



**CITY COUNCIL
MEETING AGENDA**

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

**Tuesday, September 20, 2022
7:00 PM**

- 1. Call to Order**
- 2. Roll Call**
- 3. Flag Salute**
- 4. Special Items:**
 - [a.](#) Proclamation: National Voter Registration Day, September 20, 2022
 - [b.](#) Association of Washington Cities Advanced Certificate of Municipal Leadership Program (Deputy CEO/COO Alicia Seegers Martinelli)
- 5. Public Comment:** (for discussion of items not having a public hearing on tonight's agenda)
- 6. Consent Calendar:**
 - [a.](#) Approval of Minutes: City Council, September 6, 2022
 - [b.](#) Contract Renewal – Tumwater Prosecution Services (Karen Kirkpatrick)
 - [c.](#) Bush Prairie Habitat Conservation Plan (HCP) Phase 2 Second Amendment to Service Provider Agreement (Brad Medrud)
 - [d.](#) Audit Engagement Letter (Troy Niemeyer)
 - [e.](#) Contract Salary Changes (James Trujillo)
- 7. Council Considerations:**
 - [a.](#) Service Provider Agreement with the Thurston EDC for Thurston Strong Phase II (Austin Ramirez)
- 8. Committee Reports**
 - [a.](#) Public Health and Safety Committee (Leatta Dahlhoff)
 - [b.](#) General Government Committee (Michael Althausen)
 - [c.](#) Public Works Committee (Eileen Swarthout)
 - [d.](#) Budget and Finance Committee (Debbie Sullivan)
- 9. Mayor/City Administrator's Report**
- 10. Councilmember Reports**

11. Any Other Business

12. Adjourn

Hybrid Meeting Information

The public are welcome to attend in person, by telephone or online via Zoom.

The City of Tumwater broadcasts and livestreams City Council meetings on cable television and the internet. Council meetings can be viewed on Comcast Channel 26 or on the TCMedia website.

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<https://tcmedia.org/stream.php>, select "Watch, Streaming Now, Channel 26."

OR

Go to <http://www.zoom.us/join> and enter the Webinar ID 874 1733 8222 and Passcode 870239.

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Call (253) 215-8782, listen for the prompts and enter the Webinar ID 874 1733 8222 and Passcode 870239.

Public and Written Comment

Attend in person to give public comment or register by 6:45 p.m. the day of the meeting to provide public comment using the web-based meeting platform:

https://us02web.zoom.us/webinar/register/WN_voQnsWgQSfWYV2PDt1QGOW

After registering, you will receive a confirmation email with a login to join the online meeting.

As an alternative, prior to the meeting, the public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than 5:00 p.m. on the day of the meeting. Comments are submitted directly to the Mayor and City Councilmembers and will not be read individually into the record of the meeting.

Post Meeting

Video recording of this meeting will be available within 24 hours of the meeting.

<https://tcmedia.org/channels.php>

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 Clerk by calling (360) 252-5488 or email CityClerk@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 contact the City's ADA Coordinator directly, call (360) 754-4128 or email ADACoordinator@ci.tumwater.wa.us

Proclamation

WHEREAS, registering to vote empowers eligible citizens to exercise their right to vote on Election Day; and

WHEREAS, the City of Tumwater is committed to strengthening democracy by encouraging voter registration and increasing participation in all elections; and

WHEREAS, civic-minded people and organizations have collaborated to establish National Voter Registration Day on September 20, 2022; and

WHEREAS, the goal for the 2022 National Voter Registration Day is to create awareness of elections and motivate eligible citizens to vote in coming months; and

WHEREAS, the strength of our democracy depends on the willingness of our citizens to participate by choosing the people who will lead us and by voicing their opinions on important matters that will come before the voters on Election Day.

NOW THEREFORE, I, Debbie Sullivan, Mayor of the City of Tumwater, do hereby proclaim

September 20, 2022
National Voter Registration Day

and I encourage all eligible City of Tumwater residents to register to vote and to make it a priority to vote on Election Day.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the City of Tumwater to be affixed at City Hall, this 20th day of September, in the year, two thousand twenty-two.



Debbie Sullivan

Debbie Sullivan
Mayor

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CONVENE: 7:01 p.m.

PRESENT: Mayor Debbie Sullivan and Councilmembers Peter Agabi, Michael Althausen, Joan Cathey, Leatta Dahlhoff, Angela Jefferson, and Charlie Schneider.

Excused: Councilmember Eileen Swarthout.

Staff: City Administrator John Doan, City Attorney Karen Kirkpatrick, Transportation and Engineering Director Brandon Hicks, Finance Director Troy Niemeyer, Parks and Recreation Director Chuck Denney, and City Clerk Melody Valiant.

SPECIAL ITEMS:

TUMWATER LIBRARY UPDATE: Tumwater Library Manager Lily Grant updated the Council on the services provided by the Tumwater Library.

Tumwater Library has resumed regular services since the pandemic in March 2020. The library offers all services with Family Story Time on Tuesday and Wednesday mornings, Lego programs, teen programs, and adult programs. The library is adding youth services and refining previous services.

The library offers free Wi-Fi, free computer use (in branch and available through checkout), free printing, and free faxing and copying services. The library offers for checkout backpack kits, Washington kits offering guidebooks, binoculars, Discover Pass, and information on Washington State parks. The Tumwater Library offers a seed library supplied by donations from the community, Garden Raised Bounty, and local garden stores. The seeds are free to library patrons. Recent new services include 3D printing sponsored by the Friends of the Library, musical instruments that can be checked out, and fishing kits in partnership with the Department of Fish and Wildlife. The kit includes a tackle box with hooks, lures, artificial bait, and fishing rods in different sizes for adults and youths.

Councilmember Althausen asked whether the library has any plans to offer tool checkout or solar resource materials for homeowners who may want to explore conversion to solar panels. Ms. Grant said discussions have occurred about the potential of offering a tool library to many of the branches. The program has generated interest; however, it requires logistics and funding to establish the program.

Councilmember Jefferson commented on recent incidents targeting librarians. She inquired as to the morale and working conditions at the library. Ms. Grant said the library is fortunate to have a supportive community. The library has not experienced any negative incidents and

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employee morale remaining high.

Councilmember Dahlhoff inquired about the possibility of the library collaborating with different community groups involved in community gardens throughout the City. Ms. Grant supported collaborating with community groups, as the seed program continues to be very popular.

PUBLIC COMMENT:

Pamela Hansen, P.O. Box 14521, Tumwater, cited her previous comments on property tax exemptions. Her concern is whether there would be sufficient new construction to counterbalance the property tax shift increase to both businesses and property owners. The tax exemption program is a potential inflationary cost to Tumwater taxpayers by providing a tax break to Glenn Wells and his properties. To be transparent about Tumwater tax dollar spending, exemptions, and tax breaks, the City needs to complete the calculations and publish those tax shift calculations for taxpayer review even if it is a hypothetical calculation in both best and worst case scenarios. In addition to inflationary cost, the cap-and-trade legislation, often referred to as a scheme by an in-depth evaluation by the *Seattle Post-Intelligencer*, is a future concern. The Washington State Supreme Court decided that Thurston County Superior Court Judge Dixon was restricted in his ruling and required him to dismiss a case last month. The Supreme Court decided against the cap-and-trade accounting number published in the Voter's Pamphlet for a simple non-binding advisory vote of the people to state their opinion. That decision means that the auction price of carbon allowances and auction price investment or fees are wrongly being described and cannot be evaluated by the voters. In her opinion, those billions of dollars in auction prices have one weak point of downstream collection to be exploited by power rate increases. There is the potential of billions of dollars in carbon allowance auction sales that would be contributed to the state general fund while Tumwater taxpayers may not see or realize a benefit. She suggested the Council should have staff evaluate the inflationary cost and determine a plan as the order by the Washington State Supreme Court would not include that information in the Voter's Pamphlet. Once the money enters the state general fund, it will not be simple to follow because it is not a dedicated fund. Cap-and-trade is an inflationary program statewide and the billions of dollars in auction sales that are being described as a fee and/or carbon tax are a price to pollute. The word "clawback" was used in a White House briefing by the U.S. Secretary of Commerce regarding the \$50 billion of CHIPS funding, tax dollar use, accountability, protection, and recovery.

**CONSENT
CALENDAR:**

- a. Approval of Minutes: City Council Worksession, July 26, 2022
- b. Approval of Minutes: City Council, August 1, 2022
- c. Approval of Minutes: City Council Worksession, August 9, 2022
- d. Payment of Vouchers
- e. Deschutes River Flood Reduction Study Service Provider Agreement
- f. FY 2021-2023 Water Quality Stormwater Capacity Agreement

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- g. Ordinance No. O2022-018, Habitat Conservation – Prescribed Burning
- h. Appointment of Kelly Von Holtz to the Planning Commission
- i. I-5/Troster Rd/Capitol Blvd Reconfiguration Project – Amendment to WSDOT Project Review Reimbursable Agreement (JC Account 1419)

MOTION:

Councilmember Dahlhoff moved, seconded by Councilmember Jefferson, to approve the consent calendar as published. A voice vote approved the motion unanimously.

Mayor Sullivan reviewed the items approved on the consent calendar and introduced Kelly Von Holtz, a new member of the Planning Commission.

Ms. Von Holtz said she is excited to become a member of the Planning Commission and plans to continue to work for the benefit of the City.

**COUNCIL
CONSIDERATIONS:**

**HOMES FIRST
PURCHASE AND SALE
AGREEMENT:**

Councilmember Dahlhoff announced her recusal from both the discussion and potential motion as she serves as a member of the Board of Director for Homes First.

Director Niemeyer reported the proposal was initiated in August 2021 when the Council adopted an interlocal agreement with LOTT Clean Water Alliance, a special disposition process, and a policy to acquire the property. LOTT completed a boundary line adjustment to retain some land attached to the property. The City acquired the home and declared it surplus. The proposed action would donate the house to Homes First.

Trudy Soucoup, Executive Director, Homes First, reported the home is located off Henderson House and has been vacant for at least 10 years. The home will be renovated with the addition of four bedrooms to become an eight-bedroom home for the Oxford House International Program for women in recovery. The septic system will be connected to City sewer. Many volunteer groups have contacted the organization to offer assistance in renovating the home. Former Mayor Kmet pursued the project. Homes First appreciate the support by the City of Tumwater.

MOTION:

Councilmember Althaus moved, seconded by Councilmember Jefferson, to award and authorize the Mayor to sign a Purchase and Sale Agreement with Homes First and execute all necessary documents to complete the transfer. A voice vote approved the motion. Councilmember Dahlhoff abstained.

**INTERSTATE
5/TROSTER
ROAD/CAPITOL**

Director Hicks reported the request is for the Council to reject the bids for the Interstate 5/Troster Road/Capitol Boulevard Reconfiguration project, as well as directing staff to value engineer the project and reissue bids as soon

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BOULEVARD
RECONFIGURATION
PROJECT -
REJECTION OF BIDS:

as possible.

The project addresses traffic congestion, provides multimodal facilities that do not currently exist, and upgrades existing multimodal facilities for accessibility. The project includes construction of three roundabouts with one located at Capitol Boulevard and Trosper Road, the second on Trosper Road at the current location of the on and off ramps for Interstate 5, and the third at the relocated Interstate 5 on and off ramps and a new road alignment called 6th Avenue. The project also includes construction of an extension of Trosper Road east of Capitol Boulevard extending behind the Burger King restaurant to Linda Street with the purpose of providing public access to businesses other than driveways and parking lots. The project upgrades all existing utilities in addition to undergrounding utilities. The project has been under planning, design, and right-of-way acquisition for several years.

The City received five bids, which is unusually low for a project of this scope and size. Typically, the City would receive more bids. All bids exceeded the engineer's estimate of \$10.9 million with the range of bids from \$12.3 million to \$14.1 million. Most of the increase in costs can be attributed to increasing costs of construction materials, labor wages, and the lack of workers. Additionally, supply chain pressures and shortages are contributing factors, as well as contractor capacity issues, which speak to why more bids were not received by the City. Added to those costs is inflation at an all-time high in the construction industry. Staff accounted for the complexity of the project within the engineer's estimate.

The major grant supporter for the project is the Transportation Improvement Board (TIB) with approximately half of the project costs funded by the TIB. Staff has been in contact with TIB staff regarding a request for additional funds. Staff is optimistic the City might receive some additional funds. The next meeting of the TIB Board is in three weeks.

Director Hicks requested the Council reject the bids because all bids exceed the engineer's estimate greater than ten percent. Staff completed a value engineering exercise and the revised engineer's estimate is approximately \$11-12 million. Staff plans to readvertise the bids as soon as possible.

Staff recommends the City Council reject the construction bids received for the Interstate 5/Trosper Road/Capitol Boulevard Reconfiguration project and authorize staff to readvertise the project and solicit bids after value engineering to reduce costs.

Councilmember Althausen questioned whether the request for rejection of the bids is to enable staff to recalculate the project to reduce the cost to receive lower bids or whether the rejection is to enable more time to obtain a greater amount of funding to enable the City to accept some bids. Director Hicks explained that staff is requesting the rejection of the bids as

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staff believe the pricing is too high and it is possible to achieve a similar product by reducing some of the project scope without sacrificing the quality of the project. There are two major options when bids are too high and they are to reduce the scope or secure more funding and staff are pursuing both. One of the changes in the scope to help reduce costs is allowing a delay in the start of construction to gain more interest from contractors that are too busy, as long as the project is completed by a specific date. Other elements include reducing the road structural section by reducing asphalt and aggregate thickness to the minimum amount needed for the expected traffic type and volume as well as a reduction in the working days to reduce flagging costs. There are several other measures, these are just some of the major ones considered. Value engineering considers the scope of the project and evaluates where reductions could occur without affecting the quality of the project.

Councilmember Agabi asked whether staff anticipates the results of value engineering will enable the project to remain within the budget. Director Hicks said he is confident the project costs will go down to an amount needed to move forward. Staff does not envision a drastic change in unit prices because the bids would be received within the next two weeks. Contract provisions also enable adjustments of price if asphalt and gas costs change significantly, which reduces contractor risk. Staff anticipates receiving additional funding. Based on the revised engineer's estimate, staff is confident of achieving a bid amount that makes sense for the city to pursue construction of the project.

MOTION:

Councilmember Althaus moved, seconded by Councilmember Dahlhoff, to reject the construction bids received for the Interstate 5/Troster Road/Capitol Boulevard Reconfiguration project and authorize staff to re-advertise the project and solicit bids after value engineering to reduce costs. A voice vote approved the motion unanimously.

**BUDGET WORKSHOP
#1:**

City Administrator Doan reported the workshop will focus on the proposed General Fund budget for the 2023-2024 Biennium Budget. Future meetings will cover the Utility Funds, Golf Course Fund, and other Enterprise Funds.

The review covered how the general fund fits within the overall budget, an overview of the general fund, and proposed programs and expense highlights for all departments in the City. City Administrator Doan reviewed the City's budget process initiated by the Council's retreat. The budget proposal includes all goals established by the City Council.

Director Niemeyer reviewed the budget for the General Fund. The General Fund includes public safety (Fire & Police), courts, streets, parks and recreation, facility maintenance, and all support services. Revenues for the General Fund are from taxes and fees.

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Changes from the first workshop are reflected in the sales tax and business and occupation (B&O) taxes. Based on growth in new construction the numbers were adjusted upwards. Property and sales tax are the largest source of revenues supporting the General Fund. The largest source of expenses from the General Fund is Fire and Police consuming approximately 50% of the General Fund budget followed by Parks and Recreation (Facilities), and General Fund support functions.

City Administrator Doan commented on the impact of COVID-19 increasing overtime costs for Fire and Police.

Director Niemeyer noted that the beginning balance is based on estimates of revenue and expenditures. The projection reflects that within the next biennium, the City will spend down some of the fund balance. The Council previously authorized increasing the required ending fund balance from 8% to 17% to place the City in a better financial position and to help secure a better interest rate when the City seeks bonds for financing projects. The budget also includes a proposal to create a revenue stabilization fund to help offset unexpected economic impacts.

Some drivers for General Fund expenditures are personnel costs, cost of living increases, increased inflation costs, and green investments (electric and hybrid vehicles).

City Administrator Doan reviewed highlights of each department's budget to include new budget requests:

- Legislative – City Council expenses
- Non-Departmental – Citywide special projects, miscellaneous costs, City insurance costs, and Citywide training
- Executive – Mayor, City Administrator, Communications, and City Clerk
- Finance Department – Utilities, Payroll, City Financials, Office of Assigned Counsel oversight
- Administrative Services – Human Resources, Risk Management, City Clerk, and Management of City Fleet
- City Attorney
- Violations Bureau – Located within Finance Department
- Parks and Recreation – .5 FTE Citywide Volunteer Coordinator, Facilities & Maintenance, Parks, and Recreation Programs, and Metropolitan Park District projects.
- Police Department – Major undertaking in the next biennium is the update of the Records Management System in conjunction with a regional effort, restoration of the Police Specialist position for increasing communication with the community and providing front

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counter support, addition of a new Detective Sergeant position, and funding for two replacement police officers based on projected retirements in the next five years.

- Fire Department – the Fire Department proposes adding a department assistant in support of Fire Prevention Officer that would be partly funded by fire permit fees imposed through the Community Development Department on new development. Several vehicles were added for the Medical Services Officer and the Fire Prevention Officer. The Fire Department proposes to implement Battalion staffing affording the opportunity for four Fire Captains to promote to a Battalion Chief providing the department with a higher level of incident command and response. The proposed budget adds three Firefighter FTEs with the new Medic One contract funding one of the positions with the City's General Fund paying for the three positions vacated when Fire Lieutenants are promoted to Fire Captains. The proposal aligns with the organization of the Regional Fire Authority, which includes a 2-Battalion system. The budget includes some facility improvements for both fire stations.
- Engineering – Responsible for managing transportation projects and completing plan reviews of private development proposals. The budget includes an additional Engineer position for plan review to meet current development demand. Permit revenue would fund the position. Because of the inherent needs for staff to work on site, the budget includes a request for leasing office space because City Hall cannot accommodate more personnel.
- Community Development Department – The budget proposes to convert the Building Inspector to a regular FTE converting the existing position from a one-year contract. The budget includes consultant support for the update of the Comprehensive Plan.

City Administrator Doan shared information on the increase in the level of development activity for multifamily housing and residential subdivisions increasing the amount of permit revenue to the City by a projection of \$2.4 million in 2022. The revenue offsets department costs.

- Streets – Budget requests include purchase of spare signal cabin, 3 seasonal employees, a portion of a new Department Assistant .5 FTE in Operations, replacement of Freightliner truck with a second dump truck, and the need to address long-term funding for streets.
- Transfers – The section is an internal operating fund of major types of funding transfers.
- ARPA – The fund includes the remaining amount of \$2.55 million received from the federal government.
- Public Safety Reserve – Voters approved a property tax increase in

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2011 for funding three firefighters, four police officers, fire engine replacements, and an addition to the Police Station. The last two fire engines have not been ordered and if the RFA is approved, the City would provide a \$2 million payment to the RFA to account for the last two fire engines and continue to pay for the second fire engine. Additional funds afforded in the fund are used to pay for fire and police equipment as one-time expenses to avoid creation of long-term funding commitments.

- Permit Reserve – Represents one of several reserve funds. The proposal is to add \$200,000 to the fund in recognition of the amount of revenue from permitting. The fund would help stabilize permit review functions.
- Emergency Fund – Fund assists with a declared emergency. The fund did not exist 12 years ago. The City has slowly increased the fund with a maximum amount of \$0.375 per \$1,000 of assessed valuation funded by a portion of the construction sales tax revenue.
- Facilities Reserve – The fund balance is approximately \$2 million from interest revenue. The budget proposes no addition of funds to the reserve. The budget proposes using the fund as loan to fund the renovation of the Crosby House (new roof and foundation) of approximately \$345,000 paid back by the General Government CFP. The City also has approximately \$386,000 of other facility projects to include the improvements to the fire stations, painting of City Hall, and much-needed improvements to Old Town Center. The City will need to determine the future of Old Town Center when the City completes the new community center. The fund also includes a funding commitment of \$200,000 if the RFA is approved by voters.
- Recreation Special Programs – Known as the Tumwater Youth Program (TYP) that is essentially a self-sustaining program through community donations and sponsorships. The fund balance is approximately \$90,000 with revenue anticipated of \$70,000. The program plans to expend some of the funds on external security for TYP events.
- Parks and Recreation Commission receive \$20,000 a year and the Historic Preservation Commission receives \$10,000 per year. Both bodies render decisions on how to expend the funds.
- E-Link & Fiber – Fiber and conduit are installed throughout the City during street projects. The City leases conduit to other agencies. The revenue is expended on improvements that enhance the network. One proposed project is the fiber connection between the new Operations and Maintenance Facility and the fiber system be funded through the E-Link Fund of \$200,000.
- K-9 Fund – The Fund is sponsored by donations from the community for the acquisition and training of a new K-9. K-9 James is scheduled to retire and the Police Department plans to add a new canine. Expenses are attributed to training the new canine

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and new canine officer.

- Flag Fund – The fund was created when a benefactor in the community contributed to the City to support a provision of a flag that has been flown over the National Capitol, Washington State Capitol, and Tumwater City Hall and presented to the Police Officer and Firefighter of the Year.

City Administrator Doan reviewed items not funded in the budget:

- Assistant City Attorney
- Grant/Contract Manager
- Second Signal Technician
- Two Street Maintenance Techs
- Additional Police Officers
- Additional administrative support staff
- Expanded community arts program
- Additional housing funds
- Improvements to golf, parks, and City facilities

The City's financial toolbox includes:

- Level of Service Changes
- Increase Revenue Sources
- Efficiencies
- Increase Taxes and Fees
- One-time Revenue

Actions that need to happen include:

- Regional Fire Authority – Reduce the rate of growth Citywide and provide better services
- Review Police Staffing Needs and Funding
- Review Transportation Benefit District structure and renew TBD in 2024
- Real economic development (jobs, tax base, value)
- Modify the 1% property tax cap
- Monitor revenue assumptions
- Continue to make smart infrastructure investments that:
 - Maintain facilities
 - Create capacity to support development
 - Create a better community

Next steps include:

- Budget Workshop #2 – September 27, 2022 on Utilities, Golf, ERR, Remaining Funds
- Budget Workshop #3 – October 11, 2022

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The Council offered the following comments and requests:

- A request for a proposal on compensation for members serving on City boards and commissions.
- Consider ways of collaborating with the community for tree plantings and increasing species diversity
- Questions on whether the City could collaborate with City of Olympia to participate in offering Crisis Response Unit and Familiar Faces services. City Administrator Doan recommended deferring any requests until the election in April 2023 to determine whether the Regional Fire Authority is approved by voters.
- City Administrator Doan clarified that the budget allocation of \$75,000 for Senior Services for South Sound is for the provision of food at Old Town Center for senior lunches and for some limited programming expertise.
- A request for increasing the .5 FTE Volunteer Coordinator to a $\frac{3}{4}$ FTE position.
- A request for additional funding for maintenance of the City's historic cemetery. City Administrator Doan advised of a project scheduled in the Capital Facilities Plan for improvements to the cemetery. Approximately \$50,000 of the allocation is a grant from the state for interior improvements to the cemetery. Maintenance of the cemetery is funded from the General Fund under Parks and Facilities Maintenance. Additionally, challenges are a factor when cleaning older headstones, replacing headstones, and replacement of trees within the cemetery environment that is not well mapped. Director Denney noted that tree issues are also problematic in parks and along trails. The Parks Department is the largest holder of the City's urban forest and lacked prior funding to manage the forest. Funds in the proposed budget would assist in better management of trees. Trees within the cemetery have been identified for management. The cemetery is undergoing implementation of the 1996 Cemetery Master Plan. The City added funds to the \$50,000 state grant for perimeter fencing, installation of utility connections, and maintenance of the cemetery. The work has been much more difficult than predicted and the state has provided several extensions on the grant because of the uniqueness of the situation.
- A question on the City's plan for maintenance of the totem poles along the Capitol Boulevard Bridge. Mayor Sullivan noted that any work on the totem poles include collaboration with the City's Historic Preservation Commission and the Washington Department of Transportation. The City plans to include funds in the next biennium for refurbishing the totem poles along Capitol Boulevard.
- It appears that no budget was included for body cameras and no line item for bullets. City Administrator Doan said the Police Department currently uses dash cameras. Approximately one year

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ago a conversation with the Council indicated support for continuing with dash cameras and that body cameras could be considered in the future with no firm commitment. If the Council wants to consider adding body cameras, a goal would need to be added. If the RFA passes and the City has access to surplus property tax of \$.13/\$1,000 of assessed valuation, the City will have several choices to consider, which could including funding body cameras. Police Chief Weiks said the budget does not include a line item for bullets as the dollar amount is below a specific amount and is listed under Other Operating Expenses. He offered to meet offline to address questions from the Council.

- City Administrator Doan addressed questions about the increase in police positions. Other comparables reflect that staffing is above some departments and below other departments. Staffing is defined by the type of community and officers per population may not be the best measure. Staffing level considers the community, population, the workforce, and unusual demands and characteristics in the community. Some element of criminality occurs in the City because of Interstate 5. In response to a question as to how the Mayor and City Administrator concluded the request to add five new officer positions could not be supported, City Administrator Doan advised that more conversation was required to explore how many officers would be appropriate and how those positions would be funded as the budget reflects \$3.6 million more than the City receives in revenue.
- Councilmember Althausen asked whether the battalion chief structure within the Fire Department requires a new bargaining agreement with the fire union. City Administrator Doan affirmed the need to engage in bargaining with the union. At this time, the City is in conversations with the fire union as the existing contract expires at the end of 2022. In terms of the facility improvements, his preference is to pursue a successful transition to the RFA and that the improvements have been warranted for some time and do not equate to more than \$200,000. It is important to bring the facilities up to standards.
- Councilmember Althausen asked about staffing for housing support, inspection programs, and working with tenants and landlords. City Administrator Doan advised that a position was considered but there was uncertainty in the type of position and the responsibilities of the position to include the possibility of collaborating with another jurisdiction to provide service. More information is necessary before identifying an additional position.
- Councilmember Dahlhoff asked about the probability of exploring the different type of equipment and power tools used and the energy consumed and carbon emitted, as well as the labor required to maintain tools and equipment, which directly affects the City's

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ability to fight climate change. City Administrator Doan responded that the City's department directors have received guidance on rendering decisions to convert from gas powered to electric powered tools when possible. Most of the tools used by ground maintenance staff have been converted to electric tools. The issue is whether the green market offers electric lawnmowers that can keep pace with a 10-hour day. The CFP includes a project to replace the median along Capitol Boulevard that requires constant watering as the median was poorly constructed and essentially entails the grass median sitting directly on concrete. The department presented a proposal to remove the median. Staff plans to follow up with the Council early next year on ways to mitigate impacts as private equipment manufacturers catch up with electric production.

- Councilmember Dahlhoff requested adding a discussion to the Public Safety and Health Committee meeting agenda on the role of School Resource Officers in support of TYP events. Councilmember Schneider conveyed concerns about potential encounters with a person(s) intent on causing violence during an event and conveyed appreciation for designating some funds for external security during TYP events.
- Councilmember Jefferson asked to receive a report from the City's new Economic Development Manager on his goals, plans, and how he plans to work with local agencies (EDC and Experience Olympia and Beyond, and others) plans to attract new business, and build tax base in Tumwater for the near- and long-term future. City Administrator Doan encouraged the Council to review the City's Economic Development Plan that serves as the outline for the new manager is using. City Administrator Doan added that he plans to schedule reviews with several new staff members to review their specific areas of focus at the end of the year and early next year.
- Councilmember Agabi asked how the Council would intend to address any increase in the 1% cap on property tax. City Administrator Doan said the conversation would be extensive as the 1% property tax cap represents approximately \$100,000 of additional revenue to the City each year. He noted that with the recent increases in property values, it would be important to discuss how that increase in property value does not necessarily equate to an increase in property tax. It is important for the Council to understand how property tax rates are established and how that changes when property valuations increase.

**COMMITTEE
REPORTS:**

**PUBLIC HEALTH &
SAFETY:**

The next meeting is scheduled on Tuesday, September 13, 2022 at 8 a.m. Agenda topics include an update from the Thurston County Prosecuting

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Leatta Dahlhoff

Attorney's Office.

**GENERAL
GOVERNMENT:**
Michael Althausen

The next meeting is scheduled on Wednesday, September 14, 2022 at 2 p.m. to consider two ordinances for general housekeeping code amendments.

PUBLIC WORKS:
Eileen Swarthout

The meeting on Thursday, September 8, 2022 was cancelled. .

**BUDGET AND
FINANCE:**
Debbie Sullivan

There was no report.

**MAYOR/CITY
ADMINISTRATOR'S
REPORT:**

City Administrator Doan referred to a filing by the attorney on behalf of the Preserve Homeowners Association urging the County Commission to disband the ditch district or suspend its operations. He asked for feedback from the Council on whether to forward a letter from the City requesting the suspension of the operations of the ditch district.

Councilmember Schneider said he would abstain due to the conflict of interest in the matter.

The Council authorized City Administrator Doan to forward a letter to the County Commission.

Mayor Sullivan reported on her attendance to the Intercity Transit Authority meeting. The Authority authorized the construction of 123 bus stop pads, which has created some issues surrounding the ability of loading and unloading from the rear of the buses requiring a different configuration of the 123 bus stops. The Authority scheduled a public hearing on October 5, 2022 for the Draft Transit Development Plan and clarified language for passengers under the age of 17 to ride Vanpools at no charge. Intercity Transit is currently recruiting for members for the Community Advisory Committee with applications due by October 7, 2022.

**COUNCILMEMBER
REPORTS:**

Peter Agabi:

There was no report.

Angela Jefferson:

At the August 11, 2022 meeting of the LEOFF Disability Board meeting, members discussed the definition of "reasonable care" based on questions from Councilmembers Agabi and Jefferson at the March meeting. The City Attorney reviewed the definition from the state RCW. The Board approved adding the definition to City policy; however, as the definition was already included, action was unnecessary. The Board voted unanimously to end the discussion.

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
September 6, 2022 Page 14**

On August 16, 2022, Councilmember Jefferson attended *Experience Olympia and Beyond* meeting. Members reviewed the mid-year budget revision of a shortfall of \$200,000. With some adjustments, the revision to the budget was approved. Members discussed custom marketing and other methods to increase funding. The video on Tumwater is scheduled for release highlighting the City's brewing history with historic images.

Councilmember Jefferson attended the Equity Advisory Committee meeting with the Tumwater School District at the District office. She participated in a team-building exercise and separated in small groups with training providing by Dr. Carol Meyer, the interim Superintendent. The groups reviewed and analyzed several articles on leadership and were asked to document what each member would like to see for each student. His response was a wish for Tumwater students to feel loved, valued, and accepted and to decrease the rates of suicide in the community and for them to become productive citizens in society. School District staff members are participating in similar training.

On August 18, 2022 Councilmember Jefferson hosted the Interim Tumwater School District Superintendent, the Squaxin Island Tribe Council Vice Chair, and a member from the Tumwater School Board to initiate a discussion on ways to start integrating native tribes within the school district.

Charlie Schneider:

Councilmember Schneider attended the Climate Action Steering Committee meeting. The City's Sustainability Coordinator Alyssa Jones Wood shared information on the conversion of nearly 900 lights to LED bulbs and reviewed the various types of electric vehicle stations of Levels 1, 2, and 3. The levels provide different levels of voltage and the amount of time it requires to complete a charge.

Tumwater HOPES is welcoming a new director as the current director accepted another position in another county.

Councilmember Schneider plans to attend the annual senior picnic on Thursday, September 8, 2022 at Historical Park with lunch served at 11 a.m. at no charge.

Councilmember Schneider thanked the Parks and Recreation Department and all volunteers for a successful annual food fest. The annual TOGETHER golf tournament was recently held for youths.

Joan Cathey:

Councilmember Cathey attended the last meeting of the Regional Housing Council with Councilmember Althausen.

Leatta Dahlhoff:

Councilmember Dahlhoff plans to attend the next meeting of Thurston

**TUMWATER CITY COUNCIL MEETING
MINUTES OF HYBRID MEETING
September 6, 2022 Page 15**

County 911 Administration Board meeting on Thursday, September 8, 2022.

Michael Althausen:

At the last meeting of the Regional Housing Council meeting with Councilmember Cathey, members discussed moving forward on inclusion of subject matter experts and people with lived experience within the Council's decision-making processes. The Council is considering a two-tiered approach for inclusion of some members of the Housing Action Team to include some subcommittees where the majority of attendees who have either experienced homelessness or who are providers. No formal proposal has been received from staff on the new format. Members discussed the status of the hotel acquisition. Some current deliberations include how funding will be handled for acquisition of the property. Staff is in discussions with the state on the process. The logistics of the process will be determined.

The meeting of the Capitol Lake Funding and Governance Work Group was cancelled.

ADJOURNMENT:

With there being no further business, Mayor Sullivan adjourned the meeting at 9:53 p.m.

Prepared by Valerie L. Gow, Recording Secretary/President
Puget Sound Meeting Services, psmsoly@earthlink.net

TO: City Council
FROM: Karen Kirkpatrick, City Attorney
DATE: September 20, 2022
SUBJECT: Contract Renewal – Tumwater Prosecution Services

1) Recommended Action:

Public Health and Safety Committee recommends the Council approve and authorize the Mayor to sign the Interlocal Agreement with the Thurston County Prosecuting Attorney's Office for Prosecution Services.

2) Background:

The City has a long-standing relationship with the Thurston County Prosecuting Attorney's Office. The current contract for prosecution services expires December 31, 2022. Staff recommends renewing the contract for a period of two years. The Prosecutor's Office updated their figures based on the services previously provided and projected trends, and has proposed an annual amount of \$200,400 (\$16,700 per month). This is less than the current amount of \$210,000 per year (\$17,500 per month). The proposed contract also includes civil support at \$140 per hour, not to exceed \$30,000 (which is unchanged from the current contract).

3) Policy Support:

The continued relationship with the Thurston County Prosecuting Attorney's Office helps provide and sustain quality public safety services.

4) Alternatives:

Not authorize the Mayor to sign the Interlocal Agreement for Prosecution Services.

5) Fiscal Notes:

Proposed contract amount: \$200,400 per year (\$16,700 per month) plus civil support at \$140 per hour, not to exceed \$30,000.

6) Attachments:

Attachment A – Proposed Contract and Scope for Prosecution Services 2023-2024.

Attachment A

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF TUMWATER AND
THE THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE
FOR PROSECUTION SERVICES**

THIS INTERLOCAL AGREEMENT, is made and entered into pursuant to RCW 39.34 in duplicate this _____ day of _____, 2022, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the "CITY" and THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE, hereinafter referred to as the "PAO."

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

1. SCOPE OF SERVICES.

The PAO shall perform the following services and accomplish the following tasks, including the furnishing of all materials and equipment necessary for full performance thereof:

The PAO shall perform all necessary prosecution services for the City of Tumwater as more particularly described and detailed in Attachment "A" incorporated herein by reference.

In the provision of services under this Agreement, the PAO will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

2. TERM.

This Agreement shall be in full force and effect beginning January 1, 2023 and shall remain in effect until December 31, 2024, unless sooner terminated according to the provisions herein. This Agreement may be extended for additional periods of time upon mutual written agreement of the parties.

3. 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 PAO except for services identified and set forth in this Agreement.

C. The CITY shall pay the PAO for work performed under this Agreement a sum of Two Hundred Thousand Four Hundred Dollars and no cents (\$200,400.00) per year as follows: Sixteen Thousand Seven Hundred Dollars and no cents (\$16,700.00) per month payable on or about the first Wednesday of the following month. In addition, on an as-needed basis, civil support will be billed at One Hundred Forty Dollars (\$140.00) per hour not to exceed Thirty Thousand Dollars (\$30,000.00) per year, for a total not exceed amount of Four Hundred Fifty Thousand Dollars and no cents (\$450,000.00). The cost of all infrastructure, administrative support, and services, as well as standard overhead services necessary to comply with established standards, is included in this payment.

4. INSURANCE.

Thurston County is a member of the Washington Counties Risk Pool and the liability coverage through the Risk Pool is acceptable to the CITY.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

A. The parties intend that an independent contractor relationship will be created by this Agreement. The CITY will not exercise control and direction over the work of the PAO, and is interested primarily in the results to be achieved. Subject to paragraphs herein, the implementation of services pursuant to this Agreement will lie solely within the discretion of the PAO. No agent, employee, servant or representative of the PAO shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the PAO are not entitled to any of the benefits the CITY provides for its employees. The PAO 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 PAO 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.

6. HOLD HARMLESS INDEMNIFICATION.

The PAO shall indemnify and hold the CITY and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the CITY resulting from the

PAO's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the PAO; and provided further, that nothing herein shall require the PAO to hold harmless or defend the CITY, its agents, employees and/or officers from any claims arising from the sole negligence of the CITY, its agents, employees, and/or officers.

7. COMPLIANCE WITH LAWS.

The PAO, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including 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.

8. ASSIGNMENT.

The PAO shall not assign its performance under this Agreement unless the PAO determines that a conflict of interest exists. The PAO shall notify City if a case is being assigned to an attorney outside the PAO.

9. TERMINATION.

Either party may terminate this Agreement, in whole or in part, at any time, by giving at least sixty (60) days written notice.

10. NOTICE.

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

11. ADMINISTRATION.

This Agreement will be jointly administered by Administration Chief Prosecuting Attorney and the Tumwater City Attorney. This Agreement does not create any separate legal or administrative entity.

12. FINANCING BUDGET.

This Agreement does not contemplate joint financing of the activities within its scope, nor does it contemplate a joint budget.

13. PROPERTY ACQUISITION AND DISPOSITION.

This Agreement does not contemplate the joint acquisition of property by the parties. At termination, each party will remain the sole owner of its own property. Any property acquired by the PAO in connection with this Agreement will be, and remain, solely owned by the PAO, even if the property is acquired by the County using payments made by the CITY under this Agreement.

14. 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.

15. JURISDICTION AND VENUE.

A. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and 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 only in any of the courts of competent jurisdiction in Thurston County, Washington or in the superior court of either of the two nearest judicial districts.

16. 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 statute of the State of Washington, said provision that 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.

17. 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. Any amendment or extension 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.

18. FILING. This Agreement will be filed with the Thurston County Auditor or listed on the PAO's web site prior to entry into force, in accordance with RCW 39.34.040.

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

PAO:

THURSTON COUNTY
PROSECUTING ATTORNEY'S
OFFICE
2000 Lakeridge Drive SW
Olympia, WA 98502

DEBBIE SULLIVAN
Mayor

JON TUNHEIM
Thurston County Prosecuting Attorney

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

Karen Kirkpatrick, City Attorney

ATTACHMENT "A"

PROSECUTION SERVICES

Duties

- A. The Thurston County Prosecuting Attorney's Office (PAO) will be responsible to assign an employee who is qualified and able to provide the services needed to represent the City of Tumwater (CITY) as the CITY'S primary prosecutor in matters before the Thurston County District Court. This includes representation for all stages of criminal proceedings for criminal misdemeanors and gross misdemeanors, criminal traffic misdemeanors and gross misdemeanors, and contested traffic infractions. The PAO will be present at all stages of criminal proceedings including in-custody bail hearings, arraignments, pre-trial conferences, motion hearings, bench trials, jury confirmation hearings, jury trials, and post-conviction/post-trial motions and appeals. The PAO will also represent the CITY at contested traffic hearings when the defendant is represented by counsel, or when witnesses have been called to testify.
- B. The PAO will be responsible for providing all of the legal support work necessary to support the prosecution of the CITY'S cases.
- C. Represent the CITY in matters on appeal before the Thurston County Superior Court, Washington State Court of Appeals and the Washington State Supreme Court. These are very infrequent, but would include the writing of a brief in response to the appellant's brief, and appearance at all appellate proceedings. The PAO will timely inform the Tumwater City Attorney of all matters set for trial and all appeals.
- D. Review Tumwater police reports referred for charging sufficiency. Respond timely with the necessary communication back to the police department. Meet with the police department on a regular basis; communicate regularly and timely with the police department in order to assist with case investigation, to prepare officers as witnesses for evidentiary motions and for trial, and to provide feedback to officers and their superiors on matters relating to charges filed. Provide periodic training sessions for the benefit of the police department. CITY will reimburse the PAO for all training materials provided to police department employees. Regularly communicate with and provide feedback to the Police Chief or Police Commander on criminal matters relating to police investigation and charging decisions.
- E. The PAO agrees to be available by telephone for communication with witnesses, police, and CITY staff, and provide timely responses to messages during times of unavailability. The PAO will provide a telephone number to the CITY for regular business contacts as well as a telephone number (whether the same or different number) for purposes of police investigation /advice during non - business hours (between 5:00 p.m. and 8:00 a.m.). This number is expected to be used infrequently, and only for emergent legal issues.

- F. The PAO shall have the right to determine which PAO employees will provide prosecution services under this Agreement. If the PAO has a conflict of interest on a case, the PAO will arrange for alternative service.
- G. Due to scheduling conflicts outside the control of the PAO, primarily the Monday in-custody arraignment calendar, the PAO shall have the right to make arrangements with the City of Lacey Prosecutor to represent the CITY for such purposes as may be necessary (i.e., arraignment/probable cause statements, bail hearings, conditions of release, no contact orders).
- H. The PAO agrees to timely inform the City Attorney of issues that will cause liability for the CITY or have the potential to expose the CITY to liability.
- I. In addition to the prosecution services described above, the PAO may provide the CITY with civil case support related to code enforcement matters depending on the capacity of the PAO civil division to provide these services. These services, if provided, will be billed separately at an hourly rate of \$140.00.

TO: City Council
 FROM: Brad Medrud, Planning Manager
 DATE: September 20, 2022
 SUBJECT: Bush Prairie Habitat Conservation Plan (HCP) Phase 2 Second Amendment to Service Provider Agreement

1) Recommended Action:

Approve the Bush Prairie HCP Phase 2 Second Amendment to Service Provider Agreement for signature.

2) Background:

The Mazama Pocket Gopher, the Streak-Horned Lark, and the Taylor's Checkerspot butterfly were listed for protection under the federal Endangered Species Act (ESA) in 2014. It is illegal for private and public landowners to "take" these species under the ESA, meaning the protected species cannot be harmed.

Working together with the Port of Olympia and large group of stakeholders, the City is preparing the Bush Prairie Habitat Conservation Plan (HCP) with consultant assistance to identify appropriate mitigation for these three endangered prairie species, as well as the Oregon Spotted Frog. The HCP will allow operations and maintenance, recurring activities, and development to occur in some areas frequented by endangered species, offsetting any habitat loss with other, contiguous mitigation sites.

The goal of the HCP is to allow responsible growth to occur in the City, while providing superior species protection over what an ad-hoc, case by case permitting approach is providing currently. It is the intent of the HCP to cover all actions by private and public landowners that require municipal approvals.

The City and Port applied for the Phase 2 grant from USFWS in March 2017 and were awarded the grant in April 2018. The Service Provider Agreement with ICF was completed in 2018 to work with the City and Port on Phase 2 of the Habitat Conservation Plan.

The proposed amendment would extend the time limit on the Service Provider Agreement fifteen months from current expiration date of September 30, 2022 to December 31, 2023. No other changes to the Service Provider Agreement are proposed.

WDFW has granted an extension of the Phase 2 grant with USFWS until April 1, 2023. The City filed a request for a Phase 3 grant in July 2022.

3) Policy Support:

Comprehensive Plan Conservation Element Goal C-1: Recognize the significant role played by natural features and systems in determining the overall environmental quality and livability of Tumwater.

Comprehensive Plan Conservation Element Policy C-2.16: Protect and preserve habitats for species, which have been identified as endangered, threatened, or sensitive by the state

or federal government, giving “special consideration: to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

4) Alternatives:

- ☐ Remove from the consent calendar, discuss, modify, and approve the Bush Prairie HCP Phase 2 Second Amendment to Service Provider Agreement for signature
-

5) Fiscal Notes:

This is federal grant and an internally funded work program task.

6) Attachments:

- A. Bush Prairie Habitat Conservation Plan (HCP) Phase 2 Second Amendment to Service Provider Agreement

**SECOND AMENDMENT
TO
CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

BUSH PRAIRIE HABITAT CONSERVATION PLAN, PHASE 2

THIS SECOND AMENDMENT (“Amendment”) is dated effective this _____ day of _____, 2022, and is entered into by and between the CITY OF TUMWATER, a Washington municipal corporation (“CITY”), and ICF JONES & STOKES, INC., a Washington corporation, hereinafter referred to as the “SERVICE PROVIDER.”

A. The CITY and SERVICE PROVIDER entered into a Service Provider Agreement dated effective September 4, 2018, whereby the SERVICE PROVIDER agreed to provide technical expertise, where required, to perform the services and/or tasks set forth by the Service Provider Agreement.

B. Section 14 of the Agreement provided that the Agreement may only be amended by written agreement signed by the parties.

C. The CITY and the SERVICE PROVIDER amended the Agreement to continue the Services described in Section 1 of the Agreement by extending the term of the Agreement until September 30, 2022 by a first amendment on April 7, 2021.

D. The CITY and the SERVICE PROVIDER are making significant progress towards completing the Bush Prairie Habitat Conservation Plan and desire to amend further the Agreement to continue the Services described in Section 1 of the Agreement by extending the term of the Agreement.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. Term.

Section 2 of the Agreement shall be amended to extend the term of the Agreement until December 31, 2023.

2. Full Force and Effect.

All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.

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:

ICF Jones & Stokes, Inc.
Address: 1200 6th Ave., Suite 1800
City/State/Zip: Seattle, WA 98101
Tax ID #: 94-1730361
Phone Number: (703) 934-3709

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 VIRGINIA

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 ICF Jones & Stokes, Inc. (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 _____,
My appointment expires: _____

TO: City Council
FROM: Troy Niemeyer, Finance Director
DATE: September 20, 2022
SUBJECT: Audit Engagement Letter

1) Recommended Action:

Staff recommend the Council authorize the Mayor to sign the attached Audit Engagement Letter (Attachment "A") between the City and the State Auditor's Office (SAO).

2) Background:

The City receives annual audits from the State Auditor's Office. These audits are required by state law. The audit covered with this engagement letter is the annual Financial Statement audit. Last year the Accountability audit was postponed at SAO's request due to staffing issues at SAO. SAO is postponing the Accountability audit again because their staffing issues persist. The City will receive a three-year Accountability audit next year to cover 2022, 2021 and 2020. Staff have informed SAO that we wish to go back to, and remain on, a one-year cycle for Accountability audits.

3) Policy Support:

Be fiscally responsible and develop sustainable financial strategies.

4) Alternatives:

- ☐ Do not authorize the Mayor to sign the agreement. However, these audits are required by state law.
-

5) Fiscal Notes:

The cost of the audit in this engagement letter is \$50,000. The estimated annual audit costs are included in the biennial budget.

6) Attachments:

A. Audit Engagement Letter



**Office of the Washington State Auditor
Pat McCarthy**

August 31, 2022

City Council and Mayor
City of Tumwater
555 Israel Rd SW
Tumwater, WA 98512

We are pleased to confirm the audit to be performed by the Office of the Washington State Auditor, in accordance with the provisions of Chapter 43.09 RCW, for the City of Tumwater. This letter confirms the nature and limitations of the audit, as well as responsibilities of the parties and other engagement terms.

Office of the Washington State Auditor Responsibilities

Financial Statement Audit

We will perform an audit of the basic financial statements of the City of Tumwater as of and for the fiscal year ended December 31, 2021, prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). Our audit will be conducted with the objective of our expressing an opinion on these financial statements.

We will perform our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free from material misstatement. Since we do not review every transaction, our audit cannot be relied upon to identify every potential misstatement. Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements may not be detected, even though the audit is properly planned and performed in accordance with the standards identified above.

A financial statement audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers relevant internal controls in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of internal control. Accordingly, we will express no such opinion.

Although our audit is not designed to provide an opinion on the effectiveness of internal control over financial reporting, we are required to report any identified significant deficiencies and material weaknesses in controls. We are also required to report instances of fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that could have a direct and material effect on the accuracy of financial statements.

A financial statement audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

All misstatements identified by the audit will be discussed with management. Material misstatements corrected by management and all uncorrected misstatements will be communicated at the exit conference, as required by professional auditing standards.

Our responsibility is to express in a written report an opinion on the financial statements based on the results of our audit. We cannot guarantee an unmodified opinion. We may modify or disclaim an opinion on the financial statements if we are unable to complete the audit or obtain sufficient and appropriate audit evidence supporting the financial statements. If our opinion is other than unmodified, we will fully discuss the reason with you prior to issuing our report. Further, in accordance with professional standards, we may add emphasis-of-matter or other-matter paragraphs to our report to describe information that, in our judgment, is relevant to understanding the financial statements or our audit.

We will also issue a written report (that does not include an opinion) on issues identified during the audit related to internal control over financial reporting and on compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*.

The City prepares supplementary information that accompanies the financial statements, which is required by Generally Accepted Accounting Principles. We agree to perform auditing procedures on this information, with the objective of expressing an opinion as to whether it is fairly stated, in all material respects, in relation to the financial statements taken as a whole.

Data Security

Our Office is committed to appropriately safeguarding the information we obtain during the course of the audit. We have entered into a data sharing agreement with the City to ensure compliance with legal requirements and Executive Directives (Executive Order 16-01, RCW 42.56 and OCIO Standard 141.10) in the handling of information considered confidential.

Reporting levels for audit issues

Issues identified through the auditing process will be communicated as follows. Failure to appropriately address audit issues may result in escalated reporting levels.

- **Findings** formally address issues in an audit report. Findings report significant results of the audit, such as significant deficiencies and material weaknesses in internal controls; misappropriation; and material abuse or non-compliance with laws, regulations, contracts or grant agreements. You will be given the opportunity to respond to a finding, and this response, or a synopsis of it, will be published in the audit report. Professional auditing standards define the issues we must report as findings with regard to non-compliance with a financial statement effect and internal controls over financial reporting.

- **Management letters** communicate control deficiencies, non-compliance, misappropriation, abuse, or errors with a less-than-material effect on audit objectives. Management letters are referenced, but not included, in the audit report.
- **Exit items** address control deficiencies, non-compliance, abuse, or errors that have an insignificant effect on audit objectives. These issues are informally communicated to management and are not referenced in the audit report.

Client's Responsibilities

Management is responsible for the accuracy and completeness of information provided to the auditor and will provide the Office of the Washington State Auditor with:

- Unrestricted access to people with whom the auditor wishes to speak.
- All information that is requested or relevant to auditor requests.
- Notification when any documents, records, files, or data contain information that is covered by confidentiality or privacy laws, such as HIPAA.
- Adequate workspace and conditions, including interacting with auditors professionally and respectfully and promptly communicating about any issues and concerns.

Moreover, our audit does not relieve management or the governing body of their responsibilities. Management's responsibilities, with oversight from the governing body, include:

- Selecting and applying appropriate administrative and accounting policies.
- Establishing and maintaining effective internal controls over financial reporting, compliance, and safeguarding of public resources.
- Designing and following effective controls to prevent and detect fraud, theft, and loss.
- Promptly reporting to us knowledge of any fraud, allegations of fraud or suspected fraud involving management, employees or others, in accordance with RCW 43.09.185.
- Ensuring compliance with laws, regulations and provisions of contracts and grant agreements.
- Preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America (GAAP).
- Including the auditor's report on the supplementary information in any document that both contains the supplementary information and indicates that the auditor reported on the supplementary information.
- Either presenting the supplementary information with the audited financial statements or, if the supplementary information will not be presented, making the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information and auditor's report thereon are issued.

Responsibilities at the conclusion of the audit

At the conclusion of our audit, the City will provide us with a letter to confirm in writing certain express and implied representations made during the course of the audit. This letter includes representations regarding legal matters. A separate letter may be needed from the City's legal counsel.

Management and the governing body are also responsible for following up and taking corrective action on all audit findings, including, when applicable, preparing a summary schedule of prior audit findings and a corrective action plan on the City's own letterhead.

Estimated Audit Costs and Timeline

We estimate the cost of the audit work to be \$50,000, and other expenses, if any. Invoices for these services will be prepared and presented each month as our audit work progresses.

We anticipate our reports will be published on our website www.sao.wa.gov and be available to you and the public as outlined below. These estimates are based on timely access to financial information and no significant audit reporting issues. The estimated cost and completion date may change if unforeseen issues arise or if significant audit issues are identified necessitating additional audit work. We will promptly notify you if this is the case.

Report	Date*
Independent Auditor's Report on Financial Statements	November 2022
Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with <i>Government Auditing Standards</i>	November 2022

**Report Issuance Dates Are Estimates Only*

The audit documentation for this engagement, which may contain confidential or sensitive information, is the property of SAO and constitutes a public record under Chapter 42.56 RCW. Subject to applicable laws and regulations, appropriate individuals, as well as audit documentation, will be made available upon request and in a timely manner to appropriate auditors and reviewers, City's management and governing body, and federal agencies, for purposes of a public records request, a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities.

The audit documentation for this engagement will be retained for a minimum of five years after the report release (publish) date in accordance with the public records retention schedule established by the Washington Secretary of State.

Expected Communications

During the course of the audit, we will communicate with the City's selected audit liaison, Shelly Carter, Assistant Finance Director, on the audit status, any significant changes in our planned audit scope or schedule and preliminary results or recommendations as they are developed. The audit liaison is responsible for regularly updating management and the governing body on these matters. We may also provide direct communication of these matters to management and the governing body as needed or upon request.

Please contact us if any events or concerns come to your attention of which we should be aware. We will expect the audit liaison to keep us informed of any such matters.

Audit Dispute Process

Please contact the Audit Manager or Assistant Director to discuss any unresolved disagreements or concerns you have during the performance of our audit. At the conclusion of the audit, we will summarize the results at the exit conference. We will also discuss any significant difficulties or disagreements encountered during the audit and their resolution.

By signing and returning this letter, you acknowledge that the foregoing is in accordance with your understanding. Please contact us with any questions.

We appreciate the opportunity to be of service to you and look forward to working with you and your staff.

Sincerely,



8/31/22

Lisa Carrell, CPA, Audit Manager *Date*
Office of the Washington State Auditor

City Response:

This letter correctly sets forth our understanding.

Debbie Sullivan, Mayor

Date

Shelly Carter, Assistant Finance Director *Date*

TO: City Council
FROM: James Trujillo, Administrative Services Director
DATE: September 20, 2022
SUBJECT: Contract Salary Changes

1) Recommended Action:

Increase contract salary schedule to conform with a top rate of \$41.61 for the Teamster represented positions of Traffic Signal Technician and Electrician for the current contract. Pay rates will be renegotiated when the contract is reopened in the summer of 2023 for a new contract expected to commence on January 1, 2024.

2) Background:

Due to extraordinary labor market pressures, staff recommends increasing the rate of pay for the named positions for retention purposes.

3) Policy Support:

City Policy allows for salary changes as required and allowed. The Teamsters Union supports the change and increase in salary.

4) Alternatives:

- ☐ Reject the recommendation and seek to fill expected vacant positions, contract for required services or re-organize.
-

5) Fiscal Notes:

City Finance has analyzed and approved the projected cost increase.

6) Attachments:

A. None

TO: City Council
 FROM: Austin Ramirez, Economic Development Manager
 DATE: September 20, 2022
 SUBJECT: Service Provider Agreement with the Thurston EDC for Thurston Strong Phase II

1) Recommended Action:

Approve and authorize the Mayor to sign a Service Provider Agreement with Thurston EDC for Thurston Strong Phase II.

2) Background:

At the October 26, 2021 City Council worksession, \$350,000 of federal American Recovery Plan Act (ARPA) funds was allocated to support Thurston Strong Phase II. In the time since, Thurston Strong has deployed approximately \$10 Million in recovery assistance and continues to reinforce sectors most in-need of stabilization funding and technical assistance. City and EDC staff have identified several priority needs in Tumwater reflected in the scope of services, including \$205,000 for childcare operator grants and \$80,000 for startup training scholarships for eligible businesses and entrepreneurs. Overhead for accounting and audit control (\$15,000) is also included in the total amount. Consistent with the original Thurston Strong program, these resources focus on helping entrepreneurs, businesses, and organizations adversely impacted by the pandemic.

City, EDC, and Community Foundation staff continue to discuss how the remaining \$50,000 can best support Tumwater based or focused nonprofit agencies that provide economic development related services. Although Thurston Strong has provided prior nonprofit grant funding, the demand continues to exceed supply.

3) Policy Support:

Economic Development Plan Goal #2 – Retain and support existing businesses

Economic Development Plan Goal #8 – Encourage economic development that strengthens the Tumwater community

Strategic Goal and Priorities – Work with partner organizations and jurisdictions to implement our goals to be a more inclusive community

4) Alternatives:

- ☐ Modify the funding amount, vendor or pursue a different course of action.
-

5) Fiscal Notes:

ARPA funds are available through 2025.

6) Attachments:

A. Thurston EDC Service Provider Agreement with Scope of Services.

**CITY OF TUMWATER
SERVICE PROVIDER AGREEMENT**

(THURSTON COUNTY ECONOMIC DEVELOPMENT COUNCIL)

THIS AGREEMENT is made and entered into in duplicate this _____ day of _____, 2022, by and between the CITY OF TUMWATER, a Washington municipal corporation, hereinafter referred to as the “CITY”, and THURSTON COUNTY ECONOMIC DEVELOPMENT COUNCIL, 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 September 6, 2022, and shall be completed no later than December 31, 2023. 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 **Three Hundred Thousand Dollars** (\$300,000.00) as provided in Exhibit A attached hereto.

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, 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 respects 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. 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. "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.

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 "B".

12. 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.

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. SUBRECIPIENT OF FEDERAL FUNDS.

A. The service provider is also a SUBRECIPIENT OF FEDERAL FUNDS. This service provider agreement is funded by the American Rescue Plan Act, State and Local Fiscal Recovery Funds (ARPA/SLFRF), CFDA 21.027. The Service Provider agrees to comply with all applicable requirements of federal awards as prescribed in 2 CFR 200 (Uniform Guidance) and additional guidance found in the ARPA Final Rule. The following information is required for subrecipients:

(1) Federal award identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier); **Thurston County Economic Development Council**

(ii) Subrecipient's unique entity identifier;

- (iii) Federal Award Identification Number (FAIN); **N/A**
- (iv) Federal Award Date (see the definition of *Federal award date* in [§ 200.1 of this part](#)) of award to the recipient by the Federal agency; **March 3, 2021**
- (v) Subaward Period of Performance Start and End Date; **The date this contract is signed**
- (vi) Subaward Budget Period Start and End Date; **2022-2025**
- (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient; **\$300,000**
- (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation; **\$300,000**
- (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity; **\$300,000**
- (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA); **As described in the Scope of Services for this agreement, to increase economic development in Tumwater and Thurston County.**
- (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity; **Federal Awarding Agency: US Department of the Treasury; Pass through entity: City of Tumwater Washington. Contact: Troy Niemeyer, Finance Director, 555 Israel Rd SW Tumwater, WA 98501, (360)754-4135.**
- (xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement; **the ALN is 21.027**
- (xiii) Identification of whether the award is R&D; and; **this is NOT R&D**
- (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per [§ 200.414](#); **the maximum indirect cost rate allowed for ARPA is 10%.**

B. The SERVICE PROVIDER acknowledges and agrees to comply with the COMBINED Affidavit and Certification Form (Exhibit C) for Non-Collusion, Anti-Trust, Prevailing Wage, Debarment and Certification of Lawful Employment as a condition of receipt of federal financial assistance from the Department of the Treasury.

C. The SERVICE PROVIDER acknowledges and agrees to comply with Assurances of Compliance with Civil Rights Requirements (Exhibit D) for Title

VI of the Civil Rights Act of 1964 as a condition of receipt of federal financial assistance from the Department of the Treasury.

23. 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:
THURSTON ECONOMIC
DEVELOPMENT COUNCIL
4220 6TH Avenue SE
Lacey, WA 98503
Tax ID #: 91-11831169
Phone Number: 360-754-6320

DEBBIE SULLIVAN
Mayor

Signature (Notarized – see below)
Printed Name: Michael Cade
Title: Executive Director

ATTEST:

Melody Valiant, City Clerk

APPROVED AS TO FORM:

SERVICE PROVIDER AGREEMENT – THURSTON COUNTY ECONOMIC DEVELOPMENT COUNCIL -
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Karen Kirkpatrick, City Attorney

Notary Required for Service Provider Only

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:_____

Thurston Strong Phase II

Thurston EDC Proposal and Scope of Services

Proposal – the following is an outline of work and budget to put to work the ARPA funds via the City of Tumwater.

Total funding request: \$300,000

Childcare Supportive Grants: \$205,000

To help childcare operators maintain optimal levels of service, and ensure they have the capacity and ability to provide continuous care and service, outreach and grants will be provided to those seeking financial assistance. These grants are intended to help fortify the network of care providers that enables our region's working families to have access to quality care that is affordable and attainable. Through Thurston Strong, the Child Care Action Council has been a partner in identifying gaps in both access and resources in our region's childcare system. This component will utilize that strong relationship with to ensure direct access to resources for Tumwater-based childcare providers.

CB&I Consulting / Business Stand Up / WA Center for Women in Business (WCWB) - \$60,000

The EDC's Center for Business & Innovation (CB&I) operates the state's deepest and most robust innovation and business supportive network center. The CB&I manages and operates curriculum that enables entrepreneurs to start their business off on solid footing, provides a direct pathway towards funding and launch resources, and has developed a deep network of consultants to mentor, guide, and provide the one-on-one support that is essential for any business and entrepreneur. To recharge the region's economy, the following is proposed:

**The curriculum and cohort can be adjusted to ensure that each participant in a cohort has the most appropriate learning and launch environment.*

Cohort A. Eligible entrepreneurs include those from any of the following categories:

- 1) Those seeking to launch brewing and or distilling businesses.
- 2) Black, Indigenous, and People of Color (BIPOC).
- 3) Veterans.

\$750 per participant

Cohort B. students that have utilized the SPSCC curriculum for craft brewing and or craft distilling.

\$1,500 per participant

Participants in cohort B, after completion, would also have access to the SPSCC foundation start up grants for entrepreneurs.

Additional CBI Consulting Services Available for Tumwater Businesses and Prospective Entrepreneurs.

CB&I Consulting: (numbers served depends upon the depth of one-on-one assistance required) - \$30,000 (Amount inclusive of the amount identified above, \$60,000)

CB&I Consulting is a program wherein the entrepreneur is matched with a professional technical advisor with the stated intent of launching their business plan, create a marketing plan, and/or financial projections necessary to launch with a high degree of success. CB&I Consulting connects business owners directly with consultants for direct technical assistance. Consultants complete projects or provide consultations to businesses.

WCWB, Quick Startup: \$20,000

Quick Startup is an online incubator brought to you by the Washington Center for Women in Business that provides approved participants a scholarship that includes startup training and an online store in an online marketplace for one year with a marketing package. All cohort participants will have access to this innovative program that has launched over 75 new businesses in this past year. The QuickStartUp program will also organize and host a launch event that will showcase and highlight products from the cohort participant productions.

Overhead for accounting and audit control: \$15,000

Curriculum outline for cohort A and cohort B.

Tumwater Business Startup Training Proposal

The Thurston EDC Center for Business & Innovation will provide a customized business startup training program to assist and support graduates in starting and operating successful businesses. These customized trainings will support Tumwater's Craft Brewing and Distilling District (and the goals of the SPSCC Craft Brewing and Distilling Program), as well as provide support for BIPOC and veteran entrepreneurs. The Business Startup Training would consist of a combination of an instructor lead webinar training series, online business startup course, one-on-one business advising sessions, weekly study halls, access to business plan writing software, participation in a business launch event, and access to apply for an SPSCC Growth and Innovation Startup Grant.

Accepted participants would begin with a five-week instructor lead webinar series paired with access to online business startup courses and business plan writing software.

Training Curriculum Overview:

Week 1- Structuring and Licensing your Startup

1.5 hour class time-Webinar Lecture-Sean Moore

Access to Business Enterprise Startup Training (BEST) Online Course Structuring and Licensing your Startup

Weekly Study Hall Session

Topics: Selecting a legal structure, structure formation process in Washington State, Obtaining an Employer Identification Number, Obtaining State and City of Tumwater Business Licenses, Additional Licensing, Business Insurance

Week 2- Location

1.5 hour class time-Webinar Lecture-Sean Moore

Weekly Study Hall Session

Access to Location Checklist and Site Selection Tool

Topics: Choosing the right location, Physical Location Scouting, City of Tumwater Zoning, Signage, and Fire Prevention Requirements, Leases, Alternative Physical Locations, Online locations, Multi-Channel Selling

Week 3- Branding and Marketing your Startup

1.5 hour class time-Webinar Lecture-Sean Moore

Access to BEST Online Course Branding and Marketing for Startups

Weekly Study Hall Session

Topics: Brand Mission, Brand Guide, Logos, Market Segments, Target Market, Marketing Tool Selection, Websites, Google Business Profile, Integrated Marketing Communication, Customer Service, Customer Reviews

Week 4-Finance and Accounting for Startups

1.5 hour class time-Webinar Lecture-Sean Moore

Access to BEST Online Course Accounting and Finance for Startups

Weekly Study Hall Session

Topics: Business Bank Accounts, Accounting Systems, Chart of Accounts, Financial Statements, Taxes, Funding your Startup

Week 5-Business Plan Writing

1.5 hour class time-Webinar Lecture-Sean Moore

Access to BEST Online Course Business Plan Writing for Startups

6 month access to the business plan writing software Live Plan

Weekly Study Hall Session

Topics: Business Plan Benefits, Live Plan, Business Plan Outline, Business Plan Chapter Systems, Market Research, Financial Projections, Lean Business Plans, Pitch Decks

Participants will receive access to weekly virtual study hall sessions to ask specific questions related to their startup. This access would continue for one year. They will also receive access to one-on-one coaching sessions, pitch coaching, and business plan review.

Upon completion of the training series, attendees will participate in a business launch party for friends, family, SPSCC staff, City of Tumwater Staff, investors, and other stakeholders.

Once participants have completed a business plan they would be eligible to apply for the SPSCC Growth and Innovation Fund Startup Grant in the amount of \$3,000.

The Thurston EDC Center for Business & Innovation would maintain relationships with graduates and encourage them, when ready, to participate in various growth support programs offered through and in partnership with the EDC. These include ongoing no-cost business advising, ScaleUp Training Program, government procurement and contract advising with the Washington Procurement Technical Assistance Center and ThINK Investment Network. Participants will also be encouraged to connect with the EDC's Agriculture support programs including the Southwest Regional Agriculture Park to seek local sourcing for their products.

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)

COMBINED AFFIDAVIT AND CERTIFICATION FORM

Non-Collusion, Anti-Trust, Prevailing Wage,
Debarment and Certification of Lawful Employment

NON-COLLUSION AFFIDAVIT

Being first duly sworn, the undersigned deposes and says, that they are the identical person who submitted the foregoing proposal or bid, and that such bid is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and further, that the deponent has not directly induced or solicited any other Bidder on the foregoing work equipment to put in a sham bid, or any other person or corporation to refrain from bidding, and that deponent has not in any manner sought by collusion to secure to themselves or to any other person any advantage over other Bidder or Bidders; and

CERTIFICATION REGARDING ASSIGNMENT OF ANTI-TRUST CLAIMS TO PURCHASER

Vendor and purchaser recognize that in actual economic practice, overcharges resulting from anti-trust violations are, in fact, usually borne by the purchaser. Therefore, vendor hereby assigns to purchaser any and all claims for such overcharges as to goods and materials purchased in connection with this order or contract, except as to overcharges resulting from anti-trust violations commencing after the date of the bid, quotation, or other event establishing the price under this order or contract. In addition, vendor warrants and represents that each of his suppliers and subcontractors shall assign any and all such claims to purchaser, subject to the aforementioned exception; and

DEBARMENT AFFIDAVIT

I certify that, except as noted below, the firm, association or corporation or any person in a controlling capacity associated therewith or any position involving the administration of federal or state funds; is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal or state agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal or state agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against said person, firm, association or corporation by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

Attachment E
(Page 2 of 2)

CERTIFICATION OF LAWFUL EMPLOYMENT

The bidder hereby certifies that it has complied with all provisions of the Immigration and Nationality Act, now or as herein after amended, 8 USC Section 1101 et. seq., and that all employees, including subcontractor employees, are lawfully permitted to perform work in the United States as provided in this agreement with the City of Tumwater.

FOR: Non-Collusion Affidavit, Assignment of Anti-Trust Claims to Purchaser, Minimum Wage Affidavit, Debarment Affidavit and Certification of Lawful Employment.

Service Provider Agreement – Thurston County Economic Development Council

Name of Service Provider

Signature of Authorized Representative of
Service Provider

Type/Print Name

Subscribed and sworn to before me this ____day of _____, 2021.

Type/Print Name

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

OMB Approved No. 1505-0271
 Expiration Date: November 30, 2021

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the “Recipient”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient’s program(s) and activity(ies), so long as any portion of the Recipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

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4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

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agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

Recipient

Date

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.