

The Honorable M. Karlynn Haberly
Kitsap County Superior Court
Trial Date: Monday, December 11, 2006, 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

CITY OF PORT ANGELES,

Plaintiff,

v.

OUR WATER-OUR CHOICE, and
PROTECT OUR WATERS,

Defendants,

v.

WASHINGTON DENTAL SERVICE
FOUNDATION, LLC,

A Party in Interest,

OUR WATER-OUR CHOICE, and
PROTECT OUR WATERS,

Plaintiffs/Petitioners,

v.

PORT ANGELES CITY CLERK, CITY OF
PORT ANGELES, and WASHINGTON
DENTAL SERVICE FOUNDATION, LLC,

Defendants/Respondents

No. 06-2-00828-9

(Having been consolidated with
No. 06-2-00823-8)

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 1

ORIGINAL

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1. JUDGMENT SUMMARY

PREVAILING PARTIES:

City of Port Angeles
Washington Dental Service Foundation, LLC

ATTORNEYS FOR
PREVAILING PARTIES

William E. Bloor, City Attorney
321 East Fifth Street/PO Box 1150
Port Angeles WA 98362-0217
For City of Port Angeles

Foster Pepper PLLC by Roger A. Pearce and
P. Stephen DiJulio
1111 Third Avenue, Suite 3400
Seattle WA 98101-3299
For Washington Dental Service Foundation, LLC

NON-PREVAILING PARTIES

Our Water – Our Choice
Protect Our Waters

ATTORNEY FOR
NON-PREVAILING PARTIES

Gerald Steel, PE
7303 Young Road NW
Olympia WA 98502

SYNOPSIS OF JUDGMENT:

Declaratory Judgment GRANTED in favor of
Prevailing Parties that the initiatives entitled
Medical Independence Act and Water Additives
Safety Act are beyond the scope of the local
initiative power of the City of Port Angeles, and
that the City has no duty to place said initiatives on
the ballot;

Writ of Mandamus sought by Non-Prevailing
Parties is DENIED;

Complaint for Writ of Mandamus and Petition
Pursuant to RCW 35.17.290 brought by Non-
Prevailing Parties is DISMISSED with prejudice.

AMOUNT OF MONETARY
JUDGMENT

\$0.00 (Not Applicable)

ATTORNEYS' FEES AND COSTS

\$0.00 (Not Requested by Prevailing Parties)

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 2

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2. INTRODUCTION

2.1 Consolidated Cases. This case consists of two consolidated actions involving initiative petitions filed by political action committees Our Water - Our Choice and Protect Our Waters with the City Clerk of the City of Port Angeles. The City of Port Angeles filed a Complaint For Declaratory Judgment under Clallam County Cause No. 06-2-00823-8, in which the City requested a declaration that the initiatives are beyond the scope of the initiative power for noncharter Code cities such as the City of Port Angeles. Protect Our Waters and Our Water - Our Choice filed a Complaint For Writ Of Mandamus and Petition Pursuant to RCW 35.17.290 and also filed a Verified Application For Peremptory Writ Of Mandamus To The Port Angeles City Clerk And Request For Further Relief ("Verified Application") under Clallam County Cause No. 06-2-00828-9, in which the political action committees requested the Court to find the initiative petitions legally sufficient and to order the City to hold an election for the purpose of voting on the ordinances proposed in the initiatives. The Court consolidated the two actions (Cause Nos. 06-2-00823-8 and 06-2-00828-9) for all purposes under the later-filed cause number (Cause No. 06-2-00828-9).

2.2 Hearing On The Merits. At the hearing on the merits on December 11, 2006, the City was represented by William E. Bloor, City Attorney for the City of Port Angeles, Our Water - Our Choice and Protect Our Waters were represented by Gerald Steel, P.E., attorney at law, and the Washington Dental Service Foundation was represented by Roger A. Pearce and Foster Pepper PLLC. After its review of the evidence submitted in the form of declarations by the parties, the briefing of the parties, the arguments of counsel at the hearing on the merits, and the pleadings and papers in the court record, the Court entered its oral ruling on December 11, 2006, and now enters the following:

3. FINDINGS OF FACT

3.1. In September 2006 shortly after the two actions were filed, the parties entered into a Stipulation and Order (1) Consolidating Actions, (2) Permitting Intervention, (3) Forwarding

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 Initiative Petitions to County Auditor, and (4) Setting Hearing Schedule and Trial Date
2 ("Stipulation and Order"). In the Stipulation and Order, the Court consolidated the two actions
3 for all purposes; joined Washington State Dental Service Foundation as a party defendant,
4 ordered that the City had no further legal obligations with respect to the initiative petitions (the
5 City had stipulated to forward the petitions to the County Auditor for determination of
6 sufficiency) pending the final order of this Court in the consolidated cases, ordered that the
7 parties would follow an agreed-upon briefing schedule, and agreed to schedule a hearing on the
8 merits as soon as possible after November 27, 2006.

9 3.2. Procedurally, each of the parties submitted opening, response and reply briefs
10 accompanied by declarations and exhibits. The Stipulation and Order contemplated a hearing on
11 the merits, which was scheduled for December 11, 2006, and a final order. Accordingly, the
12 Court treats the hearing as a trial on undisputed facts. Even though the parties did not submit a
13 set of stipulated facts, the following relevant facts were undisputed and, *based on these*
14 undisputed facts *below*, the initiative petitions filed by Our Water-Our Choice and Protect Our
15 Waters (attached to those parties' Verified Application For Peremptory Writ), and the
16 Agreement Regarding Gift of Fluoridation System (attached to the City's Complaint For
17 Declaratory Judgment), the Court *enters* ~~may enter~~ the final judgment herein.

18 3.3. The City of Port Angeles (the "City") is a Code city operating under RCW Title
19 35A. Pursuant to the authority in Title 35A, the City owns and operates a drinking water utility.
20 RCW 35.11.020.

21 3.4. Our Water – Our Choice ("OWOC") is a political action committee registered
22 with the Washington Public Disclosure Commission, listing an address of 1114 E. 4th Street, Port
23 Angeles WA 98362. Lynn Warber is listed as "campaign chair" of OWOC. Lynn Warber is a
24 registered voter and taxpayer of the City, and is the person who filed the proposed Medical
25 Independence Act with the Port Angeles City Clerk.
26

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 3.5. Protect Our Waters ("POW") is a political action committee registered with the
2 Washington Public Disclosure Commission, listing an address of 1923 W. 6th Street, Port
3 Angeles, WA 98362. Ann Mathewson is listed as treasurer of POW. Ann Mathewson is a
4 registered voter and taxpayer of the City, and is the person who filed the proposed Water
5 Additives Safety Act with the Port Angeles City Clerk.

6 3.6. Washington Dental Service Foundation, LLC, ("WDSF") is ~~an essential~~ ² party to
7 these actions. WDSF has a contract interest that relates to the subject matter of the actions. The
8 contract is between the City and WDSF and is titled Agreement Regarding Gift of Fluoridation
9 System (the "Agreement").

10 3.7. ~~In February 2003, the Port Angeles City Council held a lengthy public hearing on~~
11 ~~the question of whether to fluoridate the City's drinking water supply. At least 45 people gave~~
12 ~~oral testimony, and voluminous documents were presented to the City Council.~~ On February 18,
13 2003, the City Council passed a motion to approve fluoridation of the City's water supply.

14 3.8. Subsequently, on March 1, 2005, the City Council approved, by motion, a
15 contract between the City and WDSF – the Agreement. Under the Agreement, WDSF agreed to
16 pay for the design, construction and installation of a fluoridation system and then transfer the
17 system to the City. For its part, the City agreed that it would fluoridate the Port Angeles' public
18 water supply for a continuous ten (10) year period. In the event the City fails to meet its
19 obligations under the Agreement, the City is to repay up to four hundred thirty-three thousand
20 (\$433,000) to WDSF for the costs of design, construction, and installation of the fluoridation
21 system and could be liable for other expenses.

22 3.9. WDSF delivered the fluoridation system to the City on May 18, 2006, and the
23 City is currently using the system to fluoridate the City's public water supply.

24 3.10. On September 8 and September 12, 2006, OWOC and Lynn Warber filed
25 initiative petitions to have the City Council enact an ordinance or in the alternative have the city
26 residents vote on the "Medical Independence Act." On September 8 and September 11, 2006,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 POW and Ann Mathewson filed initiative petitions to have the City Council enact an ordinance
2 or in the alternative have the city residents vote on the "Water Additives Safety Act."

3 3.11. Following the filing of the initiative petitions, on September 13, 2006, the City
4 Council conducted a public meeting to consider the action to be taken. The procedure set out in
5 the state statutes is that the City will deliver the petitions to the County Auditor to verify
6 signatures. Then, RCW 35A.11.110 and 35.17.260 provide that in the event the Clallam County
7 Auditor certifies that an initiative petition has received the requisite number of valid signatures,
8 the City Clerk will transmit the initiative to the City Council for introduction. The Council may
9 either: (1) adopt the initiative as an ordinance, or (2) reject it and order it to be placed on the
10 ballot no later than the next election.

11 3.12. The City Council elected not to send the initiative petitions to the County Auditor,
12 but rather to ask for a declaratory judgment regarding the validity of the two initiative petitions.

13 3.13. On September 18, 2006, the City filed an action for a declaratory judgment under
14 Clallam County Superior Court Cause No. 06-2-0823-8. On September 19, 2006, the initiative
15 backers, POW and OWOC, filed a separate action under Clallam County Superior Court Cause
16 No. 06-2-00828-9 in which they sought, among other things, relief that would require the City
17 Clerk to deliver the initiative petitions to the County Auditor for validation of signatures.

18 3.14. In the days following the filing of the two lawsuits, the parties reached agreement
19 on the procedure to be followed. The agreement was intended to facilitate the timely
20 presentation of the substantive issues to the Court for a ruling. The agreed Stipulation and Order
21 was filed in this action on September 26, 2006.

22 3.15. In 1924 the City made the decision to establish a municipal water system. In
23 1924 the City purchased the water system from the North Pacific Public Service Company of
24 Tacoma. Since then, the City has operated its municipal water system as a proprietary function
25 of the City. In the course of doing so, the City, administratively, has made numerous significant
26 and substantial changes to the system and the water supplies. These include, among others,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 changing the source of water from Ennis Creek to Morse Creek; changing the source again from
2 Morse Creek to the Elwha River; negotiating settlements with the EPA and Department of Social
3 and Health Services (now Department of Health (DOH)) over issues of water quality and water
4 treatment; modifying, and sometimes not modifying, treatment facilities; and addressing
5 measures to be taken when the water supply was reclassified from "ground water" to "ground
6 water under the influence of surface water."

7 3.16. In summary, since 1924 the City has made numerous significant and substantial
8 decisions relating to its municipal water system. It purchased the system, and then moved major
9 components from time to time. It changed primary sources of water. It has chosen to treat, and
10 not treat, the water for various purposes; and it has chosen among alternative means of
11 complying with state regulations for operating the facility.

12 3.17 The OWOC and POW initiative petitions signed by registered voters were
13 properly submitted to the City Clerk on September 8, 2006. As of September 18, 2006, the City
14 Clerk had failed to transmit the OWOC and POW initiative petitions to the County Auditor.

15 3.18. Pursuant to the Stipulation And Order, on or about September 26, 2006, the City
16 Clerk forwarded the OWOC and POW initiative petitions to the County Auditor for a
17 determination of sufficiency, and on October 7, 2006, the County Auditor found the initiative
18 petitions to be sufficient and sent letters back to the City Clerk stating, "[t]he required number of
19 signatures has been met, thus allowing submission to the voters at an election to be determined."

20 3.19. The City of Port Angeles is not a county and is not 125,000 or greater in
21 population.

22 4. CONCLUSIONS OF LAW

23 4.1. There are three, independent tests considered by the Court to determine whether
24 the OWOC and POW initiatives are within the scope of the local initiative power and therefore
25 proper to go forward to a vote of the voters of Port Angeles.
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 4.1.1. The first test is whether the subject matter of the initiatives deals with
2 legislative rather than administrative matters. Only legislative matters are within the initiative
3 power.

4 4.1.2. The second test is whether, even if the subject matter is legislative, the
5 authority to deal with that subject matter was expressly delegated to the legislative body of the
6 City rather than to the City as a corporate body. Matters expressly delegated to the local
7 legislative body are not within the local initiative power.

8 4.1.3. The third test is whether the subject matter of the initiative exceeds the
9 legislative authority of the City. Matters exceeding the local legislative authority are likewise
10 outside the local initiative power.

11 4.2. With respect to the first test, the Court concludes that each initiative seeks to
12 regulate matters that are administrative in nature, which is the operation of a municipal water
13 system, including operation and supply of water through that municipal water system.
14 Accordingly, the initiatives are beyond the scope of the local initiative power.

15 4.3. With respect to the second test, under RCW 35A.11.020, the state Legislature has
16 vested within the City of Port Angeles legislative body, which is the Port Angeles City Council,
17 the authority to operate and supply utilities. In this case, the operation of the municipal water
18 system utility is at issue. The Court concludes that these initiatives interfere with the City's
19 operation of its public water system, and seek to regulate the operation of that municipal water
20 system. For this second reason, the initiatives are beyond the scope of the local initiative power.

21 4.4. The third test is whether either or both of these initiatives exceed the authority of
22 the City Council to enact laws. The Court concludes that both initiatives are beyond that
23 authority. The language of each initiative clearly seeks to direct the City's operation of the
24 municipal water system and manner of supply of public water. The Medical Independence Act
25 seeks to control substances that are put into the water, which is an administrative matter for the
26 City. Both of the initiatives conflict with federally mandated and state administered regulation

1 of public drinking water. In particular, the state has preempted the field for setting maximum
2 permissible concentrations for additives to drinking water. It is the State Board of Health that is
3 legislatively mandated to set standards for contaminants in drinking water based on best
4 available scientific information. RCW 70.142.010 - .030. Only certain local governments may
5 adopt stricter standards – the local health department serving counties with populations of
6 125,000 or greater may adopt more strict standards, again based on best scientific information.
7 RCW 70.142.040. Because the City is not a county of 125,000 or greater in population, it does
8 not have the authority to adopt stricter standards than the State Board of Health maximum
9 allowable concentration standards; and because the initiatives would adopt stricter standards than
10 the State Board of Health standards, the ordinances proposed by the initiatives are beyond the
11 scope of the local initiative power.

12 4.5. The Water Additives Safety Act seeks to impose an obligation on the United
13 States FDA to approve substances that are added to public drinking water systems. The City has
14 no authority to direct the FDA to regulate such substances. This also exceeds the authority of the
15 City to regulate public water systems.

16 4.6. The City does not have authority to regulate public drinking water in a manner
17 inconsistent with the controlling state and federal regulation. ~~The Medical Independence Act is~~
18 ~~ambiguous. An example is its provisions in Sections 2 and 3 that relate to making water "safe"~~
19 ~~and whether certain substances are added for "treating" versus "preventing" disease. The~~
20 ~~ambiguities are not themselves determinative, but despite them, it is clear that the Medical~~
21 ~~Independence Act is intended to create new regulations that are, to some extent, inconsistent with~~
22 ~~state and federal law regulating water quality and water additives. As such it is beyond the scope~~
23 ~~of the legislative authority of the City and is invalid.~~

WAP

24 4.7. The Medical Independence Act would also establish a new property right of
25 access to a public water supply, and would transfer that right to all persons using a public water
26 supply. This is in violation of the Washington State Constitution, Article 8, Section 7, which

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
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1 prohibits gifts of City property without any consideration. The Court notes that this could also
2 subject the City to claims if this new property right affected the security of bond holders for
3 improvements to the City water system. But it is enough for purposes of this litigation to hold
4 that the initiatives would violate the Washington Constitution.

5 5. JUDGMENT

6 Based on the foregoing findings of fact and conclusions of law, it is ORDERED,
7 ADJUDGED and DECREED as follows:

8 5.1. Declaratory judgment is **GRANTED** in favor of the City of Port Angeles that the
9 Medical Independence Act and the Water Additives Safety Act are invalid as exceeding the
10 scope of the local initiative power because the initiatives affect administrative rather than
11 legislative matters, because the initiatives deal with matters delegated specifically to the
12 legislative body of the City of Port Angeles, and because the ordinances proposed by the
13 initiatives are beyond the authority of the City of Port Angeles to enact.

14 5.2. The Writ of Mandamus sought by the Our Water – Our Choice and Protect Our
15 Waters political action committees is DENIED and the Complaint For Writ Of Mandamus And
16 Petition Pursuant to RCW 35.17.290 brought by Our Water – Our Choice and Protect Our
17 Waters is DISMISSED with prejudice because the proposed initiatives are invalid. Accordingly,
18 there is no requirement for the City of Port Angeles to act to place the initiatives on the ballot.

19 5.3. The Court finds no need to rule on the motion to dismiss or motion for judgment
20 on the pleadings brought by Washington Dental Service Foundation, LLC, as those motions are
21 subsumed in the foregoing ruling on the merits as to all issues presented to the Court.

22 DATED this 19th day of January, 2007.

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25 M. KARLYNN HABERLY
26 Superior Court Judge

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 10

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1
2 Presented by:

3
4 *Rogan A. Pearce for*
5 WILLIAM E. BLOOR, WSBA No. 4084
6 City Attorney for City of Port Angeles
7 *per permission*

8 FOSTER PEPPER PLLC

9 *Rogan A. Pearce*
10 P. Stephen DiJulio, WSBA No. 7139
11 Roger A. Pearce, WSBA No. 21113
12 Attorneys for Washington Dental Service Foundation, LLC
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT - 11

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APPENDIX B - STIPULATION AND ORDER

FILED
CLALLAM CO CLERK

2006 SEP 26 A 9:21

BARBARA CHRISTENSEN

SUPERIOR COURT OF WASHINGTON IN AND FOR CLALLAM COUNTY

OUR WATER--OUR CHOICE PAC, and
PROTECT OUR WATERS PAC,

Plaintiffs/Petitioners,

v.

PORT ANGELES CITY CLERK, and
CITY OF PORT ANGELES,

Defendants/Respondents.

No. 06-2-00828-9

STIPULATION AND ORDER
(1) CONSOLIDATING ACTIONS;
(2) PERMITTING INTERVENTION,
(3) FORWARDING INITIATIVE
PETITIONS TO COUNTY AUDITOR, and
(4) SETTING HEARING SCHEDULE AND
TRIAL DATE

I. STIPULATION

Plaintiffs/Petitioners, Our Water—Our Choice (“OWOC”) and Protect Our Waters (“POW”), by and through their attorney of record, Gerald Steel, PE; Defendants/Respondents, Port Angeles and Port Angeles City Clerk (collectively “City”), by and through the City’s attorney of record, William E. Bloor, City Attorney; and Washington Dental Service Foundation, LLC, (“WDSF”) by and through its attorneys, Foster Pepper PLLC, P. Stephen DiJulio and Roger A. Pearce, stipulate as follows:

1. On September 8, 2006, and September 11, 2006, POW filed initiative petitions with the City, seeking to have the City Council enact, or submit to a vote of the registered voters of the City, an ordinance entitled the Water Additives Safety Act.

STIPULATION AND ORDER - 1

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2. On September 8, 2006, and September 12, 2006, OWOC filed initiative petitions with the City to have the City Council enact, or submit to a vote of the registered voters of the City, an ordinance entitled the Medical Independence Act.

3. The City and WDSF are parties to an agreement entitled Agreement Regarding Gift of Fluoridation System.

4. On September 18, 2006, the City filed a Complaint for Declaratory Judgment under Clallam County Cause No. 06-2-00823-8. That action seeks a declaration that the initiatives for the Medical Independence Act and the Water Additives Safety Act are beyond the scope of the initiative power. The City named WDSF as a party to the declaratory judgment action.

5. On September 19, 2006, OWOC and POW filed this action under Clallam County Cause No. 06-2-00828-9. This action seeks an order to compel the City Clerk to forward the POW and OWOC initiative petitions to the County Auditor, to find that the initiative petitions are legally sufficient, and to order an election for the purpose of voting on the ordinances proposed in the POW and OWOC initiatives.

6. The actions under Clallam County Cause Nos. 06-2-00823-8 and 06-2-00828-9 involve the same general subject matter and should therefore be consolidated for all purposes.

7. WDSF has an interest that would be affected by the ordinances proposed in the POW and OWOC initiative petitions. WDSF should therefore be joined as a party defendant in Cause No. 06-2-00828-9.

8. No later than Tuesday September 26, 2006, the City will cause the City Clerk to promptly forward the POW and OWOC initiative petitions to the County Auditor for determination of sufficiency.

9. The City has no legal obligation to take further actions with respect to the POW and OWOC initiative petitions, pending the final order of the Superior Court in the consolidated actions under Cause Nos. 06-2-00823-8 and 06-2-00828-9.

STIPULATION AND ORDER - 2

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10. The parties agree that the agreed Order below may be submitted to Clallam Court Commissioner William G. Knebes for signing and entry.

11. The parties agree to the following briefing schedule in the consolidated action:

Opening Briefs of October 13, 2006
OWOC/POW, City and WDSF

Responding Briefs of October 24, 2006
OWOC/POW, City and WDSF

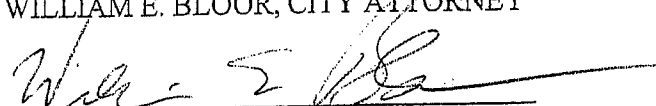
Reply Briefs of November 3, 2006
OWOC/POW, City and WDSF

The parties further agree that service of papers on each other in the consolidated cases may be done by Email or Facsimile, with hard copy to be mailed the same day.

12. The parties agree that the hearing on the merits in the consolidated cases will be set on or as soon as possible after November 27, 2006, and the parties further agree to arrange a date for such hearing before a Superior Court judge for Clallam County or, if necessary, before a visiting Superior Court judge.

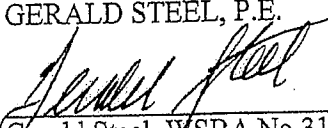
So stipulated the 25 day of September 2006.

WILLIAM E. BLOOR, CITY ATTORNEY


William E. Bloor, WSBA No. 4084
Attorney for City of Port Angeles and Port Angeles City Clerk

So stipulated the 21st day of September 2006.

GERALD STEEL, P.E.

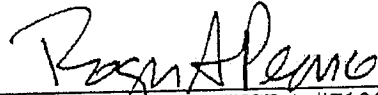

Gerald Steel, WSBA No. 31084
Attorney for Our Water—Our Choice PAC and
Protect Our Waters PAC

STIPULATION AND ORDER - 3

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1 So stipulated the 21st day of September 2006.

2 FOSTER PEPPER PLLC

3 
4 P. Steven DiJulio, WSBA #7139
5 Roger A. Pearce, WSBA #21113
6 Attorneys for Washington Dental Service Foundation, LLC

7 **II. ORDER**

8 Pursuant to the stipulation above, it is hereby ORDERED as follows:

9 1. The actions under Clallam County Cause Nos. 06-2-00823-8 and 06-2-00828-9
10 should be, and hereby are, consolidated for all purposes.

11 2. The Washington Dental Service Foundation is hereby joined as a party defendant
12 in the action under Cause No. 06-2-00828-9.

13 3. The City shall have no further legal obligations with respect to the POW and
14 OWOC initiative petitions, pending the Superior Court's final order in the consolidated cases
15 under Clallam County Cause Nos. 06-2-00823-8 and 06-2-00828-9.

16 4. The parties shall abide by the following briefing schedule for all matters raised in
17 Clallam County Cause Nos. 06-2-00823-8 and 06-2-00828-9:

18 Opening Briefs of October 13, 2006
OWOC/POW, City and WDSF

19 Responding Briefs of October 24, 2006
OWOC/POW, City and WDSF

20 Reply Briefs of November 3, 2006
21 OWOC/POW, City and WDSF

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26 STIPULATION AND ORDER - 4

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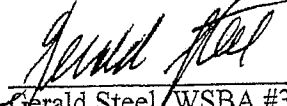
1 5. A hearing on the merits will be scheduled before a Clallam County Superior
2 Court judge or visiting judge on or as soon as possible after November 27, 2006.

3
4 SO ORDERED this 25 day of September, 2006.

5
6 WILLIAM KNEBES
7 COURT COMMISSIONER
8 WILLIAM G. KNEBES
9 Clallam County Commissioner

10 Presented by:

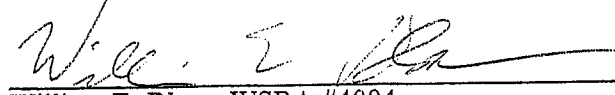
11 GERALD STEEL, P.E.

12 
13 Gerald Steel, WSBA #31084

14 Attorney for Our Water—Our Choice PAC and
15 Protect Our Waters PAC

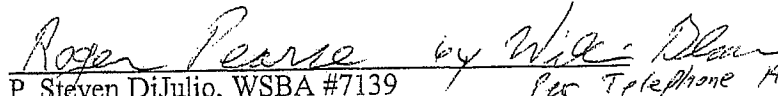
16 Agreed; Notice of Presentation Waived:

17 WILLIAM E. BLOOR, CITY ATTORNEY

18 
19 William E. Bloor, WSBA #4084

20 Attorney for City of Port Angeles and
21 Port Angeles City Clerk

22 FOSTER PEPPER PLLC

23 
24 P. Steven DiJulio, WSBA #7139

25 Roger A. Pearce, WSBA #21113

26 Attorneys for Washington Dental Service Foundation, LLC
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STIPULATION AND ORDER - 5

B-5
FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

APPENDIX C - POW INITIATIVE PETITION

061

Sponsored by
PROTECT OUR WATERS
 Ann Mathewson, Treasurer
 PO Box 2423 Port Angeles, 98362
 powowoc@yahoo.com

Ann Mathewson,
Treasurer

IMPROVING STANDARDS FOR MEDICATIONS PUT IN PUBLIC DRINKING WATER

INITIATIVE PETITION FOR SUBMISSION TO THE PORT ANGELES CITY COUNCIL

TO: The City Council of the City Of Port Angeles:
 We, the undersigned registered voters of the City of Port Angeles, State of Washington, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The proposed title of the said ordinance is the
WATER ADDITIVES SAFETY ACT.

This initiative requires specific safety standards for any substance intended to act on the mind or body of people and added to public drinking water. FDA approval is required. No component of the additive may cause water to exceed existing federal standards determined to protect the health of everyone— infant to aged—for a lifetime. This ordinance does not regulate chemicals added to water to make water safe or potable.

The full text of the ordinance is on the reverse side of this petition.

WARNING: Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each of us for himself or herself says: I am a registered voter of the city of Port Angeles, State of Washington; and my residence address is correctly stated.

Signature as Registered to Vote e.g., Mary Doe, not Mrs. John Doe	PRINT NAME	Date 2006 m/day	Voting Address Number, Street	Port Angeles Zip	Phone
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Return all petitions to Richard T. Smith, Media Contact for Protect Our Waters
 82 Island View Rd. Port Angeles, WA 98362 email: rls@otypen.com

[Front of Petition]

C-1

rw

WATER ADDITIVES SAFETY ACT

WHEREAS substances intended to treat or prevent human illness (including tooth decay) are by definition drugs which are mandated by Congress to be regulated by the Food and Drug Administration (FDA),
WHEREAS the FDA as well as the Washington State Department of Health and WAC 246-895-070 all require full disclosure of all components of drugs, which the City has yet to reveal for the formulation currently being added to its drinking water,
WHEREAS under Article 11 SECTION 11 of the State Constitution, RCW 35.88.020 and RCW 35A.70.070(6), The City Of Port Angeles may prescribe what acts shall constitute offenses against the purity of its water supply and exercise control over water pollution, and RCW 70.142.010 (2) expressly states that State and local standards for chemical contaminants may be more strict than the federal standards,
WHEREAS the citizens of Port Angeles, taking great pride in the pristine water of this area, desire to enact the following ordinance to ensure the healthfulness and aesthetic qualities of its water for all of its citizens including infants, the infirm and elderly.
Now, therefore we hereby ordain that the City of Port Angeles add to the Municipal Code:

SECTION 1

Intent: A public drinking water supply is a public resource essential to life and health. Drinking water additives intended to make water safe from microbiologic contaminants and to treat water to control corrosion and other physical properties of the water are accepted. However, the deliberate addition to drinking water of substances intended to treat the mind or body of persons in an entire population is highly controversial. This ordinance requires that any substances which are added with the intention of treating people, not the water, must meet existing health-based standards which protect the entire population, including infants, the infirm and the elderly over their lifetime.

SECTION 2

Definitions:

- (A) Substance: A substance may be organic or inorganic in nature and includes drugs as defined in RCW 69.04.009, and RCW 69.41.010(9).
(B) Contaminant: A contaminant is a chemically or physically detectable quantity of any substance other than the named substance which is present in a concentrated formulation intended to be dispensed into drinking water. As used here, the term includes all components including by-products from source materials and their manufacturing process.
(C) "Contaminated with filth" is a term applicable to contaminants taken singly or as a group which are present in a product intended to be added to drinking water and which are present in quantities which would, when dispensed at the manufacturer's Maximum Use Level, allow the final consumer-ready product to exceed for one or more contaminants the Maximum Contaminant Level Goals ("MCLGs") as published by the U.S. Environmental Protection Agency ("EPA") pursuant to the Federal Drinking Water Act, 42 USC 300f et. seq.

SECTION 3

- (A) A person or entity shall not add any substance to a public drinking water supply with the intent to treat or affect the physical or mental functions of the body of any person or which is intended to act as a medication for humans unless the manufacturer, producer, or supplier provides proof that the substance is specifically approved by the United States Food and Drug Administration ("FDA") for safety and effectiveness with a margin of safety that is protective against all adverse health and cosmetic effects at all dosage ranges consistent with unrestricted human water consumption.
(B) It is prohibited to add to a public water supply any substance which is contaminated with filth. No component of the additive mixture shall cause the drinking water to exceed the "MCLGs" determined for that component.
(i) For purposes of determining the specific contaminant contribution under paragraph (B), each shipment of the substance must include its own certificate of independent analysis provided by the manufacturer, producer, or supplier. This certificate must reveal all detectable components in the specific batch of product pursuant to WAC 246-895-070(9). Analysis of the contaminant contribution of each component shall be based on conventional tests made of the undiluted product at the application rate stated by the manufacturer to be the Maximum Use Level. The substance shall not be added to drinking water if it contains any contaminant at a concentration that will cause the drinking water to exceed the MCLG, which is the scientific health-based point of safety established by the U.S. EPA for lifetime consumption of that contaminant in drinking water.
(C) The provisions of this ordinance do not apply to substances which are added to treat water to make water safe or potable PROVIDED that water treatment substances which contain fluoride in amounts sufficient to elevate levels of fluoride in the finished water by more than 0.1 parts per million above background levels shall not be exempted by this subsection.

SECTION 4

Violations of this ordinance constitute a public nuisance and violation of this ordinance shall be punishable as a gross misdemeanor under RCW 70.54.020.

SECTION 5

- (A) To the maximum extent permitted by law, this ordinance takes precedence over any conflicting provisions in the laws, regulations, resolutions, or other ordinances of the City of Port Angeles. It does not prohibit fluoridation provided the substance used for that purpose meets the approval of FDA and the stringent safety standards as prescribed herein.
(B) This ordinance is to take effect thirty days after certification of the election in which it was approved by the Port Angeles electorate. Additions of hexafluorosilicic acid solution to the municipal water supply will then cease until proof is publicly available that the substance meets all the criteria set by this ordinance.

SECTION 6

If any provision, phrase, or part of this ordinance or its underlying legal basis, or the application to any person or circumstance is held invalid, the remainder of the provisions of this ordinance or the application thereof shall be given effect insofar as possible, and to this end the provisions of this Act are severable.

[Back of Petition]
C-2

APPENDIX D - OWOC INITIATIVE PETITION

Lynne & Orr, measure

Sponsored by
OUR WATER— OUR CHOICE!

P O Box 2423, Port Angeles, WA 98362
 Campaign Manager Lynn Warber— lynnw@olympen.com

B-250
(R-2)

MASS MEDICATION IS FORCED MEDICATION

VOTE
☒ **YES FOR CHOICE**

INITIATIVE PETITION FOR SUBMISSION TO THE PORT ANGELES CITY COUNCIL

TO: The City Council of the City Of Port Angeles:

We, the undersigned registered voters of the City of Port Angeles, State of Washington, respectfully request that the following ordinance be enacted by the City Council or, if not so enacted, be submitted to a vote of the residents of the City. The proposed title of the said ordinance is the

MEDICAL INDEPENDENCE ACT.

The full text of the ordinance is on the reverse side of this petition.

THE INTENT OF THIS ORDINANCE is to prohibit medication of people through public drinking water supplies while allowing necessary treatment of water to make it safe to drink. People claim the right to control what medication is given them, and a right to their fair share of a public water supply which is free of medication.

WARNING: Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each of us for himself or herself says: I have personally signed this petition; I am a registered voter of the city of Port Angeles, State of Washington and my residence address is correctly stated.

Signature as Registered to Vote e.g., Mary Doe, not Mrs. John Doe	PRINT NAME	Date 2006 m/day	Voting Address Number, Street	Port Angeles Zip	Phone
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Return all petitions, preferably by October 15, 2006 to:
OUR WATER — OUR CHOICE! P O BOX 2423 Port Angeles, WA 98362
powowoc@yahoo.com

[Front of Petition]
 D-1

Medical Independence Act

SECTION 1. Intent. Over the objection of many of its citizens, the City Council approved the addition of hexafluorosilicic acid (a form of fluoride) to the City's public drinking water for the express purpose of reducing tooth decay. This action has forced the entire community either to submit to this medication for tooth decay, to remove it as best individuals can, or to not use the water. Extraordinary effort and expense are required to escape being medicated by this substance which is absorbed even through unbroken skin. For many, effective avoidance is an economic and practical impossibility resulting in their enforced medication. The citizens herewith determine that access to a public water supply constitutes a property right shared by all users of that water supply. They find that the property rights of persons to whom medicated water is unacceptable are impaired by addition of medication to the common supply of water and that this is a takings which has not been compensated in any way. Furthermore, the citizens declare that the right of all adult and mentally competent citizens to control their own medical care and the right to informed consent for medical treatment are essential to their pursuit of life and liberty. The citizens of Port Angeles now declare that public water supplies should not be used to medicate citizens.

SECTION 2. It shall be unlawful for any person, agent, or any public water system to put or continue to put any product, substance, or chemical in public water supplies for the purpose of treating physical or mental disease or affecting the structure or functions of the body of any person, or with any other intent of acting in the manner of a preventive or treating medication or drug for humans or animals.

SECTION 3. This ordinance does not apply to substances which are added to treat water to make water safe or potable such as use of agents for disinfection, or corrosion control PROVIDED that water treatment substances contaminated with fluoride in amounts sufficient to elevate levels of fluoride in the finished water by more than 0.1 parts per million above those background levels which occur naturally in the raw supply water shall be prohibited.

SECTION 4. In case of conflict with any law, regulations, resolutions, or ordinances of the City of Port Angeles, this ordinance shall prevail to the maximum extent allowed by law. The action by the City Council taken Feb. 18, 2003 to approve addition of fluoride to the municipal water supply is hereby repealed.

SECTION 5. This ordinance shall take effect thirty days after certification of the election at which it was approved by the Port Angeles electorate. Additions of hexafluorosilicic acid solution to the municipal water supply will then cease.

SECTION 6. If any provision, phrase, or part of this ordinance or its underlying legal basis, or the application to any person or circumstance is held invalid, the remainder of the provisions of this ordinance or the application thereof shall be given effect insofar as possible, and to this end the provisions of this ordinance are severable.

[Back of Petition]
D-2

APPENDIX E - AGREEMENT

5/16/06
Sig

AGREEMENT REGARDING GIFT OF FLUORIDATION SYSTEM

This Agreement Regarding Gift of Fluoridation System (the "Agreement") is entered into as of March 1, 2005 (the "Effective Date"), by and between Washington Dental Service Foundation, LLC, a Washington limited liability company ("WDSF"), and the City of Port Angeles, Washington, a municipality (the "City") (collectively referred to herein as the "Parties").

RECITALS

WHEREAS, WDSF is a single member limited liability company of which Washington Dental Service, an organization exempt from federal income tax within the provisions of Section 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), is the sole member;

WHEREAS, WDSF is organized and operated for charitable purposes including improving the oral health of Washington residents by facilitating the implementation of community fluoridation projects throughout the State of Washington;

WHEREAS, the City is a political subdivision of the State of Washington within the meaning of Section 170(c)(1) of the Code;

WHEREAS, in furtherance of WDSF's charitable mission to improve the oral health of Washington residents, WDSF wishes to make a gift of a fluoridation system (the "System") to the City for the purpose of fluoridating the Port Angeles public water supply, in accordance with the terms and conditions set forth herein;

WHEREAS, the Port Angeles City Council (the "City Council") has determined that it is in the best interests of the City's residents to fluoridate the Port Angeles public water supply, to accept the gift of the System, and to proceed with implementation of a fluoridation system for the City's public water supply;

WHEREAS, the City desires to accept WDSF's gift of the System, in accordance with the terms and conditions set forth herein;

WHEREAS, contemporaneously with this Agreement, WDSF intends to enter into a design-build agreement (the "Design-Build Agreement") with CH2M Hill Constructors, Inc., a Washington corporation ("CH2M Hill"), for the design, construction and installation of the System on land owned by the City;

WHEREAS, WDSF will be responsible for paying the Contract Price for the cost of the design, construction and installation of the System;

WHEREAS, the City is not causing such design, construction and installation to be performed by CH2M Hill through any separate contract or agreement;

WHEREAS, the City is not causing the design, construction and installation of the System to be performed by WDSF through any separate contract or agreement;

WHEREAS, no part of the cost of the design, construction or installation of the System shall

ever become an obligation of the City; the design, construction and installation of the System will not be executed at the cost of the City and will not by law give rise to a lien or charge on any property of the City;

WHEREAS, it is the Parties' expectation that the System be operational no later than March 1, 2006; and

WHEREAS, WDSF and the City have determined that entering into this Agreement will further the charitable and public service missions of the Parties.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and performances set forth herein, the Parties recite, covenant and agree as follows:

AGREEMENT

ARTICLE I. PURPOSE

Section 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of WDSF's gift of the System to the City, and the City's acceptance of the gift. The City will use the System to implement the City's community water fluoridation project.

ARTICLE II.

SYSTEM TRANSFER

Section 2.1 Gift of System. Subject to and upon the terms and conditions of this Agreement, WDSF agrees and covenants to give, donate, and transfer to the City, at no cost, all of WDSF's right, title and interest in and to the System. WDSF shall transfer the System to the City (a) upon Substantial Completion of the System by CH2M Hill, (b) or otherwise pursuant to Section 5.2 below; provided however, that WDSF shall have ensured prior to any transfer that the System is free of all liens, claims, demands or encumbrances of any kind, legal or equitable that prevent or could prevent WDSF from transferring the System to the City on a free and clear basis. For purposes of this Agreement, the term "Substantial Completion" shall have the same meaning as is assigned in the Design-Build Agreement.

Section 2.2 City's Acceptance of Gift. Subject to and upon the terms and conditions of this Agreement, and except as provided in Section 2.3, the City hereby accepts WDSF's gift of the System and from and after WDSF's transfer of the System to the City at Substantial Completion, or otherwise pursuant to Section 5.2 below, agrees to assume, perform, and fully discharge when due any and all of the liabilities and obligations relating to the operation and ownership of the System, other than those relating to WDSF's payment of the Contract Price, as that term is defined Section 6.2 below, for the costs of the design, construction and installation of the System (the "Assumed Liabilities"). The term "liabilities" includes, but is not limited to, any and all debts, liabilities, and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including those arising under any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, writ, stipulation, permit, or other government requirement and those arising under any trade payable, other accounts payable, assigned contract, or

other contract.

Section 2.3 Excluded Liabilities. Assumed Liabilities shall not include WDSF's obligation to pay to CH2M Hill the Contract Price for the design, construction and installation of the System. This Section 2.3 does not, however, in any way limit WDSF's ability to recover any amounts due to WDSF from the City under Section 5.9 or Article VII of this Agreement.

Section 2.4 DISCLAIMER OF WARRANTIES. WDSF IS PROVIDING THE GIFT "AS IS" and "WHERE IS" and WITHOUT WARRANTY OF ANY KIND. WDSF EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AS WELL AS ANY WARRANTY WHATSOEVER WITH RESPECT TO THE MARKETABILITY OR SITE CLASSIFICATION OF THE SYSTEM.

Section 2.5 City Responsibility for System Results and Condition. The City acknowledges that, as between WDSF and the City, after transfer of the System to the City and acceptance of the System by the City, the City has full responsibility for the use and results obtained from the System, and that the entire risk of the System and any use, nonuse or failure of the System is with the City. Without limiting the generality of the foregoing, WDSF will have no liability with respect to: (A) the quality, nature, adequacy and physical condition of the System; (B) the existence, quality, nature, adequacy, and physical condition of utilities serving the System (C) the System's use, habitability, merchantability, or fitness, suitability, value or adequacy of the System for any particular purpose; (D) the zoning or other legal status of the System or any other public or private restrictions on use of the System; (E) the compliance of the assets or the System's operation with any applicable codes, laws, regulations, statutes, ordinances, of any governmental or quasi-governmental entity or any covenants, conditions and restrictions applicable to the System or the fluoridation of a water supply; (F) the presence or absence of hazardous materials on, under or about the System or the adjoining or neighboring property; (G) the quality of any labor and materials used in any improvements on or benefiting the System; (H) the condition of title to the System; (I) the economics of the present or future operation of the System; or (J) the health effects related to the operation of the System. As between WDSF and the City, the City assumes the responsibility and risks of all defects to and conditions in the System, including defects and conditions, if any, that cannot be observed by inspection. WDSF shall not be liable for any latent or patent defects in the System.

Section 2.6 Further Action. Each of the Parties shall execute and deliver such other documents and take such further actions as may be reasonably required or appropriate to carry out the purposes and intents of this Agreement, including but not limited to a transfer agreement and/or bill of sale to effectuate WDSF's transfer of the System to the City at Substantial Completion or pursuant to Section 5.2 below.

ARTICLE III.

LICENSE TO ENTER PREMISES; TRANSFER COSTS

Section 3.1 License to Enter City Premises. The City hereby grants to WDSF and its contractors, including specifically CH2M Hill, a revocable, non exclusive license to enter upon property of the City at the City's landfill property located at 3501 W. 18th Street, Port Angeles, for

E-3

the purpose of designing, installing, constructing and testing the System pursuant to the Design-Build Agreement, but for no other purposes.

Section 3.2 **Transfer of System to Permanent Facility.** The parties recognize that, due to changes in the City's water system as a result of the Elwha dams removal project, the System may at first be installed in a temporary water treatment facility. If the System is installed in a temporary facility, it will be necessary to transfer the System to a permanent facility at some date in the future. The estimated cost to transfer the System is thirty thousand dollars (\$30,000). If the System is installed in a temporary facility, WDSF hereby agrees to reimburse the City for all costs incurred by the City in moving the System to a permanent facility, provided the amount of reimbursement shall not exceed thirty thousand dollars (\$30,000) (the "System Transfer Costs").

ARTICLE IV. CITY'S REPRESENTATIONS AND WARRANTIES

The City hereby represents and warrants as follows.

Section 4.1 The City has the full right, power and authority to enter into this Agreement, to accept WDSF's gift of the System, and to accept all of WDSF's right, title and interest in and to the System upon its transfer by WDSF at Substantial Completion or otherwise pursuant to Section 5.2 below.

Section 4.2 The City's performance hereunder does not violate any agreement between the City and any third party, any obligation owed by the City to any third party, or the rights of any third party.

Section 4.3 Other than litigation or claims that may arise directly as a result of the denial of Protect the Peninsula's Future, Clallam County Citizens for Safe Drinking Water, Barney Munger and Eloise Kaillin's State Environmental Protection Act claim, there is no pending claim, action, suit, proceeding, litigation, arbitration, or investigation against the City, and the City is not subject to any continuing injunction, judgment or other order of any court, arbitrator or governmental agency that affects the City's ability to enter into this Agreement or to carry out its obligations set forth herein.

Section 4.4 The City will use the System exclusively for public purposes within the meaning of Section 170(c)(1) of the Code, and the City will not take or fail to take any action that would cause the System to be used for any other purposes.

ARTICLE V. CITY'S RESPONSIBILITIES

The City agrees and covenants as follows.

Section 5.1 The City shall accept WDSF's transfer of the System and will assume all of WDSF's right title and interest in and to the System at Substantial Completion in accordance with the terms and conditions of this Agreement.

Section 5.2 The City shall accept WDSF's transfer of the System and will assume all of

WDSF's right title and interest in and to the System, in whatever state of completion as the System may exist, in the event of any termination of the Design-Build Agreement prior to Substantial Completion of the System.

Section 5.3 The City shall not take or fail to take any action that will or could prevent its acceptance of WDSF's gift of the System or result in its rejection of the System prior to or after Substantial Completion, as the case may be

Section 5.4 The City shall, alone and in conjunction with CH2M Hill, as required under the Design Build Agreement, use reasonable and good faith efforts to obtain or provide for all consents, approvals or other action by or any registration with, notice to or filing with any person, entity, court or administrative or governmental body required in order to fluoridate the Port Angeles public water supply; and, not later than one hundred eighty (180) days after the earlier of (a) final termination of all legal challenges to fluoridation of the City's water supply or (b) Substantial Completion, the City shall have secured all licenses, permits, registrations and other authorizations required under federal, Washington, or local law necessary to fluoridate the Port Angeles public water supply.

Section 5.5 Upon Substantial Completion and transfer by WDSF of the System, the City shall fluoridate the Port Angeles public water supply for a continuous ten (10) year period, except for reasonable periods of time for normal maintenance or repair or any break in service necessary to switch-over to a future permanent water fluoridation system, and except in the event the City is prevented from fluoridating the Port Angeles public water supply as a result of a court order or other judicial decision.

Section 5.6 As between the City and WDSF, the City shall be responsible for investigating each and every aspect of the System's construction and future operation, including, without limitation: (i) all matters relating to the title, and all governmental and other legal requirements such as taxes, assessments, zoning, use permit requirements, building permit requirements, building codes, and other development requirements; (ii) the physical condition of the System, including, without limitation, the infrastructure available or unavailable to the System (as the case may be), access to the System, all other physical and functional aspects of the System, including the presence or absence of hazardous or toxic materials, substances or wastes of any kind; and (iii) all other matters of any significance affecting the System whether physical in nature or intangible in nature.

Section 5.7 The City hereby agrees, at its cost, to defend with due diligence any lawsuit filed by a third party that has as its goal the temporary or permanent injunction of the operation of the System, including any lawsuit filed as a result of the City's denial of Protect the Peninsula's Future, Clallam County Citizens for Safe Drinking Water, Barney Munger and Eloise Kailin's State Environmental Protection Act claim.

Section 5.8 The City shall designate one or more representatives to work with and to assist CH2M Hill with the design, construction, and installation of the System, as necessary, to ensure that the System meets the requirements of the City and all applicable laws concerning the fluoridation of a public water supply.

E-5

Section 5.9 In the event the City fails to meet any of its obligations under Article IV or Article V, after notice and a thirty (30) day opportunity to cure, the City hereby agrees and covenants to repay WDSF any and all amounts WDSF expends or has expended for or in connection with the design, construction and installation of the System, including without limitation all administrative costs and expenses, legal or other professional fees, personnel time and the System Transfer Costs (the "Repayment Amount"), such Repayment Amount not to exceed \$433,000; provided, however, that the foregoing limitation on the Repayment Amount shall not relieve or limit the City's obligations to indemnify and hold WDSF harmless under Article VII.

ARTICLE VI. CONDITIONS TO WDSF GIFT

The Gift is subject to and conditioned upon satisfaction of the conditions listed below, unless waived in writing by WDSF:

Section 6.1 WDSF and CH2M Hill shall have entered into the Design-Build Agreement for the design, construction and installation of the System.

Section 6.2 CH2M Hill and WDSF shall have agreed in writing that the System can and shall be designed, constructed and installed by CH2M Hill for a Contract Price of three hundred forty-three thousand dollars (\$343,000), plus Washington State sales taxes (the "Contract Price"). Notwithstanding anything herein to the contrary, in the event a legal proceeding suspends, delays or interrupts all or any part of the design, construction or installation of the System leading to increases in the Contract Price, WDSF hereby agrees to consider paying for all or a part of such increases to the Contract Price; provided, however, that in the event WDSF determines not to pay for such increases to the Contract Price, WDSF shall have no further obligation to the City or duty under this Agreement. In that event, WDSF shall have the right in its discretion to terminate the Design-Build Agreement and transfer the System to the City pursuant to Section 5.2 above.

Section 6.3 As of the Effective Date of this Agreement, the City shall have provided to WDSF written documentation evidencing formal action of the Port Angeles City Council authorizing and approving the City's entry into this Agreement.

Section 6.4 CH2M Hill and the City shall have secured all permits and complied with all requirements of any applicable governing bodies, including but not limited to the Washington State Department of Health, for the design, construction and installation of the System.

Section 6.5 There shall have been no significant breach or failure to perform under the Design-Build Agreement by CH2M Hill.

ARTICLE VII. INDEMNIFICATION

Section 7.1 Notwithstanding anything to the contrary contained in this Agreement, the City agrees and covenants to indemnify, defend and hold harmless WDSF and its trustees, officers, members, employees, agents and representatives from and against any and all causes of action, suits at law or equity or claims or demands and any costs, losses, liabilities, damages (including any special, indirect, incidental or consequential damages), judgments, lawsuits, claims and expenses

(including without limitation reasonable attorneys' fees and costs), of any nature, whether known or unknown, fixed or contingent, due or to become due, relating to, incurred in connection with, or arising out of any acts or omissions by the City or the operation of the System, including without limitation any breach of warranty or covenant hereunder. The City's obligations under this Section 7.1 shall not apply to the extent arising solely from WDSF's negligence or willful misconduct; provided, however, that to the extent that this Agreement constitutes a "covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property" within the meaning of RCW 4.24.115, the City's obligations under this Section 7.1 shall apply to the extent of the City's negligence.

Section 7.2 Notwithstanding anything to the contrary contained in this Agreement, to the maximum extent permitted by law, in no event shall WDSF be liable for any damages whatsoever (including, without limitation, direct, consequential, indirect, special, or incidental damages, or damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use or inability to use the System, under contract, tort (including negligence) or other cause of action and even if WDSF has been advised to the possibility of such damages.

Section 7.3 The foregoing indemnities specifically include, without limitation, claims brought by the City's employees against WDSF. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF THE CITY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE WDSF WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY THE CITY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. THE CITY AND WDSF ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

ARTICLE VIII. GENERAL

Section 8.1 Choice of Law. This Agreement shall be governed and interpreted according to the laws of the State of Washington. The Parties agree that Clallam County, in the State of Washington, shall be the exclusive and proper forum for any action or proceeding, including arbitration, if any, brought under this Agreement. The Parties accept the personal jurisdiction of such courts.

Section 8.2 Dispute Resolution. The Parties shall use reasonable, good faith efforts to cooperatively resolve any disputes that arise in connection with this Agreement. When a bona fide dispute arises between the City and WDSF subject to this Section 8.2 the parties shall each notify the other of the dispute, with the notice specifying the disputed issues and the position of the Party submitting the notice. If the Parties are unable to resolve a dispute within ten (10) business days, pursuant to this Section 8.2 either Party may proceed with any remedy available to it at law or in

equity.

Section 8.3 Remedies. Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Agreement or available to WDSF is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by WDSF shall not constitute a waiver of the right to pursue other available remedies. The City's sole and exclusive remedy from the City's use or inability to use the System or any breach of this Agreement by WDSF shall be for the City to discontinue use of the System or to repair or modify the System at the City's election and sole expense or, when applicable, to pursue legal remedies under the Design-Build Agreement.

Section 8.4 Amendments. This Agreement may be amended, supplemented or modified only by a writing dated and signed by both Parties.

Section 8.5 Assignment. Except as specifically provided in this Agreement, neither Party may assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the other Party. Any attempted assignment, transfer, or delegation in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of and be binding on the Parties hereto and their permitted successors and assigns.

Section 8.6 Severability. If any provision of this Agreement is invalid or unenforceable, the other provisions herein shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction shall not affect the validity or enforceability of any such provision in any other jurisdiction.

Section 8.7 Waiver. Any failure or delay by either Party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed a waiver of any of the rights, powers or privileges under the Agreement. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the Parties hereto. No such waiver, modification or deletion in any one instance shall be deemed to be a waiver, modification or deletion of a term or condition in any other instance, whether like or unlike. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.

Section 8.8 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and is not subject to amendment or modification except as provided herein.

Section 8.9 Force Majeure. Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, acts of God or of any public enemy, elements, flood, strikes, or an injunction or other judicial decision.

Section 8.10 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties thereto and their respective successors and assigns.

Section 8.11 Section Headings. The headings of sections in this Agreement are for reference only and shall not affect the meaning of this Agreement.

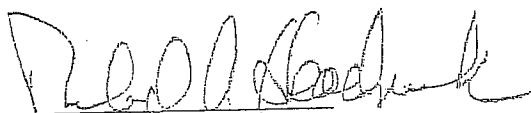
Section 8.12 Survival. The terms and conditions contained in the Agreement that by their sense and context are intended to survive the performance of the Agreement by the Parties shall so survive the completion of the performance, cancellation or termination of the Agreement, including without limitation Section 2.4, Section 2.5, Article VI and Article VII.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date written below.

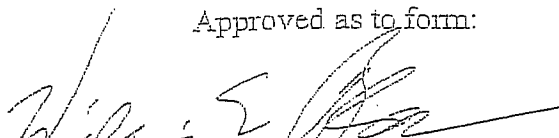
WASHINGTON DENTAL SERVICE
FOUNDATION, LLC

By: _____
Name: Tracy E. Garland
Its: President and CEO
Date: _____

CITY OF PORT ANGELES, WASHINGTON

By: 
Name: Richard A. Headrick
Its: Mayor
Date: March 1, 2005

Approved as to form:


William E. Bloor
City Attorney

Attest:


Becky Upton
City Clerk

APPENDIX F - COPIES OF RELEVANT LAWS

RCW 35A.70.070**Public health and safety, general laws applicable.**

Every code city may exercise the powers authorized and shall perform the duties imposed upon cities of like population relating to the public health and safety as provided by Title 70 RCW and, without limiting the generality of the foregoing, shall: (1) Organize boards of health and appoint a health officer with the authority, duties and functions as provided in chapter 70.05 RCW, or provide for combined city-county health departments as provided and in accordance with the provisions of chapter 70.08 RCW; (2) contribute and participate in public health pooling funds as authorized by chapter 70.12 RCW; (3) control and provide for treatment of *venereal diseases as authorized by chapter 70.24 RCW; (4) provide for the care and control of tuberculosis as provided in chapters 70.28, 70.30, **70.32, and 70.54 RCW; (5) participate in health districts as authorized by chapter 70.46 RCW; (6) exercise control over water pollution as provided in chapter 35.88 RCW; (7) for all code cities having a population of more than twenty thousand serve as a primary district for registration of vital statistics in accordance with the provisions of chapter 70.58 RCW; (8) observe and enforce the provisions relating to fireworks as provided in chapter 70.77 RCW; (9) enforce the provisions relating to swimming pools provided in chapter 70.90 RCW; (10) enforce the provisions of chapter 18.20 RCW when applicable; (11) perform the functions relating to mentally ill prescribed in chapters 72.06 and 71.12 RCW; (12) cooperate with the state department of social and health services in mosquito control as authorized by RCW 70.22.060; and (13) inspect nursing homes as authorized by RCW 18.51.145.

[1987 c 223 § 4; 1985 c 213 § 12; 1981 1st ex.s. c 2 § 25; 1979 c 141 § 42; 1967 ex.s. c 119 § 35A.70.070.]

Notes:

Reviser's note: *(1) The term "venereal diseases" was changed to "sexually transmitted diseases" by 1988 c 206.

** (2) Chapter 70.32 RCW was repealed and/or recodified in its entirety pursuant to 1999 c 172.

Savings -- Effective date -- 1985 c 213: See notes following RCW 43.20.050.

Severability -- Effective date -- 1981 1st ex.s. c 2: See notes following RCW 18.51.010.

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RCW 70.142.010

Establishment of standards for chemical contaminants in drinking water by state board of health.

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards.

[1984 c 187 § 1.]

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