95,000	95,000
Redemption Of Interfund Debt	-	-	-	-	-	-
Total Expenditures	1,521,524	832,547	1,060,793	1,025,670	891,525	1,060,723
Ending Fund Balance	106,524	311,182	377,302	508,340	655,177	713,509

Change from 2016 Budget to 2017 Budget 40.36%

Change from 2016 Projected YE to 2017 Budget 28.89%

There is one supervisor and two Operators to operate and maintain the Wastewater treatment plant, sewer lines, and lift stations in the City.

In 2010 and 2011, the City completed the upgrade of the Wastewater Treatment Plant. No sewer rate increases are budgeted for 2017.

(EXHIBIT #8)

FINANCIAL INFORMATION PROVIDED TO CITY COUNCIL

The following document was provided to Mayor Thornton by Suzanne Levis on 7-17-17. The Mayor then included the information in the 7-26-17 packet to the City Council. The information represents 2017 budget costs in the Finance Division of salaries and benefits and the percentage of allocation of those costs to the Sewer Division. Total cost for the two apportioned FTE's charged to the Sewer Department from the General Fund is \$207,437.

Per your request, here are the updated (2017 budget) allocations:

2017 Budget		General Fund		Sewer
Engineer	90%	126,926	10%	14,103
Accountant	60%	63,255	40%	42,170
Utility Billing Clerk	20%	14,166	80%	56,663
Fin Director	80%	114,830	20%	28,707
Asst City Clerk	100%	58,389		-
PW Director	75%	112,129	25%	37,376
Accountant	75%	85,251	25%	28,417
	5-FTE'S	574,946	2-FTE'S	207,437

“*Originally I planned on allocating Tony's hours on a pro-rata method but had to make some changes to accommodate accounting necessities. The budget should reflect more of Tony's\$ allocated to the General Fund and less\$ to the Sewer Fund.” (*Per Suzanne Levis) **(EXHIBIT #69)**

**Salary & Benefit Analysis WWTP Operators:
Provided to Council by Mayor (EXHIBIT #70)**

Provided to Contract Operators by Finance and Public Works Directors

Dept	Title	Date of Hire	2017 Budgeted Compensation	2017 Budgeted Benefits
------	-------	--------------	----------------------------	------------------------

Sewer	WWTP Operator II	01/01/11	72,742	33,657			
Sewer	WWTP Operator I	02/01/11	65,259	41,223			
Sewer	WWTP Supervisor	Vacant	67,700	32,464			
			205,701	107,344	313,045	313,045	RFP

Corrected City Budget Salary and Benefit for WWTP Operators per Mayor

Dept	Title	Date of Hire	2017 Budgeted Compensation	2017 Budgeted Benefits
------	-------	--------------	----------------------------	------------------------

Sewer	WWTP Operator II	01/01/11	72,742	33,657	332,800.00	City Budget
Sewer	WWTP Operator I	02/01/11	65,259	41,223	313,000.00	RFP
Sewer	WWTP Supervisor	Vacant	81,000	38,880	19,800.00	Difference
			219,001	113,760	332,761	

WWTP Budget if Previous WWTP Supervisor Still Employed With City

Dept	Title	Date of Hire	2017 Budgeted Compensation	2017 Budgeted Benefits
------	-------	--------------	----------------------------	------------------------

Sewer	WWTP Operator II	01/01/11	72,742	33,657	343,601.00	City Budget
Sewer	WWTP Operator I	02/01/11	65,259	41,223	313,000.00	RFP
Sewer	WWTP Supervisor	Vacant	92,701	38,019	30,601.00	Difference
			230,702	112,899	343,601	

(EXHIBIT #70)

The City's 2017 budget was approved by the Council on 11-22-16. My focus was on the salaries and benefits for the three FTE positions within the WWTP. To facilitate the analysis, I obtained the Excel version of the 2017 budget and focused on the worksheet that provided salary and benefit details for each person and/or position. This level of detail was not provided to the RFP Contract Proposers. This helped to establish two things. First, were the figures proposed in the 2017 budget for salaries and benefits for the three positions in the WWTP realistic and an accurate prediction of an actual budget forecast and were the amounts in the RFP for the three FTE's in the WWTP accurate and based on actual and/or realistic budget figures? Second, I also wanted to determine if the information provided to the City Council during their deliberations of the 2017 budget and their consideration of the RFP were based on accurate information. If not, then I wanted to determine to what extent, if any, did the inaccurate information impact the Council's decision to not contract-out the WWTP operation and what effect, if any, did the inaccurate information have on the RFP contract proposers?

The final 2017 City budget reflects the council was provided the cost of salaries and benefits for 5 FTE's in the Sewer Department was \$525,916.00. The salaries and benefits of the 2 FTE's in the Finance Department being apportioned to the Sewer Department totaled \$207,437.00. Subtracting the salary and benefit costs of the 2 apportioned FTE's from the salary and benefit costs of the 5 FTE's left a salary and benefit cost for the 3 FTE's in the Sewer Department of \$318,479.00. **(EXHIBIT #8 & #68)**

$$\begin{array}{r} \$525,916.00 \text{ (5 FTE's) Sewer Dept.} \\ -\$207,437.00 \text{ (2 FTE's) Apportioned S \& B of Finance Dept FTE's charged towards Sewer Dept.} \\ = \$318,479.00 \text{ (3 FTE's)} \end{array}$$

The final RFP, dated 2-21-17, showed the salary and benefit costs for the 3 FTE's in the Sewer Department to be \$313,604.00. The difference between what was approved in the City budget and what was published in the RFP is \$4,875.00. **(EXHIBIT #2)**

$$\begin{array}{r} \$318,479.00 \text{ City approved budget} \\ -\$313,604.00 \text{ RFP} \\ = \$4,875.00 \end{array}$$

The same amount of \$313,604.00 was part of a spreadsheet (budget) provided to Mayor Thornton by Mr. Sarvis in an email dated 5-8-17 and Mr. Sarvis provided the same spreadsheet to Ms. Levis in an email dated 5-11-17. **(EXHIBIT #71)**

On March 15th and 16th 2017, Finance Director Levis and Public Works Director Sarvis respectively, provided information to the contract bidders of the RFP showing the breakdown of the 3 FTE's Sewer Plant personnel to be \$313,045.00. **(EXHIBIT #10)** This was the same total amount Ms. Levis told Mayor Thornton in an email dated 6-19-17 the breakdown of the total costs was for the three FTE's in the Sewer Plant. **(EXHIBIT #12)** In Ms. Levis' salary and benefit numbers to the Mayor she indicated the anticipated salary for the empty WWTP supervisor position was \$67,700.00, plus projected/anticipated benefits of \$32,464.00. The difference between what was provided in the RFP and what was provided to the Mayor and the council was: \$5,434.00.

$$\begin{array}{r} \$318,479.00 \text{ City approved budget} \\ -\$313,045.00 \text{ Amt. provided to bidders via email by Ms. Levis and Mr. Sarvis} \\ = \$5,434.00 \end{array}$$

In her email to a contractor on 3-15-17, in which Ms. Levis provided the breakdown of the salaries and benefits for the 3 FTE's working in the WWTP, she indicated she had discovered a \$559.00 error someplace in her

computations, but was not sure where the error might be. The \$559.00 error is the difference between \$313,604.00 and \$313,045.00. (EXHIBIT #10)

$$\begin{array}{r} \$313,604.00 \\ -\$313,045.00 \\ \hline =\$ 559.00 \end{array}$$

Looked at it in another way, the \$559.00 error is also the difference between \$5,434.00 and \$4,875.00.

$$\begin{array}{r} \$5,434.00 \\ -\$4,875.00 \\ \hline =\$ 559.00 \end{array}$$

One of the important things I considered was why there was a discrepancy between what was provided to the City Council when they considered and approved the 2017 annual budget and what was provided to the RFP respondents. It can be determined how Ms. Levis arrived at \$313,045.00 for wages and benefits for the 3 FTE's working in the WWTP because she broke that down in more detail, both for the bidding contractors in an email on 3-15-17, as well as to the Mayor via an email on 6-19-17. Assuming the salaries and benefits for the WWTP Operators I and III are accurate; the variable that goes into the final number comes from the projected salary of the WWTP vacant supervisor position. The figure of \$313,045.00 that went into the RFP was comprised of an estimated \$67,700.00 salary and an estimated \$32,464.00 in benefits for the vacant supervisor position.

Sewer	WWTP Operator III	01/01/11	72,742	33,657		
Sewer	WWTP Operator I	02/01/11	65,259	41,223		
Sewer	WWTP Supervisor	Vacant	67,700	32,464		
			205,701	107,344	313,045	RFP

More importantly, the amount that was approved by the City Council in the 2017 final budget was, as indicated, \$5,434.00 more than what was represented to the bidders and ultimately presented to council during their initial consideration of the RFP responses.

Article 14 of the Working Agreement between the City of La Center and the La Center Exempt Employees Association for the period from January 1, 2016 through December 31, 2018 and signed on October 5, 2016 is as follows: **(EXHIBIT #72)**

ARTICLE 14. WAGES

14.1 Wages:

2016	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
WWTP Supv	6,069 .91	6,257.64	6,451.18	6,650.70	6,856.39	7,068.44	7,287.05	7,512.43
PW Supervisor	6,069.91	6,257.64	6,451.18	6,650.70	6,856.39	7,068.44	7,287.05	7,512.43
Engineer	6,539.20	6,741.44	6,949.94	7,164.89	7,386.48	7,614.93	7,850.44	8,093.24
2017	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
WWTP Supv	6,160.96	6,351.51	6,547.94	6,750.46	6,959.24	7,174.47	7,396.36	7,625.11
PW Supervisor	6,160 .96	6,351.51	6,547.94	6,750.46	6,959.24	7,174.47	7,396.36	7,625.11
Engineer	6,637 .29	6,842.56	7,054.19	7,272.36	7,497.28	7,729.15	7,968.20	8,214.64
2018	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
WWTP Supv	6,253 .38	6,446.78	6,646.16	6,851.71	7,063.62	7,282.09	7,507.31	7,739.49
PW Supervisor	6,253 .38	6,446.78	6,646.16	6,851.71	7,063.62	7,282.09	7,507.31	7,739.49
Engineer	6,736.85	6,945.20	7,160.00	7,381.45	7,609.74	7,845.09	8,087.72	8,337.86

14.2

Each employee in the association shall receive the following Cost of Living Adjustment (COLA) to base pay on January 1st of the year indicated:

2016-0%

2017-1.5%

2018- 1.5%.

(Note: The above Collective Bargaining Agreement was in effect at the time the City Council approved the 2017 budget on 11-22-16 and was in effect when the RFP for WWTP contract services was published. It was also in effect when Ms. Levis attempted to negotiate a reduction in salary for the vacant WWTP Supervisor position on 7-24-17.)

LCCEA-New WWTP Supervisor salary³⁹

Ms. Levis created a new salary matrix in conjunction with the MOU she attempted to negotiate with the union. The new matrix said: “The City is proposing to modify ONLY the (currently) vacant WWTP Supervisor salary matrix; the PW Supervisor and Engineer salary matrixes remain the same.”

(EXHIBIT #73) (Emphasis added)

Current:		COLA	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
2017 WWTP Supervisor	1.5%		6,160.96	6,351.50	6,547.94	6,750.46	6,959.23	7,174.47	7,396.36	7,625.11
2018 WWTP Supervisor	1.5%		6,253.38	6,446.78	6,646.16	6,851.71	7,063.62	7,282.09	7,507.31	7,739.49
Proposed		COLA	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
2017 WWTP Supervisor	1.5%		5,900.00	6,077.00	6,259.31	6,447.09	6,640.50	6,839.72	7,044.91	7,256.26
2018 WWTP Supervisor	1.5%		5,988.50	6,168.16	6,353.20	6,543.80	6,740.11	6,942.31	7,150.58	7,365.10
Annual - Current - 2017			73,931	76,218	78,575	81,005	83,511	86,094	88,756	91,501
Annual - Current - 2018			75,041	77,361	79,754	82,221	84,763	87,385	90,088	92,874
Annual - Proposed - 2017			70,800	72,924	75,112	77,365	79,686	82,077	84,539	87,075
Annual - Proposed - 2018			71,862	74,018	76,238	78,526	80,881	83,308	85,807	88,381
Diff - 2017			(3,131)	(3,294)	(3,464)	(3,640)	(3,825)	(4,017)	(4,217)	(4,426)
Diff - 2018			(3,179)	(3,343)	(3,516)	(3,695)	(3,882)	(4,077)	(4,281)	(4,493)

³⁹ As proposed by Ms. Levis

Below is the “draft” Memorandum of Understanding between Ms. Levis and Mr. Wirkus, dated 7-24-17. **(EXHIBIT #74)**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF LA CENTER
AND THE LA CENTER EXEMPT EMPLOYEES ASSOCIATION**

This Memorandum of Understanding (the Agreement) is entered into by and between the City LaCenter (the “City”) and the La Center Exempt Employees Association (the “Union”) and shall be effective on the last signed date below (the effective date).

Recitals

WHEREAS, the Union is the duly appointed and official representative for those City employees certified by the Public Employment Relations Commission in Case Number XX, and the parties are operating under a Collective Bargaining Agreement dated October 3, 2016; and

WHEREAS, the City has a vacant Wastewater Treatment Plant (WWTP) Supervisor position and desires to amend the salary matrix for this position; and

WHEREAS, this new salary matrix will be the salary for calendar years 2017 and 2018; and

WHEREAS, this Agreement is intended to memorialize the new salary matrix for the WWTP Supervisor position. This Agreement is not intended to amend or change the Collective Bargaining Agreement, nor to establish a situation that can be relied upon as a precedent (sic) or past practice.

NOW THEREFORE, based on the foregoing Recitals, the Parties hereby agree that:

1. The following salary matrix shall be applicable to the Wastewater Treatment Plant Supervisor position:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>
2017 WWTP Supervisor	5,900	6,077	6,259	6,447	6,641	6,840	7,045	7,256
2018 WWTP Supervisor	5,989	6,168	6,353	6,544	6,740	6,942	7,151	7,365

7. This Agreement is intended by the parties and shall be construed as an isolated situation and shall establish no precedent or “past practice” that can be relied upon to control any future practice or situation. The terms of this Agreement shall not be relied upon by either party as a past practice.
(EXHIBIT #74)

The final Memorandum of Understanding (MOU) and/or Memorandum of Agreement (MOA) was signed by Mr. Wirkus on 7-25-17, appears below, but without his signature. The signed version is attached as **(EXHIBIT #75)**

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF LA CENTER
AND THE LA CENTER EXEMPT EMPLOYEES ASSOCIATION**

This Memorandum of Understanding (“Agreement”) is entered into by and between the City LaCenter (the “City”) and the La Center Exempt Employees Association (the “Union”) and shall be effective on the last signed date below (the effective date).

Recitals

WHEREAS, the Union is the duly appointed and recognized representative for those City employees who are supervisors or in an FLSA exempt position, and the parties are operating under a Collective Bargaining Agreement (“CBA”) dated October 3, 2016; and

WHEREAS, the Wastewater Treatment Plant (WWTP) Supervisor position is represented by the Union, but the position is currently vacant, and the parties desire to amend the salary matrix in the CBA for this position; and

WHEREAS, the new salary matrix will be effective for the WWTP Supervisor salary for calendar years 2017 and 2018; and

WHEREAS, this Agreement is intended to memorialize the agreement of the parties and to amend the salary matrix for the WWTP Supervisor position in the CBA.

NOW THEREFORE, based on the foregoing Recitals, the Parties hereby agree that the following salary matrix shall be applicable to the Wastewater Treatment Plant Supervisor position and shall amend the CBA:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>
2017 WWTP Supervisor	5,900	6,077	6,259	6,447	6,641	6,840	7,045	7,256
2018 WWTP Supervisor	5,989	6,168	6,353	6,544	6,740	6,942	7,151	7,365

IT IS SO AGREED:

For the CITY OF LaCENTER:

For the LCEEA

By: (Not signed, seen or approved by: _____
Greg Thornton, Mayor

By: (Signed) _____
Jeromy Wirkus

Date: _____

Date: (7-25-17) _____

Acknowledged:

Suzanne Levis, City Clerk

I prepared a side-by-side comparison of the salaries and benefits of what was reported in the 3-15-17 email to the contract proposers to that of the 2017 council approved budget. Please note the salary and benefits used in the 3-15-17 email were for the Maintenance 1, step 5 position held by Mr. Klinski. The figures used in the council approved budget were for the vacant WWTP Operator 1 position. This was also true for the benefits for Mr. Klinski as a Maintenance worker and the vacant Operator 1 position. The council approved budget preceded the date Mr. Klinski was temporarily transferred from Maintenance to the WWTP. However, as noted previously, there was also the intent to keep Mr. Klinski “whole” while temporarily working in the WWTP, so it would make sense that his salary and benefits would be reported in the RFP based on his position in Maintenance, rather than on the budgeted amount for the vacant WWTP Operator position found in the budget. What does not make sense is the \$67,700 salary for the WWTP Supervisor position in the RFP documents, compared to the council approved budget amount of \$92,701. **(EXHIBIT #76)**

On 7/25/17, Mayor Thornton directed consultant Eisenhardt to amend one PowerPoint slide from \$313,045 to \$332,800 to reflect the salaries and benefits of the 3 WWTP employees, because the Mayor did not believe the lower salary as proposed by Ms. Levis in the RFP for the Supervisor accurately represented the amount of money the City would have to pay to a qualified applicant and was therefore an understatement of the City’s true cost comparison between itself and a RFP contract proposer. **(EXHIBIT #39)** As a result, Mr. Eisenhardt changed the PowerPoint slide showing \$615,000 for the first year of City Operations to \$635,000, wherein he rounded up \$19,700 to \$20,000. **(EXHIBIT #78)** Both slides follow:

**PAUL EISENHARDT’S POWERPOINT SLIDE
PRESENTATION TO CITY COUNCIL 6/28/17**

4 Life Cycle Costs, Rate Impacts, Risk Transfer and Performance Guarantees

Rate Impacts

	(\$000)	Veolia	City Ops.	Difference
• City ops. costs higher for year 1		\$ 594	615	+ 21
• City ops. costs lower for year 2		\$ 617	593	- 24
• City NPV lower for 7 years		\$ 3,992	3,824	- 168

Rate Impact Summary

- Approx. 1,350 Rate Payers
- **\$ 21,000 = approx. \$ 15 / yr. per Rate Payer**

Rate Exposures

- Veolia costs and performance guaranteed
- City costs and performance are not guaranteed

(Financial & regulatory exposures) **(EXHIBIT #78)**

4 Updated Life Cycle Costs, Rate Impacts, Risk Transfer and Performance Updated
Guarantees

Rate Impacts

**City Cost Compared
to Veolia Costs**

(\$000)	Veolia	City Ops.	
• City ops. costs higher for year 1	\$ 594	635	City + \$ 41 higher
• City ops. costs lower for year 2	617	614	City - \$ 3 lower
• City NPV slightly lower for 7 yr total	\$ 3,992	\$ 3,954	City - \$ 38 lower (total for 7 years; average \$5.5 / yr)

Rate Impact Summary

- Approx. 1,350 Rate Payers
- \$ 5,500 = approx. \$ 4 / yr. or 33 cents / month per Rate Payer

Rate Exposures

- Veolia costs and performance guaranteed (rate payer protected)
- City costs and performance are not guaranteed

(Financial, operations & regulatory exposures & risks to rate payer) (**EXHIBIT #78**)

On October 12, 2017, Mayor Thornton signed an “Offer of Employment” letter for Mr. Jenkins, with a starting salary of (\$85,707), effective 11-1-17. Mr. Jenkins base salary increased to (\$90,088) in January 2018. Mr. Jenkins’ base salary in 2017 is \$4,700 higher than the \$81,000 previously estimated by Mayor Thornton during the RFP consideration process and \$18,000 higher than the \$67,700 salary represented to the RFP respondents by Ms. Levis. **(EXHIBIT #77)**

XII. CASE ANALYSIS

In reviewing allegations of this nature, I first look to local ordinances and policies and then to state statutes. In this particular case, the City of La Center’s Personnel Policies, Guiding Principles and Municipal Codes address most of the allegations. Credibility and cooperation from witnesses are also important considerations. For the most part, documents, including emails, were of the greater importance. I prepared a detailed Chronology to aid in following events. The Chronology is attached as **(EXHIBIT #79)**.

The more significant events and how they relate to the allegations were:

1. 10-5-16: Working Agreement signed by the City and Union for LCEEA for two years.
2. 11-20-16: Email exchange between Levis and Lewis. “Need more time.” “Please recommend a stall.” “Mayor is trying to circumvent bid law.”
3. 11-22-16: Council approved 2017 final budget
4. 11-31-16: Last day of Sue Lawrence employment
5. 12-5-16: Memo to Mayor re: contract services with Paul Eisenhardt
6. 12-13-16: PSA signed by Mayor for Sue Lawrence contract services
7. 12-23-16: Eisenhardt’s PSA signed by the Mayor
8. 2-13-17: Special Council meeting to authorize issuance of WWTP RFP
9. 2-22-17: RFP issued
10. 2-22-17: Company/Contractor “Budget” posted to RFP for \$313,604 for 3-FTE’s
11. 3-15-17: Email from Levis to CH2M with breakdown of salaries and benefits for 3-FTE’s totaling \$313,045
12. 3-16-17: Email from Sarvis to RFP proposers forwarding salary and benefit numbers from Levis
13. 3-21-17: Klinski requested permanent transfer from maintenance to WWTP
14. 5-2-17: Two responses from RFP received by City
15. 6-28-17: Council meeting agenda: Retain current operation or contract with Veolia
16. 7-13-17: Email from Levis to Luiz regarding two spreadsheets related to budget costs
17. 7-19-17: Mayor and Corbin met with Levis. All Labor Relations & HR issues go through Corbin
18. 7-20-17: Email from Levis to Lewis
19. 7-24-17: Email from Mayor to Levis regarding salary and benefit costs provided to CH2M on 3-15-17
20. 7-24-17: Email from Levis to Wirkus regarding “request to reopen salary negotiations for WWTP Supervisor position only
21. 7-25-17: Wirkus signed MOU regarding salary change for WWTP Supervisor only
22. 7-26-17: Email from Mayor to Levis and Wirkus about not signing MOU
23. 7-26-17: Email from Mayor to Levis and Sarvis re: Professional expectations
24. 7-26-17: Council voted to keep WWTP in-house and not contract out
25. 7-31-17: Memo to Mayor by Levis not sent. Used to memorialize events
26. 10-12-17: Offer of Employment Letter to Matt Jenkins

XIII. SUMMARY

On 1-3-18, I sent the following questions to Ms. Levis' legal counsel. Her responses, via her attorney, dated 1-15-18 and 1-23-18 are included below.

I am trying to understand the differences reflected in the Council approved 2017 budget, approved on 11-22-16, compared to what was reflected as the prior 2017 budget during the preparation of the 2018 council approved budget. In particular, I am focusing on the detail salary and benefits shown for the vacant supervisor position, and the salary and benefits shown for Mr. Birdwell and Mr. Klinski.

- What is the explanation for the two 2017 budgets being different?

Council approved 2017 budget detail:

Supervisor salary: \$92,701 (includes phone allowance) + benefits: \$37,234 = \$129,936 Total
Operator 1: salary \$65,259 (includes addtl. comp. of \$5,625) + benefits: \$13,476 = \$78,734 Total
Operator 3: salary \$72,742 (includes \$10,800 O.T.) + \$33,657 + benefits: = \$106,400 Total
Total of 3-FTE's Salary and benefits (including O.T.) = \$315,070

Council approved 2018 budget (with comparison to prior year "approved" 2017 budget):

Supervisor salary: \$92,701 + benefits: \$37,141: = \$129,842 Total
Operator 1: salary \$53,311 + benefits: \$28,490: = \$81,801 Total
Operator 3: salary \$61,942 + \$10,800 OT + benefits: = \$33,657: \$106,399 Total (The difference in the total for the Operator 3 can be explained through the automatic rounding process of Excel)
Total of 3-FTE's Salary and benefits (including O.T.) = \$318,042

- Ms. Levis' Response.

Please refer to the attached spreadsheet, "Budget spreadsheet," that has three tabs for ease of comparison. Ms. Levis describes the tabs in the text below.

Ms. Levis' process: I keep my budget spreadsheet updated all year / every month – we (my staff and I) refer to it as "the budget spreadsheet." Given the limitations of the software available to me and my staff, this is how I monitor revenues, expenditures and budget. When the budget is formally adopted, I save a copy of the spreadsheet notated as "FINAL" and include the date that it was adopted. I however continue to update the budget spreadsheet (hence the name 'live'). So there are then two copies – the final one adopted and the one that I am continually updating – once all the revenues / expenditures are in for the year and the bank reconciliation is done (usually in early February, as we don't 'close the books' until Jan 20 in compliance w/RCW 35A.33.150) then I'll change the name of the spreadsheet to FINAL – this spreadsheet will reflect the final revenues and expenses for the year. I then start a new 'budget spreadsheet'.

The attached spreadsheet has three tabs:

S-Detailed Exp – this has almost all of 2017 expenses – if you read the cell notes in column AO, you can see where I've analyzed the differences between budget and actual. You will note that Sue's salary was still in the (sewer) adopted budget – please see the cell notes in AO140-161 – a patrol officer resigned in Nov 2016 – his position was also left in the (general fund) budget which is consistent with my practice of avoiding major changes to the budget that late in the process (Nov). By that time, we've had public hearings and numerous work sessions with council – it's not appropriate to make big changes to the budget after the public process.

WWTP (copy in RFP) – this is the copy of the budget that was part of the RFP – please note that in cell I74 I balanced it to the budget so it should be obvious I wasn’t trying to misrepresent anything. (Emphasis added)

In responding to these questions I discovered an error that is embarrassing but also innocent. The adopted budget had an Op 1 position budgeted at Step 1 — but when I sent the email in March I then knew that the PW maintenance worker was going to permanently stay in that position — in the interest of providing full disclosure I used his salary. Due to where his salary was in PW we had to bring him in at Step 5. That is the error, no wonder I was off. Look at the “WWTP (copy of RFP)” tab from S2 to X29. I thought I was providing full disclosure in my email to the vendor by tying it out to reality—fortunately the net effect to the budget was immaterial, just \$4,998 as shown in X17. Like I said, an embarrassing but innocent mistake.

WWTP RFP (live) – this is the updated, ‘live’ version that I explained about above. Yes, there is a discrepancy between the two amounts noted above but when I noted the discrepancy I most likely considered immaterial. If you’ll note in the cell notes in I-41 and I-42, I did notice that the amounts had changed. On the “S-Detailed Exp” tab take a look at the note in cell AD690 – we were charging the city engineer to the sewer fund as I had budgeted but then found it caused accounting discrepancies so stopped and reversed the costs.

- In addition, please explain how you arrived at the salaries and benefits for the three WWTP FTE’s that were reported to Ms. Obermeyer with CH2M on 3-15-17, specifically the salaries and benefits for the Supervisor position and the Operator 1 position. What is the explanation for the benefits for the Operator 1 position being so different i.e.: \$13,476 vs. \$28,490 vs. \$41,223? The figures reported to Ms. Obermeyer (and presumably to other RFP respondents) were:

Supervisor salary: \$67,700 + benefits of \$32,464 Total: =\$100,164

Operator 1: Salary: \$65,259 + benefits of \$41,223 (includes O.T.) =Total: \$106,482

Operator 3: Salary: \$72,742 + benefits of \$33,657: =Total: \$106,399

Total of 3-FTE’s Salary and benefits (including O.T.) =\$313,045

(NO RESPONSE TO THIS QUESTION AS OF 2-26-18)

- In the RFP (Company Budget) the cost for 3 FTE’s for salaries & benefits, including O.T., totaled: \$313,604. The difference between \$313,604 and \$313,045 would account for the \$559.00 error you noted in your 3-15-17 email to Ms. Obermeyer. Please explain how you arrived at the \$313,604 figure and please explain why the (Company Budget) for the salaries and benefits of 3-FTE’s included Overtime and Additional benefits.
- *In the city budget Ms. Levis breaks out salary, overtime and benefits to track those separately. She did not want to force the vendors to do the same because she suspected that their benefit costs would be less –subsequently she provided the information as a ‘lump sum’⁴⁰.*
- Please explain why none of your weekly “spreadsheets” to the Mayor made any mention of negotiating with the union for a lower WWTP Supervisor salary?
- *The truth is quite simple. Ms. Levis had numerous conversations with Mayor Thornton on this subject and it didn’t occur to her that she would need to “mention” it in the spreadsheet. On one of the emails to Al previously identified to you Ms. Levis discussed Mayor Thornton’s comments*

⁴⁰ This response did not address the question. The Company budget included O.T. and additional benefits.

on the issue – this is contemporaneous evidence indicating that the mayor and Ms. Levis had discussed the subject matter.⁴¹ (**Emphasis added**)

- Please explain why the original 2017 budget did not contain any footnote concerning the anticipated contract negotiation to lower the salary matrix for the WWTP Supervisor position that, if successful and approved, might have a material effect on the budget?
- *Ms. Levis didn't consider it material nor would she necessarily want to disclose the City's negotiating strategy so publicly.*
- Did you have any communication with the City of Ridgefield concerning Matt Jenkins' salary? If so, when, why and with whom? If so, what did you learn?
- *Yes. Ms. Levis called and/or emailed Tracy Blehm who processes payroll at Ridgefield. Ms. Blehm emailed Ms. Levis the salary matrix they use which Ms. Levis then used for comparison.*⁴²
- Did you or Mr. Sarvis have any conversations with Matt Jenkins regarding his City of Ridgefield salary or any conversations with Mr. Jenkins on what salary he might be willing to accept prior to negotiating the MOU? If so, when and why?
- *To the best of her recollection Ms. Levis did not have any such conversations with Mr. Jenkins about salary. Such a conversation was unnecessary; she already knew what he was making at Ridgefield.*
- What experience do you have in Labor Relations? Do you have any correspondence from the prior Mayor where he authorized you to work outside of your job description to perform Labor Relations? Anything from Mayor Thornton?
- *In 2016, which was the first year of GT's mayor's term, Ms. Levis negotiated all three of the union contracts. She was in PERC mediation with two of the unions. The mediator separated the parties (as is normal) into two rooms and went back and forth between the two rooms. The parties spent a few days doing this. Greg Thornton was extremely aware of Ms. Levis' role and involvement as he stopped in a few times and sat in on discussions with the mediator. This is the same negotiating sessions where Ms. Levis negotiated a lower planner and building inspector. So again, Ms. Levis has always negotiated the union contracts on behalf of the City of La Centre (sic) and the mayor was FULLY aware that she was doing so in 2016.*

Bruce Bischof was the City's negotiating attorney and can verify Ms. Levis' role and involvement, as can Guy Coss, the PERC mediator. The City Attorney, Dan Kearns, can also verify Ms. Levis' historical involvement in labor relations. There are emails from Mr. Kearns to the prior mayor, Jim Irish, discussing Ms. Levis' role in labor relations, specifically including negotiations. You have access to Ms. Levis' email and can locate those for yourself if they are needed.

⁴¹ This is an apparent reference to the email from Ms. Levis to Council Member Luis, dated 7-20-17, **Exhibit No. 22** and the email from the Mayor to Levis, dated 7-24-17, **Exhibit No. 26**. Both emails followed a meeting between the Mayor, Corbin and Levis on 7-19-17. Also see **Exhibit No. 27**, email from Levis to Wirkus & Cooper, dated 7-24-17; and **Exhibit No. 35**, an email from Levis to the Mayor, dated 7-25-17. The Mayor denies having numerous conversations with Ms. Levis, with the exception of a conversation on 7-19-17.

⁴² Mr. Jenkins' base salary was \$71,822.40 at Ridgefield. He also received approx. 104 hrs annually for being on-call. In addition, he also received call-out and overtime pay. His base pay was therefore \$75,413.52 before call-out and O.T. was added. Mr. Jenkins also said he was going to receive a 3% increase in 2018, bringing his salary to \$77,676.00, had he stayed at the City of Ridgefield.

As addressed in our earlier correspondence, Ms. Levis' job description is broadly worded and nothing within the document excludes labor relations from her duties. As such, the suggestion that she worked outside of her job description is inaccurate. There is no correspondence from the Mayor specifically authorizing her to engage in labor relations since no such correspondence was necessary—there is likely no such correspondence from Mayor Irish, either, for a similar reason. Mayor Thornton was fully aware of Ms. Levis' historical role and he knew that she negotiated all three of the CBAs in 2016.

In terms of Ms. Levis' qualifications, she has attended AWC's Labor Relations Institute conference almost annually in addition to years of on the job experience. She has also relied on counsel, including Bruce Bischoff and Dan Kearns.

Attachments: Bruce Bischoff contact information; PERC mediation Aug2016; PERC mediation 5/16.16; PERC mediation 5.17.16; Timeline of union negotiations.xlsx;

- When was the first time you can recall Mayor Thornton telling you, either directly or in the presence of other employees/Directors, that consultant Janice Corbin would be handling Labor Relations and/or HR functions for the City?
- *Ms. Levis does not specifically recall "the first time." She has received conflicting directives from them both regarding HR functions.*

Attached are two emails, "RE_Officer tuition email.pdf" and "RE_Open Enrollment memo email.pdf," regarding HR/labor matters sent by Ms. Levis to the city's attorneys and to Janice Corbin. At the staff meeting following the January 3, 2018 email exchanges Ms. Corbin informed Ms. Levis that she could no longer copy the city's attorneys on emails on these matters and any inquiry she had about HR or labor matters had to go through her and that she would consult the city's attorneys as needed. Consistent with that message, the third email, "Corbin email from GT," is Mayor Thornton's direct communication regarding his having placed "all human resources labor relations" under Ms. Corbin's authority who would then coordinate with the city's attorneys. The final email, "Joe question.pdf" demonstrates Ms. Levis' compliance with this directive.

- What form of documentary evidence, other than the "Memo to Mayor Thornton" that was not actually sent to the Mayor, do you have that would support your statement of ongoing and multiple conversations with Mayor Thornton regarding the intent to negotiate the salary matrix for the WWTP Supervisor position?
- *Janice Fowler, who sits outside Ms. Levis' office can attest to the numerous conversations on this subject matter.*⁴³
- In the "Working Agreement" between the City and the Union for LCEEA, which was in affect at the time of the negotiated MOU, the salaries of the WWTP Supervisor and the PW Supervisor appeared to be matched to each other and covered by the same union. Did you have any concerns that negotiating a lower salary for the WWTP Supervisor, with the PW Supervisor, potentially might be either a conflict of interest for Mr. Wirkus and/or be an ULP? Did you seek any legal

⁴³ Ms. Fowler stated during a follow-up interview she did not remember ever hearing a conversation between Ms. Levis and the Mayor regarding her intent to negotiate a new salary matrix for the WWTP Supervisor position.

advice prior to negotiating the MOU from the City Attorney or any other attorney? If so, with whom did you consult?

Please see the attached email of Tuesday, July 25, 2017, from Dan Kearns to Suzanne Levis. Mr. Kearns drafted the MOU. Ms. Levis consulted counsel throughout the process. There was no conflict of interest or a ULP. For the 2016 negotiation for the LCEEA contract, Bruce Bischof and Ms. Levis negotiated with Sue Lawrence (the then WWTP supervisor) – she negotiated on behalf of the LCEEA CBA. They negotiated salary / COLA amounts – that was not considered a ‘conflict of interest’ or a ULP threat. This was the same situation as the 2016 negotiations. Jeromy, as Ms. Levis stated in her interview, has been employed by the City of La Center since 2004. His position was that an employee beginning employment in 2016 should not be making the same salary as an employee who had been working for the city for 12 years.⁴⁴

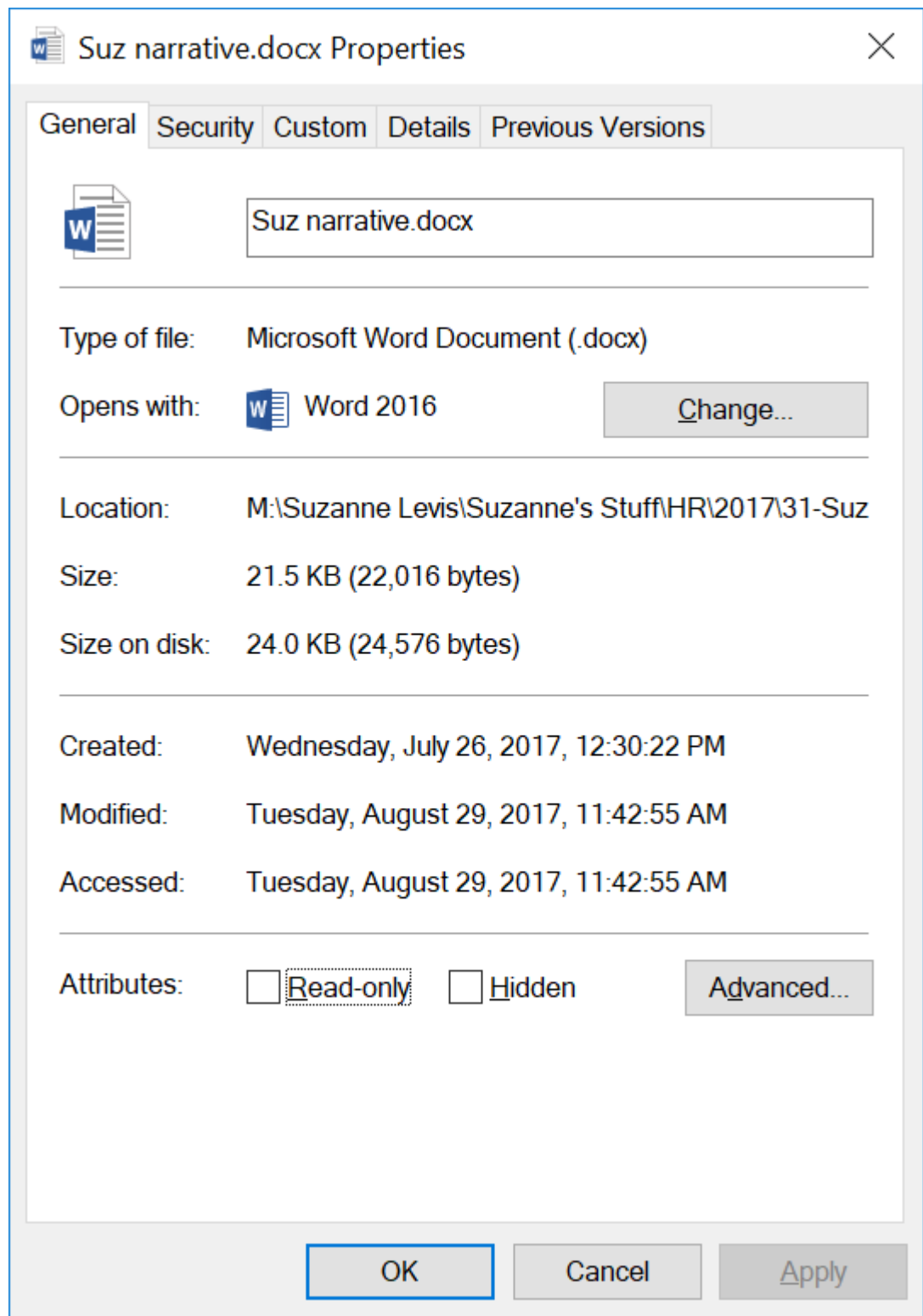
Attachments: Dan email w-MOU.pdf; Signed MOU.pdf.

- Please forward directly to me the “first/original generation” version of the Word document of the July 31, 2017 Memo to Mayor Thornton that was used to memorialize your thoughts and chronology of the events.

You have the only draft of this document. If your focus is on creation date, you can look at the document properties and see that it was created on July 26 and accessed on August 29, 2017 when Ms. Levis sent the document to her counsel:

(SEE FOLLOWING PAGE)

⁴⁴ Mr. Sarvis originally proposed hiring Mr. Jenkins at step 6 for \$82,080 and moving him to step 7 in 2018 at a salary of \$85,812.00.



Sent 1-15-18:

The document in its original Word format is attached. I am sending it to you with all metadata attached so that you can satisfy your curiosity about when the document was created by my client

(7/26/2017 12:30 p.m.) and when it was last saved by her (7/31/2017 8:23 a.m.).⁴⁵ The last time she edited the document was on 7/31/2017, thus the date on the memo. Also attached is a contemporaneous email from Ms. Levis to the Union Rep openly discussing the RFP salary issue. All involved were aware of the difference between the former supervisor's salary and the salary in the RFP.⁴⁶

On 1-27-18, I sent the following questions to Ms. Levis' attorney: **AS OF 2-26-17, I HAVE NOT RECEIVED A RESPONSE TO THESE FOLLOWING QUESTIONS, DESPITE ONE FOLLOW-UP EMAIL TO THE ATTORNEY AND ONE PHONE CALL.**

Question: Regarding cells **I-41 and I-42** in the WWTP RFP (live), I believe those might have been misidentified. Please double check these cell references for accuracy.

In Cell **I-74** in the WWTP (copy in RFP) you note that it balanced to the budget. However, I am perplexed where the figure in **I-73** of \$1,056,292 came from. I am able to see where the figure in **I-74** came from. I have searched all of the spreadsheets and the original Sewer Fund budget, approved in 11-22-16, and have been unable to locate that dollar amount of \$1,056,292⁴⁷. Please note the Sewer Fund –Total Uses, S-Detailed Exp, cell **W-780**, shows the amount of \$1,060,287⁴⁸ and the amount from the 11-22-16 budget for Sewer Operations Fund uses the amount of \$1,060,723.⁴⁹

Taking into consideration the explanation cited above for the salary and benefits for the Operation 1 position, which resulted in an overstatement of his salary and benefits used in the 3-15-17 email in the amount of \$24,681, as found in **Cell X-24** of the WWTP (Copy in RFP tab), it would appear this amount was then used to offset the understated difference of \$29,678 used for the Supervisor's salary and benefits in the 3-15-17 email, resulting in the net difference of \$4,998 as noted in cell **X-27** of the WWTP (copy in RFP tab, between of all 3-FTE's salaries and benefits in the "adopted budget" and the 3-15-17 email. If I remove from consideration the amount of \$24,681, due to Ms. Levis' explanation, would I not be left with a difference of \$29,678 for the supervisor as noted in **Cell X-26**? Given all this, I am interested in knowing how Ms. Levis was able to balance within \$1.00? (**Exhibit #86**)

For the Supervisor position, I note there is \$25,001 difference in the salary and \$4,677 difference in the benefits when comparing the 2017 budget and the 3-15-17 email. Neither the spreadsheet nor the notes answer my question how did Ms. Levis arrive at the numbers that were included in the 3-15-17 email to Ms. Obermeyer as it relates to the Supervisor position? Specifically, how did Ms. Levis arrive at the \$67,700 salary for the supervisor position and the \$32,464 for benefits?

XIV. CONCLUSION:

In the **Summary of Issues** section of the report, page 3, several questions were posed for consideration. They were:

⁴⁵ The meta-data in the document confirmed these dates and times.

⁴⁶ Reference to an email to the union representative on 3-15-17 was incorrect. The email was to Ms. Obermeyer, one of the RFP respondents. Attorney Gonzalez stated later he misspoke and had incorrectly identified Ms. Obermeyer's role. The 3-15-17 email referenced above to Ms. Obermeyer was not copied to Mayor Thornton.

⁴⁷ This cell does not contain a formula to show where the number comes from. It is only a number that is \$1.00 less than the number in cell I-74, thus the two cells balance within \$1.00 of each other

⁴⁸ (**See Exhibit # 68**)

⁴⁹ (**See Exhibit #8**)

1. Was any of the alleged conduct by the Finance Director a violation of City Policy?

City policies include the “Guiding Principles”, as well as formal policies identified in the City’s Personnel Manual. Specific chapters of the Personnel Policy are number 2.6: **Anti-Disruption** and number 9.1: **General Code of Conduct**.

The City’s Guiding Principles are found in the report starting at Section VII. The guiding principles apply to all City employees. **Personal and Professional Accountability** states, in part: “The work that you are responsible for performing in your job is done on the behalf of our community, and as such you are representing the City of La Center.” “Perform all job duties within the standards set forth for your position...” “A key component of personal accountability is to own your mistakes, and to explore how the mistake may be resolved.” **Customer Service** states, in part: “As a public servant it is your responsibility to provide the customers (citizens) with accurate information about services, regulations and processes.” **Integrity**, states in part, “Integrity means that your words and actions are the same whether you are speaking with peers, supervisors, or other professionals. Work honorably and professionally...” **Mutual Respect** states, in part: “Demonstrating respect to everyone is essential specific to professional accountability. Treating everyone with respect is not negotiable in the workplace....” **Teamwork** is demonstrated when you expand your perspective from simply performing your individual tasks to helping ensure the Department’s overall mission is accomplished by giving assistance, encouragement and support to coworkers.” **Gossip:** Do not participate in spreading gossip and rumors, and do not tolerate it from coworkers. The behaviors of rumor and gossip sabotage a team’s ability to work together effectively. It is disrespectful, nonproductive, and a selfishly motivated act that impedes employees from performing their jobs... Rumor, gossip, and sabotage are not respectful or helpful, and impedes employees from performing their jobs.” (Emphasis added)

Section 2.6 Anti-Disruption Policy states in part, “Any conduct in the workplace or while on City time that is disruptive to the normal operations of City business or invades the rights of others will not be tolerated. Thus, all employees are expected to maintain work relationships that respect and adhere to the City’s expectations. This includes refraining from spreading harmful rumors, gossiping or discussing non-business related information about others. Other disruptive conduct includes but is not limited to... ridicule.” **Conduct Towards Co-Workers and the Public** states in part, “All employees are expected to treat their co-workers and the public with courtesy and respect. While employees may disagree with one another, or even with aspects of City policies, management directives, or other practices, they are expected to resolve their concerns in a way that is not disruptive of the City’s business, and does not undermine the quality of the workplace for others.... Employees are not to act in a way that is considered combative or threatening to other co-workers or the public.... Also, gossip in the workplace, particularly if it is unfounded or humiliating, destroys co-worker morale. All employees are charged with the responsibility of avoiding or stopping harmful gossip in the workplace. Any information unrelated to an employee’s job performance or dealing with non-City business, that you may find hurtful or demoralizing if the statements were made about you, should be considered prohibited gossip.” (Emphasis added)

Section 9.1 General Code of Conduct, states in part, “All employees are expected to represent La Center to the public in a professional manner that is courteous, efficient and helpful.... Since the proper working relationship between employees and the City depends on each employee’s

ongoing job performance, professional conduct and behavior, the City has established the following minimum standards of personal conduct: basic tact and courtesy towards customers, potential customers and fellow employees; adherence to City policies, procedures, safety rules and safe work practices; compliance with directions from supervisor and management; preserving and protecting the City's equipment, grounds, facilities and resources; and providing orderly and cost-efficient services to its customers and abiding by the Anti-Disruption Policy set forth in the policy manual. (Emphasis added)

2. **Were any laws violated by the conduct of the Finance Director?** These laws might be City Municipal Codes and/or state statutes. A listing of Municipal Codes starts at Section IX of this report and a listing of potentially applicable state statutes start at Section X. Chapter 1.01, Section 2.10.030 of the Municipal Code applies to the duties of the Finance Director. The Municipal Code also references RCW 35A.42.010 and RCW 35A.42.040. A violation of either the Municipal Code or state statutes would potentially constitute a violation of law. Making a determination whether a Municipal Code or State Statute was violated would constitute a legal conclusion and one I will leave to attorneys.

3. **Does any of the alleged conduct by the Finance Director constitute a misrepresentation⁵⁰ of financial documents?** This question pertains to the financial documents provided to City Council in the 2017 City Budget and those documents provided to the Council for their consideration of the RFP proposals; as well as the financial documents included in the RFP and/or provided to RFP respondents by email. On November 22, 2016, when the Council approved the 2017 annual City budget regarding the salaries and benefits of 3-FTE's in the WWTP, they were provided the cost of \$318,479. That cost included the salary of the WWTP Supervisor as being \$92,701. The documents available to the RFP respondents that were included within an online "City library" when the RFP was published on 2-22-17, indicated the cost of the 3-FTE's in the WWTP was \$313,604. The RFP provided on-line access to the City's 2017 pdf version of the approved City budget, but the pdf version did not break out the specific costs of salary and benefits for the 3 individual employees in the WWTP. In response to an email inquiry from Ms. Obermeyer, one RFP respondent on March 15, 2017, Ms. Levis told Ms. Obermeyer and other RFP respondents⁵¹, via email, the cost of the salaries and benefits for the 3-FTE's in the WWTP was \$313,045, which included the salary of the WWTP Supervisor of \$67,700. Mr. Sarvis followed up with the other RFP respondents the following day by forwarding Ms. Levis' email dated 3-15-17. In the 3-15-17 email, Ms. Levis acknowledged she had discovered a \$559 error between the \$313,604 amount and the \$313,045 amount. Regardless of that error, both totals reflected the salary of the WWTP Supervisor to be \$67,700 and not the City budgeted amount of \$92,701. Ms. Levis has stated in at least one email she does not know how she came up with the \$67,700 figure. The published RFP stated the City would use its best efforts to publish accurate information. In addition, Ms. Levis reported the "Total uses- Sewer Fund" to be: \$1,056,293.00 in one document, \$1,056,292.00 in another, \$1,060,723.00 in another and \$1,060,287.00 in yet another document. (Exhibit No.'s 8, 68, 86 & 87) In addition, Ms. Levis represented she had balanced to within \$1.00 in her spreadsheet associated with the RFP. When asked where the figure of \$1,056,292 came from which was used to balance against \$1,056,293, no response has been provided. From the spreadsheet Ms. Levis provided, the cell containing the amount of \$1,056,293,

⁵⁰ Black's Law Dictionary, Seventh Edition: Misrepresentation: 1. The act of making a false or misleading statement about something, usu. with the intent to deceive. 2. The statement so made; an assertion that does not accord with facts... An assertion need not be fraudulent to be a misrepresentation.

⁵¹ Other RFP respondents were informed of the detail salary and benefit amounts by Mr. Sarvis, who forwarded Ms. Levis' email to them the follow day.

contained a formula that showed the amount was the sum of \$426,104 + \$86,700 + \$543,489. The cell containing the amount of \$1,056,292 contained no formula, but only the above amount.

4. **To what extent, if any, do the City of La Center policies and principles apply to the alleged conduct of the Finance Director?** City policies, job description, Guiding Principles, Municipal Codes and RCW's require a City Finance Director to place the interests of the City before personal interests and/or personal opinion that might impact the objectives of the City and the responsibilities of the position. This would include intentionally providing false and/or inaccurate information to the City Council, the Mayor and/or RFP respondents.

XV. MS. LEVIS DEFENSES:

Through her attorney, Mr. Justo Gonzalez, Ms. Levis has offered the following defenses and explanations.

1. "All involved were aware of the difference between the former supervisor's salary and the salary in the RFP." In support of this position, Mr. Gonzalez provided a copy of the 3-15-17 email from Ms. Levis to Ms. Obermeyer. Mayor Thornton said he did not become aware of this email until months later.
2. "Ms. Levis negotiated all three of the union contracts and was in PERC mediation with two of the unions... Greg Thornton was extremely aware of Ms. Levis' role and involvement as he stopped in a few times and sat in on discussions with the mediator. This is the same negotiating sessions where Ms. Levis negotiated a lower planner and building inspector... Ms. Levis has always negotiated the union contracts on behalf of the City of La Centre (sic) and the mayor was FULLY aware that she was doing so in 2016." Mayor Thornton has said Ms. Levis was told by him on multiple occasions that Labor Relations and HR matters would be handled by Consultant Janice Corbin.
3. Ms. Levis said she had multiple conversations with the mayor and Ms. Corbin concerning her intention to negotiate a lower salary for the vacant WWTP supervisor and "was never given any feedback that I should not attempt this nor (sic) any indication that I was doing this without his approval." Both Mayor Thornton and Ms. Corbin dispute this statement. The Mayor stated he was not aware of the MOU to change the WWTP supervisor's salary until July and at no time did Ms. Levis discuss the subject with him or receive his approval.
4. Ms. Levis provided the name of a witness to the multiple conversations Ms. Levis reportedly had with Mayor Thornton regarding negotiating a lower salary for the vacant WWTP supervisor's position. That witness denied having overheard any conversations between Ms. Levis and the Mayor or having any direct knowledge of any such conversations specifically related to negotiating a lower salary for the vacant WWTP supervisor. The witness stated Ms. Levis had asked her to turn her radio down and attempt to listen whenever Mayor Thornton was in her office. The witness stated she attempted to listen as best she could.
5. Ms. Levis consulted with the City Attorney and labor attorneys.

Mr. Gonzalez provided numerous documents, which are included. He also provided and suggested I review the "Webber Report" dated 4-3-14. I did read the 36 page report, which referenced a previous "Nolan Report". I found only one reference in the "Webber Report" wherein Council Member Greg Thornton reportedly had commented on 10-15-13 that he "expressed concerns about Ms. Nolan's findings." This was the only reference to Council Member Thornton in the "Webber Report". It was unclear to what purpose Mr. Gonzalez believed this investigation would benefit from reading the "Webber Report" or having some background information regarding the "Nolan Report." If the intent

was to demonstrate a prior bias by now Mayor Thornton towards Ms. Levis, that was not obvious in the “Webber Report.” (**Exhibit #87**)

Kenneth J Wilson

Kenneth J. Wilson