



CITY OF
TUMWATER

**PUBLIC WORKS COMMITTEE
MEETING AGENDA**

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

**Thursday, November 07, 2024
8:00 AM**

1. Call to Order
2. Roll Call
- [3.](#) Approval of Minutes: Public Works Committee - October 3, 2024 & October 17, 2024
- [4.](#) Interagency Agreement with Washington Department of Commerce for Tumwater Fire Stations Solar + Storage Feasibility (Water Resources & Sustainability Department)
- [5.](#) Grant from the Dept of Ecology for the Golf Course Stormwater Retrofit Project Amendment 2 (Water Resources & Sustainability Department)
- [6.](#) Acceptance of Work with Sound Pacific Construction for the 2022 Pedestrian Improvements Project (Transportation & Engineering Department)
- [7.](#) Acceptance of Work with Miles Resources for the 2023 Pavement Maintenance project (Transportation & Engineering Department)
- [8.](#) Authority to Solicit Bids and Recommend Award for the Percival Creek Fish Barrier Removal project (Transportation & Engineering Department)
- [9.](#) Old Hwy 99 & 79th Ave Roundabout Schedule 74 Underground Conversion Design Agreement with Puget Sound Energy (Transportation & Engineering Department)
10. Additional Items
11. Adjourn

Meeting Information

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

Watch Online

<https://us02web.zoom.us/j/83405340160?pwd=JDQqMMaoW6Rwt6r0JE5rax4gzW9e7PD.1>

Listen by Telephone

Call (253) 215-8782, listen for the prompts and enter the Webinar ID 834 0534 0160 and Passcode 503889.

Public Comment

The public may submit comments by sending an email to council@ci.tumwater.wa.us, no later than

5:00 p.m. the day before the meeting. Comments are submitted directly to the Committee members and will not be read individually into the record of the meeting.

Post Meeting

Audio of the meeting will be recorded and later available by request, please email CityClerk@ci.tumwater.wa.us

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) 754-4129 or email ADACoordinator@ci.tumwater.wa.us.

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
October 3, 2024 Page 1**

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarhout and Councilmembers Michael Althausser and Angela Jefferson.

Staff: City Administrator Lisa Parks, City Attorney Karen Kirkpatrick, Finance Director Troy Niemeyer, Transportation & Engineering Director Brandon Hicks, Water Resources and Sustainability Director Dan Smith, Engineering Services Manager Bill Lindauer, Program Manager Patrick Soderberg, Engineer I Bernie Gertje, Community Engagement Specialist Marnie McGrath, Sustainability Coordinator Alyssa Jones Wood, Water Resources Specialist David Kangiser, and Administrative Assistant Bonnie Hale.

Others: Meridith Greer, Greer Environmental Consulting.

**APPROVAL OF
MINUTES: PUBLIC
WORKS
COMMITTEE,
AUGUST 22, 2024,
AND SEPTEMBER 5,
2024:**

MOTION: **Councilmember Jefferson moved, seconded by Councilmember Althausser, to approve the minutes of August 22, 2024 and September 5, 2024 as published. A voice vote approved the motion unanimously.**

**SMALL WORKS
CONTRACT WITH
SARE ELECTRIC
FOR THE CITY OF
TUMWATER FLEET
EV CHARGING
STATIONS
PROJECT:**

Coordinator Jones Wood reported the two proposals are related. The first proposal is for electric vehicle charging for the City’s fleet advancing fleet electrification as supported by several City policies and the Thurston Climate Mitigation Plan (TCMP). Actions in the TCMP speak to zero emission fleets and City purchasing policies requirement to replace fossil fuel vehicles with electric vehicles (EVs) and hybrids with some exceptions related to heavy- and medium-duty vehicles.

**&
INTERAGENCY
AGREEMENT WITH
WASHINGTON
DEPARTMENT OF
COMMERCE FOR
WASHINGTON
ELECTRIC
VEHICLE**

In 2023, the City’s Green Team completed a fleet electrification assessment using the Electrification Coalition’s Open Source Drive Tool (DRV). The assessment revealed that up to 69% of the municipal fleet and 48% of police fleet would be viable to be electrified by 2040. The remaining 31% non-police fleet that remains fossil fueled is largely older non-supported vehicles that operate on gas and not slated for replacement, as well as heavy equipment that may not have electric alternatives. For the police fleet to achieve 48% electrification, it is dependent upon the production of the Chevy Blazer EV PPV, the first fully electric pursuit-

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**CHARGING
PROGRAM
(WAEVCP)**

rated Police vehicle. Many police departments in the country have purchased EVs that are not pursuit-rated or crash rated for police use.

Based on the fleet electrification forecast, the City could reduce its gasoline consumption by more than 70% by 2030. The electrification assessment forecasts a need for chargers to support electric vehicles.

Based on the findings, the City applied for a Department of Commerce grant opportunity and received an award of \$78,000. The estimated remaining costs of the project would be funded by City dollars initially but likely reimbursed as direct pay from the IRS.

The grant will fund a small works contract with Sare Electric to install 10 new Level 2 EV charging stations for fleet use across five different facilities including the police department. An additional three charging stations would be stubbed out for future installations at the police department. The 10 stations are forecasted to meet needs for the next two years of fleet electrification progress.

Sare Electric was selected from a competitive solicitation process for the project.

Councilmember Jefferson inquired as to the location of the charging station at the Old Town Center as parking is severely limited at the site. Coordinator Jones Wood advised that the charging station would be placed at the parking lot located to the left of the building that is shared with the daycare center.

Coordinator Jones Wood advised that the grant required the City to contact and consult with all local tribes. All tribes were contacted with some tribes responding. Staff shared information as the project entails ground disturbance. All sites were assessed for historical resources. Approximately 25% of the labor associated for the construction of the stations will be performed by apprentices and EV chargers are all ENERGY Star certified.

Coordinator Jones Wood reported the requests are to place the Small Works Contract with Sare Electric for Fleet EV Charging on the October 15, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign and placing the Interagency Agreement with Washington Department of Commerce for WAEVCP on the October 15, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign. Coordinator Jones Wood invited questions and comments.

Chair Swarthout asked about the status of the fast charging stations needed in the future. Coordinator Jones Wood advised that the fast EV chargers

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MINUTES OF VIRTUAL MEETING
October 3, 2024 Page 3**

are included in the design of the new Operations and Maintenance Facility. All charging needs have been incorporated within the design process. Another location requiring a fast EV charger is the police department. The first step is installing the initial set of chargers for availability. When the Chevy Blazer EV PPV becomes available, one of the vehicles will serve as a pilot to ensure the EV meets police operational needs. At the conclusion of the trial, staff will move forward with additional EV charging stations. Fast chargers are extremely expensive at approximately \$300,000 to install. The project is intended to serve the City's fleet needs and not the public. The City has separate projects for expanding public EV charging.

MOTION:

Chair Swarthout moved, seconded by Councilmember Althaus, to place the Small Works Contract with Sare Electric for Fleet EV Charging on the October 15, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign and place the Interagency Agreement with Washington Department of Commerce for WAEVCP on the October 15, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

**ACQUISITION OF
THE REYKDAL AND
LANGTON
PROPERTIES FOR
THE PERCIVAL
CREEK FISH
PASSAGE BARRIER
REMOVAL
PROJECT:**

Meridith Greer reported the project site is located off Sapp Road to realign the stream and replace the undersized culvert with a 19-foot open box culvert to create fish passage and improve habitat. The project also includes transportation and pedestrian improvements by opening lanes to full 11-foot widths and adding bike lanes and sidewalks. Because of the size of the project, some right-of-way is required. One parcel is owned by Ms. Langton. The proposal is to acquire 3,659 square feet of property and placing another 2,110 square feet in a temporary construction easement. The second parcel owned by the Reykdal family is for another 1,137 square feet of property for a temporary construction easement. The City is working with Tierra Right of Way to complete the acquisition of the properties.

In total, \$24,800 is necessary to acquire the property from Ms. Langton and \$9,250 from the Reykdal family. The project includes an allocation of \$100,000 for acquisition of right-of-way.

Councilmember Jefferson inquired about the selection of the contractor. Ms. Greer advised that the Transportation and Engineering Department is preparing the bid documents for release of the bid for construction of the project. The bid release date may be in November dependent upon the holiday work schedule. The intent is to release the bid package before the end of the year to enable hiring a contractor early next year.

Chair Swarthout asked about the proposed width of the bike path. Ms. Greer advised that the project includes 11-foot wide travel lanes, a five-foot wide sidewalk, and six-foot wide bike lanes.

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
October 3, 2024 Page 4**

Chair Swarthout asked whether the design for the road improvement was completed. Director Smith advised that staff will forward a copy of the design to the committee.

Director Smith asked that the committee place the offer letters for the Reykdal and Langton properties on the October 15, 2024 City Council consent calendar to acquire right-of-way needed to complete the Percival Creek Fish Passage Barrier Removal project, with a recommendation to approve and authorize the Mayor to sign.

MOTION:

Councilmember Althauser moved, seconded by Councilmember Jefferson, to place the offer letters for the Reykdal and Langton properties on the October 15, 2024 City Council consent calendar to acquire right-of-way needed to complete the Percival Creek Fish Passage Barrier Removal project, with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.

ADJOURNMENT:

With there being no further business, Chair Swarthout adjourned the meeting at 8:21 a.m.

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

**TUMWATER PUBLIC WORKS COMMITTEE
MINUTES OF VIRTUAL MEETING
October 17, 2024 Page 1**

CONVENE: 8:00 a.m.

PRESENT: Chair Eileen Swarthout and Councilmembers Michael Althaus and Angela Jefferson.

Staff: City Administrator Lisa Parks, Assistant City Attorney David Abbott, Finance Director Troy Niemeyer, Transportation & Engineering Director Brandon Hicks, Water Resources and Sustainability Director Dan Smith, Engineering Services Manager Bill Lindauer, Engineer I Bernie Gertje, Community Engagement Specialist Marnie McGrath, and Administrative Assistant Bonnie Hale.

**93RD AVENUE
INTERCHANGE
STUDY
CONSULTANT
AGREEMENT WITH
SHEA CARR &
JEWELL,
INCORPORATED:**

Director Hicks presented the 93rd Avenue Interchange Study consultant agreement. The interchange exceeds capacity at certain times of the day and is heavily traveled by trucks and residential traffic generated from new development. Daily traffic on the east side of the interchange has increased from over 9,000 daily trips in 2002 to 21,000 daily trips in 2022 representing a 130% increase in 20 years. Most issues exist on the east side of the interchange. An increase in traffic is anticipated in response to proposed large development immediately adjacent to the interchange based on zoning and land ownership.

Director Hicks displayed several images of truck traffic near the interchange. Today, the interchange lacks storage area for vehicles with many conflicting left turn movements creating capacity and safety issues. The interchange is old and lacks connected multimodal facilities. Some sidewalks exist with bike lanes; however, the sidewalk and bike lane network has many gaps with facilities lacking on both sides of the road. The main scope of the project is capacity, safety, and multimodal facilities.

Recently developed properties are contributing to the issues experienced at the interchange. New development includes 1.5 million square feet of new warehouses, 23,000 square feet in commercial or retail uses, 75,000 square feet of government buildings (National Guard Readiness Center), and 700 single family homes. Planned development include 2.1 million square feet of warehouses, 500 new residential units, and new development planned by the Confederated Tribes of the Chehalis Reservation of commercial uses expanding the existing development of the Flying J Truck Stop.

The study includes four major project partners and business stakeholders with close coordination with the tribe, which owns approximately 70 acres located adjacent to the interchange and zoned for dense development.

SCJ Alliance was selected as the most qualified consultant to complete

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the study. The scope of work includes analyzing safety and mobility issues and evaluation of capacity at the interchange and for all road segments within the immediate vicinity. The consultant will complete an intersection control evaluation (ICE) required when construction involves Washington State Department of Transportation (WSDOT) or the U.S. Department of Transportation (DOT). The total cost of the study is approximately \$258,960 with the consultant fee of \$222,600 included. The remaining amount is for staff time. The study received a substantial federal grant awarded by the Thurston Regional Planning Council.

Director Hicks asked the committee to recommend the City Council approve and authorize the Mayor to sign the Consultant Agreement with Shea Carr & Jewell, Inc., for the I-5 & SR 11-93rd Ave SE Interchange Study. He noted that the staff report and the agreement lacked information on the total cost but that the cost is reflected in exhibits to the agreement. The proposed action is for a not to exceed amount of \$222,597.49. Director Brandon invited questions from members.

Councilmember Jefferson asked whether the outcome of the study would provide recommendations on particular enhancements at the interchange, such as roundabout or traffic signals. Director Brandon said the study would document all improvements necessary within the scope of the study that could include widening the interchange bridge on 93rd Avenue, some intersection control changes, or other multimodal transportation improvements.

Councilmember Jefferson asked about the necessity of hiring a consultant. For example, she asked whether staff has the expertise to identify needed improvements to the interchange and surrounding area. Director Hicks responded that many employees who drive through the area daily have a good understanding of the issues and some possible solutions; however, the consultant's efforts will be required, as the study must be submitted to WSDOT in coordination with the Federal Highway Administration for any improvements to the interchange. The consultant will provide some basic layouts addressing existing and future conditions to help identify needed right-of-way necessary to support development proposals. The study will be comprehensive. The department lacks the capacity to complete the study.

Councilmember Althaus asked whether the requirements are necessary because the facility is over and adjacent to Interstate 5. Director Hicks affirmed that any work on WSDOT facilities, especially on I-5 requires the City to complete permitting and document requirements. Additionally, east of the interchange, 93rd Avenue also serves as State Route 121. The City street is also part of the state highway system primarily because of Millersylvania State Park. The state is required to maintain the pavement on the road to the park and the City is responsible

**TUMWATER PUBLIC WORKS COMMITTEE
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for all frontage and access control.

Chair Swarhout asked about the potential of running a water main along the overpass. Director Hicks said that if the bridge is widened, it would likely entail the addition of a water main across the bridge. The tribe’s project included connecting water to the westside of I-5 to the south of its property on other private property. City water currently serves the tribe’s development.

Timing of the improvements is unknown at this time because construction funding has not been identified. The current focus is for improvements to the Tumwater Boulevard interchange by reconstructing the interchange in phases. A design was completed for the northbound ramp and construction should occur within the next several years.

MOTION:

Councilmember Jefferson moved, seconded by Councilmember Althausser, recommend the City Council approve and authorize the Mayor to sign the Consultant Agreement with Shea Carr & Jewell, Inc., for the I-5 & SR 11-93rd Ave SE Interchange Study Project. A voice vote approved the motion unanimously.

**RESOLUTION NO.
R2024-017, 2025 FEE
SCHEDULE:**

Director Niemeyer reported the resolution is an annual process to establish all fees charged for services provided by the City. The City’s practice has been smaller incremental increases annually rather than a large increase every few years.

Director Niemeyer reviewed the proposed changes. The inspection fee for business for new location or change in use has increased from \$85 to \$100. Table II includes minor updates with larger changes attributed to school district impact fees by the school districts. Last year, the impact fees charged by the Tumwater School District were not updated. The Olympia School District has not provided information on school district impact fees. The impact fees will be added after the City receives information from the Olympia School District.

Table III for building and fire safety was updated to reflect current costs of doing business. The Certificate of Occupancy fee for a business increased from \$85 to \$110.

Table IV for Transportation and Engineering, Utilities, and Utilities Connections includes some small fee increases. The major change increases water connection fees by 8.5% and sewer connection fees by 4%.

Table V for Public Safety includes a fire alarm fee increase for the third false alarm of \$393. The fee is based on the recommendation by the Washington Association of Fire Chiefs.

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Table VI for Recreation includes an increase of \$10 for youth baseball and youth basketball fees.

Table VIII is a new table for fees for the Lifeline Program, a program for low-income residents to receive a 50% discount off utilities. Additionally, the City offers the Tumwater Hardship Program funded by community donations. Federal programs also provide funding support to the community.

Table VII reflects an increase in the LOTT sewer connection fee of 3%. The City proposes to increase utilities of 6% for water, 8% for stormwater, and 7% for sewer. The Water Resources and the Sustainability Department is completing a 10-year rate study for utilities addressing future growth and needs. The study recommends higher increases than the proposal; however, because the study has not been completed, the proposal is less than the recommended increase. The increases support additional utility staff, equipment, electrification of the fleet, long-term capital projects, urban forestry, and a portion for stormwater for the Deschutes Estuary Restoration project.

Director Niemeyer reviewed the financial toolbox available to increase revenue sources to fund additional positions and other costs. Part of the proposal and the overall budget proposal is an increase in the utility tax on Tumwater utilities from 6% to 12% contributing another \$600,000 to the general fund to fund increasing costs. The cost to a customer would be approximately \$8 a month.

Director Niemeyer reviewed utility tax rates of Olympia and Lacey. Olympia currently charges 12.5% and Lacey charges 6% in utility taxes. He shared a comparison of all utility rates for the City of Tumwater compared to the rates charged by the cities of Lacey and Olympia. Tumwater's monthly water increase represents \$2.30, \$1.62 for sewer (City's portion only with LOTT portion of \$1.38), \$1.13 for stormwater, and \$8.08 for utility tax for a total increase of a monthly bill (assuming consumption of 900 cubic feet of water) of \$14.51 or an average monthly utility bill \$143.55 or \$5 less than Olympia and \$7.65 less than Lacey.

Director Niemeyer invited questions.

Councilmember Jefferson requested information on the City's last increase in utility tax. Director Niemeyer advised that the City has not increased utility tax since he joined the City four years ago but would follow up with information on the last tax increase.

Councilmember Althaus commented that the City of Lacey's utility tax remains at 6% while individual utility rates are much higher than the City

**TUMWATER PUBLIC WORKS COMMITTEE
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of Tumwater's utility rates. Director Niemeyer replied that individual utility rates are based on what a city believes are necessary to operate the utility to include wages and increased costs of construction and connection fees. More discretion is available for utility tax. The City of Tumwater currently allocates a small percentage of utility tax to the general fund and to the Transportation Capital Facilities Plan (CFP) and the General Government CFP. The proposal includes designating the additional 6% entirely to the general fund.

City Administrator Parks clarified that water, sewer, and stormwater are enterprise funds or proprietary funds. Rates charged by the City support the utility system. The City is unable to utilize rate revenue beyond the needs of each utility. However, it is possible for the City to transact interfund loans. If any of the loan funds are a component of the utility rate, the City is required to reimburse the utility. Utility tax applied to each utility can be utilized by the general fund.

Councilmember Jefferson asked about any outreach to the community on assistance by the City to help residents pay utility bills. City Administrator Parks said staff recognizes challenges within the community and currently offer several programs to assist utility customers who have trouble paying their utility bills. Many people are taking advantage of the programs as needed. The City has been effective in communicating the availability of the programs to the community. Staff is committed to exploring other programs that might be offered. The City has the authority to develop programs to address the needs of customers who have financial limitations. Councilmember Jefferson recommended including information about the programs within monthly utility bills.

Chair Swarthout asked about the possibility of accounting for the increases when considering a person's income as some customers who need financial assistance cannot qualify as their income threshold does not meet eligibility requirements to participate in the programs. Director Niemeyer advised that the City's financial assistance programs use Thurston County income thresholds for property tax assistance. Staff acknowledges that some customers do not qualify for assistance despite having trouble paying their utility bill. If a customer qualifies for the City's Lifeline Program, the customer would receive a 50% discount on their entire utility bill.

City Administrator Parks added that staff could explore options for possibility reevaluating whether the income threshold level could be increased; however, the City must abide by the constitutional provision of not gifting public funds.

Director Smith noted that the department is exploring options as part of a study on the utilities. The study is nearing completion on the financial

**TUMWATER PUBLIC WORKS COMMITTEE
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aspect and for future capital projects. The last element of the study is reviewing the affordability factor of each utility rate. It may entail a revised affordability formula and potential opportunities or programs that could be implemented either in addition to or as an expanded program for financial assistance to low-income customers.

Chair Swarthout asked whether projects similar to the recently completed Habitat for Humanity project qualify for the Lifeline Program or other programs. Director Smith responded that during the development phase, the City offers different discounts for the connection fees for properties providing low-income housing. Within the Lifeline Program, the Finance Department has been working with mobile home communities and other low-income supported housing to provide a discount to individual ratepayers. Staff works with customers to determine the number of ratepayers that qualify for the program.

City Administrator Parks added that the connection fee is paid by the developer while the Lifeline Program applies to users that qualify.

Director Niemeyer said the briefing is only informational. The proposal will be presented to the Council on November 4, 2024 for consideration. The effective date of the proposal is January 1, 2025.

MOTION: **Councilmember Jefferson moved, seconded by Councilmember Althausser, to recommend placement of Resolution No. R-2024-0017 for the 2025 Fee Schedule on the November 4, 2024 City Council Consideration calendar with a recommendation to approve and authorize the Mayor to sign. A voice vote approved the motion unanimously.**

ADJOURNMENT: **With there being no further business, Chair Swarthout adjourned the meeting at 8:50 a.m.**

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

TO: Public Works Committee
 FROM: Alyssa Jones Wood, Sustainability Coordinator
 DATE: November 7, 2024
 SUBJECT: Interagency Agreement with Washington Department of Commerce for Tumwater Fire Stations Solar + Storage Feasibility

1) Recommended Action:

Place the Interagency Agreement with Washington Department of Commerce for Tumwater Fire Stations Solar and Storage Feasibility on the November 19, 2024, City Council consent calendar with a recommendation to approve and authorize the Mayor to sign.

2) Background:

The Thurston Climate Mitigation Plan (TCMP) was accepted by the City Council via Resolution R2021-001 on January 19, 2021. The project funded by the Department of Commerce will help advance Strategy B5 of the TCMP, “increase the production of local renewable energy.”

3) Policy Support:

City Council Strategic Priorities and Goals 2023 - 2024
 B. Be a Leader in Environmental Sustainability
 4. Continue to update and advance the Climate Action Plan.

4) Alternatives:

Reject the grant funding and do not complete the solar feasibility assessment.

5) Fiscal Notes:

The City has been awarded a grant amount of \$50,000. No City match is required nor anticipated to complete the project.

This project is supported with funding from Washington’s Climate Commitment Act. The CCA supports Washington’s climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov.

6) Attachments:

A. Interagency Agreement with Washington Department of Commerce for Tumwater Fire Stations Solar + Storage Feasibility



Interagency Agreement with

City of Tumwater

through

Energy Division, Energy Programs in Community

Contract Number:

24-52238-011

For

General Clean Energy RFA 2024

Clean Energy Siting & Permitting

Tumwater Fire Stations Solar and Storage Feasibility

Dated: Monday, October 14, 2024

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Face Sheet

Contract Number: 24-52238-011

**Energy Division, Energy Programs in Communities Unit
 General Clean Energy RFA**

1. Contractor City of Tumwater 555 Israel Rd SW Tumwater, WA 98501		2. Contractor Doing Business As (as applicable) 	
3. Contractor Representative Alyssa Jones Wood Sustainability Coordinator 555 Israel Rd SW Tumwater, WA 98501 360-754-4140 ajoneswood@ci.tumwater.wa.us		4. COMMERCE Representative Esther Nielsen Program Manager 360-725-2727 Esther.Nielsen@commerce.wa.gov <div style="float: right; text-align: right;"> PO Box 42525 1011 Plum St. NE Olympia, WA 98504-2525 </div>	
5. Contract Amount \$50,000	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date 10/14/2024	8. End Date 7/31/2025
9. Federal Funds (as applicable) N/A		Federal Agency: N/A	
10. Tax ID # 91-6001520		11. SWV # 0007172-00	12. UBI # 344-000-001
13. UEI # LLLDHHS4E5G1			
14. Contract Purpose Feasibility Study: The City of Tumwater will plan and design solar plus storage for each of the City's Two Fire Stations.			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" –Reporting, Attachment "D" - Proviso			
FOR CONTRACTOR <hr/> Debbie Sullivan, Mayor <hr/> Date		FOR COMMERCE <hr/> Michael Furze, Assistant Director Energy Division <hr/> Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

DECLARATIONS

The Washington State Department of Commerce (Commerce) has been appropriated funds by the Washington State Legislature to provide grants to promote Washington's commitment to equitable, clean energy development.

CLIENT INFORMATION

Legal Name: City of Tumwater

Agreement Number: 24-52238-011

Award Year: 2024

State Wide Vendor Number: 0007172-00

PROJECT INFORMATION

Project Title: Tumwater Fire Stations Solar and Storage Feasibility

Project Address: 311 Israel Road SW and 405 Linwood Ave

Project City: Tumwater

Project State: WA

Project Zip Code: 98501

GRANT INFORMATION

Grant Amount: \$50,000

Non-State Match (1:X) N/A

Type of Match Accepted: cash, in-kind

Earliest Date for Reimbursement: Date of Contract Execution

Time of Performance: 10/14/2024 - 6/30/2025

Program Specific Terms and Conditions

As identified herein, notwithstanding General & Specific Terms and Conditions SECTIONS, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

1. **BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT (Replaces Special Terms and Conditions #4 Billing Procedures and Payment)**

COMMERCE will pay Contractor not more often than monthly upon acceptance of services provided and receipt of properly completed invoices for completed milestones, which shall be submitted to the Representative for COMMERCE.

The Contractor shall provide the Representative of COMMERCE a signed electronic Invoice A19 form that includes the contract number referenced on the declarations page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed and the milestone number(s) achieved.

The Contractor is required to maintain documentation to support invoiced costs and cost share obligations. The Contractor shall make these documents available to COMMERCE if requested.

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone.

However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor's control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

1. **SUBCONTRACTING** (Replaces General Terms and Conditions #15 Subcontracting)

The Contractor may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Contractor Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).

The Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract.

In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties. Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

All reference to the Contractor under this clause shall also include Contractor's employees, agents or subcontractors.

2. **PREVAILING WAGE LAW**

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this Agreement, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request

3. **HISTORICAL OR CULTURAL ARTIFACTS**

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor's Executive Order 21-02, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable.

Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 21-02 coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local law enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permit.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

In the event that the Contractor finds it necessary to amend the Scope of Work the Contractor may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act

4. ACKNOWLEDGMENT OF CLIMATE COMMITMENT ACT FUNDING

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The Tumwater Fire Stations Solar and Storage Feasibility Clean Energy Grant is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and

Item 4.



D. Any equipment purchased with CCA funding through a generally visible decal.

Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed \$50,000, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

EXPENSES

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$0, which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

4. BILLING PROCEDURES AND PAYMENT (Replaced by Program Specific Terms and Conditions #1 Billing and Compensation for Performance Based Contract)

~~COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.~~

~~The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.~~

~~Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.~~

~~COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.~~

~~No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by COMMERCE.~~

Invoices and End of Fiscal Year

~~Invoices are due on the 20th of the month following the provision of services.~~

~~Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date. The Contractor must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.~~

~~Duplication of Billed Costs~~

~~The Contractor shall not bill COMMERCE for services performed under this Agreement, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.~~

~~Disallowed Costs~~

~~The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.~~

~~COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).~~

5. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. FRAUD AND OTHER LOSS REPORTING

Contractor shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

8. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Attachment D – Proviso
- Program Specific Terms and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C – Reporting

General Terms and Conditions

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" means the entire written agreement between COMMERCE and the Contractor, including any Attachments, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

3. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

4. ASSIGNMENT

Neither this Contract, work thereunder, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and

iii. All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

- B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law.

The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures.

The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

- C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

6. COPYRIGHT

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The

Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

11. RECAPTURE

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

12. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

13. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

15. **SUBCONTRACTING** (Replaced by Program Specific Terms and Conditions #2 Subcontracting)

~~The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor's duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.~~

16. **SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

17. **TERMINATION FOR CAUSE**

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

18. **TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract, COMMERCE may, by ten (10) business days' written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

19. **TERMINATION PROCEDURES**

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or

acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

20. TREATMENT OF ASSETS

Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.

- A. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.

- B.** The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C.** If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.
- D.** The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract.
- E.** All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

21. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Attachment A: Scope of Work

Project Name: Tumwater Fire Stations Solar and Storage Feasibility

Site Address: 311 Israel Road SW and 405 Linwood Ave SW in Tumwater, WA

Serving electric utility: Puget Sound Energy

Timeline: List major actions taken to facilitate the feasibility study:

Project Initiative	Action	Description/Deliverable	Estimated completion time
A: Phase I: Information Gathering and Data Collection			January 2025
A.1	Executed contract with consultant	Executed contract (sub-contractor)	January 2025
A.2	Community engagement plan	Simple documentation of planned community/stakeholder engagement (meeting dates, survey link, etc.)	January 2025
A.3	Kick-off meeting with key stakeholders	Stakeholder Meeting notes and	January 2025
A.4	Data Collection & Site Visit	Zip file with data gathered including photos from site visit	January 2025
B: Phase 2: Iterative Technical Design and Community Engagement			January - June 2025
B.1	Conceptual photovoltaic design	load profile; conceptual design	April 2025
B.2	Design review meeting	Updates to preliminary design notes and/or slide deck; list of any changes or challenges that arose	May 2025
B.3	Community engagement	Summary of community input	June 2025
C: Phase 3: Final Documentation			June 2025
C.1	Feasibility study report	Final feasibility report siting analysis; Financial analysis	June 2025

Analysis Anticipated:

<input checked="" type="checkbox"/> Electrical Load	<input checked="" type="checkbox"/> Structural load	<input type="checkbox"/> Wind Load
<input type="checkbox"/> SEPA	<input type="checkbox"/> NEPA	<input checked="" type="checkbox"/> Other (please specify): Emergency Management Plan

Project Summary:

This project will determine the feasibility and preliminary design of a solar plus battery energy storage system (S+BESS) system at Tumwater's two fire stations.

The scope of work includes:

- Consultant Selection & Contracting – Contractor will select a consultant responsible for studying the technical, economic, and environmental feasibility of installing a solar plus BESS system at Tumwater's two fire stations.
- Community & Stakeholder Engagement – Consultant will document plans to engage stakeholders and the wider community, including through meeting(s) and surveys. This also includes consultation with affected Tribes.
- Information Gathering & Data Collection – Consultant will gather and review on building usage, existing Emergency Management Plan and set goals for emergency preparedness, utility data, as-builts, and conduct a comprehensive site visit.
- Iterative Technical Design – Contractor will draft conceptual design and load profile, and will identify any potential construction challenges. Contractor will update designs following stakeholder engagement on the design.
- DAHP Assessment – Consultant will complete a cultural resource survey and inventory of the site according to WA Department of Archeology and Historical Preservation guidelines.
- Final Report – Consultant will submit their final report with all analysis, assessments, and evaluations to the Contractor at the close of the feasibility study. Contractor submit this report to the WA Department of Commerce as its final milestone.

Attachment B: Budget

All funding is subject to continued legislative authorization and re-appropriation where applicable.

Milestone	Deliverable(s)	Deliverable Description	Expected Completion Date	Percent of Grant	\$ Amount of grant
A: Contracting and Planning			December-24	10.0%	\$ 5,000.00
A.1	Executed contract with consultant	Executed Service Provider Contract with sub-consultant			
A.2	Community engagement plan	Simple documentation of planned community/stakeholder engagement (meeting dates, etc.)			
A.3	kick-off stakeholder meeting notes	Meeting Agenda and notes			
A.4	Data Collection and Site Visit	utility data, photos from site visit, and notes from site visit			
B: Iterative Technical Design and Community Engagement			June-25	40.0%	\$ 20,000.00
B.1	Conceptual design	load profile; conceptual design			
B.2	Ongoing Community/Stakeholder meetings	Meeting minutes and attendance from each meeting; Summary of community input to be included in project scope			
B.3	Community Engagement	summary of community input			
C: Final Documentation			June-25	50.0%	\$ 25,000.00
C.1	Feasibility study report	Final feasibility report siting analysis; Financial analysis			
			Total	100.0%	\$ 50,000.00

TOTAL AWARD AMOUNT:	\$ 50,000.00
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Attachment C: Reporting

The Contractor must provide quarterly written reports and/or host a regular quarterly video and/or phone call with COMMERCE for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Contractor shall provide a quarterly report to COMMERCE, no later than 15 days after the end of each quarter. The report form will be provided by Commerce. The report should describe the project activity that occurred during the quarter, including but not limited to:

1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
2. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.); and,
3. Any additional metrics required from the capital budget proviso, legislature, governor's office, or COMMERCE.
4. Quarterly updated invoice projection sheet for grant expenditures. Commerce will provide the invoice projection sheet;

A final report and fact sheet will be submitted to Commerce. Commerce will provide the fact sheet template and may request the fact sheet be updated as conditions warrant.

Quarterly Reports Submission Deadlines

Quarter 1	April 15
Quarter 2	July 15
Quarter 3	October 15
Quarter 4	January 15

Attachment D: Proviso

Clean Energy Siting and Permitting

2023-2025 biennial operating budget

Clean Energy Siting and Permitting – Section 123, Subsection 7

\$10,000,000 of the climate commitment account—state appropriation is provided solely for grants to support port districts, counties, cities, towns, special purpose districts, any other municipal corporations or quasi-municipal corporations, and tribes to support siting and permitting of clean energy projects in the state. Eligible uses of grant funding provided in this section include supporting predevelopment work for sites intended for clean energy projects, land use studies, conducting or engaging in planning efforts such as planned actions and programmatic environmental impact statements, and staff to improve permit timeliness and certainty.

TO: Public Works Committee
 FROM: Dan Smith, Water Resources & Sustainability Director
 DATE: November 7, 2024
 SUBJECT: Grant from the Dept of Ecology for the Golf Course Stormwater Retrofit Project Amendment 2 (labeled 4)

1) Recommended Action:

Place Amendment 2 of the Department of Ecology Grant for the Golf Course Stormwater Retrofit Project on the City Council consent calendar on November 19, 2024 with a recommendation to approve and authorize the Mayor to sign.

2) Background:

The City received a grant from the Department of Ecology to design and construct a system to treat stormwater runoff from the golf course parking lot. Currently, rain water that runs off the parking lot goes directly into the Deschutes River untreated. New studies have shown that chemicals found in tire dust create toxic water for coho salmon, a species that has been struggling to survive in the Deschutes River. This funding would allow Tumwater to construct a bioretention facility to treat that water, meeting requirements for the Salmon-Safe certification at the golf course.

This grant amendment fixes a clerical error on the part of the Department of Ecology by amending the start date of the agreement back to July 1, 2022 as reflected in the original agreement with Ecology. This amendment is the second grant amendment for this project, but is inaccurately labeled amendment number four due to an error in Ecology’s grant software that created two additional amendments which were never pursued.

3) Policy Support:

Strategic Priority B – Be a Leader in Environmental Sustainability

4) Alternatives:

None.

5) Fiscal Notes:

The City of Tumwater received a \$123,717.33 grant from the Department of Ecology. A 25% match was required, with Ecology providing \$92,788.00 toward the design and construction of this project. In total, design and permitting is anticipated to cost \$194,681.08. The Parks Department is funding the remaining design and construction costs as part of the Golf Course Parking Lot Resurfacing Project outlined under General Government projects number 17 in the Tumwater Capital Improvement Plan 2024-2029.

6) Attachments:

A. Amendment 2 (labeled 4)



**AMENDMENT NO. 4
 TO AGREEMENT NO. WQC-2023-Tumwat-00051
 BETWEEN
 THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
 AND
 City of Tumwater**

PURPOSE: To amend the above-referenced agreement (AGREEMENT) between the state of Washington Department of Ecology (ECOLOGY) and City of Tumwater (RECIPIENT) for the Tumwater Valley Golf Course Parking Lot Stormwater Retrofit Design (PROJECT).

This amendment is required to change the Funding Effective Date for funding distribution EG230029 to match the Agreement Initiation Date, of 07/01/2022. The funding effective date was erroneously changed by Ecology in a previous amendment.

IT IS MUTUALLY AGREED that the AGREEMENT is amended as follows:

Effective Date:
 Original: 01/31/2024 Amended: 07/01/2022

CHANGES TO THE BUDGET

Funding Distribution EG230029

Funding Title: SFAP
 Funding Type: Grant
 Funding Effective Date: 07/01/2022 Funding Expiration Date: 10/16/2025

Funding Source:
 Title: SFAP - SFY23
 Fund: FD
 Type: State
 Funding Source %: 100%
 Description: Model Toxics Control Capital Account(MTCCA) Stormwater

Approved Indirect Costs Rate: Approved State Indirect: 0%
 Recipient Match %: 25%
 InKind Interlocal Allowed: No
 InKind Other Allowed: No
 Is this Funding Distribution used to match a federal grant? No

City of Tumwater

Tumwater Valley Golf Course Parking Lot Stormwater Retrofit Design Project

Agreement No. WQC-2023-Tumwat-00051

SFAP	Task Total
Grant and Loan Administration	\$ 2,500.00
Cultural and Environmental Review, and Permitting	\$ 500.00
Design Plans and Specifications	\$ 25,000.00
Construction Management	\$ 3,500.00
Construction	\$ 92,017.33
Project Close Out	\$ 200.00

Total: \$ 123,717.33

City of Tumwater

Tumwater Valley Golf Course Parking Lot Stormwater Retrofit Design Project

Agreement No. WQC-2023-Tumwat-00051

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
SFAP	25 %	\$ 30,929.33	\$ 92,788.00	\$ 123,717.33
Total		\$ 30,929.33	\$ 92,788.00	\$ 123,717.33

TO: Public Works Committee
 FROM: Colby Fletcher, Construction Engineer
 DATE: November 7, 2024
 SUBJECT: Acceptance of Work with Sound Pacific Construction for the 2022 Pedestrian Improvements Project

1) Recommended Action:

Staff requests the Public Works Committee recommend the City Council accept the 2022 Pedestrian Improvements project as complete and authorize the release of the performance bond as soon as the laws of the state of Washington allow and place it on the November 19, 2024, City Council consent calendar.

2) Background:

The 2022 Pedestrian Improvements Project was a construction project that addressed various sidewalk deficiencies on residential streets, installed Rectangular Rapid-Flashing Beacons (RRFB) to enhance safety at two existing midblock pedestrian crossings, and the installation of one new pedestrian crossing to restore full pedestrian accessibility at an existing intersection.

The sidewalk deficiencies addressed by this project were identified through data collection as part of the Americans with Disabilities Act (ADA) Transition Plan Update. The RRFB installations occurred at the 5100 Capitol Boulevard SE crossing and the 1850 Barnes Boulevard SW crossing. The new crossing installation occurred at the south leg of the Capitol Boulevard SE and Custer Way SW intersection.

The Public Works Contract with the low bidder, Sound Pacific Construction, was signed on July 7, 2022, for a total bid amount of \$493,337.00. Work on this project is complete and the final construction amount is \$497,877.97.

3) Policy Support:

Strategic Priorities and Goals 2021-2026:

- B. Build a Community Recognized for Quality, Compassion and Humanity
 - C. Create and Maintain a Transportation System Safe for All Modes of Travel
-

4) Alternatives:

- Do not accept the project as complete and direct staff to pursue alternative actions(s).
-

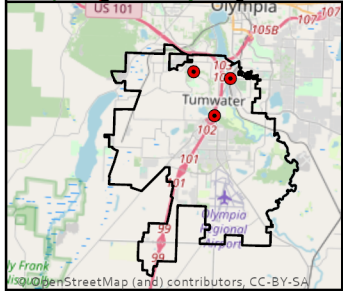
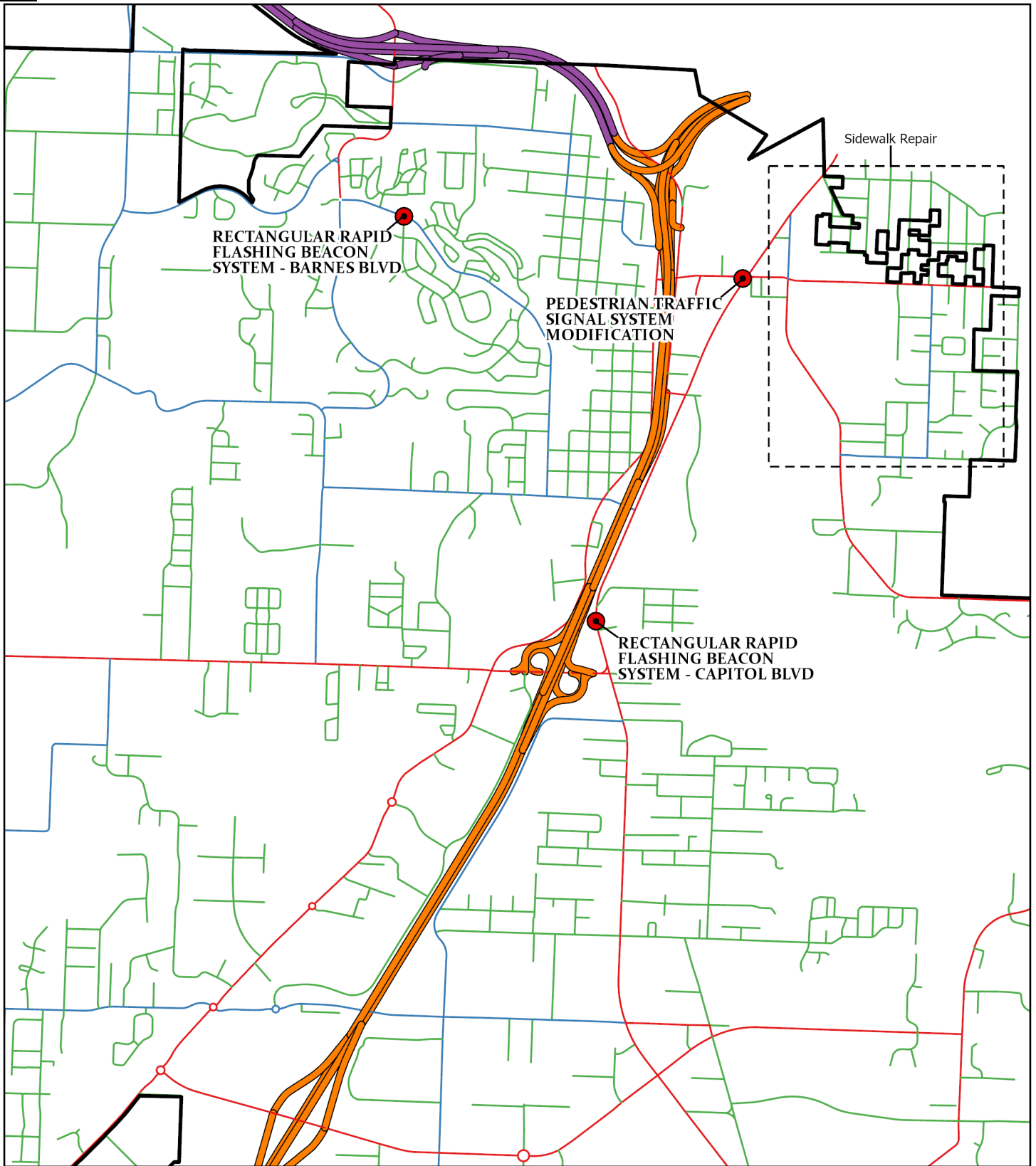
5) Fiscal Notes:

Funding for the project came from the Transportation CFP, Transportation Benefit District,

Tumwater School District, and the City of Tumwater.

6) Attachments:

A. Vicinity Map

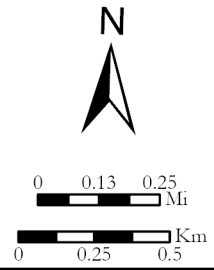


2022 Pedestrian Improvements

- | | |
|----------------------|--------------------|
| Improvement Sites | Residential |
| Tumwater City Limits | State Freeway |
| Arterial | Interstate Freeway |
| Collector | |

2022

Coordinate System: NAD 1983 HARN StatePlane Washington South FIPS 4602 Feet



TO: Public Works Committee
 FROM: Daryl Epstein, Engineer II
 DATE: November 7, 2024
 SUBJECT: Acceptance of Work with Miles Resources for the 2023 Pavement Maintenance project.

1) Recommended Action:

Staff requests the Public Works Committee recommend the City Council accept the 2023 Pavement Maintenance project as complete and authorize the release of the performance bond as soon as the laws of the state of Washington allow and place it on the November 19, 2024, City Council consent calendar.

2) Background:

The 2023 Pavement Maintenance project encompassed grind & inlay, RPM replacement, citywide striping, and crack seal of many roads within the City of Tumwater. All curb ramps within the extents of paving limits were replaced with new ADA ramps, and areas where obvious pavement and subgrade damage existed were targeted for pavement/roadway repair.

The Public Works contract with the low bidder, Miles Resources, was signed on May 19, 2023, for \$3,857,857.00. Work on this project is now complete; the final contract total is \$4,171,958.32.

3) Policy Support:

Strategic Priorities and Goals 2021-2026:

- B. Build a Community Recognized for Quality, Compassion and Humanity
 - C. Create and Maintain a Transportation System Safe for All Modes of Travel
-

4) Alternatives:

- Do not accept the project as complete and direct staff to pursue alternative actions(s).
-

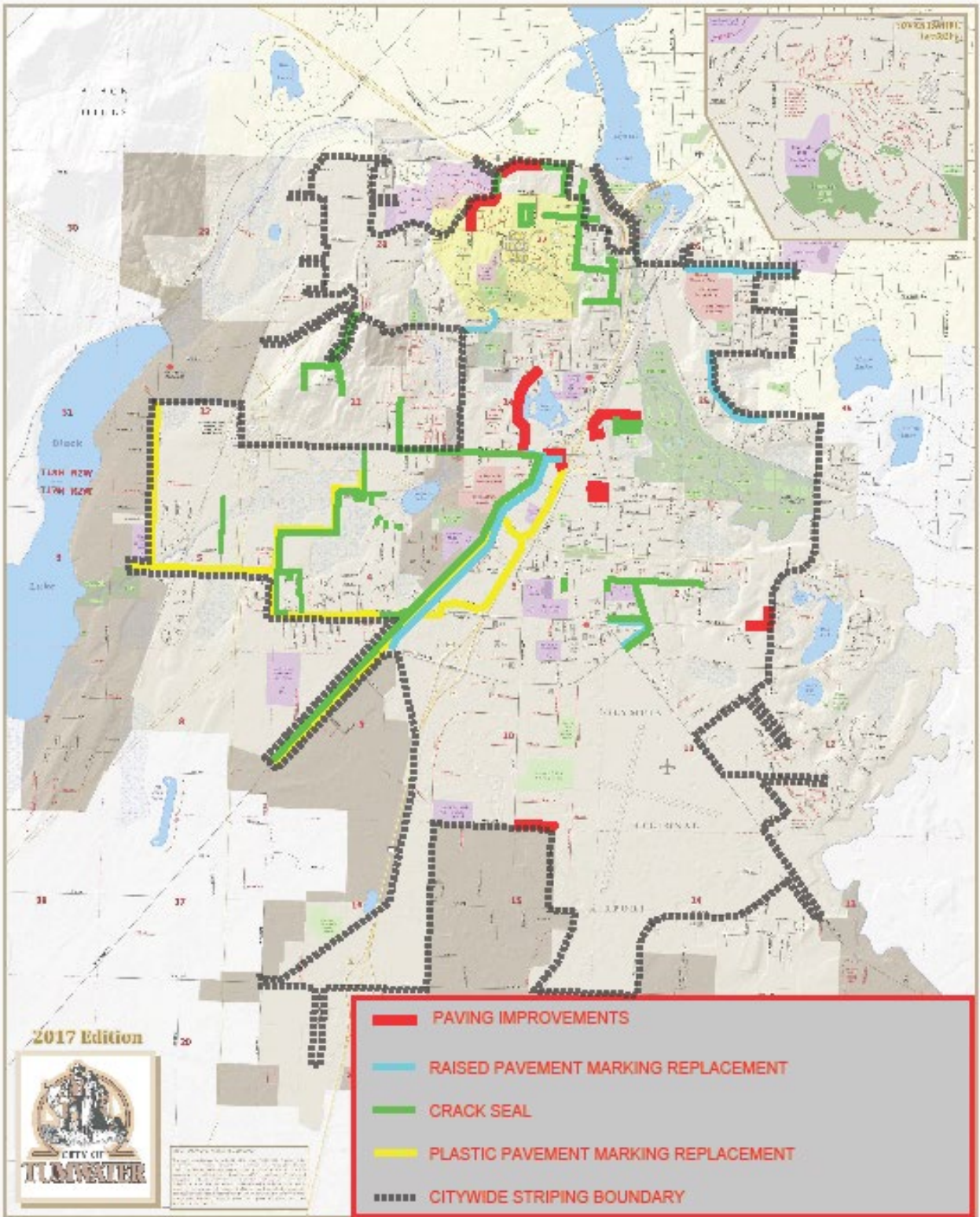
5) Fiscal Notes:

Funding for the project came from the Transportation Benefit District.

6) Attachments:

- A. Vicinity Map

ATTACHMENT A: VICINITY MAP



TO: Public Works Committee
 FROM: Don Carney, Capital Projects Manager
 DATE: November 7, 2024
 SUBJECT: Authority to Solicit Bids and Recommend Award for the Percival Creek Fish Barrier Removal project

1) Recommended Action:

Staff requests the Public Works Committee: 1) authorize staff to solicit bids for the Percival Creek Fish Barrier Removal project, 2) recommend City Council award and authorize the Mayor to sign a Public Works Contract with the lowest responsible bidder, and 3) recommend City Council authorize the closure and detour of Sapp Road SW from Crosby Blvd SW to RW Johnson Rd SW for the duration of the project. The roadway will be open to local traffic only.

2) Background:

This project is for the removal and replacement of a fish barrier culvert conveying Percival Creek under Sapp Road. The existing culvert is an undersized five-foot diameter concrete culvert and the replacement culvert will be a 60 feet long by 19 feet wide by 8.5 feet high box culvert. Other improvements include improved instream large wood and streambed material, roadway reconstruction, and additional multimodal facilities for the Percival Creek crossing.

This project includes complex work both in the roadway and Percival Creek. Much of the work includes deep excavation in a segment of the road that is not wide enough to divert traffic around the work zone. The project also has a narrow construction timeline due to approved work windows for fish protection. A full road closure and detour is necessary to complete the work expeditiously and for the safety of construction personnel, City staff, and the traveling public. The roadway up to the culvert excavation will remain open to local traffic.

The Engineer’s estimate for construction is in the range of \$2,000,000 to \$2,500,000.

3) Policy Support:

Strategic Priority B – Be a Leader in Environmental Sustainability
 • Remove obstructions to fish passages

4) Alternatives:

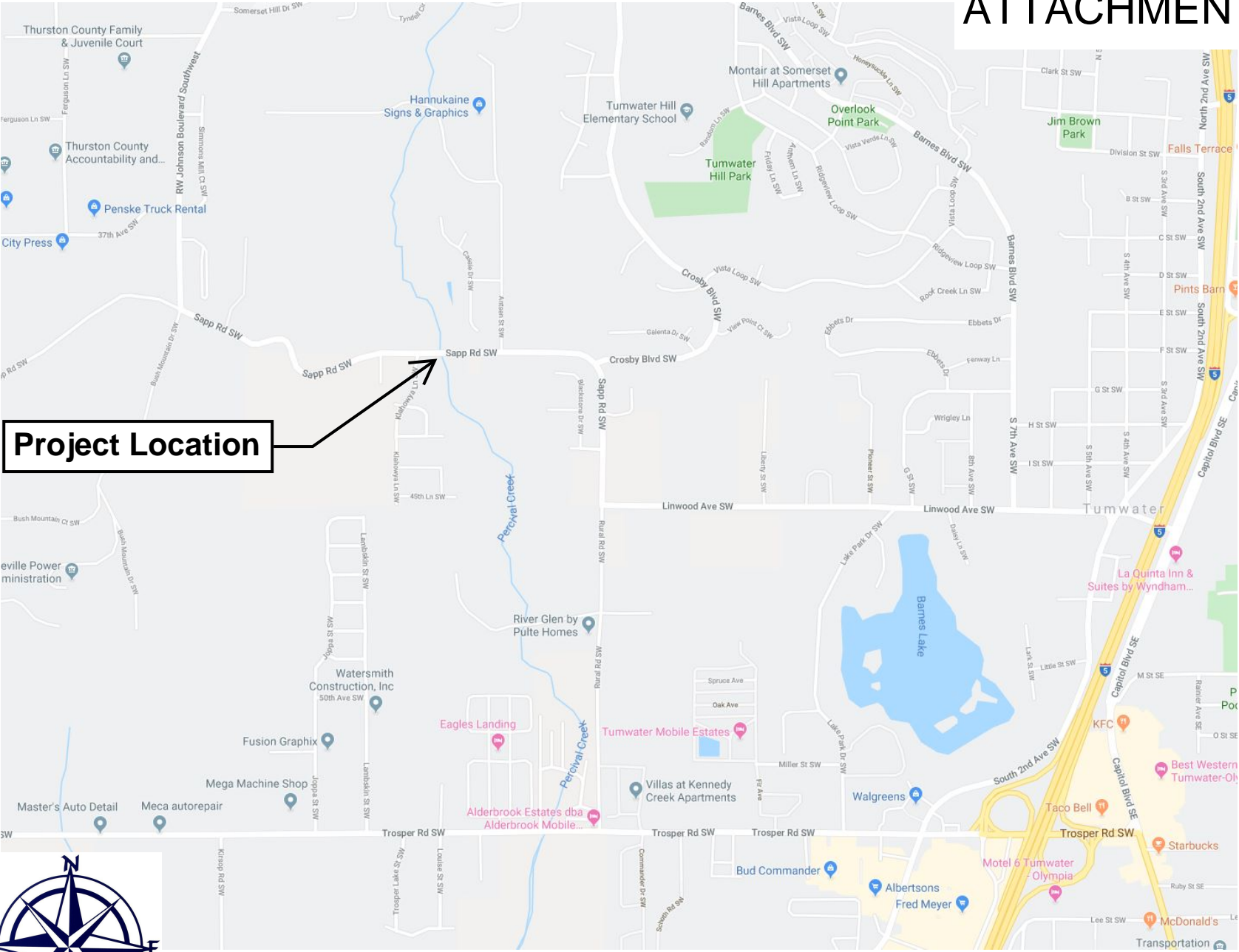
- Revise the project.
- Do not authorize staff to solicit bids.

5) Fiscal Notes:

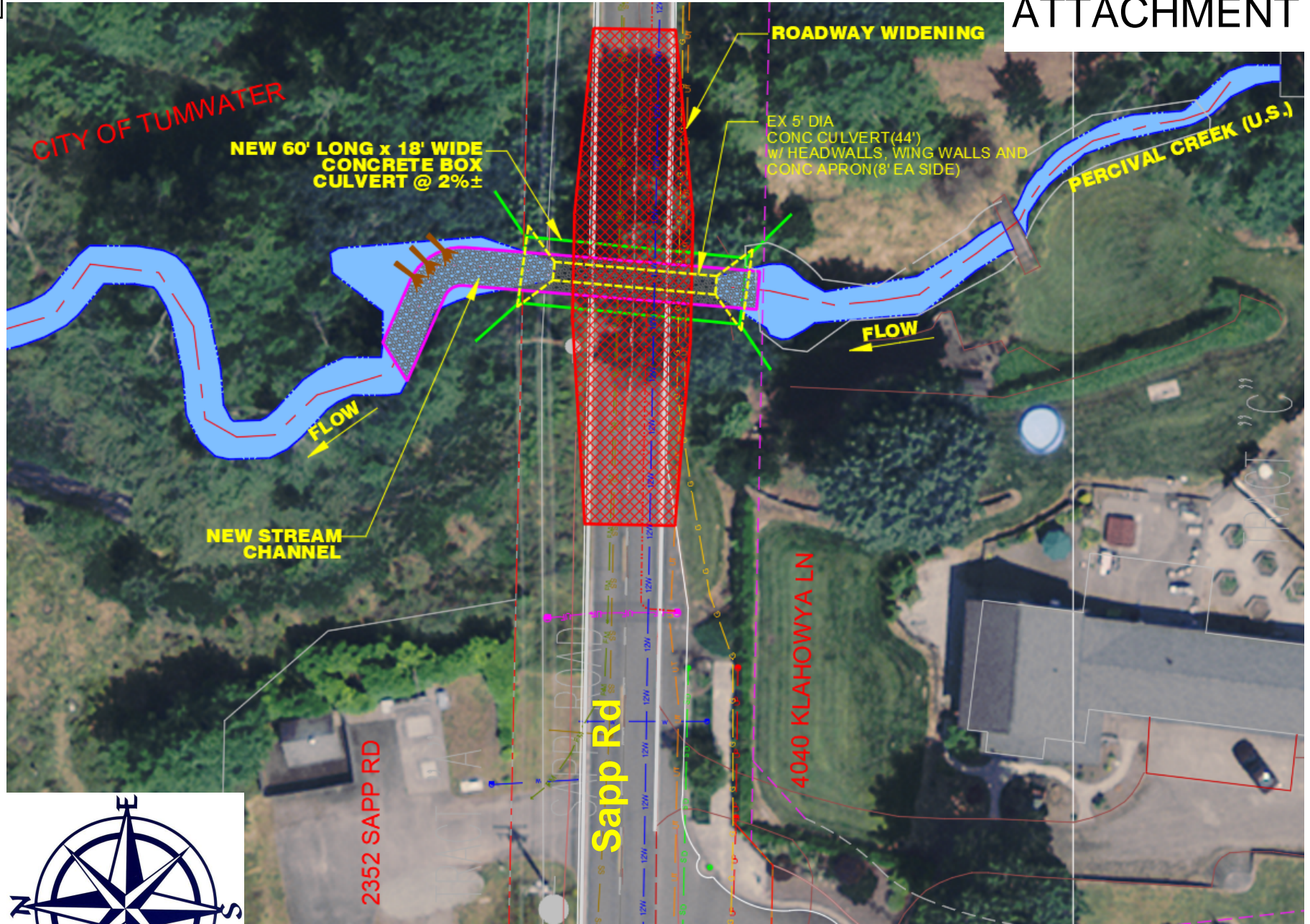
Tumwater has secured \$2,100,000 from WSDOT’s PROTECT funding program and \$257,550 as an RCO grant. These grants are non-matching grants, however additional funds to complete the project will be City of Tumwater Storm Drain Funds.

6) Attachments:

- A. Vicinity Map
- B. Project Overview



VICINITY MAP



PROJECT OVERVIEW

TO: Public Works Committee
 FROM: Don Carney, Capital Projects Manager
 DATE: November 7, 2024
 SUBJECT: Old Hwy 99 & 79th Ave Roundabout Schedule 74 Underground Conversion Design Agreement with Puget Sound Energy

1) Recommended Action:

Staff requests the Public Works Committee recommend the City Council approve and authorize the Mayor to sign the Puget Sound Energy (PSE) Schedule 74 Underground Conversion Design Agreement to design the utility underground conversion for the Old Hwy 99 and 79th Ave Roundabout project and place it on the November 19, 2024, City Council consent calendar.

2) Background:

In 2023, the City signed a Service Provider Agreement with HDR Engineering to provide the design of a roundabout at the intersection of Hwy 99 and 79th Ave SE and frontage improvements along city-owned parcels at the intersection of 79th Ave SE and Trails End Drive SE. The roundabout and frontage improvements work includes placing all overhead utilities underground within the project limits.

The City had determined that road improvement projects would include conversions of all utilities from overhead to underground where feasible. Under Schedule 74 rules a government entity can elect to put overhead electrical facilities underground and PSE will share the cost in design for the underground conversion. The cost of design is shared 60% PSE and 40% City.

By approving the Schedule 74 Underground Conversion Project Design Agreement, Puget Sound Energy will begin design for the underground conversion along with these improvements. The Schedule 74 Design Agreement outlines the conditions and terms of the agreement. These documents are required by PSE to begin their design.

3) Policy Support:

Create and Maintain a Transportation System Safe for All Modes of Travel

- Continue to improve maintenance and interconnectivity of a bicycle and pedestrian system.
 - Continue improving the maintenance of the transportation system.
-

4) Alternatives:

- Deny the agreement and retain utilities overhead.
-

5) Fiscal Notes:

The funds to complete the Schedule 74 Project Design Agreement will come from the Transportation CFP. The City will pay 40% of the costs, and PSE will pay 60% of the costs.

6) Attachments:

- A. Schedule 74 Underground Conversion, Project Design Agreement
- B. Project Overview

SCHEDULE 74 UNDERGROUND CONVERSION**Project Design Agreement**

Project Name: OLD HWY 99 SE & 79TH AVE SE RAB IMPROVEMENT

Project Number: 101169283

THIS Agreement, dated as of this 29 day of July, 2024, is made by and between City of Tumwater, a City (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with "Exhibit A" Schedule 74 of the Company's Electric Tariff G, incorporated herein, ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Exhibit B, "PSE Schedule 74 Briefing Book" and Exhibit C "Appendices to PSE Schedule 74 Briefing Book" are hereby incorporated into this contract. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.
2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.
3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

Design Agreement, Attachment "A" to Schedule 74, Page 1
 OLD HWY 99 SE & 79TH AVE SE RAB IMPROVEMENT

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.
5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.
6. Following the Company's receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).
7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.
8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.
10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.
11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:
 - (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.
 - (b) Each estimate of the costs to be incurred by a party shall, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.
 - (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.
 - (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.
 - (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For

purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

- (f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following:
 - (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.
12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,
- (a) notify the Company in writing that this Agreement is terminated; or
 - (b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
 - (i) reasonable,
 - (ii) consistent with the Scope of Work, and
 - (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

- (a) change the Scope of Work in accordance with paragraph 13, below, or
- (b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or
- (c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or
- (d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.
- (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.
14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.
15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.
- (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.
17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

Attn: _____
Fax: _____

If to the Company:

Puget Sound Energy, Inc.
Christine VanWagenen
2711 Pacific Ave SE, Olympia WA 98501
Attn: CVW

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

- 20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- 21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.
- 22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

Company:

PUGET SOUND ENERGY, INC.

BY _____

BY _____

ITS _____

ITS _____

Date Signed _____

Date Signed _____

Approved as to form:

**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES**

(N)

1. AVAILABILITY

The Company shall install an Underground Distribution System and shall remove the existing overhead electric distribution system of 15,000 volts or less together with Company-owned poles following removal of all utility wires therefrom under this Schedule when all of the following conditions are met:

- a. The Government Entity has determined that installation of an Underground Distribution System is or will be required and has notified the Company in writing of such determination, and the Company and such Government Entity have agreed upon the provisions of the Design Agreement and the Construction Agreement pursuant to which the Company shall design and install an Underground Distribution System and provide service under this Schedule.
- b. The Company has the right to install, construct, operate, repair and maintain an electrical distribution system (including an Underground Distribution System) within the Public Thoroughfare in the Conversion Area pursuant to a franchise previously granted by the Government Entity requesting such installation and executed by the Company, or, if there is no such franchise, or if such franchise does not provide such right, pursuant to some other grant of rights mutually agreed upon by the Company and the Government Entity.
- c. All customers served by the Company within the Conversion Area will receive electric service through Underground Service Lines from the Underground Distribution System, unless the Company explicitly agrees to other electric service arrangements.

Government Entities that are eligible to receive service under this Schedule are not eligible for service under Schedule 73 of the Company's Electric Tariff G.

2. AGREEMENT PROVISIONS

The Company shall provide and install an Underground Distribution System within the Conversion Area subject to the terms and conditions of a Schedule 74 Design Agreement (the "Design Agreement") and a Schedule 74 Construction Agreement (the "Construction Agreement"), and the following shall apply:

(N)

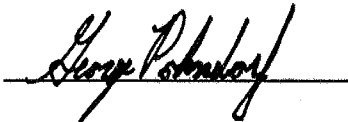
Issued: June 26, 2002

Effective: July 1, 2002

Advice No.: 2002-12

By Authority of the Washington Utilities and Transportation Commission in Docket Nos. UE-011570 & UG-011571

Issued By Puget Sound Energy

By: 

George Pohndorf

Title: Director, Rates & Regulation

PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- a. The Design Agreement and the Construction Agreement shall (i) be consistent with this Schedule, and (ii) be substantially in the forms of Attachment A and Attachment B hereto, which attachments are by this reference incorporated in this Schedule as if fully set forth herein. Without limiting the possibility that the Company and the Government Entity may (consistent with this Schedule) mutually agree upon terms that are in addition to those contained in the forms set forth in Attachments A and B hereto, neither the Government Entity nor the Company shall be required to agree to additional terms as a condition of service under this Schedule.
- b. The Design Agreement and the Construction Agreement shall:
- (1) except as otherwise provided in Section 2.b(2), obligate the Government Entity to pay the Company 40% of the total Cost of Conversion and the Company to pay 60% of the total Cost of Conversion;
 - (2) obligate the Government Entity to pay (i) 100% of the total Cost of Conversion for conversion of that portion, if any, of the existing overhead distribution system located, as of the date on which the Government Entity provides the notice referred to in Section 4.a or the date on which the Government Entity commences acquisition or condemnation of real property to facilitate construction of any public improvements related to the conversion project, whichever occurs first, (A) outside of the Public Thoroughfare or (B) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion;
 - (3) obligate the Government Entity to pay the Company 100% of the costs of (i) cancellation as provided herein; (ii) any facilities installed at the time of the conversion to provide Temporary Service, as provided for herein; and (iii) removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment);
 - (4) obligate the Company to pay 100% of the cost of obtaining the rights referred to in Section 3.b; and
 - (5) obligate the Government Entity to (i) perform or to cause to be performed (A) all Trenching and Restoration and job coordination required for the installation of the Underground Distribution System and (B) all surveying for alignment and grades of vaults and ducts and (ii) to pay 100% of the cost of performance under clause (i) of this Section 2.b(5).

(N)

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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

- c. The Government Entity may, at its option, install ducts and vaults, provided that (i) pursuant to the Design Agreement and the Construction Agreement the Government Entity and the Company have mutually agreed upon (A) the cost of such installation to be included in the Cost of Conversion and (B) the specifications and standards applicable to such installation, and (ii) such installation is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company for such installation pursuant to the Design Agreement. To the extent the Government Entity installs any of the Facilities pursuant to the Construction Agreement, the Company shall not be required to do so under this Schedule.
- d. A Government Entity that is a municipality shall notify all persons and entities within the Conversion Area that electric service to such persons and entities must be converted from overhead to underground (as provided for in the Company's Electric Tariff G) within the applicable statutory period following written notice from the Government Entity that service from underground facilities is available in accordance with RCW 35.96.050. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to persons and entities failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

3. INSTALLATION AND OPERATING RIGHTS:

- a. The Company may install all of the Facilities within a Public Thoroughfare in the locations provided for in a franchise previously granted by the Government Entity or otherwise provided for in the grant of rights referred to in Section 1.b. The Government Entity shall act in good faith and shall use its best efforts to provide space sufficient for the safe and efficient installation, operation, repair and maintenance of all of the Facilities ("Sufficient Space") within the Public Thoroughfare in the Conversion Area, and the Company shall act in good faith and shall use its best efforts to install Facilities in such space within the Public Thoroughfare. If the Company and the Government Entity agree that there is not or will not be Sufficient Space within the Public Thoroughfare in the Conversion Area, then the Government Entity shall provide Sufficient Space by obtaining additional Public Thoroughfare or other equivalent rights mutually agreeable to the Government Entity and the Company, title to which shall be in the Government Entity's name.

(N)

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PUGET SOUND ENERGY
Electric Tariff G

SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)

(N)

- b. If, notwithstanding the use of best efforts by each of the Government Entity and the Company as provided in Section 3.a, the Government Entity and the Company do not agree whether there is or will be Sufficient Space within the Public Thoroughfare in the Conversion Area, the Company shall install those Facilities, for which there is not Sufficient Space within the Public Thoroughfare, on property outside the Public Thoroughfare, the rights for which shall be obtained by the Company at its sole expense. Subject to the other provisions of this Schedule, nothing in this section shall excuse the Company from complying with any work schedule agreed to by the Government Entity and the Company pursuant to the Design Agreement and the Construction Agreement.
- c. If the Government Entity requires the relocation of any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall reimburse the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.
- d. If the Government Entity requires (or takes any action that has the effect of requiring) a third party not acting as an agent or a contractor of Government Entity to relocate any Facilities installed pursuant to this Schedule in a Public Thoroughfare within five (5) years from the date of the energization for service of such Facilities, the Government Entity shall require the third party, as a condition to the Company's performance of any relocation, to pay the Company for all costs incurred by the Company in connection with the relocation and reinstallation of facilities substantially equivalent to the relocated Facilities.

4. GENERAL

- a. **Timing:** The Company shall commence performance (as contemplated in the forms of Design Agreement and Construction Agreement attached hereto as Attachments A and B) within ten (10) business days of written notice from a Government Entity of its determination that it requires installation of an Underground Distribution System under this Schedule.
- b. **Ownership of Facilities:** Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate, and maintain the Underground Distribution System installed or provided pursuant to this Schedule.
- c. **Prior Contracts:** Nothing herein contained shall affect the rights or obligations of the Company under any previous agreements pertaining to existing or future facilities of greater than 15,000 Volts within any Conversion Area.

(N)

Issued: June 26, 2002

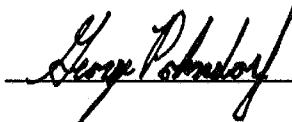
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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

d. Temporary Service: Temporary Service shall not exceed a term of 18 months from the date on which service from the Underground Distribution System is available, unless the Company acting reasonably agrees to extend such term. Should a Temporary Service not be removed within such 18-month period or such other period of time that has been approved by the Company acting reasonably, a Government Entity that is a municipality shall exercise its authority under RCW 35.96.050 to order such Temporary Service disconnected and removed within the applicable statutory period following the date of mailing of the Government Entity's notice under RCW 35.96.050. Otherwise, if a Temporary Service is not disconnected or removed within such time approved by the Company acting reasonably, the Government Entity shall pay either (i) 100% of the Cost of Conversion for the entire Underground Distribution System or (ii) 100% of the costs of converting only the Temporary Service to underground, whichever the Government Entity may elect.

5. USE BY OTHER UTILITIES OF TRENCHES PROVIDED BY GOVERNMENT ENTITY

Other utilities may be permitted by the Government Entity to use trenches provided by the Government Entity pursuant to this Schedule for the installation of such other utilities' facilities, so long as such facilities, or the installation thereof, do not interfere (as determined pursuant to the Company's electrical standards) with the installation, operation or maintenance of the Company's Facilities located within such trenches.

6. CANCELLATION

If by written notice or other official action a Government Entity cancels or suspends indefinitely or takes similar official action regarding a conversion project undertaken under this Schedule prior to completion of the conversion to an Underground Distribution System, the Government Entity shall pay the Company all of the costs incurred by the Company to the date of such cancellation consistent with the termination provisions of the Design Agreement and Construction Agreement.

7. STREET LIGHTING

Removal and replacement of existing street lighting or installation of new street lighting within the Conversion Area suitable for service from the Underground Distribution System installed pursuant to this Schedule shall be arranged separately as provided in the Company's Electric Tariff G.

(N)

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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

8. UNDERGROUND SERVICE LINES

Underground Service Lines shall be installed, owned, and maintained as provided in the Company's Electric Tariff G.

9. GENERAL RULES AND PROVISIONS

Service under this Schedule is subject to the General Rules and Provisions contained in Schedule 80 of the Company's Electric Tariff G.

10. DEFINITIONS

The following terms when used in this Schedule, the Design Agreement or the Construction Agreement shall, solely for purposes of this Schedule and such agreements, have the meanings given below:

- a. Conversion Area: The geographical area in which the Company replaces its overhead electric distribution system with an Underground Distribution System.
- b. Cost of Conversion: The cost of converting an existing overhead distribution system to an Underground Distribution System shall be the sum of:
 - (i) the actual, reasonable costs to the Company for labor, materials and overheads and all other reasonable costs, not including mark-up or profit of the Company, for design of the Underground Distribution System, such costs to be determined in accordance with the Design Agreement; plus
 - (ii) the actual costs to the Company for labor, materials and overheads and all other costs, not including mark-up or profit of the Company, to construct and install the Underground Distribution System, up to a maximum amount determined in accordance with the Construction Agreement; plus
 - (iii) the actual reasonable design costs to the Company (including costs for labor, materials and overheads and all other reasonable costs), and the actual construction and installation costs to the Company (including costs for labor, materials and overheads and all other costs), less the salvage value to the Company of the facilities removed, up to a maximum amount determined in accordance with the Construction Agreement, in each case not including mark-up or profit of the Company, for removal of the existing electrical facilities; plus

(N)

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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

- (iv) the actual costs to the Government Entity (if any) of installation of ducts and vaults or other Facilities that the Government Entity has agreed to install for the Underground Distribution System pursuant to the Construction Agreement, up to a maximum amount determined in accordance with the Construction Agreement; plus
- (v) the actual, reasonable costs to the Government Entity (if any) of obtaining Public Thoroughfare or other equivalent rights for the Facilities pursuant to Section 3.a.

The Cost of Conversion shall not include any costs of Trenching and Restoration, or of the Company's obtaining rights pursuant to Section 3.b of this Schedule. Company upgrades and expansions, Government Entity requested changes and requested upgrades, the cost of delays and overtime labor costs shall be as provided for in the Design Agreement and the Construction Agreement.

- c. Facilities: All components of the Underground Distribution System, including but not limited to, primary voltage cables, secondary voltage cables, connections, terminations, pad-mounted transformers, pad-mounted switches, ducts, vaults and other associated components.
- d. Government Entity: The municipality, county or other government entity having authority over the Public Thoroughfare in the Conversion Area.
- e. Public Thoroughfare: Any municipal, county, state, federal or other public road, highway or thoroughway, or other public right-of-way or other public real property rights allowing for electric utility use.
- f. Temporary Service: Temporary Service shall have the meaning set forth in the General Rules and Provisions of the Company's Electric Tariff G and, in addition, shall mean (i) limited overhead facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to leave in place within the Conversion Area after installation of the Underground Distribution System and/or (ii) limited overhead or underground facilities that, at the request of the Government Entity, the Company may elect in its sole discretion to install concurrently with the installation of the Underground Distribution System, and that, in each case, shall be used to provide overhead distribution service within the Conversion Area for such period as may be approved by the Company acting reasonably under the circumstances, (e.g., to accommodate other demolition or construction projects within the Conversion Area).

(N)

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**PUGET SOUND ENERGY
Electric Tariff G**

**SCHEDULE 74
CONVERSION TO UNDERGROUND SERVICE
FOR GOVERNMENT ENTITIES
(Continued)**

(N)

- g. Trenching and Restoration: Includes, but is not limited to, any or all of the following, whether in Public Thoroughfares or on other property: breakup of sidewalks, driveways, street surfaces and pavements; disturbance or removal of landscaping; excavating for vaults; trenching for ducts or cable; shoring, flagging, barricading and backfilling; installation of select backfill or concrete around ducts (if required); compaction; and restoration of Public Thoroughfares and other property; all in accordance with the specifications applicable thereto set forth in the Design Agreement and the Construction Agreement.
- h. Underground Distribution System: An underground electric distribution system, excluding "Underground Service Lines" as such term is defined herein, that is comparable to the overhead distribution system being replaced. The Underground Distribution System includes the Facilities as defined herein. For purposes of this Schedule, a "comparable" system shall include, unless the Government Entity and the Company otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the Design Agreement and Construction Agreement necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.
- i. Underground Service Lines: The underground electric cables and associated components extending from the service connections at the outside of the customers' structures to the designated primary voltage or secondary voltage service connection points of an Underground Distribution System.

(N)

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Issued By Puget Sound Energy

By: 

George Pohndorf

Title: Director, Rates & Regulation

**SCHEDULE 74 UNDERGROUND CONVERSION
Project Construction Agreement**

Project Name: Schedule 74 Conversion
Project Number:

THIS Agreement, dated as of this ____ day of _____, 2021 __, is made by and between The City of __, a Municipal Corporation (the "Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the "Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy, and pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity has determined that it is necessary to replace the existing overhead electric distribution system within the area specified in the Project Plan (as defined below) (the "Conversion Area") with a comparable underground electric distribution system, all as more specifically described in the Project Plan (the "Conversion Project").

C. The Government Entity and the Company have previously entered into a Project Design Agreement dated as of June 19th 2019 (the "Design Agreement"), pursuant to which the parties completed certain engineering design, cost assessment, operating rights planning and other preliminary work relating to the Conversion Project and, in connection with that effort, developed the Project Plan.

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the completion of the Conversion Project, which both parties intend shall qualify as an underground conversion under the terms of Schedule 74.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Definitions.

(a) Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement, including, without limitation, the following:

- i) Cost of Conversion;
- ii) Public Thoroughfare;
- iii) Temporary Service;
- iv) Trenching and Restoration;
- v) Underground Distribution System; and
- vi) Underground Service Lines.

(b) "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, a "comparable" system shall include, unless the Parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less)

Construction Agreement, Exhibit "A" to Schedule 74, Page 1
__Avenue South Schedule 74 (101xxxxxx)

of such diameter and number as may be specified and agreed upon in the Project Plan necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced.

- (c) "Estimated Reimbursable Private Conversion Costs" shall mean the Company's good faith estimate of the Reimbursable Private Conversion Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (d) "Estimated Reimbursable Temporary Service Costs" shall mean the Company's good faith estimate of the Reimbursable Temporary Service Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (e) "Estimated Reimbursable Upgrade Costs" shall mean the Company's good faith estimate of the Reimbursable Upgrade Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (f) "Estimated Shared Company Costs" shall mean the Company's good faith estimate of the Shared Company Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (g) "Estimated Shared Government Costs" shall mean the Government Entity's good faith estimate of the Shared Government Costs, as specified in the Project Plan and as changed and adjusted from time to time in accordance with Section 6, below.
- (h) "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of the foregoing, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.
- (i) "Party" shall mean either the Company, the Government Entity, or both.
- (j) "Private Property Conversion" shall mean that portion, if any, of the Conversion Project for which the existing overhead electric distribution system is located, as of the date determined in accordance with Schedule 74, (i) outside of the Public Thoroughfare, or (ii) pursuant to rights not derived from a franchise previously granted by the Government Entity or pursuant to rights not otherwise previously granted by the Government Entity.
- (k) "Project Plan" shall mean the project plan developed by the Parties under the Design Agreement and attached hereto as Exhibit A, as the same may be changed and amended from time to time in accordance with Section 6, below. The Project Plan includes, among other things, (i) a detailed description of the Work that is required to be performed by each Party and any third party, (ii) the applicable requirements and specifications for the Work, (iii) a description of the Operating Rights that are required to be obtained by each Party for the Conversion Project (and the requirements and specifications with respect thereto), (iv) an itemization and summary of the Estimated Shared Company Costs, Estimated Shared Government Costs, Estimated Reimbursable Private Conversion Costs (if any), Estimated Reimbursable Temporary Service Costs (if any) and Estimated Reimbursable Upgrade Costs (if any), and (v) the Work Schedule.
- (l) "Operating Rights" shall mean sufficient space and legal rights for the construction, operation, repair, and maintenance of the Underground Distribution System.
- (m) "Reimbursable Private Conversion Costs" shall mean (i) all Costs of Conversion, if any, incurred by the Company which are attributable to a Private Property Conversion, less (ii) the distribution pole replacement costs (if any) that would be avoided by the Company on account of such

Private Property Conversion, as determined consistent with the applicable Company distribution facilities replacement program, plus (iii) just compensation as provided by law for the Company's interests in real property on which such existing overhead distribution system was located prior to conversion; provided that the portion of the Reimbursable Private Conversion Costs attributable to the Costs of Conversion under subparagraph (i) of this paragraph shall not exceed the Estimated Reimbursable Private Conversion Costs without the prior written authorization of the Government Entity.

- (n) "Reimbursable Temporary Service Costs" shall mean all costs incurred by the Company which are attributable to (i) any facilities installed as part of the Conversion Project to provide Temporary Service, as provided for in Schedule 74, and (ii) the removal of any facilities installed to provide Temporary Service (less salvage value of removed equipment); provided that the Reimbursable Temporary Service Costs shall not exceed the Estimated Reimbursable Temporary Service Costs without the prior written authorization of the Government Entity.
- (o) "Reimbursable Upgrade Costs" shall mean all Costs of Conversion incurred by the Company which are attributable to any Government-Requested Upgrade; provided that the Reimbursable Upgrade Costs shall not exceed the Estimated Reimbursable Upgrade Costs without the prior written authorization of the Government Entity.
- (p) "Shared Company Costs" shall mean all Costs of Conversion (other than Reimbursable Upgrade Costs, Reimbursable Private Conversion Costs and Reimbursable Temporary Service Costs) incurred by the Company in connection with the Conversion Project; provided, however, that the Shared Company Costs shall not exceed the Estimated Shared Company Costs without the prior written authorization of the Government Entity. For the avoidance of doubt, the "Shared Company Costs" shall, as and to the extent specified in the Design Agreement, include the actual, reasonable costs to the Company for the "Design Work" performed by the Company under the Design Agreement.
- (q) "Shared Government Costs" shall mean all Costs of Conversion incurred by the Government Entity in connection with (i) any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity as part of the Government Work, and (ii) the acquisition of any Operating Rights which the Parties have, by mutual agreement, specified in the Project Plan are to be obtained by the Government Entity for the Conversion Project, but only to the extent attributable to that portion of such Operating Rights which is necessary to accommodate the facilities of the Company; provided, however, that the Shared Government Costs shall not exceed the Estimated Shared Government Costs without the prior written authorization of the Company.
- (r) "Total Shared Costs" shall mean the sum of the Shared Company Costs and the Shared Government Costs. For the avoidance of doubt, the Total Shared Costs shall not include, without limitation, (i) costs to the Government Entity for Trenching and Restoration, or (ii) costs associated with any joint use of trenches by other utilities as permitted under Section 3(b).
- (s) "Work" shall mean all work to be performed in connection with the Conversion Project, as more specifically described in the Project Plan, including, without limitation, the Company Work (as defined in Section 2(a), below) and the Government Work (as defined in Section 3(a), below).
- (t) "Work Schedule" shall mean the schedule specified in the Project Plan which sets forth the milestones for completing the Work, as the same may be changed and amended from time to time in accordance with Section 6, below.

2. Obligations of the Company.

- (a) Subject to the terms and conditions of this Agreement, the Company shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Company Work"):
- i) furnish and install an Underground Distribution System within the Conversion Area (excluding any duct and vault installation or other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity);
 - ii) provide a Company inspector on-site at the times specified in the Work Schedule to inspect the performance of any duct and vault installation Work which the Parties have specified in the Project Plan is to be performed by the Government Entity; and
 - iii) upon connection of those persons or entities to be served by the Underground Distribution System and removal of facilities of any other utilities that are connected to the poles of the overhead system, remove the existing overhead system (including associated wires and Company-owned poles) of 15,000 volts or less within the Conversion Area except for Temporary Services.
- (b) Upon request of the Government Entity, the Company shall provide periodic reports of the progress of the Company Work identifying (i) the Company Work completed to date, (ii) the Company Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Company Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and the Work Schedule.
- (c) Except as otherwise provided in the Company's Electric Tariff G, the Company shall own, operate and maintain all electrical facilities installed pursuant to this Agreement including, but not limited to, the Underground Distribution System and Underground Service Lines.
- (d) Subject to the terms and conditions of this Agreement, the Company shall perform all Company Work in accordance with the Project Plan, the Work Schedule and this Agreement.

3. Obligations of the Government Entity.

- (a) Subject to the terms and conditions of this Agreement, the Government Entity shall do the following as specified in, and in accordance with the design and construction specifications and other requirements set forth in, the Project Plan (the "Government Work"):
- i) provide the Trenching and Restoration;
 - ii) perform the surveying for alignment and grades for ducts and vaults; and
 - iii) perform any duct and vault installation and other Work which the Parties have specified in the Project Plan is to be performed by the Government Entity.
- (b) Other utilities may be permitted by the Government Entity to use the trenches provided by the Government Entity for the installation of their facilities so long as such facilities or the installation thereof do not interfere (as determined pursuant to the Company's electrical standards) with the Underground Distribution System or the installation or maintenance thereof. Any such use of the trenches by other utilities shall be done subject to and in accordance with the joint trench design specifications and installation drawings set forth or otherwise identified in the Project Plan, and the Government Entity shall be responsible for the coordination of the design and installation of the facilities of the other utilities to ensure compliance with such specifications and drawings.
- (c) Upon request of the Company, the Government Entity shall provide periodic reports of the progress of the Government Work identifying (i) the Government Work completed to date, (ii) the Government Work yet to be completed, and (iii) an estimate regarding whether the Conversion Project is on target with respect to the Estimated Shared Government Costs and the Work Schedule.

- (d) The Government Entity shall be responsible for coordinating all work to be performed in connection with the street improvement program within the Conversion Area.
- (e) Subject to the terms and conditions of this Agreement, the Government Entity shall perform all Government Work in accordance with the Project Plan, the Work Schedule and this Agreement.

4. Work Schedule.

- (a) The Government Entity and the Company have agreed upon the Work Schedule as set forth in the Project Plan. Changes to the Work Schedule shall be made only in accordance with Section 6, below.
- (b) Promptly following the execution of this Agreement, and upon completion by the Government Entity of any necessary preliminary work, the Government Entity shall hold a pre-construction meeting involving all participants in the Conversion Project to review project design, coordination requirements, work sequencing and related pre-mobilization requirements. Following the pre-construction meeting, the Government Entity shall give the Company written notice to proceed with the Work at least ten (10) business days prior to the commencement date specified in the Work Schedule.
- (c) Subject to the terms and conditions of this Agreement, each Party shall perform the Work assigned to it under this Agreement in accordance with the Work Schedule. So long as the Company performs the Company Work in accordance with the Work Schedule, the Company shall not be liable to the Government Entity (or its agents, servants, employees, contractors, subcontractors, or representatives) for any claims, actions, damages, or liability asserted or arising out of delays in the Work Schedule.

5. Location of Facilities.

All facilities of the Company installed within the Conversion Area pursuant to this Agreement shall be located, and all related Operating Rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74, as specified by the Parties in the Project Plan.

6. Changes.

- (a) Either Party may, at any time, by written notice thereof to the other Party, request changes in the Work within the general scope of this Agreement (a "Request for Change"), including, but not limited to: (i) changes in, substitutions for, additions to or deletions of any Work; (ii) changes in the specifications, drawings and other requirements in the Project Plan, (iii) changes in the Work Schedule, and (iv) changes in the location, alignment, dimensions or design of items included in the Work. No Request for Change shall be effective and binding upon the Parties unless signed by an authorized representative of each Party.
- (b) If any change included in an approved Request for Change would cause a change in the cost of, or the time required for, the performance of any part of the Work, an equitable adjustment shall be made in the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs (if any), the Estimated Reimbursable Temporary Service Costs (if any), the Estimated Reimbursable Upgrade Costs (if any) and/or the Work Schedule to reflect such change. The Parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.
- (c) The Work Schedule, the Estimated Shared Company Costs, the Estimated Shared Government Costs, the Estimated Reimbursable Private Conversion Costs, the Estimated Reimbursable Temporary Service Costs and/or the Estimated Reimbursable Upgrade Costs shall be further

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equitably adjusted from time to time to reflect any change in the costs or time required to perform the Work to the extent such change is caused by: (i) any Force Majeure Event under Section 11, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Work and was not known by or disclosed to the affected Party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Work which are expressly identified by the Parties in the Project Plan. Upon the request of either Party, the Parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the Parties are unable to agree upon the terms of the equitable adjustment, either Party may submit the matter for resolution pursuant to the dispute resolution provisions in Section 10, below.

- (d) Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each Party shall, if requested by the other Party, proceed with the Work in accordance with any approved Request for Change. Any request to proceed hereunder must be accompanied by a written statement setting forth the requesting Party's reasons for rejecting the proposed equitable adjustment of the other Party.

7. Compensation and Payment.

- (a) Subject to and in accordance with the terms and conditions of this Agreement (including, without limitation, the payment procedures set forth in this Section 7), payment in connection with the Conversion Project and this Agreement shall be as follows:
- i) The Total Shared Costs shall be allocated to the Parties in the following percentages: (A) sixty percent (60%) to the Company, and (B) forty percent (40%) to the Government Entity.
 - ii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Private Conversion Costs, if any.
 - iii) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Upgrade Costs, if any.
 - iv) The Government Entity shall pay one hundred percent (100%) of all Reimbursable Temporary Service Costs, if any.
 - v) The Government Entity shall pay one hundred percent (100%) of the costs it incurs to perform that portion of the Government Work specified in Section 3(a)(i) and (ii) (i.e., Trenching and Restoration and surveying).
 - vi) The Company shall pay one hundred percent (100%) of the costs it incurs to design, provide and construct any Company-Initiated Upgrade.
 - vii) The Company shall pay one hundred percent (100%) of the costs it incurs to obtain Operating Rights outside the Public Thoroughfare.
- (b) Based on the allocation of responsibilities set forth in Section 7(a), above, the Parties shall determine the net amount payable by the Government Entity or the Company, as applicable, to the other Party under this Agreement (the "Net Amount"). The Net Amount shall be determined by using the amount of the Total Shared Costs allocated to the Government Entity under Section 7(a)(i), and adjusting such amount as follows:
- i) Subtracting (as a credit to the Government Entity) the amount of the Shared Government Costs.
 - ii) Adding (as a credit to the Company) the amount of all Reimbursable Private Conversion Costs, Reimbursable Upgrade Costs and Reimbursable Temporary Service Costs.
 - iii) Subtracting (as a credit to the Government Entity) any payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement.

The Net Amount, as so calculated, (A) will be an amount payable to the Company if it is a positive number, and (B) shall be an amount payable to the Government Entity if it is a negative number.

- (c) Within sixty (60) business days of completion of the Conversion Project, the Government Entity shall provide the Company with an itemization of the Shared Government Costs (the "Government Itemization"), together with such documentation and information as the Company may reasonably request to verify the Government Itemization. The Government Itemization shall, at a minimum, break down the Shared Government Costs by the following categories, as applicable: (i) property and related costs incurred and/or paid by the Government Entity, including any costs of obtaining Operating Rights, and (ii) construction costs incurred and/or paid by the Government Entity, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Government Entity.
- (d) Within thirty (30) business days after the Company's receipt of the Government Itemization and requested documentation and information, the Company shall provide the Government Entity a written statement (the "Company Statement") showing (i) an itemization of the Shared Company Costs, (ii) the Parties' relative share of the Total Shared Costs based on the Company's itemization of the Shared Company Costs and the Government Entity's itemization of the Shared Government Costs set forth in the Government Itemization, (iii) any Reimbursable Private Conversion Costs, (iv) any Reimbursable Upgrade Costs, (v) any Reimbursable Temporary Service Costs, (vi) any credits to the Government Entity for payments previously made to the Company by the Government Entity under the Design Agreement which, under the terms of the Design Agreement, are to be credited to the Government Entity under this Agreement, and (vii) the Net Amount, as determined in accordance with Section 7(b), above, together with such documentation and information as the Government Entity may reasonably request to verify the Company Statement. The itemization of the Shared Company Costs included in the Company Statement shall, at a minimum, break down the Shared Company Costs by the following categories, as applicable: (i) design and engineering costs, and (ii) construction costs, including and listing separately inspection, labor, materials and equipment, overhead and all costs charged by any agent, contractor or subcontractor of the Company.
- (e) Within thirty (30) business days after the Government Entity's receipt of the Company Statement and requested documentation and information, the Net Amount shall be paid by the owing Party to the other Party, as specified in the Company Statement.

8. Indemnification.

- (a) The Government Entity releases and shall defend, indemnify and hold the Company harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Government Entity in its performance under this Agreement. During the performance of such activities the Government Entity's employees or contractors shall at all times remain employees or contractors, respectively, of the Government Entity.
- (b) The Company releases and shall defend, indemnify and hold the Government Entity harmless from all claims, losses, harm, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees) caused by or arising out of any negligent act or omission or willful misconduct of the Company in its performance under this Agreement. During the performance of such activities the Company's employees or contractors shall at all times remain employees or contractors, respectively, of the Company.
- (c) Solely for purposes of enforcing the indemnification obligations of a Party under this Section 8, each Party expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, and agrees that the obligation to indemnify, defend and hold harmless provided for in this Section 8 extends to any such claim brought against the indemnified Party by

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or on behalf of any employee of the indemnifying Party. The foregoing waiver shall not in any way preclude the indemnifying Party from raising such immunity as a defense against any claim brought against the indemnifying Party by any of its employees.

9. Conversion of Service to Customers within Conversion Area.

- (a) Upon commencement of the Work, the Government Entity shall notify all persons and entities within the Conversion Area that service lines to such customers must be converted from overhead to underground service within the applicable statutory period following written notice from the Government Entity that service from underground facilities are available in accordance with RCW 35.96.050. Upon the request of any customer, other than a single family residential customer, within the Conversion Area, the Company shall remove the overhead system and connect such persons' and entities' Underground Service Lines to the Underground Distribution System.
- (b) The Parties acknowledge that single family residences within the Conversion Area must (i) provide a service trench and conduit, in accordance with the Company's specifications, from the underground meter base to the point of service provided during the conversion, and (ii) pay for the secondary service conductors as defined in Schedule 85 of the Company's Electric Tariff G. The Government Entity shall exercise its authority to order disconnection and removal of overhead facilities with respect to owners failing to convert service lines from overhead to underground within the timelines provided in RCW 35.96.050.

10. Dispute Resolution.

- (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the Parties. A Party who wishes dispute resolution shall notify the other Party in writing as to the nature of the dispute. Each Party shall appoint a representative who shall be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- (b) Any claim or dispute arising hereunder which relates to any Request for Change or any equitable adjustment under Section 6, above, or the compensation payable by or to either Party under Section 7, above, and which is not resolved by senior management within the time permitted under Section 10(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.
- (c) In connection with any arbitration under this Section 10, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the Parties. Each Party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing Party's costs and expenses (including, but not limited to, reasonable attorneys' fees) by the other Party.

- (d) Unless otherwise agreed by the Parties in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

11. Uncontrollable Forces.

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a third party; or any failure or delay in the performance by the other Party, or a third party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

12. Insurance.

- (a) PSE shall, and shall require each of its contractors to, secure and maintain in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) comprehensive general liability insurances, with a minimum coverage of \$2,000,000 per occurrence and \$2,000,000 aggregate for personal injury; and \$2,000,000 per occurrence/aggregate for property damages, and professional liability insurance in the amount of \$2,000,000.
- (b) The Government Entity shall ensure that each of its contractors performing any Government Work secures and maintains in force throughout the duration of the Conversion Project (or, if sooner, until termination of this Agreement) insurance policies having the same coverage, amounts and limits as specified Section 12(a), above.
- (c) In lieu of the insurance requirements set forth in Section 12(a), above, the Company may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the Government Entity's request, the Company shall provide the Government Entity with reasonable written evidence that the Company is maintaining such self-insurance.

13. Other.

- (a) Agreement Subject To Tariff. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electrical Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.
- (b) Termination. The Government Entity reserves the right to terminate the Conversion Project and this Agreement upon written notice to the Company. In the event that the Government Entity terminates the Conversion Project and this Agreement, the Government Entity shall reimburse the Company for all costs reasonably incurred by the Company in connection with the Work performed prior to the effective date of termination. In such event, the costs reimbursable to the Company (i) shall not be reduced by any Shared Government Costs or other costs incurred by the Government Entity, and (ii) shall be paid within thirty (30) days after the receipt of the Company's invoice therefor. Sections 1, 5, 7, 8, 9, 10, 11 and 13 shall survive any termination of the Conversion Project and/or this Agreement.

- (c) Facilities Greater Than 15,000 Volts. Nothing in this Agreement shall in any way affect the rights or obligations of the Company under any previous agreements pertaining to the existing or future facilities of greater than 15,000 Volts within the Conversion Area.
- (d) Compliance With Law. The Parties shall, in performing the Work under this Agreement, comply with all applicable federal, state, and local laws, ordinances, and regulations.
- (e) No Discrimination. The Company, with regard to the Work performed by the Company under this Agreement, shall comply with all applicable laws relating to discrimination on the basis race, color, national origin, religion, creed, age, sex, or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.
- (f) Independent Contractor. The Company and the Government Entity agree that the Company is an independent contractor with respect to the Work and this Agreement. The Company is acting to preserve and protect its facilities and is not acting for the Government Entity in performing the Work. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties. Neither the Company nor any employee of the Company shall be entitled to any benefits accorded employees of the Government Entity by virtue of the Work or this Agreement. The Government Entity shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Company, or any employee of the Company.
- (g) Nonwaiver of Rights or Remedies. No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall, except to the extent provided in this Agreement, be construed as a waiver or, or choice of, or relinquishment of any right under any provision of this Agreement or any right at law or equity not otherwise provided for herein. The express waiver by either Party of any right or remedy under this Agreement or at law or equity in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.
- (h) No Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.
- (i) Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental regulatory authorities and courts having jurisdiction over this Agreement, the Parties or either of them. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental regulatory authorities and courts that are required to be incorporated into agreements of this character are by this reference incorporated in this Agreement.
- (j) No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.
- (k) Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to either Party or any circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent provided by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court or arbitrator holds they are not severable from the invalid provisions.

- (l) Notice. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity:

City of SeaTac
 4008 South 188th Street
 SeaTac, Washington 98188
 Attn: Florendo Cabudol Jr. P.E.
 Phone Number: 206-973-4740
 Email: facbudol@ci.seatac.wa.us

If to the Company:

Puget Sound Energy, Inc.
 6905 South 228th Street
 Kent Washington 98032
 Attn: Jason Airey
 Phone Number: 206-348-9637
 Email: Jason.airey@pse.com

Any Party may change its address specified in this Section 13(l) by giving the other Party notice of such change in accordance with this Section 13(l).

- (m) Applicable Law. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.
- (n) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties; provided, however, that except as expressly set forth in this Agreement, nothing herein is intended to or shall alter, amend or supersede the Design Agreement and the same shall remain in full force and effect in accordance with its terms.
- (o) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the Parties, including but not limited to, any entity to which the rights or obligations of a Party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:

City of SeaTac

BY _____

ITS _____

Date Signed _____

Approved as to form: _____

Company:

PUGET SOUND ENERGY, INC.

BY _____

ITS _____

Date Signed _____



Old Hwy 99 & 79th Ave SE Roundabout Project