



CITY OF
TUMWATER

**PUBLIC WORKS COMMITTEE
MEETING AGENDA**

**Online via Zoom and In Person at
Tumwater City Hall, Council Conference
Room, 555 Israel Rd. SW, Tumwater, WA
98501**

**Thursday, April 03, 2025
8:00 AM**

1. Call to Order
2. Roll Call
3. Grant Agreement with the Department of Ecology for the Nutrient Reduction Enhanced Maintenance Plan (EMP) (Water Resources and Sustainability Department)
4. Service Provider Agreement with Herrera for the Nutrient Reduction Enhanced Maintenance Plan (EMP) (Water Resources and Sustainability Department)
5. Ansten Sewer Project – Authority to Solicit Bids (Transportation & Engineering Department)
6. Resolution R2025-008 and Development Agreement with Tumwater 70th Ave LLC for Conversation of Onsite Septic to Public Sewer Service (Water Resources and Sustainability Department)
7. Additional Items
8. Adjourn

Meeting Information

All committee members will be attending remotely. The public are welcome to attend in person, by telephone or online via Zoom.

Watch Online

<https://us02web.zoom.us/j/84329973811?pwd=oNSStiQCtdYGbaNOOkP3Tbq7VDQHzb.1>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 843 2997 3811 and Passcode 503889.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Video of this meeting will be recorded and posted on our City Meeting page: <https://tumwater-wa.municodemeetings.com>.

Accommodations

The City of Tumwater takes pride in ensuring that people with disabilities are able to take part in, and benefit from, the range of public programs, services, and activities offered by the City. To request an accommodation or alternate format of communication, please contact the City's ADA Coordinator directly, call (360) 754-4129 or email ADACoordinator@ci.tumwater.wa.us. For vision or hearing impaired services, please contact the Washington State Relay Services at 7-1-1 or 1-(800)-833-6384.

TO: Public Works Committee
 FROM: Dave Kangiser, Water Resources Specialist
 DATE: April 3, 2025
 SUBJECT: Grant Agreement with the Department of Ecology for the Nutrient Reduction Enhanced Maintenance Plan (EMP)

1) Recommended Action:

Place the Grant Agreement with the Department of Ecology for the Nutrient Reduction Enhanced Maintenance Plan on the April 15, 2025 Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

Budd Inlet does not meet Washington State’s water quality standards for dissolved oxygen and was placed on the federal Clean Water Act Section 303(d) list of impaired waters, triggering a Total Maximum Daily Load (TMDL) study. As a result, Tumwater has been assigned waste load allocations for nutrient-laden discharges from the stormwater system to the Deschutes river, a major tributary to Budd Inlet. The Department of Ecology awarded a grant to help the City develop an Enhanced Maintenance Plan focused on maintenance activities that will reduce the discharge of nutrients from Tumwater’s stormwater system. An EMP will also help direct the City’s future stormwater management program with the overall goal of improving water quality by removing sediment and pollutants from roadway runoff. The EMP would also provide support meeting mapping and street sweeping requirements in the City’s municipal stormwater permit.

3) Policy Support:

- 2024-2029 Western Washington Phase II Municipal Stormwater Permit
 - Budd Inlet Dissolved Oxygen TMDL, October 2022
-

4) Alternatives:

- Not accept the Ecology grant. The work and budget to implement permit and TMDL requirements would need to be allocated in future budget terms.
-

5) Fiscal Notes:

This grant is funded through the Water Quality Combined Financial Assistance Fund. Total eligible cost for the EMP is \$200,000.00, 85% of which will be paid with this grant. A 15% match (\$30,000.00) is required by the City and will be paid for by the stormwater fund. The grant expires June 30, 2026.

6) Attachments:

A. Grant Agreement WQC-2025-Tumwat-00058



Agreement No. WQC-2025-Tumwat-00058

WATER QUALITY COMBINED FINANCIAL ASSISTANCE AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF TUMWATER

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as “ECOLOGY,” and City of Tumwater, hereinafter referred to as the “RECIPIENT,” to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	Nutrient Reduction Enhanced Maintenance Plan
Total Cost:	\$200,000.00
Total Eligible Cost:	\$200,000.00
Ecology Share:	\$170,000.00
Recipient Share:	\$30,000.00
The Effective Date of this Agreement is:	07/01/2024
The Expiration Date of this Agreement is no later than:	06/30/2026
Project Type:	Stormwater Activity

Project Short Description:

This project will improve water quality in the City of Tumwater by reducing total suspended solids (TSS), metals, and nutrients before they are carried into the stormwater system and discharged into the Deschutes River, Percival Creek, Black Lake Ditch, and Budd Inlet. This project will develop an Enhanced Maintenance Plan (EMP) that will analyze the current maintenance program and identify activities to increase nutrient removal on streets and within the stormwater conveyance system.

Project Long Description:

Budd Inlet does not meet Washington State’s water quality standards for dissolved oxygen (DO) and was placed on the federal Clean Water Act Section 303(d) list of impaired waters, triggering a Total Maximum Daily Load (TMDL) study. Human influences have exacerbated low-DO conditions by contributing excess nutrients into waterbodies through stormwater runoff.

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To help Budd Inlet meet TMDL requirements, Ecology placed waste load allocations on all National Pollutant Discharge Elimination System (NPDES) Permittees whose Municipal Separate Storm Sewer System (MS4) contribute to Budd Inlet for total nitrogen, dissolved inorganic nitrogen, total organic carbon, and five-day biochemical oxygen demand. As part of the Stormwater Management Action Planning (SMAP) process, the RECIPIENT identified the three highest priority subbasins as Troser Lake, West Mottman, and Fishpond Creek. Each of these subbasins drain to either Percival Creek, Black Lake, or Black Lake Ditch, three of the highest priority water bodies for nutrient reductions where the TMDL prioritizes work and implementation actions. These waterbodies lie partially within the city and receive direct discharge from the MS4.

The RECIPIENT will develop an Enhanced Maintenance Plan (EMP) as a first step toward meeting the water quality improvement waste load allocations identified in the Budd Inlet TMDL Study. The EMP will outline water quality goals for each receiving water where the MS4 discharges, spatially analyze nutrient loading across the MS4, and analyze the current maintenance program to identify where improvements can be made. To analyze nutrient loading, the RECIPIENT will conduct an MS4 mapping exercise to determine the location of pollution hotspots and untreated outfall connections to receiving waters to help prioritize programmatic implementation such as targeted street sweeping. The current programs that will be reviewed for water quality effectiveness and cost are catch basin inspection, source control, street sweeping, stormwater facility maintenance, and Illicit Discharge Detection and Elimination (IDDE) screening.

Overall Goal:

This project will help protect and restore water quality in Washington State by reducing stormwater impacts from existing infrastructure and development.

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Recipient Name: City of Tumwater

RECIPIENT INFORMATION

Organization Name: City of Tumwater

Federal Tax ID: 91-6001520
UEI Number: LLLDHHS4E5G1

Mailing Address: 555 Israel Road SW
Tumwater, WA 98501

Physical Address: 555 Israel Road SW
Tumwater, Washington 98501

Contacts

Agreement No: WQC-2025-Tumwat-00058
 Project Title: Nutrient Reduction Enhanced Maintenance Plan
 Recipient Name: City of Tumwater

<p>Project Manager</p>	<p>Dave Kangiser Water Resources Specialist</p> <p>555 Israel Road SW Tumwater, Washington 98501 Email: dkangiser@ci.tumwater.wa.us Phone: (360) 754-4140</p>
<p>Billing Contact</p>	<p>Bonnie Hale Department Assistant II</p> <p>555 Israel Road SW Tumwater, Washington 98501 Email: bhale@ci.tumwater.wa.us Phone: (360) 754-4180</p>
<p>Authorized Signatory</p>	<p>Dan Smith Director</p> <p>555 Israel Road SW Tumwater, Washington 98501 Email: desmith@ci.tumwater.wa.us Phone: (360) 754-4140</p>

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 Recipient Name: City of Tumwater

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
 Water Quality
 PO BOX 47600
 Olympia, WA 98504-7600

Physical Address: Water Quality
 300 Desmond Drive SE
 Lacey, WA 98503

Contacts

<p>Project Manager</p>	<p>Rachel Yonemura Project Specialist</p> <p>PO Box 47775 Olympia, Washington 98504-7775 Email: ryon461@ecy.wa.gov Phone: (360) 485-2474</p>
<p>Financial Manager</p>	<p>Xavier Gilbert Stormwater Project Financial Specialist</p> <p>PO Box 47600 Olympia, Washington 98504-7600 Email: XGIL461@ecy.wa.gov Phone: (564) 669-1942</p>

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Project Title: Nutrient Reduction Enhanced Maintenance Plan
Recipient Name: City of Tumwater

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology’s authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

City of Tumwater

By: _____

By: _____

Vincent McGowan, P.E. Date

Dan Smith Date

Water Quality
Program Manager

Director

Template Approved to Form by
Attorney General's Office

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Project Title: Nutrient Reduction Enhanced Maintenance Plan
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Debbie Sullivan

City of Tumwater Mayor

Date

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 Project Title: Nutrient Reduction Enhanced Maintenance Plan
 Recipient Name: City of Tumwater

SCOPE OF WORK

Task Number: 1 **Task Cost: \$5,000.00**

Task Title: Grant and Loan Administration

Task Description:

A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include but are not limited to: Maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and the EAGL (Ecology Administration of Grants and Loans) recipient closeout report (including photos, if applicable). If the RECIPIENT elects to use a contractor to complete project elements, the RECIPIENT shall retain responsibility for the oversight and management of this funding agreement.

B. The RECIPIENT shall keep documentation that demonstrates the project is in compliance with applicable procurement, contracting, and interlocal agreement requirements; permitting requirements, including application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items. This documentation shall be available upon request.

C. The RECIPIENT shall maintain effective communication with ECOLOGY and maintain up-to-date staff contact information in the EAGL system. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:

Properly managed and fully documented project that meets ECOLOGY's grant or loan administrative requirements.

Task Expected Outcome:

- * Timely and complete submittal of requests for reimbursement, quarterly progress reports, and Recipient Closeout Report.
- * Properly maintained project documentation.

Grant and Loan Administration

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges or changes in the project schedule. Submitted at least quarterly.	
1.2	Recipient Closeout Report (EAGL Form)	

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Project Title: Nutrient Reduction Enhanced Maintenance Plan
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SCOPE OF WORK

Task Number: 2 **Task Cost:** \$194,283.45

Task Title: Enhanced Maintenance Plan

Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

A. The RECIPIENT will develop and submit a draft and final Enhanced Maintenance Plan (EMP), including an alternatives analysis for ECOLOGY review and comment. Allow 45 calendar days for ECOLOGY review. At a minimum, this plan shall include the following elements:

1. Introduction/Overview

- a. Assessment of waterbodies that receive water from the RECIPIENT's MS4. Include information such as pollutants of concern, TMDLs, beneficial uses, etc. Estimate the amount of pollutants contributed to the system by the RECIPIENT's MS4 and water quality improvement goals for each waterbody.
- b. Explain why the RECIPIENT is choosing to explore enhanced maintenance as a strategy for pollutant reduction, as opposed to other means of improving water quality.
- c. Summarize the differences between the current program and the RECIPIENT's enhanced program.

2. Current Program Description

- a. Current program priorities, goals, and how the RECIPIENT determines where to employ existing maintenance resources.
- b. Estimate of the total cost to implement the existing program. Include labor, training, disposal, equipment maintenance and replacement costs. Note if any costs are currently unfunded.
- c. Any formal/informal method used to determine if the program is meeting the goals described above. If the program is routinely assessed by the RECIPIENT, describe how changes are made to the program.
- d. Current program implementation. Include location and frequency of current pollutant removal and source control efforts, staff training, equipment maintenance, material disposal process, data collection and tracking methods. Quantify the equipment needed to implement the current program.
- e. Estimate of the water quality benefits the program provides. Show the method used to arrive at this estimate. If insufficient data exists to provide an estimate, identify and describe these gaps.

3. Future Program Description

- a. Describe the methodology for an alternatives analysis, including:
 - i. The priorities/goals of the enhanced maintenance program.
 - ii. A brief description of the alternatives being considered.
 - iii. The criteria used to evaluate alternatives including cost and water quality benefit.
- b. Perform the alternatives analysis. Identify the preferred enhancement alternative(s) and justify selection.
 - i. Estimate the water quality benefits and show the method used to arrive at this estimate.
 - ii. Cost estimates should include labor, training, disposal, equipment acquisition, maintenance and replacement costs, and facility improvements. If the program proposes to purchase equipment, analyze rent or lease versus purchase alternatives to determine the most economical approach.

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c. Describe the program's implementation. Identify equipment and facilities needed to realize the program. Include location and frequency of enhanced maintenance efforts, data collection and analysis methods.

d. Explain how frequently the program will be assessed, and the process for adaptive management of the program to ensure the goals are achieved.

B. The RECIPIENT will respond to ECOLOGY comments on the draft EMP.

Task Goal Statement:

The RECIPIENT will complete the Enhanced Maintenance Plan and respond to ECOLOGY comments in a timely manner.

Task Expected Outcome:

Identification of the best alternative for optimizing water quality in Deschutes River, Percival Creek, Black Lake Ditch, and Budd Inlet and reducing total suspended solids (TSS), metals, and nutrients from roadways and lands within the basins.

Enhanced Maintenance Plan

Deliverables

Number	Description	Due Date
2.1	Signed and dated consultant contract, if procuring services for Enhanced Maintenance Plan development. The contract must include ECOLOGY's standard contract clauses and/or specification insert . Upload to EAGL and notify ECOLOGY.	
2.2	Draft Enhanced Maintenance Plan. Upload to EAGL and notify ECOLOGY.	
2.3	Responses to ECOLOGY Enhanced Maintenance Plan comments. Upload to EAGL and notify ECOLOGY.	
2.4	ECOLOGY Enhanced Maintenance Plan Acceptance Letter. Upload to EAGL and notify ECOLOGY.	
2.5	Final Enhanced Maintenance Plan. Upload to EAGL and notify ECOLOGY.	

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SCOPE OF WORK

Task Number: 3 **Task Cost:** \$716.55

Task Title: Project Close Out

Task Description:

The RECIPIENT must ensure the following items are completed and provide the associated deliverables to ECOLOGY. The RECIPIENT must approve all materials prior to submitting them to ECOLOGY for acceptance.

- A. The RECIPIENT will submit the Recipient Closeout Report (RCOR) in EAGL in accordance with Task 1.
- B. The RECIPIENT will submit an Outcomes Summary using the ECOLOGY template

Task Goal Statement:

The RECIPIENT will complete all close out submittals in a timely manner.

Task Expected Outcome:

Timely and complete submittal of Recipient Closeout Report and Outcomes Summary.

Project Close Out

Deliverables

Number	Description	Due Date
3.1	Outcomes Summary. Upload to EAGL and notify ECOLOGY.	

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Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SFAP	15.00 %	\$ 30,000.00	\$ 170,000.00	\$ 200,000.00
Total		\$ 30,000.00	\$ 170,000.00	\$ 200,000.00

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

WQC-2024—Water Quality Program Special Terms and Conditions (Update June 2023)

SECTION 1: DEFINITIONS

Unless otherwise provided, the following terms will have the respective meanings for all purposes of this agreement:

“Administration Charge” means a charge established in accordance with Chapter 90.50A RCW and Chapter 173-98 WAC, to be used to pay Ecology’s cost to administer the State Revolving Fund by placing a percentage of the interest earned in an Administrative Charge Account.

“Administrative Requirements” means the effective edition of ECOLOGY's Administrative Requirements for Recipients of Ecology Grants and Loans at the signing of this agreement.

“Annual Debt Service” for any calendar year means for any applicable bonds or loans including the loan, all interest plus all principal due on such bonds or loans in such year.

“Average Annual Debt Service” means, at the time of calculation, the sum of the Annual Debt Service for the remaining years of the loan to the last scheduled maturity of the loan divided by the number of those years.

“Accrued Interest” means the interest incurred as loan funds are disbursed.

“Acquisition” means the purchase or receipt of a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access/trail easements, covenants, water rights, leases, and mineral rights.

“Build American Buy American (BABA)” means a portion of the Infrastructure Investment and Jobs Act and establishes a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022.

“Bipartisan Infrastructure Law (BIL)” means funding to improve drinking water, wastewater and stormwater infrastructure.

“Centennial Clean Water Program” means the state program funded from various state sources.

“Contract Documents” means the contract between the RECIPIENT and the construction contractor for construction of the project.

“Construction Materials” means an article, material, or supply (other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; aggregate binding agents or additives; or non-permanent products) that is or consists primarily of, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), (including optic glass), lumber, and drywall.

“Cost Effective Analysis” means a comparison of the relative cost-efficiencies of two or more potential ways of solving a water

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quality problem as described in Chapter 173-98-730 WAC.

“Davis Bacon Prevailing Wage Act” means the federal law mandating on-site workers on public works projects be paid certain wages, benefits, and overtime (also known as “prevailing wage” on all government-funded construction, alteration, and repair projects.

“Defease” or “Defeasance” means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

“Effective Date” means the earliest date on which eligible costs may be incurred.

“Effective Interest Rate” means the total interest rate established by Ecology that includes the Administrative Charge.

“Estimated Loan Amount” means the initial amount of funds loaned to the RECIPIENT.

“Estimated Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Estimated Loan Amount and the estimated schedule for completion of the project.

“Equivalency” means the amount of State Revolving Fund (SRF) funding each funding cycle equivalent to the EPA grant to Ecology.

“Equivalency Project” means State Revolving Fund (SRF) funded project(s) designated by ECOLOGY to receive federal funding and meet additional federal requirements.

“Expiration Date” means the latest date on which eligible costs may be incurred.

“Final Accrued Interest” means the interest accrued beginning with the first disbursement of funds to the RECIPIENT through such time as the loan is officially closed out and a final loan repayment schedule is issued.

“Final Loan Amount” means all principal of and accrued interest on the loan from the Project Start Date through the Project Completion Date.

“Final Loan Repayment Schedule” means the schedule of loan repayments over the term of the loan based on the Final Loan Amount and the initiation of operation or completion date, whichever comes first.

“Forgivable Principal” means the portion of a loan that is not required to be paid back by the borrower.

“General Obligation Debt” means an obligation of the RECIPIENT secured by annual ad valorem taxes levied by the RECIPIENT and by the full faith, credit, and resources of the RECIPIENT.

“General Obligation Payable from Special Assessments Debt” means an obligation of the RECIPIENT secured by a valid general obligation of the Recipient payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all the taxable property within the boundaries of the RECIPIENT.

“Gross Revenue” means all of the earnings and revenues received by the RECIPIENT from the maintenance and operation of the Utility and all earnings from the investment of money on deposit in the Loan Fund, except (i) Utility Local Improvement Districts (ULID) Assessments, (ii) government grants, (iii) RECIPIENT taxes, (iv) principal proceeds of bonds and other obligations, or (v) earnings or proceeds (A) from any investments in a trust, Defeasance, or escrow fund created to Defease or refund Utility obligations or (B) in an obligation redemption fund or account other than the Loan Fund until commingled with other earnings and revenues of the Utility or (C) held in a special account for the purpose of paying a rebate to the United States Government under the Internal Revenue Code.

“Guidelines” means the ECOLOGY’s Funding Guidelines that that correlate to the State Fiscal Year in which the project is funded.

“Initiation of Operation Date” means the actual date the facility financed with proceeds of the loan begins to operate for its intended purpose. (For loans only)

“Iron and Steel Products” means products made primarily of iron or steel including but may not be limited to: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

“Loan” means the Washington State Water Pollution Control Revolving Fund Loan or Centennial Clean Water Fund (Centennial) Loan made pursuant to this loan agreement.

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“Loan Amount” means either an Estimated Loan Amount or a Final Loan Amount, as applicable.

“Loan Fund” means the special fund created by the RECIPIENT for the repayment of the principal of and interest on the loan.

“Loan Security” means the mechanism by which the RECIPIENT pledges to repay the loan.

“Loan Term” means the repayment period of the loan.

“Maintenance and Operation Expense” means all reasonable expenses incurred by the RECIPIENT in causing the Utility to be operated and maintained in good repair, working order, and condition including payments to other parties, but will not include any depreciation or RECIPIENT levied taxes or payments to the RECIPIENT in lieu of taxes.

“Manufactured Products” means, items and construction materials composed in whole or in part of non-ferrous metals such as aluminum plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

“Produced in the United States” means for iron and steel products, that all manufacturing processes, from the initial melting state through the application of coatings, occurred in the United States.

“Net Revenue” means the Gross Revenue less the Maintenance and Operation Expense.

“Original Engineer’s Estimate” means the engineer’s estimate of construction costs included with bid documents.

“Prevailing Wage” means hourly wage, usual benefits, and overtime paid in the largest city in each county, to the majority of workers, laborers, and mechanics performing the same work. The rate is established separately for each county.

“Principal and Interest Account” means, for a loan that constitutes Revenue-Secured Debt, the account created in the loan fund to be first used to repay the principal of and interest on the loan.

“Project” means the project described in this agreement.

“Project Completion Date” means the date specified in the agreement on which the Scope of Work will be fully completed and is the last day eligible costs can be incurred. This term is only used in loan agreements.

“Project Schedule” means that schedule for the project specified in the agreement.

“Revenue-Secured Debt” means an obligation of the RECIPIENT secured by a pledge of the revenue of a utility and one not a general obligation of the RECIPIENT.

“Reserve Account” means, for a loan that constitutes a Revenue Secured Debt and if specifically identified as a term and condition of the funding agreement, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.

“Risk-Based Determination” means an approach to sub-recipient monitoring and oversight based on risk factors associated to a RECIPIENT or project.

“Scope of Work” means the tasks and activities constituting the project.

“Section 319” means the section of the Clean Water Act that provides funding to address nonpoint sources of water pollution.

“Senior Lien Obligations” means all revenue bonds and other obligations of the RECIPIENT outstanding on the date of execution of this loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this loan agreement having a claim or lien on the Gross Revenue of the Utility prior and superior to the claim or lien of the loan, subject only to Maintenance and Operation Expense.

“State Water Pollution Control Revolving Fund (Revolving Fund)” means the water pollution control revolving fund established by Chapter 90.50A.020 RCW.

“Termination Date” means the effective date of ECOLOGY’s termination of the agreement.

“Termination Payment Date” means the date on which the RECIPIENT is required to repay to ECOLOGY any outstanding balance of the loan and all accrued interest.

“Total Eligible Project Cost” means the sum of all costs associated with a water quality project that have been determined to be eligible for ECOLOGY grant or loan funding, including any required recipient match.

“Total Project Cost” means the sum of all costs associated with a water quality project, including costs that are not eligible for ECOLOGY grant or loan funding.

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“Unique Entity Identity Identifier (UEI)” means a 12-character alphanumeric ID assigned by SAM.gov. to an entity doing business with or receiving funds from the federal government. This number replaces the DUNS number.

“ULID” means any utility local improvement district of the RECIPIENT created for the acquisition or construction of additions to and extensions and betterments of the Utility.

“ULID Assessments” means all assessments levied and collected in any ULID. Such assessments are pledged to be paid into the Loan Fund (less any prepaid assessments permitted by law to be paid into a construction fund or account). ULID Assessments will include principal installments and any interest or penalties which may be due.

“Utility” means the sewer system, stormwater system, or the combined water and sewer system of the RECIPIENT, the Net Revenue of which is pledged to pay and secure the loan.

SECTION 2: CONDITIONS APPLY TO ALL RECIPIENTS OF WATER QUALITY COMBINED FINANCIAL ASSISTANCE FUNDING.

The Water Quality Financial Assistance Funding Guidelines are included in this agreement by reference and are available on ECOLOGY’s Water Quality Program website.

A. Accounting Standards: The RECIPIENT shall maintain accurate records and accounts for the project (PROJECT Records) in accordance with Generally Accepted Accounting Principles (GAAP) as issued by the Governmental Accounting Standards Board (GASB), including standards related to the reporting of infrastructure assets or in accordance with the standards in Chapter 43.09.200 RCW “Local Government Accounting – Uniform System of Accounting.”

B. Architectural and Engineering Services: The RECIPIENT certifies by signing this agreement that the requirements of Chapter 39.80 RCW, “Contracts for Architectural and Engineering Services,” have been, or shall be, met in procuring qualified architectural/engineering services. The RECIPIENT shall identify and separate eligible and ineligible costs in the final architectural/engineering services contract and submit a copy of the contract to ECOLOGY.

C. Acquisition: The following provisions shall be in force only if the project described in this agreement is an acquisition project:

- a. Evidence of Land Value and Title. The RECIPIENT shall submit documentation of the cost of the property rights and the type of ownership interest that has been acquired.
- b. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.
- c. Conveyance of Rights to the State of Washington. Upon purchase of real property rights (both fee simple and lesser interests), the RECIPIENT shall execute the document necessary to convey certain rights and responsibilities to ECOLOGY, on behalf of the State of Washington. The documents required will depend on the project type, the real property rights being acquired, and whether or not those rights are being acquired in perpetuity (see options below). The RECIPIENT shall use language provided by ECOLOGY, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to ECOLOGY.

Documentation Options:

1. Deed of Right. The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. RECIPIENTS shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the RECIPIENT has acquired a perpetual easement for public purposes. The RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the deed of right.
2. Assignment of Rights. The Assignment of Rights document transfers certain rights such as access and enforcement to ECOLOGY. The RECIPIENT shall use this document when an easement or lease is being acquired for water quality and habitat conservation. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
3. Easements and Leases. The RECIPIENT may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language

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will depend on the situation; therefore, the RECIPIENT must obtain ECOLOGY approval on the draft language prior to executing the easement or lease.

d. Real Property Acquisition and Relocation Assistance.

1. Federal Acquisition Policies. See Section 4 of this agreement for requirements specific to Section 319 and SRF funded projects.
2. State Acquisition Policies. When state funds are part of this agreement, the RECIPIENT agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26 RCW, and Chapter 468-100 WAC.
3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the RECIPIENT agrees to provide any housing and relocation assistance required.

e. Hazardous Substances.

1. Certification. The RECIPIENT shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances, as defined in RCW 70.105D.020(10), and certify:
 - i. No hazardous substances were found on the site, or
 - ii. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site is deemed “clean.”
2. Responsibility. Nothing in this provision alters the RECIPIENT's duties and liabilities regarding hazardous substances as set forth in RCW 70.105D.
3. Hold Harmless. The RECIPIENT will defend, protect and hold harmless ECOLOGY and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property the RECIPIENT is acquiring.

f. Restriction On Conversion Of Real Property And/Or Facilities To Other Uses

The RECIPIENT shall not at any time convert any real property (including any interest therein) or facility acquired, developed, maintained, renovated, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of ECOLOGY. For acquisition projects that are term limited, such as one involving a lease or a term-limited restoration, renovation or development project or easement, this restriction on conversion shall apply only for the length of the term, unless otherwise provided in written documents or required by applicable state or federal law. In such case, the restriction applies to such projects for the length of the term specified by the lease, easement, deed, or landowner agreement.

D. Best Management Practices (BMP) Implementation: If the RECIPIENT installs BMPs that are not approved by ECOLOGY prior to installation, the RECIPIENT assumes the risk that part or all of the reimbursement for that activity may be delayed or ineligible. For more details regarding BMP Implementation, please reference the Water Quality Financial Assistance Funding Guidelines available on ECOLOGY's Water Quality Program funding website.

E. Electronic Fund Transfers: Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process or electronic fund transfers, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

F. Equipment Purchase: Equipment purchases over \$5,000 and not included in the scope of work or the Ecology approved construction plans and specifications, must be pre-approved by ECOLOGY's project manager before purchase. All equipment purchases over \$5,000 and not included in a contract for work being completed on the funded project, must also be reported on the Equipment Purchase Report in EAGL.

G. Funding Recognition: The RECIPIENT must inform the public about any ECOLOGY or EPA funding participation in this

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project through the use of project signs, acknowledgement in published materials, reports, the news media, websites, or other public announcements. Projects addressing site-specific locations must utilize appropriately sized and weather-resistant signs. Contact your Ecology Project Team to determine the appropriate recognition for your project.

H. Growth Management Planning: The RECIPIENT certifies by signing this agreement that it is in compliance with the requirements of Chapter 36.70A RCW, “Growth Management Planning by Selected Counties and Cities.” If the status of compliance changes, either through RECIPIENT or legislative action, the RECIPIENT shall notify ECOLOGY in writing of this change within 30 days.

I. Interlocal: The RECIPIENT certifies by signing this agreement that all negotiated interlocal agreements necessary for the project are, or shall be, consistent with the terms of this agreement and Chapter 39.34 RCW, “Interlocal Cooperation Act.” The RECIPIENT shall submit a copy of each interlocal agreement necessary for the project to ECOLOGY upon request.

J. Lobbying and Litigation: Costs incurred for the purposes of lobbying or litigation are not eligible for funding under this agreement.

K. Post Project Assessment Survey: The RECIPIENT agrees to participate in a brief survey regarding the key project results or water quality project outcomes and the status of long-term environmental results or goals from the project approximately three years after project completion. A representative from ECOLOGY’s Water Quality Program may contact the RECIPIENT to request this data. ECOLOGY may also conduct site interviews and inspections, and may otherwise evaluate the project, as part of this assessment.

L. Project Status Evaluation: ECOLOGY may evaluate the status at any time. ECOLOGY’s Project Manager and Financial Manager will meet with the RECIPIENT to review spending trends, completion of outcome measures, and overall project administration and performance. If the RECIPIENT fails to make satisfactory progress toward achieving project outcomes, ECOLOGY may change the scope of work, reduce grant funds, or increase oversight measures.

M. Technical Assistance: Technical assistance for agriculture activities provided under the terms of this agreement shall be consistent with the current U.S. Natural Resource Conservation Service (“NRCS”) Field Office Technical Guide for Washington State and specific requirements outlined in the Water Quality Funding Guidelines. Technical assistance, proposed practices, or project designs that do not meet these standards may be eligible if approved in writing by ECOLOGY.

SECTION 3: CONDITIONS APPLY TO SECTION 319 AND CENTENNIAL CLEAN WATER FUNDED PROJECTS BEING USED TO MATCH SECTION 319 FUNDS.

The RECIPIENT must submit the following documents to ECOLOGY before this agreement is signed by ECOLOGY:

1. Federal Funding Accountability and Transparency Act (FFATA) Form is available on the Water Quality Program website and must be completed and submitted to Ecology. (This form is used for Section 319 (federal) funds only)
2. “Section 319 Initial Data Reporting” form must be completed in EAGL.

A. Data Reporting: The RECIPIENT must complete the “Section 319 Initial Data Reporting” form in EAGL before this agreement can be signed by Ecology. This form is used to gather general information about the project for EPA.

B. Funding Recognition and Outreach: In addition to Section 2.F. of these Special Terms and Conditions, the RECIPIENT shall provide signage that informs the public that the project is funded by EPA. The signage shall contain the EPA logo and follow usage requirements available at <http://www2.epa.gov/stylebook/using-epa-seal-and-logo>. To obtain the appropriate EPA logo or seal graphic file, the RECIPIENT may send a request to their Ecology Financial Manager.

To increase public awareness of projects serving communities where English is not the predominant language, RECIPIENTS are encouraged to provide their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable. (Applies to both the Section 319 funded projects and the Centennial match projects)

The RECIPIENT shall use the following paragraph in all reports, documents, and signage developed under this agreement: (Applies to Section 319 funded projects only)

“This project has been funded wholly or in part by the United States Environmental Protection Agency under an assistance agreement to the Washington State Department of Ecology. The contents of this document do not necessarily reflect the views

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and policies of the Environmental Protection Agency, nor does the mention of trade names or commercial products constitute endorsement or recommendation for use.”

C. Load Reduction Reporting: The RECIPIENT shall complete the “Section 319 Annual Load Reduction Reporting” form in EAGL by January 15 of each year and at project close-out. ECOLOGY may hold reimbursements until the RECIPIENT has completed the form. This form is used to gather information on best management practices (BMPs) installed and associated pollutant load reductions that were funded as a part of this project.

D. Time Extension: The RECIPIENT may request a one-time extension for up to 12 months. However, the time extension cannot exceed the time limitation established in EPA’s assistance agreement. In the event a time extension is requested and approved by ECOLOGY, the RECIPIENT must complete all eligible work performed under this agreement by the expiration date. (For Section 319 funded projects only)

SECTION 4: CONDITIONS APPLY TO ALL FEDERAL FUNDING AGREEMENTS, INCLUDING SECTION 319, State Revolving Fund (SRF) Equivalency Projects, and SEWER OVERFLOW AND STORMWATER REUSE MUNICIPAL GRANT (OSG)

A. Acquisitions: RECIPIENTS shall comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.

B. Audit Requirements: In accordance with 2 CFR 200.501(a), the RECIPIENT agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year. The RECIPIENT must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse’s Internet Data Entry System available at: <https://facweb.census.gov/>.

C. Archaeological Resources and Historic Properties (Section 106): This requires completion of the Ecology Cultural Resources Review Form, coordination with Ecology Cultural Resources staff, and receipt of the Ecology Final Determination prior to any property acquisition and above and below ground disturbing activities.

D. Architectural and Engineering Services Procurement: The RECIPIENT must procure architectural and engineering services in accordance with the federal requirements in Chapter 11 of Title 40, U.S.C. (see <https://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/chapter11&edition=prelim>).

E Build America, Buy America (BABA – Pub. L. No. 117-58, 70901-52) (Federally funded SRF Equivalency projects only): The RECIPIENT identified by ECOLOGY as receiving federal equivalency funding agrees to comply with all federal requirements applicable to the assistance received (including those imposed by the Infrastructure Investment and Jobs Act (“IIJA”/BIL), Public Law No. 117-58) which the RECIPIENT understands includes, but is not limited to, the following requirements: that all the iron and steel, manufactured products, and construction materials used in the Project are to be produced in the United States (“Build America, Buy America Requirements”) unless (i) the RECIPIENT has requested and obtained a waiver from the cognizant Agency pertaining to the Project or the Project is otherwise covered by a general applicability waiver; or (ii) all of the contributing Agencies have otherwise advised the RECIPIENT in writing that the Build America, Buy America Requirements are not applicable to the project.

RECIPIENT shall comply with all record keeping and reporting requirements under all applicable legal authorities, including any reports required by the funding authority (such as EPA and/or a state), such as performance indicators of program deliverables, information on costs and project progress. The RECIPIENT identified by ECOLOGY as receiving federal equivalency funding, understands that (i) each contract and subcontract related to the project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the applicable legal requirements and this Agreement may result in a default hereunder that results in a repayment of the assistance agreement in advance of termination and/or repayment of assistance, and/or other remedial actions.

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EPA has granted an adjustment period waiver of the requirements of Section 70914(a) of the BIL, pursuant to Section 70914(b)(1) (public interest waiver), for eligible projects financed by SRF projects that have initiated project design planning prior to May 14, 2022, the statutory effective date of the BABA requirements. This action permits the use of non-domestic manufactured products and construction materials in such projects funded by a Clean Water or Drinking Water SRF that may otherwise be prohibited under the BABA requirements of Section 70914. This action permits the use of non-domestic manufactured products and construction materials in such projects funded by a Clean Water or Drinking Water SRF that may otherwise be prohibited under the BABA requirements of Section 70914. Sections 70917(a) and (b) of BIL provide a savings provision for existing statutory requirements that meet or exceed BABA requirements. The statutory American Iron and Steel (AIS) requirements of Clean Water Act (CWA) Section 608 and Safe Drinking Water Act (SDWA) Section 1452(a)(4) has previously applied to SRF projects and will continue to do so as part of BABA requirements.

Where manufactured products used in the project are required to be produced in the United States, manufactured product shall mean manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation. The manufactured products included cover the majority of potential water infrastructure products, including complex products made up of a variety of material types and components. For water infrastructure projects, commonly manufactured products would include, but not be limited to, pumps, motors, blowers, aerators, generators, instrumentation and control systems, gauges, meters, measurement equipment, treatment equipment, dewatering equipment, actuators, and many other mechanical and electrical items.

F. Disadvantaged Business Enterprise (DBE): General Compliance, 40 CFR, Part 33. The RECIPIENT agrees to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (MBE/WBE) 40CFR, Part 33 in procurement under this agreement.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C. The RECIPIENT agrees to make the following good faith efforts whenever procuring construction, equipment, services, and supplies under this agreement. Records documenting compliance with the following six good faith efforts shall be retained:

- 1) Ensure Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government RECIPIENTS, this shall include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources.
- 2) Make information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Consider, in the contracting process, whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State, and Local Government RECIPIENTS, this shall include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Use services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime contractor awards subcontracts, require the prime contractor to take the five good faith efforts steps in paragraphs 1 through 5 above.

The RECIPIENT agrees to submit ECOLOGY's Contractor Participation Report Form D with each payment request. Contract Administration Provisions, 40 CFR, Section 33.302. The RECIPIENT agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

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Non-discrimination Provision. The RECIPIENT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The RECIPIENT shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the RECIPIENT to carry out these requirements is a material breach of this agreement which may result in the termination of this contract or other legally available remedies.

This does not preclude the RECIPIENT from enacting broader nondiscrimination protections.

The RECIPIENT shall comply with all federal and state nondiscrimination laws, including but not limited to, Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this agreement may be rescinded, canceled, or terminated in whole or in part and the RECIPIENT may be declared ineligible for further funding from ECOLOGY. The RECIPIENT shall, however, be given a reasonable time in which to cure this noncompliance.

The RECIPIENT shall include the following terms and conditions in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services pertaining to this agreement.

“The Contractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor will carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract or other legally available remedies.”

Bidder List, 40 CFR, Section 33.501(b) and (c). The RECIPIENT agrees to create and maintain a bidders list. The bidders list shall include the following information for all firms that bid or quote on prime contracts, or bid or quote subcontracts, including both MBE/WBEs and non-MBE/WBEs.

1. Entity's name with point of contact
2. Entity's mailing address, telephone number, and e-mail address
3. The procurement on which the entity bid or quoted, and when
4. Entity's status as an MBE/WBE or non-MBE/WBE

G. Electronic and information Technology (EIT) Accessibility: RECIPIENTS shall ensure that loan funds provided under this agreement for costs in the development or purchase of EIT systems or products provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology as per Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7.

Systems or products funded under this agreement must be designed to meet the diverse needs of users without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology.

H. Federal Funding Accountability and Transparency Act (FFATA) Form, available on the Water Quality Program website.

I. Hotel-Motel Fire Safety Act: The RECIPIENT shall ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (15 USC 2225a, PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act. Pursuant to 15 USC 2225a.

J. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a

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character similar in the locality as determined by the Secretary of Labor.

The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and subcontracts more than \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act and make such records available for review upon request. Wage determinations and instructions for their use can be found at <https://sam.gov/>.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW and make such records available for review upon request. Where conflicts arise between the State prevailing wage rates and Davis-Bacon Act prevailing wage requirements the more stringent requirement shall govern. Washington State prevailing wage rates can be found at <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

K. Trafficking in Persons: The RECIPIENT and RECIPIENT employees that are private entities shall not engage in forms of trafficking in persons. This includes, but is not limited to, the procurement of a commercial sex act or forced labor. The RECIPIENT shall notify ECOLOGY immediately of any information received from any source alleging a violation under this provision.

L. Unique Entity Identity Identifier (UEI): The RECIPIENT agrees to register with and make their registration public in the System for Award Management (SAM.gov). The RECIPIENT will be assigned a UEI and agree to include their UEI Number under their organization’s information in EAGL. The UEI number must be entered into EAGL before a funding agreement is signed.

SECTION 5: CONDITIONS APPLY TO STATE REVOLVING FUND (SRF) LOAN FUNDED PROJECTS ONLY.

The RECIPIENT must submit the following documents/forms to ECOLOGY before this agreement is signed by ECOLOGY:

1. Financial Capability Assessment Documentation (upon request)
2. Opinion of RECIPIENT’s Legal Council – Form available on the Ecology website must be completed and uploaded to the General Uploads form in EAGL.
3. Authorizing Ordinance or Resolution – Must be uploaded to the General Uploads form in EAGL.
4. Federal Funding Accountability and Transparency Act (FFATA) Form (Required for all federally funded SRF Equivalency projects – Form available on the Ecology website must be completed and uploaded to the General Uploads form in EAGL.
5. CWSRF Federal Reporting Information form – Must be completed in EAGL.
6. Fiscal Sustainability Plan (Asset Management) Certification Form (Only required if the project includes construction of a wastewater or stormwater facility construction) – Must be completed in EAGL.
7. Cost and Effectiveness Analysis Certification Form (Required for all projects receiving SRF Loan funding) – Must be completed in EAGL.
8. State Environmental Review Process (SERP) Documentation (Required for treatment works projects only) – Must be uploaded to the Environmental and Cultural Review form in EAGL.

A. Alteration and Eligibility of Project: During the term of this agreement, the RECIPIENT (1) shall not materially alter the design or structural character of the project without the prior written approval of ECOLOGY and (2) shall take no action which would adversely affect the eligibility of the project as defined by applicable funding program rules and state statutes, or which would cause a violation of any covenant, condition, or provision herein.

B. American Iron and Steel (Buy American – P.L 113-76, Consolidated Appropriations Act 2014, Section 436): This loan provision applies to projects for the construction, alteration, maintenance, or repair of a “treatment works” as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.) The RECIPIENT shall ensure that all iron and steel products

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used in the project are produced in the United States. Iron and Steel products means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials. The RECIPIENT may request waiver from this requirement from the Administrator of the Environmental Protection Agency. The RECIPIENT must coordinate all waiver requests through ECOLOGY. This provision does not apply if the engineering plans and specifications for the project were approved by ECOLOGY prior to January 17, 2014. ECOLOGY reserves the right to request documentation of RECIPIENT'S compliance with this provision.

C. Authority of RECIPIENT: This agreement is authorized by the Constitution and laws of the state of Washington, including the RECIPIENT's authority, and by the RECIPIENT pursuant to the authorizing ordinance or resolution. The RECIPIENT shall submit a copy of the authorizing ordinance or resolution to the ECOLOGY Financial Manager before this agreement shall be signed by ECOLOGY.

D. Equivalency Projects: ECOLOGY designated equivalency project and alternative designated equivalency project RECIPIENTS agree to accept federal funds and the federal requirements that accompany the funds. This includes all the requirements in Section 4 and this Section.

E. Fiscal Sustainability Plan Certification: The RECIPIENT shall submit a completed Fiscal Sustainability Plan Certification before this agreement is signed by ECOLOGY. The Fiscal Sustainability Plan Certification is available from the ECOLOGY Financial Manager or on the Water Quality Program website.

F. Funding Recognition and Outreach: The RECIPIENT agrees to comply with the EPA SRF Signage Guidance to enhance public awareness of EPA assistance agreements nationwide. Signage guidance can be found at: <https://ecology.wa.gov/About-us/How-we-operate/Grants-loans/Find-a-grant-or-loan/Water-Quality-grants-and-loans/Facility-project-resources>.

G. Insurance: The RECIPIENT shall at all times carry fire and extended insurance coverage, public liability, and property damage, and such other forms of insurance with responsible insurers and policies payable to the RECIPIENT on such of the buildings, equipment, works, plants, facilities, and properties of the Utility as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, and against such claims for damages as are ordinarily carried by municipal or privately-owned utilities engaged in the operation of like systems, or it shall self-insure or participate in an insurance pool or pools with reserves adequate, in the reasonable judgment of the RECIPIENT, to protect it against loss.

H. Litigation Authority: No litigation is now pending, or to the RECIPIENT's knowledge, threatened, seeking to restrain, or enjoin:

- (i) the execution of this agreement; or
- (ii) the fixing or collection of the revenues, rates, and charges or the formation of the ULID and the levy and collection of ULID Assessments therein pledged to pay the principal of and interest on the loan (for revenue secured lien obligations); or
- (iii) the levy and collection of the taxes pledged to pay the principal of and interest on the loan (for general obligation-secured loans and general obligation payable from special-assessment-secured loans); or
- (iv) in any manner questioning the proceedings and authority under which the agreement, the loan, or the project are authorized. Neither the corporate existence, or boundaries of the RECIPIENT nor the title of its present officers to their respective offices is being contested. No authority or proceeding for the execution of this agreement has been repealed, revoked, or rescinded.

I. Loan Interest Rate and Terms: This loan agreement shall remain in effect until the date of final repayment of the loan, unless terminated earlier according to the provisions herein.

When the Project Completion Date has occurred, ECOLOGY and the RECIPIENT shall execute an amendment to this loan agreement which details the final loan amount (Final Loan Amount), and ECOLOGY shall prepare a final loan repayment schedule. The Final Loan Amount shall be the combined total of actual disbursements made on the loan and all accrued interest to the computation date.

The Estimated Loan Amount and the Final Loan Amount (in either case, as applicable, a "Loan Amount") shall bear interest

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based on the interest rate identified in this agreement as the “Effective Interest Rate,” per annum, calculated on the basis of a 365-day year. Interest on the Estimated Loan Amount shall accrue from and be compounded monthly based on the date that each payment is mailed to the RECIPIENT. The Final Loan Amount shall be repaid in equal installments, semiannually, over the term of this loan “Loan Term” as outlined in this agreement.

J. Loan Repayment:

Sources of Loan Repayment

1. Nature of RECIPIENT's Obligation. The obligation of the RECIPIENT to repay the loan from the sources identified below and to perform and observe all other agreements and obligations on its part, contained herein, shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind. To secure the repayment of the loan from ECOLOGY, the RECIPIENT agrees to comply with all the covenants, agreements, and attachments contained herein.
2. For General Obligation. This loan is a General Obligation Debt of the RECIPIENT.
3. For General Obligation Payable from Special Assessments. This loan is a General Obligation Debt of the RECIPIENT payable from special assessments to be imposed within the constitutional and statutory tax limitations provided by law without a vote of the electors of the RECIPIENT on all the taxable property within the boundaries of the RECIPIENT.
4. For Revenue-Secured: Lien Position. This loan is a Revenue-Secured Debt of the RECIPIENT’s Utility. This loan shall constitute a lien and charge upon the Net Revenue junior and subordinate to the lien and charge upon such Net Revenue of any Senior Lien Obligations.

In addition, if this loan is also secured by Utility Local Improvement Districts (ULID) Assessments, this loan shall constitute a lien upon ULID Assessments in the ULID prior and superior to any other charges whatsoever.

5. Other Sources of Repayment. The RECIPIENT may repay any portion of the loan from any funds legally available to it.
6. Defeasance of the Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT shall not be entitled to, and shall not affect, an economic Defeasance of the loan. The RECIPIENT shall not advance refund the loan.

If the RECIPIENT defeases or advance refunds the loan, it shall be required to use the proceeds thereof immediately upon their receipt, together with other available RECIPIENT funds, to repay both of the following:

- (i) The Loan Amount with interest
- (ii) Any other obligations of the RECIPIENT to ECOLOGY under this agreement, unless in its sole discretion ECOLOGY finds that repayment from those additional sources would not be in the public interest.

Failure to repay the Loan Amount plus interest within the time specified in ECOLOGY’s notice to make such repayment shall incur Late Charges and shall be treated as a Loan Default.

7. Refinancing or Early Repayment of the Project. So long as ECOLOGY shall hold this loan, the RECIPIENT shall give ECOLOGY thirty days written notice if the RECIPIENT intends to refinance or make early repayment of the loan.

Method and Conditions on Repayments

1. Semiannual Payments. Notwithstanding any other provision of this agreement, the first semiannual payment of principal and interest on this loan shall be due and payable no later than one year after the project completion date or initiation of operation date, whichever comes first.

Thereafter, equal payments shall be due every six months.

If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

Payments shall be mailed to:

Department of Ecology
 Cashiering Unit
 P.O. Box 47611
 Olympia WA 98504-7611

In lieu of mailing payments, electronic fund transfers can be arranged by working with ECOLOGY’s Financial Manager.

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No change to the amount of the semiannual principal and interest payments shall be made without a mutually signed amendment to this agreement. The RECIPIENT shall continue to make semiannual payments based on this agreement until the amendment is effective, at which time the RECIPIENT's payments shall be made pursuant to the amended agreement.

2. Late Charges. If any amount of the Final Loan Amount or any other amount owed to ECOLOGY pursuant to this agreement remains unpaid after it becomes due and payable, ECOLOGY may assess a late charge. The late charge shall be one percent per month on the past due amount starting on the date the debt becomes past due and until it is paid in full.
3. Repayment Limitations. Repayment of the loan is subject to the following additional limitations, among others: those on defeasance, refinancing and advance refunding, termination, and default and recovery of payments.
4. Prepayment of Loan. So long as ECOLOGY shall hold this loan, the RECIPIENT may prepay the entire unpaid principal balance of and accrued interest on the loan or any portion of the remaining unpaid principal balance of the Loan Amount. Any prepayments on the loan shall be applied first to any accrued interest due and then to the outstanding principal balance of the Loan Amount. If the RECIPIENT elects to prepay the entire remaining unpaid balance and accrued interest, the RECIPIENT shall first contact ECOLOGY's Revenue/Receivable Manager of the Fiscal Office.

K. Loan Security

Due Regard: For loans secured with a Revenue Obligation: The RECIPIENT shall exercise due regard for Maintenance and Operation Expense and the debt service requirements of the Senior Lien Obligations and any other outstanding obligations pledging the Gross Revenue of the Utility, and it has not obligated itself to set aside and pay into the loan Fund a greater amount of the Gross Revenue of the Utility than, in its judgment, shall be available over and above such Maintenance and Operation Expense and those debt service requirements.

Where collecting adequate gross utility revenue requires connecting additional users, the RECIPIENT shall require the sewer system connections necessary to meet debt obligations and expected operation and maintenance expenses.

Levy and Collection of Taxes (if used to secure the repayment of the loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors on all of the taxable property within the boundaries of the RECIPIENT in an amount sufficient, together with other money legally available and to be used therefore, to pay when due the principal of and interest on the loan, and the full faith, credit and resources of the RECIPIENT are pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of that principal and interest.

Not an Excess Indebtedness: For loans secured with a general obligation pledge or a general obligation pledge on special assessments: The RECIPIENT agrees that this agreement and the loan to be made do not create an indebtedness of the RECIPIENT in excess of any constitutional or statutory limitations.

Pledge of Net Revenue and ULID Assessments in the ULID (if used to secure the repayment of this loan): For so long as the loan is outstanding, the RECIPIENT irrevocably pledges the Net Revenue of the Utility, including applicable ULID Assessments in the ULID, to pay when due the principal of and interest on the loan.

Utility Local Improvement District (ULID) Assessment Collection (if used to secure the repayment of the loan): All ULID Assessments in the ULID shall be paid into the Loan Fund and used to pay the principal of and interest on the loan.

L. Maintenance and Operation of a Funded Utility: The RECIPIENT shall, at all times, maintain and keep the funded Utility in good repair, working order, and condition.

M. Opinion of RECIPIENT's Legal Counsel: The RECIPIENT must submit an "Opinion of Legal Counsel to the RECIPIENT" to ECOLOGY before this agreement will be signed. ECOLOGY will provide the form.

N. Prevailing Wage (Davis-Bacon Act): The RECIPIENT agrees, by signing this agreement, to comply with the Davis-Bacon Act prevailing wage requirements. This applies to the construction, alteration, and repair of treatment works carried out, in whole or in part, with assistance made available by the State Revolving Fund as authorized by Section 513, title VI of the Federal Water Pollution Control Act (33 U.S.C. 1372). Laborers and mechanics employed by contractors and subcontractors shall be paid wages not less often than once a week and at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

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The RECIPIENT shall obtain the wage determination for the area in which the project is located prior to issuing requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitation). These wage determinations shall be incorporated into solicitations and any subsequent contracts. The RECIPIENT shall ensure that the required EPA contract language regarding Davis-Bacon Wages is in all contracts and subcontracts more than \$2,000. The RECIPIENT shall maintain records sufficient to document compliance with the Davis-Bacon Act and make such records available for review upon request.

The RECIPIENT also agrees, by signing this agreement, to comply with State Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable. Compliance may include the determination whether the project involves “public work” and inclusion of the applicable prevailing wage rates in the bid specifications and contracts. The RECIPIENT agrees to maintain records sufficient to evidence compliance with Chapter 39.12 RCW and make such records available for review upon request.

O. Progress Reports: RECIPIENTS funded with State Revolving Fund Loan or Forgivable Principal shall include the following verification statement in the “General Comments” text box of each progress report.

“We verified that we are in compliance with all the requirements as outlined in our funding agreement(s) with the Department of Ecology. This includes but is not limited to:

- The Davis-Bacon Act, 29 CFR , prevailing wage requirements, certified weekly payroll, etc.
- The Disadvantaged Business Enterprise (DBE), 40 CFR, Part 33
- The American Iron and Steel Act (Buy American)
- The Build America Buy America Act (BABA) (equivalency projects only)”

P. Representations and Warranties: The RECIPIENT represents and warrants to ECOLOGY as follows:

Application: Material Information. All information and materials submitted by the RECIPIENT to ECOLOGY in connection with its loan application were, when made, and are, as of the date the RECIPIENT signs this agreement, true and correct. There is no material adverse information relating to the RECIPIENT, the project, the loan, or this agreement known to the RECIPIENT, which has not been disclosed in writing to ECOLOGY.

Existence; Authority. It is a duly formed and legally existing municipal corporation or political subdivision of the state of Washington or a federally recognized Indian Tribe. It has full corporate power and authority to execute, deliver, and perform all of its obligations under this agreement and to undertake the project identified herein.

Certification. Each payment request shall constitute a certification by the RECIPIENT to the effect that all representations and warranties made in this loan agreement remain true as of the date of the request and that no adverse developments, affecting the financial condition of the RECIPIENT or its ability to complete the project or to repay the principal of or interest on the loan, have occurred since the date of this loan agreement. Any changes in the RECIPIENT’s financial condition shall be disclosed in writing to ECOLOGY by the RECIPIENT in its request for payment.

Q. Sale or Disposition of Funded Utility: The RECIPIENT shall not sell, transfer, or otherwise dispose of any of the works, plant, properties, facilities, or other part of the funded Utility or any real or personal property comprising a part of the funded Utility unless:

1. The facilities or property transferred are not material to the operation of the funded Utility, or have become unserviceable, inadequate, obsolete, or unfit to be used in the operation of the funded Utility or are no longer necessary, material, or useful to the operation of the funded Utility; or
2. The aggregate depreciated cost value of the facilities or property being transferred in any fiscal year comprises no more than three percent of the total assets of the funded Utility; or
3. The RECIPIENT receives from the transferee an amount equal to an amount which will be in the same proportion to the net amount of Senior Lien Obligations and this LOAN then outstanding (defined as the total amount outstanding less the amount of cash and investments in the bond and loan funds securing such debt) as the Gross Revenue of the funded Utility from the portion of the funded Utility sold or disposed of for the preceding year bears to the total Gross Revenue for that period.
4. Expressed written agreement by the ECOLOGY.

The proceeds of any transfer under this paragraph must be used (1) to redeem promptly, or irrevocably set aside for the

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redemption of, Senior Lien Obligations and to redeem promptly the loan, and (2) to provide for part of the cost of additions to and betterments and extensions of the Utility.

R. Sewer-Use Ordinance or Resolution for Funded Wastewater Facility Projects: If not already in existence, the RECIPIENT shall adopt and shall enforce a sewer-use ordinance or resolution. Such ordinance or resolution shall be submitted to ECOLOGY upon request.

The sewer use ordinance must include provisions to:

- 1) Prohibit the introduction of toxic or hazardous wastes into the RECIPIENT's sewer system.
- 2) Prohibit inflow of stormwater into separated sewer systems.
- 3) Require that new sewers and connections be properly designed and constructed.

S. Termination and Default:

Termination and Default Events

1. For Insufficient ECOLOGY or RECIPIENT Funds. ECOLOGY may terminate this loan agreement for insufficient ECOLOGY or RECIPIENT funds.
2. For Failure to Commence Work. ECOLOGY may terminate this loan agreement for failure of the RECIPIENT to commence project work.
3. Past Due Payments. The RECIPIENT shall be in default of its obligations under this loan agreement when any loan repayment becomes 60 days past due.
4. Other Cause. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance in full by the RECIPIENT of all its obligations under this loan agreement. The RECIPIENT shall be in default of its obligations under this loan agreement if, in the opinion of ECOLOGY, the RECIPIENT has unjustifiably failed to perform any obligation required of it by this loan agreement.

Procedures for Termination. If this loan agreement is terminated prior to project completion, ECOLOGY shall provide to the RECIPIENT a written notice of termination at least five working days prior to the effective date of termination (the "Termination Date"). The written notice of termination by the ECOLOGY shall specify the Termination Date and, when applicable, the date by which the RECIPIENT must repay any outstanding balance of the loan and all accrued interest (the "Termination Payment Date").

Termination and Default Remedies

No Further Payments. On and after the Termination Date, or in the event of a default event, ECOLOGY may, at its sole discretion, withdraw the loan and make no further payments under this agreement.

Repayment Demand. In response to an ECOLOGY initiated termination event, or in response to a loan default event, ECOLOGY may at its sole discretion demand that the RECIPIENT repay the outstanding balance of the Loan Amount and all accrued interest.

Interest after Repayment Demand. From the time that ECOLOGY demands repayment of funds, amounts owed by the RECIPIENT to ECOLOGY shall accrue additional interest at the rate of one percent per month, or fraction thereof.

Accelerate Repayments. In the event of a default, ECOLOGY may, in its sole discretion, declare the principal of and interest on the loan immediately due and payable, subject to the prior lien and charge of any outstanding Senior Lien Obligation upon the Net Revenue. That is, the loan is not subject to acceleration so long as any Senior Lien Obligations are outstanding.

Repayments not made immediately upon such acceleration will incur Late Charges.

Late Charges. All amounts due to ECOLOGY and not paid by the RECIPIENT by the Termination Payment Date or after acceleration following a default event, as applicable, shall incur late charges.

Intercept State Funds. In the event of a default event and in accordance with Chapter 90.50A.060 RCW, "Defaults," any state funds otherwise due to the RECIPIENT may, at ECOLOGY's sole discretion, be withheld and applied to the repayment of the loan.

Property to ECOLOGY. In the event of a default event and at the option of ECOLOGY, any personal property (equipment) acquired under this agreement may, in ECOLOGY's sole discretion, become ECOLOGY's property. In that circumstance,

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ECOLOGY shall reduce the RECIPIENT's liability to repay money by an amount reflecting the fair value of such property. Documents and Materials. If this agreement is terminated, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT shall, at the option of ECOLOGY, become ECOLOGY property. The RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Collection and Enforcement Actions. In the event of a default event, the state of Washington reserves the right to take any actions it deems necessary to collect the amounts due, or to become due, or to enforce the performance and observance of any obligation by the RECIPIENT, under this agreement.

Fees and Expenses. In any action to enforce the provisions of this agreement, reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of legal staff) shall be awarded to the prevailing party as that term is defined in Chapter 4.84.330 RCW.

Damages. Notwithstanding ECOLOGY's exercise of any or all the termination or default remedies provided in this agreement, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and/or the state of Washington because of any breach of this agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

T. User-Charge System for Funded Utilities: The RECIPIENT certifies that it has the legal authority to establish and implement a user-charge system and shall adopt a system of user-charges to assure that each user of the funded utility shall pay its proportionate share of the cost of operation and maintenance, including replacement during the design life of the project. The user-charge system will include provisions for a connection charge.

In addition, the RECIPIENT shall regularly evaluate the user-charge system, at least annually, to ensure the system provides adequate revenues necessary to operate and maintain the funded utility, to establish reserves to pay for replacement, and to repay the loan.

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY

EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled

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“CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than \$30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than \$25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required Unique Entity Identifier in www.sam.gov <http://www.sam.gov> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov>.

For more details on FFATA requirements, see www.fsr.gov <http://www.fsr.gov>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](http://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf) <http://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE

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Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management \(SAM\)](https://sam.gov/SAM/) <<https://sam.gov/SAM/>> exclusion list.

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GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS

For DEPARTMENT OF ECOLOGY GRANTS and LOANS

07/01/2023 Version

1. ADMINISTRATIVE REQUIREMENTS

- a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (<https://fortress.wa.gov/ecy/publications/SummaryPages/2301002.html>)
- b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.
- c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.
- d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (<https://ocio.wa.gov/policy/accessibility>) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

- a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:
 - Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.
- * For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

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- For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).
- b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

- Keep the IDP at the project site.
 - Make the IDP readily available to anyone working at the project site.
 - Discuss the IDP with staff, volunteers, and contractors working at the project site.
 - Implement the IDP when Cultural Resources or human remains are found at the project site.
- c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.
- d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.
- Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.
- e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

- a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.
- b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.
- c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.
- d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.
- e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.
- f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.
- g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services>. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.
- h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.
- i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

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j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

- a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
- b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.
- c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.
- d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

- a) RECIPIENT notifies the funding program of an appeal request.
- b) Appeal request must be in writing and state the disputed issue(s).
- c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.
- d) ECOLOGY reviews the RECIPIENT's appeal.
- e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

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The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.

The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.

Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.

Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.

Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at:

<http://www.ecy.wa.gov/eim>.

c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at:

<https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards>. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

Agreement No: WQC-2025-Tumwat-00058
Project Title: Nutrient Reduction Enhanced Maintenance Plan
Recipient Name: City of Tumwater

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

- a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.
- b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.
- c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.
- d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

- a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.
- b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.
- c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

Agreement No: WQC-2025-Tumwat-00058
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- a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
- b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
- c) RECIPIENT shall use ECOLOGY's provided progress report format.
- d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
- e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

- a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
- b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
- c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
- d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
- e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
- f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
 1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
 2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
- g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

Agreement No: WQC-2025-Tumwat-00058
Project Title: Nutrient Reduction Enhanced Maintenance Plan
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22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

- a) Be kept in a manner which provides an audit trail for all expenditures.
- b) Be kept in a common file to facilitate audits and inspections.
- c) Clearly indicate total receipts and expenditures related to this Agreement.
- d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced.

Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

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27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

- a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.
- b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing,
<https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing>.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or in part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

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event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.

RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement

ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination

All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY

RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER

Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

TO: Public Works Committee
 FROM: Dave Kangiser, Water Resources Specialist
 DATE: April 3, 2025
 SUBJECT: Service Provider Agreement with Herrera for the Nutrient Reduction Enhanced Maintenance Plan (EMP)

1) Recommended Action:

Place the Service Provider Agreement with the Herrera for the Nutrient Reduction Enhanced Maintenance Plan on the April 15, 2025 Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

Budd Inlet does not meet Washington State’s water quality standards for dissolved oxygen and was placed on the federal Clean Water Act Section 303(d) list of impaired waters, triggering a Total Maximum Daily Load (TMDL) study. As a result, Tumwater has been assigned waste load allocations for nutrient-laden discharges from the stormwater system. Herrera Environmental Consultants has been chosen to assist the City in developing an EMP focused on maintenance activities that will reduce the discharge of nutrients from Tumwater’s stormwater system. The project will also help inform the City’s future stormwater management program with the overall goal of improving water quality by removing sediment and pollutants from roadway runoff. The project also includes support for mapping and meeting street sweeping requirements of the City’s stormwater permit.

3) Policy Support:

- 2024-2029 Western Washington Phase II Municipal Stormwater Permit
 - Budd Inlet Dissolved Oxygen TMDL, October 2022
 - WA Department of Ecology (ECY) Grant Agreement No. WQC-2025-Tumwat-00058
-

4) Alternatives:

- As this project is a requirement to meet federal and state regulations, no clear alternatives have been identified.
-

5) Fiscal Notes:

Herrera’s has provided a project budget of \$190,561.00 which includes project management, data collection and review, mapping and spatial analysis, and the development of a complete Enhanced Maintenance Plan for the City. The City has been awarded a grant from ECY to support this work in the amount of \$200,000.00. The City’s required 15% match, \$30,000, and any additional expenses are funded by the Storm Fund.

6) Attachments:

- A. Service Provider Agreement with Herrera for the Nutrient Reduction Enhanced Maintenance Plan

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

NUTRIENT REDUCTION ENHANCED MAINTENANCE PLAN

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 2025, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and Herrera Environmental Consultants, Inc., a Washington corporation, hereinafter referred to as the “SERVICE PROVIDER”.

WITNESSETH:

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents that the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF SERVICES.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit “A” Scope of Services attached hereto and incorporated herein (the “Project”).

2. TERM.

The Project shall begin no earlier than April 1, 2025, and shall be completed no later than December 31, 2026. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. TERMINATION.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause, by the CITY.

4. COMPENSATION AND METHOD OF PAYMENT.

A. Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

B. No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

C. The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement a total sum not to exceed **ONE HUNDRED NINETY THOUSAND FIVE HUNDRED SIXTY-ONE AND 00/100 DOLLARS** (\$190,561.00) as reflected in Exhibit B, Cost Estimate.

D. Upon execution of this Agreement, the SERVICE PROVIDER must submit IRS Form W-9 Request for Taxpayer Identification Number (TIN) and Certification unless a current Form W-9 is already on file with the CITY.

E. The SERVICE PROVIDER shall submit an invoice to the CITY for services rendered during the contract period. The CITY shall initiate authorization for payment after receipt of said invoice and shall make payment to the SERVICE PROVIDER within approximately thirty (30) days thereafter.

F. When subcontracting services or purchasing goods from third parties, as identified and approved in this Agreement, the SERVICE PROVIDER must submit written documentation establishing that the goods and/or services have been provided and the third party has been paid in order to receive payment for such goods and/or services.

G. Invoices may be submitted immediately following performance of services, but in no event shall an invoice be submitted more than twenty (20) business days following the end of the contract term or the end of the calendar year, whichever is earlier.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the SERVICE PROVIDER. No agent, employee, servant or

representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

B. In the performance of the services herein contemplated the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work; however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

C. As an independent contractor, the SERVICE PROVIDER shall be responsible for the reporting and payment of all applicable local, state, and federal taxes.

D. It is recognized that the SERVICE PROVIDER may or will be performing services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with the SERVICE PROVIDER'S ability to perform the services. The SERVICE PROVIDER agrees to resolve any such conflicts of interest in favor of the CITY.

6. SERVICE PROVIDER EMPLOYEES/AGENTS.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee, agent or servant from employment on this Project. The SERVICE PROVIDER may, however, employ that individual on other non-CITY related projects.

7. HOLD HARMLESS INDEMNIFICATION.

A. SERVICE PROVIDER Indemnification. The SERVICE PROVIDER agrees to indemnify, defend and hold the CITY, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the SERVICE PROVIDER, its partners, shareholders, agents, employees, or by the SERVICE PROVIDER'S breach of this Agreement. The SERVICE PROVIDER expressly waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The SERVICE PROVIDER'S

indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefit acts or programs. This waiver has been mutually negotiated by the parties.

B. CITY Indemnification. The CITY agrees to indemnify, defend and hold the SERVICE PROVIDER, its officers, directors, shareholders, partners, employees, and agents harmless from any and all claims, demands, losses, actions and liabilities (including costs and attorney fees) to or by any and all persons or entities, including without limitation, their respective agents, licensees, or representatives, arising from, resulting from or connected with this Agreement to the extent solely caused by the negligent acts, errors, or omissions of the CITY, its employees or agents. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

C. Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

8. INSURANCE.

A. The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, their agents, representatives, employees or subcontractors.

B. The SERVICE PROVIDER shall provide a Certificate of Insurance evidencing:

1. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

2. Commercial General Liability insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

3. Professional Liability insurance written on a claims made basis with limits of no less than \$2,000,000 per claim, and \$2,000,000 policy aggregate limit.

C. The CITY shall be named as an additional insured on the insurance policy, except professional liability, as respect to work performed by or on behalf of the SERVICE PROVIDER and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

D. The SERVICE PROVIDER'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. Any payment of deductible or self-insured retention shall be the sole responsibility of the SERVICE PROVIDER.

F. The SERVICE PROVIDER'S insurance shall be primary insurance as respect to the CITY and the CITY shall be given written notice of any cancellation, suspension or material change in coverage within two (2) business days of SERVICE PROVIDER'S receipt of such notice.

9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

A. The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including being licensed to do business in the City of Tumwater by obtaining a Tumwater business license and any additional regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

B. The SERVICE PROVIDER specifically agrees to pay any applicable CITY business and occupation (B&O) taxes which may be due on account of this Agreement.

11. ASSIGNMENT/SUBCONTRACTING.

A. The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent

of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

C. Any technical service subcontract not listed in this Agreement, must have express advance approval by the CITY.

12. NONDISCRIMINATION.

A. The CITY is an equal opportunity employer.

B. Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law; provided that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the proper performance of the particular worker involved. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships.

C. Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, religion, color, national origin, citizenship or immigration status, families with children status, sex, marital status, honorably discharged veteran or military status, the presence of any sensory, mental or physical disability or the use of a trained dog guide or service animal by a person with a disability, sexual orientation, genetic information, age or other basis prohibited by state or federal law. "Race" is inclusive of traits historically associated or perceived to be associated with race including, but not limited to, hair texture and protective hairstyles. For purposes of this subsection, "protective hairstyles" includes, but is not limited to, such hairstyles as afros, braids, locks, and twists. It is not an unfair practice when a distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, rule or government contract.

D. If any assignment and/or subcontract have been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

E. Nondiscrimination in Benefits. **The provisions of this subsection are only applicable to contracts with an estimated value of \$50,000 or more.** Pursuant to Tumwater Municipal Code (TMC) Chapter 3.46, the SERVICE PROVIDER shall provide employee benefits or an equivalent sum to the domestic partners of their employees involved in the SERVICE PROVIDER'S operations applicable to this Agreement if such benefits are provided to employees' spouses as more particularly set forth in Chapter 3.46 of the TMC, a copy of which is attached hereto as Exhibit "C".

F. Nondiscrimination in Contractors / Subcontractors. The City of Tumwater, in accordance with RCW 49.60.530 requires all covered contractors or subcontractors to actively pursue a diverse and inclusive workforce. Contractors and subcontractors are prohibited from all forms of discrimination listed in RCW 49.60.530.

13. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the CITY will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the CITY in the event this provision applies.

14. CHANGES.

Either party may request changes to the Scope of Services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

15. MAINTENANCE AND INSPECTION OF RECORDS.

A. The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by

this Agreement.

B. The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

C. To ensure the CITY'S compliance with the Public Records Act, RCW 42.56, the SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under the Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

17. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

18. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the signature page of this Agreement.

19. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

20. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington. It is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained in the superior court of Thurston County, Washington.

21. SEVERABILITY.

A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

22. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:
CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

SERVICE PROVIDER:
Herrera Environmental Consultants
2200 6th Ave, Suite 1100
Seattle, WA 98121
Tax ID #: 911-329-346
Phone No. 971-200-8879

Debbie Sullivan
Mayor

Signature (Notarized – see below)
Printed Name:
Title:

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney
STATE OF WASHINGTON

COUNTY OF THURSTON

I certify that I know or have satisfactory evidence that _____(name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____(title) of _____(company) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____

Notary Public in and for the State of Washington,
My appointment expires:_____

CITY OF TUMWATER NUTRIENT REDUCTION ENHANCED MAINTENANCE PLAN

On January 24, 2025, the City of Tumwater (City) authorized Herrera Environmental Consultants (Herrera) to prepare a scope of work and cost estimate to develop an Enhanced Maintenance Plan (EMP) focused on nutrient reduction in accordance with the grant agreement between the City and the Washington State Department of Ecology (Ecology). The grant was received to help inform the City's future operational approach to stormwater management with the overall goal of improving water quality by removing sediment and pollutants from roadway runoff. The project also includes support with mapping and street sweeping requirements in the National Pollutant Discharge Elimination System Phase II municipal stormwater permit (NPDES Phase II Permit). This scope of work includes a discussion of the activities, assumptions, deliverables, and a schedule associated with the following tasks for this project:

- Task 1 – Project Management
- Task 2 – Data Collection, Literature Review, and Needs Assessment
- Task 3 – Spatial Analysis
- Task 4 – Enhanced Maintenance Plan

Task 1 – Project Management

Herrera will be responsible for ongoing administration of the project, including preparing invoices and progress reports, as well as coordination of work efforts with the City project manager (Dave Kangiser). Herrera's project manager (Rebecca Dugopolski) and contract manager will have phone and e-mail contact with the City project manager and other City representatives on an as-needed basis with regard to scope, schedule, budget, and invoicing issues.

This task also includes regular check-in meetings between the Herrera and City project manager. The regular meetings will be the primary forum for discussing schedule and budget status, additional information needs, and to identify and address any emerging or ongoing concerns. These regular meetings are in addition to task-specific meetings outlined in other tasks.

Herrera's project manager will be responsible for ongoing administration of the project, including preparing invoices and progress reports, as well as coordination of work efforts with the City.

Assumptions

- The project kickoff meeting will be virtual (conducted using Microsoft Teams).

SCOPE OF WORK

- Project management check-in meetings will be scheduled on a bi-weekly basis. Meetings will be virtual (conducted using Microsoft Teams or a conference call) and will last up to 30 minutes.
- Herrera will set up a shared electronic folder (SharePoint site) for sharing electronic files and deliverables.

Deliverables

- Draft and revised (as needed) project schedule (PDF)
- Monthly progress reports and invoices (PDF)
- Link and access to a shared electronic folder (SharePoint)

Task 2 – Data Collection, Literature Review, and Needs Assessment

Subtask 2.1 – Existing Data Collection

Herrera will coordinate with the City's project manager and other City staff to gather and evaluate applicable data, reports, GIS mapping, and financial information. Herrera will compile a list of requested materials and will coordinate with the City to obtain this information. Following the data review, a list of additional requests will be prepared, and potential gaps will be identified. All of this information, along with the NPDES Phase II Permit and the "Budd Inlet Dissolved Oxygen Total Maximum Daily Load (TMDL) Water Quality Improvement Report and Implementation Plan," will be used to develop a foundation for the subsequent tasks.

Subtask 2.2 – Literature Review

Herrera will compile and review local, regional, and national literature focusing on potential sources of nitrogen (in the forms of total nitrogen (TN) and dissolved inorganic nitrogen (DIN)) and carbon (in the forms of total organic carbon (TOC) and biological oxygen demand (BOD₅)) that contribute to dissolved oxygen impairments. This task will also involve reviewing stormwater best management practice (BMP) effectiveness and City operations and maintenance (O&M) documents, focusing on activities that are related to the management of these nutrients. The findings from the literature review will be used to develop the nutrient loading analysis in Task 3. A brief summary of relevant findings and data will be shared with the City for review during this subtask, but formal summary documentation will be integrated into the Subtask 3.1 technical memorandum.

Subtask 2.3 – Define Stormwater Maintenance and Outreach Program Needs

A kickoff workshop will be held with City staff familiar with stormwater maintenance, outreach, and the Budd Inlet TMDL. This workshop will help establish a mutual understanding of the City's stormwater maintenance and outreach program needs and will cover topics such as catch basin and conveyance

SCOPE OF WORK

maintenance, street sweeping, illicit discharge detection and elimination (IDDE), proper disposal of pet waste, and other relevant topics. Herrera will develop a questionnaire for City staff to complete before the workshop to guide the discussion.

Subtask 2.4 – Data Gaps and Needs Assessment

Following the workshop, Herrera will develop a detailed set of matrices that address the Budd Inlet TMDL requirements and portions of the City's stormwater maintenance and outreach program that go above and beyond the Budd Inlet TMDL requirements. These recommendations may include additional street sweeping or education and outreach campaigns outside of the Budd Inlet watershed. There will most likely be multiple iterations of these recommendations as Herrera works with the City to develop an optimal set of recommendations for the City's stormwater maintenance and outreach program to incorporate into the EMP (Task 4).

Assumptions

- The City will provide the requested information or will direct Herrera to readily available electronic data sources as appropriate.
- Up to 2 Herrera team members will participate in a virtual workshop with City staff. One workshop is assumed, lasting 2-3 hours long.
- The City will identify and invite O&M staff from Public Works, Parks and Recreation, and Tumwater Valley Golf Course as appropriate to participate in the virtual workshop.
- The City will review and provide consolidated feedback to a workshop questionnaire provided by Herrera.
- Up to 2 virtual follow-up meetings will be scheduled with specific City and Herrera staff to discuss different aspects of the stormwater maintenance program (that will be evaluated for this subtask) in more detail.
- Herrera will develop draft workshop/meeting notes, summarizing the discussion during the workshop and subsequent follow-up meetings.
- This task does not include assistance with code amendments, policy updates, or design standard updates necessary to implement new programs (if applicable) or to meet new Phase II permit requirements.

Deliverables

- E-mail communication identifying data gaps and requesting additional data (if needed) for Subtask 2.1
- E-mail communication briefly summarizing literature review findings for Subtask 2.2
- Draft and final workshop agenda for Subtask 2.3 (Word)

SCOPE OF WORK

- Draft and final questionnaire for City staff for Subtask 2.3 (Word)
- Draft and final workshop/meeting notes for Subtask 2.3 (Word)
- Draft and final current activities matrices for Subtask 2.4 (Word and PDF)

Task 3 – Spatial Analysis

Subtask 3.1 – Nutrient Loading Analysis of Receiving Waters within the Budd Inlet Watershed

Herrera will perform a spatial analysis to identify and prioritize areas with high nutrient loading from the municipal separate storm sewer system (MS4). This analysis will leverage the data compiled under Subtask 2.1 (e.g., land use data, existing municipal and private-owned/operated BMPs that provide nutrient management, monitoring data [e.g., S8.D Municipal Stormwater Phase I Permit outfall data, Thurston County Water Quality Program data]) to develop a “wash off” model for predicting nutrient loadings from various land uses throughout the City.

As a first step in this analysis, Herrera will determine the portion of the Budd Inlet watershed that is located within the city limits. We will then group GIS land use data into broad categories and use unit-area loading rates extrapolated from the S8.D outfall data and other local data sources to estimate the watershed-total load for the City’s portion of the Budd Inlet watershed. This load estimate will be calculated by multiplying unit-area loading rates for each parameter and land use, by the area represented by that land use in each watershed (i.e., high density residential, low density residential, commercial, industrial, and roadways).

Herrera will coordinate with the City to determine the most appropriate scale to aggregate the calculated loads to (i.e., subwatershed, reach, other) and the highest load estimates within those areas will be used to determine high priority areas for siting stormwater retrofits.

Based on the findings from Subtask 2.2 and the highest load estimates described above, Herrera will highlight potential locations that could be considered for stormwater retrofits under other City and regional planning efforts and for targeting non-structural program recommendations in Subtask 2.3 to meet requirements of the Budd Inlet TMDL. Herrera will summarize the work completed in this subtask in a technical memorandum that documents the literature review from Subtask 2.2 and procedures used for the nutrient loading analysis to identify high priority areas for stormwater program investments.

Subtask 3.2 – Regulatory Mapping Requirements

To support the City with mapping requirements related to the NPDES Phase II Permit, Herrera will expand upon the outfall data previously collected as part of the Trosper Lake Stormwater Management Action Plan (SMAP) and additional data compiled as part of Task 2 to develop an initial list of known outfalls and discharge points. Herrera will conduct a desktop review of outfalls and discharge points with a 24-inch

SCOPE OF WORK

nominal diameter or larger (or an equivalent cross-sectional area for non-piped systems), including tributary conveyance types, materials, and sizes.

Based on this desktop review, Herrera will document the outfalls and discharge points that need additional data or data verification. Once the data is verified by the City, Herrera will develop drainage areas for each outfall and discharge point and assign respective land use designations based on the Land Use element of the City's Comprehensive Plan. Herrera will summarize the work completed in this subtask in a technical report that documents the procedures used to collect and update the data, as well as the methodology to map and assess the acreage of the associated drainage areas. At the end of this subtask, Herrera will transfer a geodatabase of the known outfalls, discharge points, and delineated drainage areas to the City.

Assumptions

- The City will provide the requested information or will direct Herrera to readily available electronic data sources as appropriate.
- Two virtual working meetings will be scheduled with the City (up to 1 hour each) to present initial findings and to address any questions.
- Meeting notes will not be prepared for the working meetings, but a list of action items will be developed (if needed) following each meeting.
- Potential stormwater retrofit locations will be highlighted as part of Subtask 3.1, but feasibility of specific stormwater retrofits (e.g., vaults, bioretention, etc.) will not be evaluated as part of this subtask.
- No field work to verify potential stormwater retrofit locations, outfall locations, or outfall attributes is scoped under this task.

Deliverables

- Draft web map of high priority areas for Subtask 3.1
- Draft technical memorandum for Subtask 3.1 (Word)
- Final technical memorandum for Subtask 3.1 (Word and PDF)
- Draft web map of known outfalls, discharge points, and delineated drainage areas for Subtask 3.2
- Draft technical report for Subtask 3.2 (Word)
- Final technical report for Subtask 3.2 (Word and PDF)
- Geodatabase files of known outfalls, discharge points, and delineated drainage areas for Subtask 3.2

SCOPE OF WORK

Task 4 – Enhanced Maintenance Plan

Utilizing the information gathered and recommendations made in Task 2, Herrera will work with the City to develop an EMP that addresses the following topics:

- Introduction/overview
- EMP objectives and priorities
- Existing maintenance program
- Proposed enhanced maintenance program
- Recommendations

Introduction/Overview

Herrera will review the City's receiving water assessment, receiving water prioritization, and SMAPs to develop a summary of waterbodies that receive water from the City's MS4. This summary will include an estimate of the pollutant loading contributed by the City's MS4 and water quality improvement goals for each waterbody.

EMP Objectives and Priorities

Herrera will coordinate with the City to develop and document objectives and priorities for the EMP.

Existing Maintenance Program

Herrera will develop a description of the City's existing maintenance program based on the current activities matrices prepared for Subtask 2.4. The description of the existing maintenance program is anticipated to include the following components per the City's grant agreement with Ecology:

- Description of existing maintenance program
- Description of how existing maintenance resources are prioritized
- Estimate of the total cost to implement the existing maintenance program (including labor, training, disposal, equipment maintenance, and replacement costs)
- Method used to evaluate and assess the existing maintenance program related to the goals and priorities
- Location and frequency of current pollutant removal and source control efforts, staff training, equipment maintenance, material disposal process, data collection and tracking methods
- Identification of equipment needed to implement the existing maintenance program
- Estimate of the water quality benefits that the current maintenance program provides (focusing on TN, DIN, TOC, and BOD₅ in the Budd Inlet watershed).

SCOPE OF WORK

Proposed Enhanced Maintenance Program

Herrera will develop a description of the City's proposed enhanced maintenance program based on recommendations from Task 2. The description of the proposed maintenance program is anticipated to include the following components per the City's grant agreement with Ecology:

- Description of proposed enhanced maintenance program
- Description of alternatives (i.e., non-structural program recommendations) being considered
- Criteria used to evaluate alternatives including cost and water quality benefit (focusing on TN, DIN, TOC, and BOD5 in the Budd Inlet watershed)
- Estimate of the total cost to implement the proposed enhanced maintenance program (including labor, training, disposal, equipment acquisition, maintenance and replacement costs, and facility improvements)
- Evaluation of equipment purchasing approach (purchasing, renting, or leasing)
- Location and frequency of enhanced maintenance efforts, data collection and analysis methods
- Identification of equipment and staffing needed to implement the enhanced maintenance program
- Frequency of program assessment including adaptive management

Recommendations

The recommendations section of the EMP will be developed based on recommendations from Task 2. The recommendations are anticipated to include the following:

- Implementation schedule (short-term and long-term)
- Description of available funding
- Proposed evaluation and performance measures

Assumptions

- Two virtual working meetings will be scheduled with the City (up to 1 hour each) to develop the draft and revised draft EMP objectives and priorities.
- Meeting notes will not be prepared for the working meetings, but a list of action items will be developed (if needed) following each meeting.
- The draft EMP will be reviewed by the City. The revised draft EMP will be reviewed by Ecology (per the City's grant agreement with Ecology).
- The City will be responsible for posting the revised draft and final EMP to EAGL for Ecology's review.
- Ecology will provide an acceptance letter once their review of the EMP has been completed.

SCOPE OF WORK

- This task includes a total of 6 conference calls (up to 1 hour each) for project coordination.

Deliverables

- Annotated EMP outline (Microsoft Word)
- Draft and revised draft objectives and priorities (Word)
- Draft (Internal Review Draft), revised draft (Ecology Review Draft), and final EMP (Microsoft Word and PDF)
- Responses to Ecology's comments on the revised draft EMP (Microsoft Excel or Microsoft Word)

SCOPE OF WORK

Project Schedule

Task/Subtask	Deliverable/Meeting	Timeline ^a
Task 1 – Project Management		
	Project kickoff meeting	Apr. 2025 (TBD)
	Bi-weekly project management check-in meetings	Apr. 2025 – Jun. 2026
	Draft project schedule	Apr. 30, 2025
	Revised project schedule	May 14, 2025
	Monthly invoices and progress reports	Apr. 2025 – Jun. 2026
Task 2 – Data Collection, Literature Review, and Needs Assessment		
Subtask 2.1 – Existing Data Collection	E-mail communication identifying data gaps and requesting additional data	May 30, 2025
Subtask 2.2 – Literature Review	E-mail communication briefly summarizing literature review findings	May 30, 2025
Subtask 2.3 – Define Stormwater Maintenance and Outreach Program Needs	Draft workshop agenda and questionnaire	May 2, 2025
	Final workshop agenda and questionnaire	May 9, 2025
	Workshop	May 2025 (TBD)
	Draft workshop notes	1 week after workshop
	Final workshop notes	2 weeks after workshop
	Follow-up meeting #1	June 2025 (TBD)
	Follow-up meeting #1 notes	1 week after meeting
	Follow-up meeting #2	July 2025 (TBD)
	Follow-up meeting #2 notes	1 week after meeting
Subtask 2.4 – Data Gaps and Needs Assessment	Draft current activities matrices	July 25, 2025
	Final current activities matrices	Sept. 30, 2025
Task 3 – Spatial Analysis		
Subtask 3.1 – Nutrient Loading Analysis of Receiving Waters within the Budd Inlet Watershed	Draft web map of high priority areas and potential stormwater retrofit locations	Oct. 31, 2025
	Draft technical memorandum	Oct. 31, 2025
	Final technical memorandum	Dec. 19, 2025
	Final web map of high priority areas and potential stormwater retrofit locations and geodatabase files	Dec. 31, 2025
Subtask 3.2 – Regulatory Mapping Requirements	Draft web map showing known outfalls, discharge points, and delineated drainage areas	May 30, 2025
	Draft technical report	May 30, 2025
	Final technical report	June 30, 2025
	Geodatabase files of known outfalls, discharge points, and delineated drainage areas	June 30, 2025

SCOPE OF WORK

Task/Subtask	Deliverable/Meeting	Timeline ^a
Task 4 – Enhanced Maintenance Plan		
	Conference call #1	Nov 2025 (TBD)
	Annotated outline	Dec. 2025 (TBD)
	Draft objectives and priorities	Dec. 2025 (TBD)
	Virtual working meeting #1	Jan. 2026 (TBD)
	Revised draft objectives and priorities	Jan. 2026 (TBD)
	Virtual working meeting #2	Feb. 2026 (TBD)
	Conference call #2	Mar. 2026 (TBD)
	Conference call #3	Mar. 2026 (TBD)
	Draft EMP	Apr. 1, 2026
	Conference call #4	Apr 2026 (TBD)
	Revised draft EMP	Apr 2026 (TBD)
	Conference call #5	May 2026 (TBD)
	Conference call #6	Jun. 2026 (TBD)
	Responses to Ecology’s comments on the revised draft EMP	Jun. 30, 2026
	Final EMP	Jun. 30, 2026

TBD: to be determined

^a The proposed project timeline assumes that the notice to proceed will be issued in mid-April 2025.

Exhibit B



Cost Estimate for City of Tumwater Nutrient Reduction Enhanced Maintenance Plan
 Herrera Project No. 25-08608-000

3/4/2025

			Task No.					Total
			1	2	3	4	5	
			Project Management	Data Collection, Literature Review, and Needs Assessment	Spatial Analysis	Enhanced Maintenance Plan	Contingency	
Herrera Labor based on:	Burdened Labor Rates							
Schedule	Task Start Date		3/25/2025	3/25/2025	3/25/2025	12/1/2025	3/25/2025	
	Task End Date		12/31/2026	9/30/2025	1/30/2026	9/30/2026	12/31/2026	
Staff	Labor Category	2025 Burdened Labor Rates						
Lenth, John	Scientist VIII / Vice President	\$355.22	0	3	0	5	0	8
Busiek, Brian	Engineer VI	\$285.43	0	3	30	10	0	43
Schmidt, Jennifer	GIS Analyst VII	\$291.08	0	2	52	6	0	60
Dugopolski, Rebecca	Engineer VI	\$288.44	50	26	24	46	0	146
Chechanover, Julianne	Engineer III	\$178.35	16	28	0	110	0	154
Johnson, Rachel	Engineer IV	\$195.64	8	42	22	58	0	130
Bruneau, Julia	Engineer II	\$139.96	2	26	16	58	0	102
Packard, Whitney	Engineer I	\$128.42	0	54	14	0	0	68
Stebbing, Rebecca	GIS Analyst II	\$135.06	0	6	138	60	0	204
Jackowich, Pamela	Administrative Coordinator IV	\$148.86	0	4	12	20	0	36
Maloof, Charles	Project Accountant III	\$141.91	21	0	0	0	0	21
Total Hours per Task			97	194	308	373	0	972
Subtotal Labor			\$22,101	\$35,193	\$59,388	\$69,809	\$0	\$186,491
Subtotal Herrera Labor			\$22,101	\$35,193	\$59,388	\$69,809	\$0	\$186,491
5%	Escalation on Herrera Labor in 2026		\$631	\$0	\$297	\$3,141	\$0	\$4,070
Escalated Subtotal Herrera Labor			\$22,732	\$35,193	\$59,685	\$72,950	\$0	\$190,561
Grand Subtotal			\$22,732	\$35,193	\$59,685	\$72,950	\$0	\$190,561
Grand Total								\$190,561

Note: Herrera adjusts labor rates annually in January unless contract specifies otherwise.

Chapter 3.46
CITY CONTRACTS – NONDISCRIMINATION IN BENEFITS

Sections:

- 3.46.010 Definitions.
- 3.46.020 Nondiscrimination in benefits.
- 3.46.030 Limitations.
- 3.46.040 Powers and duties of the city administrator.
- 3.46.050 Appeals.
- 3.46.060 Effective date.

3.46.010 Definitions.

For the purpose of this chapter:

- A. “Contract” means a contract for public works, consulting, or supplies, material, equipment or services estimated to cost \$50,000 or more;
- B. “Contract awarding authority” means the city officer, department, commission, employee, or board authorized to enter into or to administer contracts on behalf of the city;
- C. “Domestic partner” means any person who is registered with his/her employer as a domestic partner or, in the absence of such employer-provided registry, is registered as a domestic partner with a governmental body pursuant to state or local law authorizing such registration. Any internal employer registry of domestic partnership must comply with criteria for domestic partnerships specified by rule by the city administrator;
- D. “Employee benefits” means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees; provided, that it does not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state law.

(Ord. O2000-028, Added, 02/06/2001)

3.46.020 Nondiscrimination in benefits.

A. No contractor on a city contract shall discriminate in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. The contractor shall not be deemed to discriminate in the provision of employee benefits if, despite taking reasonable measures to do so, the contractor is unable to extend a particular employee benefit to domestic partners, so long as the contractor provides the employee with a cash equivalent.

B. Other Options for Compliance Allowed. Provided that a contractor does not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, a contractor may:

1. Elect to provide benefits to individuals in addition to employees' spouses and employees' domestic partners;
2. Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent benefits; or
3. Provide benefits neither to employees' spouses nor to employees' domestic partners.

C. Requirements Inapplicable Under Certain Conditions. The city administrator may waive the requirements of this chapter where:

1. Award of a contract or amendment is necessary to respond to an emergency;
2. The contractor is a sole source;
3. No compliant contractors are capable of providing goods or services that respond to the city's requirements;
4. The contractor is a public entity;
5. The requirements are inconsistent with a grant, subvention or agreement with a public agency;
6. The city is purchasing through a cooperative or joint purchasing agreement.

D. Requests for waivers of the terms of this chapter are to be made to the city administrator by the contract awarding authority. Decisions by the city administrator to issue or deny waivers are final unless appealed pursuant to TMC 3.46.050.

E. The city administrator shall reject an entity's bid or proposal, or terminate a contract, if the city administrator determines that the entity was set up, or is being used, for the purpose of evading the intent of this chapter.

F. No contract awarding authority shall execute a contract with a contractor unless such contractor has agreed that the contractor will not discriminate in the provision of employee benefits as provided for in this chapter.

G. All contracts awarded by the city shall contain provisions prohibiting discrimination in the provision of employee benefits, including provisions containing appropriate remedies for the breach thereof as prescribed by this chapter, except as exempted by this chapter or rule.

(Ord. O2000-028, Added, 02/06/2001)

3.46.030 Limitations.

The requirements of this chapter only shall apply to those portions of a contractor's operations that occur:

- A. Within the city;
- B. On real property outside of the city if the property is owned by the city or if the city has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the city; and
- C. Elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

(Ord. O2000-028, Added, 02/06/2001)

3.46.040 Powers and duties of the city administrator.

The city administrator shall have the power to:

- A. Adopt rules and regulations in accordance with this chapter establishing standards and procedures for effectively carrying out this chapter;
- B. Determine and impose appropriate sanctions and/or liquidated damages for violation of this chapter by contractors including, but not limited to:
 - 1. Disqualification of the contractor from bidding on or being awarded a city contract for a period of up to five years; and
 - 2. Contractual remedies, including, but not limited to, liquidated damages and termination of the contract;
- C. Examine contractor's benefit programs covered by this chapter;
- D. Impose other appropriate contractual and civil remedies and sanctions for violations of this chapter;
- E. Allow for remedial action after a finding of noncompliance, as specified by rule;
- F. Perform such other duties as may be required by ordinance or which are necessary to implement the purposes of this chapter.

(Ord. O2000-028, Added, 02/06/2001)

3.46.050 Appeals.

Any aggrieved party may appeal a decision of the city administrator to the mayor by the submittal of a written request to the city attorney within ten working days of the decision to be appealed. The mayor's decision will be in writing with findings identified upon which the decision was made. Subsequent appeal will be to the Thurston County superior court.

(Ord. O2000-028, Added, 02/06/2001)

3.46.060 Effective date.

The provisions of this chapter shall apply to any contract awarded on or after January 2, 2002.

(Ord. O2000-028, Added, 02/06/2001)

TO: Public Works Committee
FROM: Joseph Norman, Senior Engineer
DATE: April 3, 2025
SUBJECT: Ansten Sewer Project – Authority to Solicit Bids

1) Recommended Action:

Place the Ansten Sewer Project on the May 6, 2025 City Council consent calendar with a recommendation to approve and authorize the Mayor to sign a Public Works contract to the lowest responsible bidder.

2) Background:

Staff has developed Antsen Sewer Project to correct issues caused by competing sanitary sewer lift stations. The project aims to address these issues by constructing a new sanitary sewer force main.

3) Policy Support:

Strategic Priorities and Goals 2025-2026:

Be a Leader in Environmental Health and Sustainability

4) Alternatives:

Do not authorize staff to solicit bids

5) Fiscal Notes:

Funded through the Sewer Fund

6) Attachments:

A. Antsen Sewer Vicinity Map



PROJECT VICINITY MAP

TO: Public Works Committee
 FROM: Dan Smith, Water Resources & Sustainability Director
 DATE: April 3, 2025
 SUBJECT: Resolution R2025-008 and Development Agreement with Tumwater 70th Ave LLC for Conversation of Onsite Septic to Public Sewer Service

1) Recommended Action:

Place Resolution R2025-008 and Development Agreement with Tumwater 70th Ave LLC on the April 15, 2025, City Council agenda for a Public Hearing and recommend Council to approve and authorize the Mayor to sign following conclusion of the Public Hearing.

2) Background:

In September 2023, City Council authorized the Mayor to sign a grant agreement with the Department of Ecology (ECY) to create a more effective septic to sewer conversion program, specifically for high-density septic systems in mobile home communities. This project evaluates the challenges of high-density septic conversions and will provide a model framework to assist other communities in charting their own courses to protect water quality. As a result, 39 units in the Velkommen Mobile Home Park will convert to city sewer. The proposed agreement provides assurances and clarity on the roles and fiscal responsibilities for both the Developer and the City as this project moves into the construction phase.

3) Policy Support:

- Be a Leader in Environmental Health and Sustainability
- Continue to fund and promote septic-to-sewer conversions.
 - Ensure ample drinking water supply & support water reuse opportunities.
 - Improve habitat & water quality by assessing fish passages, removing obstructions, converting urban-density septic systems, & collaborating with area Tribes.
- ECY Grant Agreement WQC-2023-Tumwat-00050

4) Alternatives:

- Reject or recommend revisions to the Development Agreement.

5) Fiscal Notes:

The Agreement provides clarity for the fiscal and management responsibilities of the City and Developer and outlines both the project elements authorized for reimbursement as well as conditions necessary for the Developer to receive the reimbursement. Grant award amounts to \$500,000 from the state matched with \$166,666 dollars from the City and/or Developer. City match is funded by the Sanitary Sewer CFP, SS-08.

6) Attachments:

- A. Resolution R2025-008 Velkommen MHP Septic to Sewer
- B. Development Agreement with 70th Ave LLC for Converting to Public Sewer Service
- C. Sanitary Sewer CFP, SS-08

RESOLUTION NO. R2025-008

A RESOLUTION of the City Council of the City of Tumwater, Washington, approving and authorizing the Mayor to execute a Development Agreement with 70th Ave LLC related to conversion of thirty-nine mobile home units from private septic systems to public sanitary sewer.

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person or entity having ownership or control of real property within its jurisdiction pursuant to RCW 36.70B.170(1); and

WHEREAS, Tumwater 70th LLC owns property at Velkommen Mobile Home Park, located at 2535 70th Ave. SW, Tumwater, WA, hereinafter the “Property”;

WHEREAS, the Property provides space for thirty-nine (39) mobile home units, all of which are on septic systems and Tumwater 70th LLC wishes to install city sewer services to its tenants and remove deteriorating onsite septic systems;

WHEREAS, deteriorating and failing septic systems negatively impact water quality;

WHEREAS, the 2015 Urban Septic Assessment Report identified the Velkommen Mobile Home Park is ranked as a “high to very high risk to groundwater” due to density of septic systems onsite;

WHEREAS, the City of Tumwater received a grant from the Department of Ecology to assist with septic removal and replacement with sewer service and, because of this funding, all mobile home units now served by multiple onsite septic systems are planned to be converted to city sewer;

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1));

WHEREAS, pursuant to RCW 36.70B.200, on April 15, 2025, the City Council held a duly noticed public hearing on the Agreement as required by law;

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

Section 1. Approval and Authorization. After reviewing the Agreement and considering all the testimony and information presented at the public hearing, the City Council finds that the Agreement is consistent with the criteria set forth in

RCW 36.70B.170 and approves the Agreement attached as Exhibit A hereto. The Mayor is authorized to execute the Agreement with 70th Ave LLC and to take all further and necessary action required by the Agreement.

Section 2. Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and affirmed.

Section 3. Severability. The provisions of this Resolution are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Resolution or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the Resolution, or the validity of its application to other persons or circumstances.

Section 4. Effective Date. This Resolution shall become effective immediately upon adoption and signature as provided by law. Provided, however, in order to claim the benefits of the Development Agreement and acquire the rights, privileges, and authorities hereby granted, 70th Ave LLC must, within sixty (60) days of the effective date of this Resolution, file in the office of the City Clerk, its written acceptance of the Development Agreement. The failure of 70th Ave LLC to file such an acceptance shall be deemed a rejection by 70th Ave LLC and this Resolution shall be null and void.

RESOLVED this 15th day of April, 2025

CITY OF TUMWATER

Debbie Sullivan, Mayor

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF TUMWATER AND TUMWATER 70TH
AVE LLC FOR
CONVERSION OF ONSITE SEPTIC TO PUBLIC SEWER SERVICE**

This Development Agreement is made and entered into on the Effective Date by and between the City of Tumwater, a Washington municipal corporation, hereinafter the “City”, and Tumwater 70th Ave LLC, a Washington Limited Liability Company, herein after the “Developer” relating to the conversion of private onsite septic system(s) to the public wastewater utility for the Velkommen Mobile Home Park.

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and entities with ownership or control of real property within its jurisdiction;

WHEREAS, the City of Tumwater is a municipal corporation under the laws of the State of Washington with authority to enact laws and enter into agreements to promote the health, safety, and welfare of its residents;

WHEREAS, the City of Tumwater Housing Action Plan includes specific strategies to achieve affordable housing goals, including Strategy 1.i *Fund development projects that increase low-income housing through grants or loans*, and Strategy 1.m. *Extend public water and sewer to unserved areas to allow infill development in underdeveloped areas*;

WHEREAS, Tumwater 70th LLC owns property at Velkommen Mobile Home Park, located at 2535 70th Ave. SW, Tumwater, WA, hereinafter the “Property”;

WHEREAS, the Property provides space for thirty-nine (39) mobile home units, all of which are on septic systems and Tumwater 70th LLC wishes to install city sewer services to its tenants and remove deteriorating onsite septic systems;

WHEREAS, deteriorating and failing septic systems negatively impact water quality;

WHEREAS, the 2015 Urban Septic Assessment Report estimated that there are 989 parcels in Tumwater with septic systems and an additional 1,630 parcels within the Urban Growth Boundary;

WHEREAS, the Velkommen Mobile Home Park is ranked as a high to very high risk to Groundwater due to density of septic systems onsite;

WHEREAS, the City of Tumwater applied for and received a grant from the Department of Ecology to assist with septic removal and replacement with sewer service and, because of this funding, all mobile home units now served by multiple onsite septic systems are planned to be converted to city sewer;

WHEREAS, Agreement No. WQC-2023-Tumwat-0050 with the Department of Ecology, hereinafter the “Grant Agreement,” states the City “will create a more effective septic to sewer conversion program specifically for high-density septic systems in mobile home communities;”

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1));

WHEREAS, for the purposes of this development agreement, “development standards” include, but are not limited to, all the standards listed in RCW 36.70B.170(3);

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)) and as required by the City through the standard Development Review process;

WHEREAS, the Property is designated Manufactured Home Park (“MHP”) in the City Comprehensive Plan and Zoning maps;

WHEREAS, the purpose of the MHP designation is to ensure the development of well-planned designated manufactured home facilities and to ensure the compatibility of such facilities with adjacent existing and planned use (TMC 18.48.110);

WHEREAS, designated manufactured home parks shall be complete developments and are required to include facilities such as sanitary sewage disposal, as approved by the community development department (TMC 18.48.110(B));

WHEREAS, after a public hearing, by Resolution No. R2025-008, the City Council authorized the Mayor to sign this Development Agreement with the Developer;

NOW, THEREFORE, the parties agree as follows:

- 1. Property.** The Property, commonly known as Velkommen Mobile Home Park, is located at 2535 70th Ave SW, Tumwater, WA 98512. The Property is legally described in Exhibit 1 attached hereto and incorporated herein by reference. A survey of the Property is attached as Exhibit 2, attached hereto, and incorporated herein by reference. The Developer contemplates a minor lot line adjustment which, if approved by the City, will change the legal description and survey. Said lot line adjustment will have no impact on the contemplated work or scope of the Project.
- 2. Project.** The Project consists of the conversion of thirty-nine (39) existing mobile home units from onsite septic systems to public sewer service. Development and use of the Property will be in conformance with the Development Agreement, the Grant Agreement, the City's MHP zoning, and the Comprehensive Plan and Development Regulations as set forth in the site plans at Exhibit 3, attached hereto and incorporated herein by reference. The Project does not contemplate any improvements to the existing homes, aside from connection to public sewer. As such, no improvements are required by the City for this Project.
- 3. Exhibits.**

 - (a) Exhibit 1 – Property Legal Description
 - (b) Exhibit 2 – [Property Site Plan](#)
 - (c) Exhibit 3 - [Grant Agreement WQC-2023-Tumwat-00050](#)
- 4. Parties.**

 - (a) The “City” is the City of Tumwater, a Washington municipal corporation, having a mailing address of 555 Israel Road SW, Tumwater, WA 98501.
 - (b) The “Developer” is the Tumwater 70th Ave LLC, a limited liability company organized under the laws of the State of Washington, which owns the Property, and whose principal office is located at and has a mailing address of GP Realty Finance, Inc., 12600 SE 38th Street, #103, Bellevue, WA, 98006.
- 5. Definitions.** As used in this Development Agreement, the following terms, phrases, and words shall have the meanings and be interpreted as set forth in this Section.

 - a) “Adopting Resolution” means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.

- b) “Council” means the duly elected legislative body governing the City of Tumwater.
 - c) “Design Guidelines” means the Tumwater Development Guide, as adopted by the City.
 - d) “Director” means the City’s Community Development Director.
 - e) “Effective Date” means the effective date of the Adopting Resolution.
 - f) “Existing Land Use Regulations” means the ordinances adopted by the City Council of Tumwater in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, the Development Guide, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision and building standards. Existing Land Use Regulation does not include non-land use regulations such as taxes and impact fees.
 - g) “Project” means the anticipated development of the Subject Property, as specified in Section 2 and as provided for in all associated permits and approvals, and all incorporated exhibits.
- 6. Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development, and that the City has no interest therein except as authorized in the exercise of its governmental functions.
- 7. Term of Agreement.** This Development Agreement shall commence upon the Effective Date of the Adopting Resolution approving this Development Agreement and shall continue in force for a period of two (2) years unless extended or terminated as provided herein.
- 8. Grant-Eligible Project Elements.** In partnership with Developer, the City of Tumwater will use grant funding from the Department of Ecology to help offset costs for converting existing multiple septic systems that serve thirty-nine (39) existing mobile home units at the Property. The City will reimburse for all or part of the following items, dependent upon funds available and to the extent the project’s elements are eligible for grant

reimbursement from the Department of Ecology pursuant to the Grant Agreement:

- a. Septic system abandonment;
- b. Trench restoration and repaving;
- c. The purchase and installation of a manhole(s) necessary to serve the existing thirty-nine (39) units;
- d. 8-inch (or other as approved by City) gravity sewer piping;
- e. Construction to connect existing manufactured homes to public sanitary sewer;
- f. Latecomer's fee;
- g. City sewer connection fees;
- h. LOTT Capacity Development Charges;
- i. Permitting costs for each mobile home unit and site plan submission charges.

9. Developer's Responsibilities. The Developer shall be responsible for the following:

- a. Advertising, bidding, hiring, and contracting with a construction firm or firms to complete the conversion of the existing septic systems;
- b. Paying for the design, permitting, and construction costs in advance before requesting reimbursement from the City, no more frequently than quarterly. The Developer is responsible for paying prevailing wages for construction, and providing the City with an Affidavit to Pay Prevailing Wages provided herein as Exhibit 5;
- c. Removing all existing onsite septic systems, abandoning any remaining septic tanks, and decommissioning all existing drain fields related to this project according to federal, state, and local regulations.
- d. Connecting all existing thirty-nine (39) mobile home units to the City's sanitary sewer system. All costs associated with connecting any additional units beyond the thirty-nine (39) existing units contemplated by this Development Agreement on the Property will be the sole responsibility of the Developer.
- e. Providing for all future, routine, on-going maintenance costs associated with the Property.
- f. If the Developer contemplates additional units, pads, or homes beyond the existing thirty-nine (39) units to ease the administrative burden, the Developer will make every effort to separate that work from the Project contemplated by this Development Agreement.
- g. The Developer will make any contract(s) for other work as part of this Project available, upon request, to all parties for review to insure an appropriate segregation of costs.

- h. The Developer agrees that the new sanitary sewer system constructed as part of this Project is within the mobile home park located on private property and will not be dedicated to the City. Maintenance, repair, future replacement, and any new extensions of the sanitary sewer system from connection to the Main on 70th Avenue SW and within the park is the sole responsibility of Developer.
- i. Deliver to the City all appropriate documentation required for the City to complete reimbursement requests per the Grant Agreement. Appropriate documentation includes, but not limited to, all relevant invoices, change orders, documentation of work progress, and daily construction notes. Such documentation shall be sent to the City as noted in the schedule below.

Reporting Period		Reports due to City	Reports due to Ecology
Quarter 1	January 1 – March 31	April 20, 2025	April 30, 2025
Quarter 2	April 1 – June 30	July 20, 2025	July 30, 2025
Quarter 3	July 1 – September 30	October 20, 2025	October 30, 2025
Quarter 4	October 1 – December 31	January 20, 2026	January 30, 2026

- j. The Developer shall provide the City with the following documents for review by the Department of Ecology as required by the Grant Agreement:
 - i. Copies of all required permits
 - ii. Final Bid Package
- k. Prior to selecting a construction contractor by the Developer, the Developer shall provide responses to Ecology comments on the Final Bid Package, as needed, following a 15-day review period of the Final Bid Package performed by the Department of Ecology.
- l. Prior to start of construction, the Developer shall provide the City a signed and dated construction contract;
- m. During and following construction, the Developer shall provide the City:
 - i. Any Change Order(s)
 - ii. Complete Construction Completion Form
- n. Failure to provide all the abovementioned deliverables may result in the loss of grant funding and termination of this Development Agreement.

10. City Responsibilities. The City shall:

- a. Administer the Grant Agreement;

- b. Be the primary contact for the Department of Ecology and submit all deliverables on behalf of the Developer and the City;
- c. Provide Developer reimbursement for the Project to the extent the projects elements are eligible for grant reimbursement and all documentation from the Developer has been received pursuant to the Grant Agreement.
 - i. The Department of Ecology reviews the payment request(s) from the City and, if approved, provides reimbursement of eligible expenses to the City of Tumwater for 75% of the total amount requested, up to a total reimbursement amount of \$666,666.67.
 - ii. If the Department of Ecology does not provide full reimbursement (or the total grant limit of \$666,666.67 has been reached), Developer shall be notified that the reimbursement will be limited to what is approved by the Department of Ecology.
 - iii. If required by Developer's Lender in writing, City will remit reimbursements directly to Lender.
- d. In total, the City will spend no more than \$666,666.67, or such lesser amount as approved and reimbursed by Department of Ecology under the Grant Agreement, assisting Developer of eligible costs for converting their existing onsite septic system(s) to City sewer. Reduction or termination of grant reimbursements shall not constitute a breach or default under this Agreement.
- e. In accordance with the Grant Agreement with Ecology, all these funds must be spent by November 21, 2025.
- f. The City agrees to give advanced notice, preferably 30 days, to the Developer and any secured lender in the event of a potential loss and/or termination of grant funding so the Developer and lender can cure any potential items of default.

11. Construction Schedule It is anticipated that the total work will take six (6) months or less to complete.

- a. Parties recognize the Property is occupied and the contractor will need to stage the work to maintain resident ingress and egress.
- b. 70th Ave LLC and the contractor will provide the City with a construction schedule before work begins and provide regular updates to the City, once per month at a minimum.
- c. Should the schedule change, the Developer shall notify the City as soon as the change has been identified. An updated schedule shall be provided to the City upon request.

12. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the

Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

13. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

14. Minor Modifications. Minor modification from the exhibits attached hereto may be approved in accordance with the provisions of the City of Tumwater's code and shall not require an amendment to this Development Agreement.

15. Further Discretionary Actions. The Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA (State Environmental Policy Act, Ch. 43.21C RCW and Ch. 16.04 TMC). Nothing in this Development Agreement limits the authority or the obligation of the City of Tumwater to hold legally required public hearings or limits the discretion of the City or any of its officers or officials in complying with or applying Existing Land Use Regulations.

16. Default.

- a. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days' notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day

period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

- b. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Tumwater Municipal Code for violations of this Development Agreement and the Code.

17. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

18. Termination. This Agreement shall expire and/or terminate as provided below.

- a. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all the permits and/or approvals issued by the City for such development are not underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.
- b. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement and submits applications for development of the Property that are inconsistent with such permits and approvals.
- c. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the Subject Property has been fully developed, whichever first occurs, and all the Developer's obligations in connection therewith are satisfied as determined by the City.

19. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions of any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

- 20. Effects upon Termination on City.** Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to the then existing planning and zoning laws). Dependent upon the status of the project and reimbursements made to the Developer by the City, the City may seek to recover payments made to the Developer if project is not completed before termination.
- 21. Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title, and interests therein to any person, firm, or corporation at any time during the term of this Agreement. The Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.
- 22. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned, or transferred to it.
- 23. Non-Enforcement not Waiver.** Failure by any party to enforce the Agreement shall not be construed as a waiver of any right to do so.
- 24. Amendment to Agreement; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of all the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property

during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map, or development regulations relating to the Subject Property five years from the anniversary date of the Effective Date of this Agreement.

- 25. Releases.** Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee, or transferee expressly assumes the obligations under this Agreement as provided herein.
- 26. Notices.** Notices, demands, correspondence to the City and the Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 4. Notice to the City shall be to the attention of both the Water Resources & Sustainability Director and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners and Lender of record who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.
- 27. Reimbursement for Agreement Expenses of the City.** The Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This Development Agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the Project, are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.
- 28. Applicable Law and Attorney's Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Thurston County Superior Court or the U.S. District Court for Western Washington.

- 29. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.
- 30. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.
- 31. Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

****Signatures on the following page****

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

CITY:
CITY OF TUMWATER
555 Israel Road SW
Tumwater, WA 98501

DEVELOPER:

Debbie Sullivan, Mayor
Mayor

Name Printed:
Title:

Date: _____

Date: _____

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the _____(title) of _____(company/organization) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)
Notary Public in and for the State of
Washington
My appointment expires _____

EXHIBIT 1: PROPERTY LEGAL DESCRIPTION

SURVEY INFORMATION

LEGAL DESCRIPTION

TPN: 31560000100

LOT 1 OF ANDERSON P.U.D DIVISION NO. 1 MOBILE HOME PARK PUD, AS RECORDED IN VOLUME 20 OF PLATS, PAGE 45; AND LOT 2 OF ANDERSON P.U.D DIVISION NO. 2 MOBILE HOME PARK PUD, AS RECORDED IN VOLUME 21 OF PLATS, PAGE 46; EXCEPT THAT PORTION CONVEYED TO THE CITY OF TUMWATER AS RECORDED MARCH 14, 2006 UNDER AUDITOR'S FILE NO. 3815093; ALSO EXCEPT ANY MOBILE OR MANUFACTURED HOME LOCATION THEREON.

SITUATE IN THURSTON COUNTY, WASHINGTON STATE.

EXHIBIT 2 – PROPERTY SITE PLAN

[EXHIBIT 3 – GRANT AGREEMENT WQC-2023-Tumwat-00050](#)

CITY OF TUMWATER CAPITAL FACILITIES PLAN WORKSHEET

CONTACT: Dan Smith
FUND: Sanitary Sewer
DEPT: Water Resources & Sustainability
PROJECT NO.
NEW: No
PRIOR:

SS-08

PROGRAM TITLE: Sewer Extension Program

PROGRAM DESCRIPTION:
 Project provides funding for extension of sewer mains to neighborhoods to facilitate onsite system conversions to sanitary sewer for protection of drinking water, public and environmental health. Project prioritization results from City evaluation and planning processes. This program is currently under consideration and has not been fully defined. Projects are shown annually, but may be combined for efficiency and workload. WRS will lead the program development; TED will lead the design and construction for identified projects.

IS PROJECT RECOMMENDED BY PLAN/POLICY? YES PLAN: 2015 General Sewer Plan PAGE# 8-2 GROWTH: 0%

FINANCIAL DATA

EXPENSES	PRIOR YRS	6YR TOTAL	2024	2025	2026	2027	2028	2029	FUTURE YEARS	GRAND TOTAL
Capital Costs:										
Planning & Design		\$ 540,000		\$ 150,000		\$ 180,000		\$ 210,000		\$ 540,000
Land & R-O-W		\$ -								\$ -
Construction		\$ 3,600,000		\$ 1,000,000		\$ 1,200,000		\$ 1,400,000		\$ 3,600,000
Equipment		\$ -								\$ -
Other		\$ -								\$ -
TOTAL EXPENSES	\$ -	\$ 4,140,000	\$ -	\$ 1,150,000	\$ -	\$ 1,380,000	\$ -	\$ 1,610,000	\$ -	\$ 4,140,000
Sources of Funds:										
General Government		\$ -								\$ -
Grants		\$ -								\$ -
Operating Income	\$ -	\$ 4,140,000		\$ 1,150,000		\$ 1,380,000		\$ 1,610,000		\$ 4,140,000
Connections	\$ -	\$ -								\$ -
Revenue Bonds		\$ -								\$ -
Other		\$ -								\$ -
TOTAL SOURCES	\$ -	\$ 4,140,000	\$ -	\$ 1,150,000	\$ -	\$ 1,380,000	\$ -	\$ 1,610,000	\$ -	\$ 4,140,000